

# Frequently Asked Questions

This information sheet will become a helpful tool in implementing your workers' compensation loss control program. BIAW Claims Specialists work with R.O.I.I. Select participants and can be reached at 800-228-4229.

*Kept on Salary* and *Light Duty* or *Modified Return to Work* programs are crucial to containing losses, decreasing rates, increasing refunds and are a requirement of the R.O.I.I. Select program.

Implementing *Kept on Salary* means that your company has established a policy of paying injured workers their full salary or wages and all benefits including accrual of sick leave and vacation leave for at least the first 30 week days (6 weeks) from the date of first medical certification to be off of work or return to light/modified work. **Failure to comply with this requirement will result in forfeiting a refund for the plan year that you are enrolled in the R.O.I.I. Select program.**

The following are a few of the most frequently asked questions regarding the R.O.I.I. Select Kept On Salary (KOS) and Light Duty requirements.

**Am I responsible to notify L&I that I have a KOS program?**

Yes, you should notify L&I on the *Report of Accident* that you have a KOS program. When you receive the *Report of Accident* from the medical provider answer "yes" to question #73 and indicate "KOS" in the *other* blank. In the *comments* section write "KOS for first 30 week days after the date of injury" (6 weeks).

**Do I have to pay KOS during the three-day waiting period?**

Yes. KOS means exactly that. You must pay the worker as if there was no time lost. You also pay the worker's benefits such as health care and accrual of sick leave and vacation leave. In the R.O.I.I. Select program you must continue this benefit for at least 30 week days.

**Example:** Worker Joe was injured at 10:00 am, immediately transported to the doctor and certified for 5 days time off of work. You pay for the whole day that the worker was injured and the five days he's off of work.

### Can I require Worker Joe use all of his sick leave before KOS benefits begin?

No. L&I's new policy, which became effective July 22, 2007, states, "Employers who provide kept-on-salary (KOS) to workers cannot do so by mandating the worker's use of sick leave, holiday or vacation pay, or similar benefits. When an employer requires the use of these benefits L&I considers the worker to be entitled to time loss benefits."

### Can I implement the Return to Work program during the KOS period?

Yes, absolutely. Begin by working to obtain a release, at minimum, of modified or light duty right away. You should also be working on a release to the job that the worker was doing at the time of injury.

*Example:* Worker Joe was given a Return to Work Authorization form (form #1 in the R.O.I.I. Select procedure packet), a copy of a Job at Time of Injury job description and a copy of a Modified/Light Duty job description when he was transported to the doctor. The doctor reviewed the job analysis and determined that he was to be off of work completely for the first five days but then could return to work as a Light Duty Warehouse Worker on the 6<sup>th</sup> day. You have paid him full wages for the first five days and he shows up for light duty work on the sixth.

### Does the light duty work have to be similar to the job at the time of injury?

No. Light duty work can be any work that fits the worker's restrictions that is available in any area of the company.

*Example:* Worker Joe's job at the time of injury was roofing. The light duty job he is released to is in the warehouse.

### Do I have to pay the same wages Worker Joe was earning at the time of injury and what if his earnings were based on piecework?

Yes. For 30 week days from the date of certification you have to pay the same wages he earned at the time of injury. When a worker's earnings are based on piecework you can average his earnings over the prior 12 months and pay his KOS accordingly. If he is a short time employee use the wages of a worker in the same work situation who has worked for you for a longer time frame to get a representative wage.

*Example:* Worker Joe has worked for you for 7 months. This is a sufficient amount of time to determine an average wage. Add up the total gross earnings and divide by 7 months to determine the average monthly wage. To get the weekly and daily rates, divide the monthly rate by 4.4 weeks and the weekly rate by 5 days. Or, Worker Joe worked for you for 7 days. Use the wages of a like employee who would have a similar work pattern as Worker Joe was intended to have to obtain average earnings (use at least 6 months up to 12 months of earnings if possible). If Worker Joe worked for you for 3 months then went to work a cash job for 2 months and came back to work for you for 3 months, you only use 6 months worth of earnings because the 2 months of cash earnings are "off the books." You do not want to reward Worker Joe for working as an unlicensed contractor who may have taken customers away from your company. In other words, you only include wages that are "on the books." If however, Worker Joe was working for another employer during those 2 months you should attempt to get his earnings to include them in the calculation.

### If Worker Joe is still on light duty after the 30 days KOS period is expired, do I have to continue to pay his full wages?

No. After the 30 days of KOS has expired you can reduce the wage to "fair market value" for the job. Notify BIAW and L&I so that L&I can pay *Loss of Earning Power* (LEP) benefits. But, you must continue his other benefits such as health care coverage, accrual of sick and vacation time, etc.

*Example:* At the job at the time of injury, Worker Joe was earning \$4000 per month. The light duty position as a warehouse worker traditionally pays \$2000 per month. L&I will pay LEP at 80% of the difference between the wages. You and the worker will have to provide documentation, i.e., payroll, copy of paycheck, etc., before L&I will pay the LEP benefit.

**Will Labor and Industries contact the doctor to determine when Worker Joe can return to work at full duty? Will they contact my company to determine if Worker Joe has returned to work?**

Don't count on it. When L&I is notified that the worker is KOS the claim is flagged as non-compensable. This flag lets the claim manager know that it is a low priority claim as there are no time loss benefit payment deadlines to be met. In essence, you are the claim manager for at least the first 30 days in regard to benefit payment.

***Example:** Worker Joe has been attending his therapy and doctor appointments but you have not received updates. The doctor and therapist are sending reports to L&I because L&I pays their bills. However, since you are paying the worker's wages you also need to follow the recovery progress. You must communicate with the doctor's office regarding information pertaining to the claim. Contact the doctor by phone, fax or mail to request an update on ability to work or to change the work requirements. Per RCW 51.36.060 the doctor's office is required to provide information about claim related issues to the employer.*

**Should I pay KOS because Worker Joe says his doctor isn't releasing him to full duty?**

No. Pay KOS based only upon a written certification from the attending physician. This certification should include objective medical findings to support the need to "off of work" or "on light duty."

***Example:** You have observed Worker Joe when he visits the office and he seems to be in a lot of pain accompanied by wincing and groaning behavior. He says the doctor has told him he'll never be able to return to the job he was doing at the time of injury and may never work at all. Don't pay KOS based solely on your observations or his information. Submit a Return to To Work Authorization Form to the doctor every week or two. The doctor should have a treatment plan increasing the worker's physical capabilities and steady progress to full healing. If the worker's not progressing, check with the doctor to determine what additional treatment can be done, i.e., surgery, pain management program, etc.*

It can happen that the worker has been released to return to work but because the employer has not communicated with the doctor, the employer continues to pay wages and the worker doesn't bother to come to work. If this happens, L&I will issue an overpayment to credit the employer's account and begin collections against the claimant. However, the employer will be hard pressed to recoup KOS benefits. So, make sure you contact the doctor to certify the KOS benefit.

### Do I have to pay KOS if there is a scheduled unpaid holiday?

No. Because you are paying full wages on the day immediately prior to and/or the day immediately after the holiday there is no requirement to pay for the holiday provided you are not paying any employees for that day. If the day is a scheduled paid holiday then you are required to pay the injured worker.

*Example: If your company is shut down on the 4<sup>th</sup> of July and you do not pay your employees for the day, you are not required to pay the injured worker.*

### Do I have to pay KOS while Worker Joe is attending treatment or doctor appointments?

It depends. If the treatment is for an office check up, routine physical therapy, picking up a prescription, then you do not have to pay for that time away from work. If L&I has commissioned an examination such as a chiropractic consult or independent medical exam (IME) then you must pay for the time away from work.

*Example: Worker Joe's injury requires he attend physical therapy twice per week. His appointments are in the late morning so he has to miss work. You do not pay for that time off. However, to avoid extra paperwork and possible bad feelings, many employers pay for the time off. You also have the right to request the worker schedule appointments either before or after work. Most therapists and other providers will accommodate such a schedule.*

### Do I have to pay KOS when Worker Joe is taking personal time off, for instance, to attend a baseball game?

No. Since the worker is making a personal choice to not be at work due to something not associated with his injury you do not pay KOS. The worker can use vacation or other personal leave time to cover that time off.

*Example: Worker Joe's son won tickets to an early afternoon Mariners game and wants to treat dear old dad. Worker Joe takes the time off as personal leave.*

**Worker Joe waited to seek treatment and the time loss certification didn't begin until the date of first treatment. Do I pay him for 30 days from the date of injury or 30 days from the date of first medical certification?**

You pay him for 30 days from the date of first medical certification. But, only for days that are certified by the doctor.

*Example: Worker Joe was injured on August 15, 2001. He continued to work until September 5, 2001 when he decided to seek medical attention. The doctor certified him for time off of work or light duty on that date. You pick up KOS effective September 5, 2001, but pay only until September 25, 2001 which is 30 days from the date of injury (which was August 15, 2001).*

**I pay my workers every week or two weeks. Do I have to continue to pay Worker Joe this way or should I reduce the number of paydays as an incentive for the worker to return to work? Should I require the worker to pick up his check in person?**

Yes to all questions. Continue to pay the worker according to the regular schedule or pay more often if possible. The more you see of the worker the more you can visually assess the progress towards healing and it gives you the opportunity to discuss the treatment, light duty work, etc.

*Example: Your company pays wages every two weeks. In order to keep control of the situation where a worker is not being released by the doctor to any type of work you can change that employee's pay day to, say, every Monday. You will be able to see how Worker Joe's doing after the weekend (does he appear to be dragging, maybe even hungover? Or does he appear to be well rested and seeming to be taking good care of himself?)*

The more you require the worker to personally pick up his check, the more connected he'll feel to the company. Or if he's malingering, the quicker he'll return to work to avoid the eyes of the office staff when he comes in each week.

**A third party caused Worker Joe's injury. Who pays KOS?**

You pay the KOS but notify the worker's attorney to determine if you should be made a party to any settlement.

*Example: Worker Joe is injured in an auto accident caused by another driver. The hospital will file a workers' compensation claim and L&I allows the claim. L&I pays the costs and your account is charged 50% until a settlement is made. You are still required under the R.O.I.I. Select program to keep indemnity (time loss) costs off of your account for the first 30 days after the injury. However, the worker will likely retain an attorney to subrogate for costs and damages. L&I is also a party to the action, but you may also have a right to some of the recovery so check with the claimant's attorney.*