

VOCATIONAL REHABILITATION

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INTRODUCTION

There has been a growing awareness of the demonstrated benefits of disability prevention and rehabilitation of injured workers. An increasing number of employers concerned about the high costs of injuries and extended disabilities have begun to invest in rigorous return-to-work and disability management programs.

The primary objective of vocational rehabilitation is the restoration of the injured worker to suitable work. Early intervention by a certified vocational rehabilitation counselor shifts the focus from disability to return to work: judiciously, timely and cost effectively. When return is delayed, workers can lose more than earnings; skills and work habits depreciate when people are out of work for a long period of time, leading to a decline in future productivity and earnings.

Vermont Statute [21 VSA §641](#) requires that employers provide vocational rehabilitation services to any injured worker when, because of the work injury they are unable to return to suitable employment. It is the responsibility of each employer or adjuster to initiate the vocational rehabilitation process.

The employer/insurer should look to the vocational rehabilitation counselor as the rehabilitation expert and expect comprehensive, unbiased recommendations and rehabilitation services to be provided by that individual. The Department of Labor considers the rehabilitation function and the claims function to be largely separate and distinct from each other. Vocational rehabilitation counselors are not, nor should they be, claims agents or claims investigators. The appropriate role of the vocational rehabilitation counselor in workers' compensation is to evaluate the rehabilitation potential, make objective recommendations regarding appropriate vocational rehabilitation services, assist injured workers in reviewing their available options, and to coordinate necessary services in accordance with the laws of the state of Vermont. See [21 VSA §641](#).

WHO ACTUALLY PROVIDES VOCATIONAL REHABILITATION SERVICES?

Vocational rehabilitation services provided to a Vermont workers' compensation injured worker may only be provided by those individuals that have been certified as meeting the minimum education and experience identified by this Department. Vermont certified rehabilitation counselors shall conduct themselves in accordance with the [Code of Ethics for Rehabilitation Counselors adopted by the CRC Commission](#) and the Standards of Performance established by this Department.

Following is a list of reasonable expectations of a Vermont certified rehabilitation counselors:

1. Utilize career/occupational materials and labor market information effectively.
2. Determine and resolve job adjustment problems.
3. Review assessment information to determine appropriate services.
4. Determine an individual's need for rehabilitation engineering/technology services.

5. Identify and contact employers to develop job opportunities.
6. Properly complete a job analysis.
7. Modify and restructure jobs and use assistive devices where appropriate.
8. Teach appropriate job seeking and job retention skills.

The rehabilitation counselor must have a thorough and accurate knowledge of community organizations, resources and an extensive knowledge of careers and local market needs.

IDENTIFICATION AND REFERRAL

[Rule 53.1000](#) requires that any injured worker who has received, or is entitled to receive, more than 90 days of temporary total disability benefits shall be identified and screened.

The adjuster is responsible for identifying those individuals that must be screened by filing a Memorandum of Payment form (Form 25M) with the Department whenever an injured worker has received or is eligible to receive more than 90 calendar days of temporary total disability benefits.

A Memorandum of Payment is **REQUIRED** for any lost time payment issued, regardless of whether payment is issued voluntarily or in an accepted claim.

Screening shall be performed by qualified vocational rehabilitation professionals employed by the Vermont Department of Aging and Independent Living's (DAIL) Division of Vocational Rehabilitation (DVR).

When the Department receives the Form 25M e-mail notification of the assigned screening goes out to you. The adjuster is responsible for submitting the injured worker's medical records to DVR via the secure website at <https://gs-sftp.ahs.state.vt.us> within 10 days of notice of the screening referral. You will receive an e-mail from DVR confirming receipt of the records. **IF YOU DO NOT RECEVIE THIS CONFIRMATION**

PLEASE CONTACT DVR VIA E-MAIL AND INQUIRE IF THEY HAVE RECEIVED THEM. Please remember that you will need this confirmation if you are attempting to file a Form 27 Notice to Discontinue as evidence that you have complied with the vocational rehabilitation requirement.

The DVR screener will provide a recommendation to the injured worker, the employer or insurer and the Department regarding eligibility for a full entitlement assessment.

If the DVR screener determines that it is appropriate for the injured worker to receive a full entitlement assessment the employer or insurer shall **promptly** file a VR referral for an entitlement assessment and send a copy to the injured worker. **If the employer or insurer wishes to contest the screening results they MUST file a VR referral form at the time it files its denial.**

The vocational rehabilitation referral must be completed and signed by the individual making the referral. The task of completing the referral form may not be delegated to the vocational rehabilitation professional or the rehabilitation company. If the employer and/or insurer does not properly designate a vocational rehabilitation counselor within 15 days of receiving the screener's report the injured worker may choose a counselor by filing a Notice of Intent to Change Vocational Rehabilitation Counselor.

It is important that the employer and insurer understand that there is **no** provision in the law or the rules for employers or insurers to delay or refuse to initiate the referral process beyond the required timeframes established by the rules of this Department.

Upon receipt of the referral the counselor should assure that the referral form is complete and if so the counselor will contact the insurer to obtain all relevant materials.

CHANGE OF REHABILITATION COUNSELORS

An injured worker may file a Notice of Intent to Change Vocational Rehabilitation Counselors if he/she is not satisfied with the rehabilitation

counselor selected for him/her by the employer or insurer. Absent good cause the injured worker may only change counselors once.

If the assigned counselor departs from the profession the party that chose the counselor will have an opportunity to designate a replacement counselor. Upon notice that the assigned counselor is leaving the profession the employer or insurer shall complete a new Rehabilitation Referral Notification Form with appropriate documentation and forward copies to the Department, injured worker, employer and new counselor. If the assigned counselor departs from the firm that they were employed by at the time the party that chose them the assigned counselor will provide notice to the injured worker that they are leaving the firm and provide them an opportunity to choose a new counselor if they desire.

If vocational rehabilitation services are not voluntarily offered by the employer/insurer the Commissioner/designee may refer the individual to a qualified counselor for an evaluation on the need for vocational rehabilitation services. The Commissioner/designee may order a change in the rehabilitation counselor if the counselor is not complying with the spirit and/or letter of the established rules and regulations of this Department or is not a certified rehabilitation professional.

ENTITLEMENT

[Rule 54.0000](#) states that if as a result of a compensable injury an injured worker is unable to return to **suitable** employment for which they have prior training or experience relevant to currently available suitable employment that injured worker shall be provided vocational rehabilitation services.

The determination of entitlement shall be made by a certified vocational rehabilitation counselor within 30 days of the filing of a referral. The counselor may request an extension of the 30 day period if the parties agree or if, despite good faith efforts to complete the assessment within 30 days, additional time is needed. The extension request must clearly document why the assessment could not have been completed within the established guidelines and propose an action plan to complete the assessment. The entitlement assessment shall be received by the Department of Labor on the original due date unless the rehabilitation counselor has received a written

approval of their request for the extension.

Important: If the condition prohibiting the injured worker from returning to suitable employment is not a result of the compensable injury then the injured worker can not be found entitled to vocational rehabilitation services.

In completing the entitlement assessment the vocational rehabilitation counselor **shall** first contact the employer at the time of the injury. That contact is intended to promote the advantages for the injured worker as well as the employer, of a return to work program. The goal of the employer contact by the vocational rehabilitation is to coordinate any and all necessary services to return the injured worker to suitable employment. During the employer contact the vocational rehabilitation counselor should assess the work performed by the injured worker, the nature of the injury and the employer's ability to assist in the return-to-work efforts.

After the counselor contacts the employer they must complete an interview with the injured worker to update his/her medical status and complete a vocational profile that includes an educational background and work history. In all cases the counselor must advise the injured worker that he/she has the right to select another rehabilitation professional if they are not satisfied with the employer selected counselor. The counselor shall document the work history in significant detail for purposes of crosschecking the information in the Dictionary of Occupational Titles (D.O.T.) and for work skill transferability. The work history should also include a description of all job duties listed and any notation of any discrepancy, if the physical demands of a job are not consistent with those reported in the D.O.T.

Information regarding an injured worker's limitations and residual abilities is necessary to determine entitlement as well as to facilitate a return to work in an appropriate job. Therefore, it is recommended that the vocational rehabilitation counselor review the current medical status including physical capabilities, secondary conditions affecting recovery, treatment, prognosis and estimate of time frames if possible.

The entitlement assessment process shall conclude with a written report to the insurer; injured worker and the Department. The report must include a conclusion made by the counselor as to whether the injured worker is

entitled to vocational rehabilitation services. The counselor's conclusion shall be supported by evidence presented both in the body of the report as well as any attachments. The report shall be submitted on the approved Entitlement Assessment form.

If either of the parties, insurer or injured worker, disagree with the rehabilitation professional's conclusion they may appeal the decision to the Commissioner of the Department of Labor. The appellant must remember that it is his/her burden to prove that the counselor's findings are incorrect.

RETURN TO WORK

If an entitlement assessment results in a determination that an injured worker is entitled to vocational rehabilitation services the certified vocational rehabilitation counselor must develop and submit to the Department of Labor a Return to Work Plan (RTWP) within 45 days of the completion of the entitlement assessment. The return to work plan is a written agreement between the injured worker and the counselor on how to reach the goal of a return to suitable employment. The vocational rehabilitation counselor in consultation with the injured worker and employer/insurer must develop, record, and file a rehabilitation plan on the form prescribed by the Commissioner.

The RTWP shall be reviewed and signed by the counselor and injured worker prior to its submission to the insurer for the adjuster's review and approval. The employer/insurer's signature must be that of a Vermont licensed claims adjuster. If either the injured worker or the adjuster disagree with the plan as written and choose not to sign the plan he/she must include a statement explaining his/her reason for refusing to sign. Upon receipt of a plan that has not been signed by the insurer and/or the injured worker the Commissioner will schedule an informal telephone conference between the insurer and injured worker. NOTE: If the insurer was afforded an opportunity to participate in its development and did not and they failed to respond to a proposed return to work plan within 21 days from receipt of the plan it will be approved.

In the development of an RTWP the counselor must assume a higher likelihood of a successful return to suitable employment based on the

hierarchy of vocational options identified in the rules. The counselor must first consider the possibility of a vocational rehabilitation plan involving modification of the usual and customary job or alternate work with the same or similar employer utilizing existing employment skills. If appropriate modified or alternate work with the same employer is not available, the counselor SHALL fully explain, in the rehabilitation plan, the reason a particular step in the hierarchy is being used and why each preceding step in the hierarchy was ruled out.

NOTE: The counselor does NOT need to provide services associated with each step before moving on to the next step he/she only needs to consider each step before moving on to the next. If a Labor Market Survey is conducted in the process of preparing a vocational rehabilitation plan the survey shall then include, but not be limited to, the following information:

1. The potential wage earning capacity, including potential overtime wages and monetary fringe benefits;
2. The physical demands of the identified job(s) as identified by the potential employers;
3. The minimum educational requirements and work experience required by the potential employers;
4. Potential job openings for the six months prior to the survey and projected openings for the upcoming six months.

The counselor should utilize, whenever possible, the Labor Market Survey completed by the Department of Labor for the particular region of the state.

When preparing a vocational rehabilitation plan the counselor shall assure that the plan contains, but not be limited to, the following;

1. Identification of the services necessary to enable the injured worker to become employable at suitable employment;
2. Labor market information indicating the employability of the injured worker at plan completion;

3. An estimate of the cost and the time necessary for the completion of the plan. This includes total equipment costs, travel, training, and the projected costs of services provided by the rehabilitation service providers;
4. If necessary, a job analysis of the injured worker's previous occupation, including earnings;
5. Justification as to why each preceding step of the hierarchy was not used.
6. The specific responsibilities of the injured worker; counselor and the employer/insurer.
7. Specific vocational outcome and associated milestones our output measures. The plan SHALL contain a firm time frame for completion.
8. Any other information that will significantly affect the plan.

An assessment of existing employment skills may lead to an opinion by the vocational rehabilitation counselor that direct job placement is the most appropriate means to return the injured worker to suitable employment. Therefore, if the vocational rehabilitation plan includes job development/job placement services the counselor then will consider and include the following:

1. The identification of a vocational goal(s) and substantiation that it is consistent with the injured worker's skills, abilities and interests; relevant labor market assessment, with an opinion from the counselor that the injured worker can presently compete for employment in the target areas.
2. Job search skills instruction, which is used to teach injured workers how to write resumes, research the job market, locate suitable new employment, complete employment applications, interview for employment, and develop other skills related to looking for suitable new employment;

3. Job development, which is identifying, targeting and contracting, or assisting the injured worker to contact the appropriate prospective employers, and assisting the worker in related return-to-work activity. In requiring the injured worker's participation in job development activities the counselor and insurer shall consider the worker's job search skills.
4. Job analysis, which is used to identify the physical and other demands of a job or occupational goal based on direct observation of the job.
5. Return-to-work follow-up, which is contacting a worker and employer after the worker returns to work to insure the work is suitable and providing necessary assistance, while the worker remains eligible for vocational rehabilitation services, to help continue the employment. Return-to-work follow-up must continue for the first 60 days after the worker becomes employed.

The counselor shall clearly outline job placement expectations and responsibilities of both parties to the injured worker. Generally the responsibilities should include:

1. The counselor/job developer providing information regarding specific job openings for the injured worker, interview coordination, and follow up contact with the injured worker and prospective employer subsequent to the interview for an assessment of the results.
2. That the injured worker be expected to include a reasonable number of self-generated employer contacts with his/her regular weekly contact with the counselor.

If all return to work alternatives, utilizing the injured worker's current skills have been considered and determined inappropriate the counselor should then move to a training program. The labor market must drive the new

training program and the new job must exist in adequate numbers to ensure employability after training.

The selection of the training program should be based on the needs of the injured worker, the quality of instruction and whether the program will lead to suitable employment. Training that will not lead to suitable employment will not be approved.

If the RTWP proposes a training plan it should take the shape of one of several types.

On-the-Job-Training (OJT), a program which is defined as a wage-paying, job furnishing instruction in the job skills necessary to qualify the injured worker for continuation of permanent, suitable employment with the training employer.

1. The training time should not exceed 12 months.
2. The training shall prepare the injured worker for employment in the labor market at large.
3. Training which prepares an injured worker for a job unique to the training site should only be acceptable if that fact is acknowledged in the on-the-job training plan that is signed by all interested parties and the injured worker understands that if the training does not lead to a permanent position with the employer there will be no further services available.

If the proposed rehabilitation plan is an “On-the-Job Training” plan the counselor shall fully document in an On-The-Job Training Agreement (separate from the RTWP) the following information:

1. The title of the job for which the injured worker is being trained and the corresponding Dictionary of Occupational Titles (D.O.T.) code.
2. A list and description of the skills the injured worker will acquire as a result of the training.

3. Evaluation/method criteria to be used to measure the injured worker's progress throughout the OJT program.
4. A specific list of the supplies & tools required by the plan and their costs.
5. Weekly workers' compensation benefits, if any, to be paid to the injured worker during the training program.
6. A full description of the work to be performed during the plan and the identity and qualifications of the trainer.
7. The start date, completion date, work schedule and training schedule.
8. A statement of salary to be earned and a determination that the injured worker will earn at least the minimum wage.
9. Verification that the employer is covered by workers' compensation insurance.
10. A statement that the employer shall pay into and deduct Social Security Taxes, FICA, and Federal and State taxes as required by law.
11. A description of whether the injured worker is an employee or trainee. If the injured worker will be considered a trainee and is not expected to remain with this employer upon the completion of training that must be explained to the injured worker at the onset of the plan and the insurer must also be aware that the provision of VR services will not end at the completion of the training.
12. The schedule of monitoring and its costs to be provided by the counselor.

13. A schedule of the amount of payments to be made to the employer, if any, as well as a clear description of how the trainer is to request payment from the insurer.
14. That the new employer agrees to report the injured worker's progress to the counselor on a monthly basis, outlining the status of the training, absences, and whether training is proceeding according to schedule, as well as a final evaluation to determine if the anticipated skills have been acquired. The counselor shall provide a copy to the injured worker and the Department of Labor.

A plan for an "on-the-job training program" shall not extend beyond twelve months unless it can be justified through the use of the Specific Vocational Preparation (SVP) associated with the job title for which the injured worker is being trained. The SVP may be found in the Dictionary of Occupational Titles (D.O.T.). If the SVP supports that the extended duration is needed to master the required skills or that the training will significantly increase the likelihood that the injured worker will recover pre-injury economic status than an OJT plan extending beyond twelve months may be approved.

Basic education is education that raises the injured worker's relatively low level of education so the injured worker can obtain suitable employment directly or through participation in other training. This type of a training plan is usually limited in duration.

Formal training is training that teaches the injured worker skills in a vocational school, community college or other post-secondary educational facility. Before the counselor identifies "formal training" as the most appropriate way to provide the injured worker with the opportunity to return to suitable employment the counselor should also consider the following:

1. Whether the injured worker has the basic skills to successfully complete a formal training program.
2. The length of time the injured worker has been absent from school and its effect on the probability of successful completion.

3. A review of prior grades/transcripts.
4. Whether vocational testing supports the recommendation.
5. Whether the labor market is positive for the vocational goal.
6. Transportation issues which may affect the injured worker's ability to attend training.

If the vocational rehabilitation counselor determines that "formal training" is appropriate the following must be considered when developing the plan:

1. Courses shall relate to the vocational goal; AND
2. The counselor shall compare the skills the injured worker already possesses or will acquire with the skills necessary to meet entry-level hiring requirements for the occupations stated in the vocational goal; AND
3. The injured worker should take the maximum course load consistent with the injured worker's abilities, limitations, and length of time since the injured worker last attended school; AND
4. The vocational rehabilitation counselor's involvement should be limited once the classes begin; AND
5. The injured worker should be informed that if he/she finds that he/she is having difficulty with the studies, etc. the injured worker should first contact the instructor as well as the vocational rehabilitation counselor.

When developing the Return to Work Plan identifying Formal Training the counselor shall;

1. Briefly state the reasons that the proposed vocational goal and strategy is appropriate and can be reasonably expected to succeed.
2. Always attach a copy of the formal training site's curriculum or course outline for the proposed training. If the usual training curriculum will be reduced for the proposed program the counselor should specify what will be deleted and include the rationale to support the deletion.

Self-Employment is an arduous, high-risk pursuit. Unless the injured worker has previously been successfully self-employed or there is otherwise a persuasive rationale for the self-employment, the Department requires that all other reasonable vocational alternatives be fully explored before recommending a self-employment plan. It is incumbent on the counselor to provide an opinion and supporting documentation as to whether self-employment is the most appropriate alternative and whether it is likely to represent suitable employment.

Self-employment plans must include a review of the self-employment proposal including, but not limited to market analysis, competition location, pricing, income/revenue projection, prior experience and other sources of income. To facilitate this requirement, the plan documentation should include a report on the self employment proposal from an established financial institution or management consulting firm which comments on the advisability and viability of the proposed business undertaking, or a statement from the injured worker as to why such a report cannot be procured or is unnecessary, as well as an opinion from the counselor as to the advisability and viability of the proposed business undertaking.

The submission of a self-employment plan must include both a RTWP and a Self Employment Workbook as well as all of the appropriate reports and documentation supporting the proposed plan.

IMPORTANT NOTE: All Vocational Rehabilitation Plans shall address any and all job modifications necessary to return the injured worker to suitable employment.

All vocational services must receive prior authorization through the approval of a plan by the Commissioner and SHALL include an itemization of the projected costs associated with the vocational plan. That itemization shall include, but not be limited to:

1. Vendor names;
2. Total equipment costs;
3. Travel;
4. Training;
5. Projected costs of the counselor's time and travel.

If the Commissioner/designee denies the proposed vocational rehabilitation plan the counselor has 30 calendar days from the date of denial to submit to the Department a revised plan with all appropriate signatures.

PROGRESS REPORTS

[Rule 55.8000](#) requires that the vocational rehabilitation counselor submit reports on the status and progress of the injured worker's rehabilitation plan to the injured worker, insurer, and the Department of Labor. Those progress reports shall be filed only as reasonably necessary, or only if requested by the employer/insurer or injured worker.

The purpose of the progress report is to inform the parties of the current status of the rehabilitation plan and provide a current estimate of the plan cost and duration to completion.

When writing a Progress Report the counselor shall use the prescribed Department of Labor Form and include, but not be limited to, the following:

1. Cover only the time since the last progress report.
2. Identify the objectives for the report period, whether these objectives were met; an account of any previously

recommended actions, the results of such actions, or an account of why those actions were not taken and what action is to be taken;

3. Identify specific services provided as they relate to the vocational rehabilitation process during the report period and their outcome;
4. Identify specific services to be provided in the next report period, as they relate to the vocational rehabilitation process, justification for the necessity of the services, how the effectiveness of the services is to be measured and the estimated time frames for delivery;
5. Any other information which would insure successful completion of the plan.

Attached to each report shall be a copy of the bill(s) submitted to the insurer for services rendered during the reporting period which the report covers.

DISCONTINUING VOCATIONAL REHABILITATION BENEFITS

Once the RTWP has been approved the vocational rehabilitation services cannot be discontinued until the injured worker has returned to suitable employment; has failed to cooperate with the vocational rehabilitation process, has voluntarily withdrawn from the process, or when it becomes apparent because of a change in the injured worker's current medical condition that the provision of further vocational rehabilitation services would serve no useful purpose.

The vocational rehabilitation benefits may be suspended due to on-going medical treatment or other circumstances interfering with the vocational rehabilitation process. The request to suspend must specify the end date of the suspension.

Failure to cooperate is defined as a pattern of behavior, either a set of actions or in-actions, by the injured worker or the injured worker's legal

representative that obstructs or delays a timely resolution of the case. As you will note, the definition focuses on behavior rather than attitudes. Behavior provides measurable documentation of non-cooperation. Attitudes, however negative, are difficult to document and their effects difficult to measure.

Non-cooperative behavior might include, but would not be limited to:

1. Failure to keep scheduled appointments.
2. Failure to maintain contact with the vocational counselor or to report significant changes in his/her medical or vocational status.
3. Failure to demonstrate "best efforts" in vocational tests, assessments or plan development activities.
4. Failure to fulfill responsibilities in an approved vocational rehabilitation plan.
5. Failure to follow through with assignments.

Prior to discontinuing the vocational rehabilitation benefits for failure to cooperate with the vocational rehabilitation process the vocational rehabilitation counselor must document the non-cooperative behavior and counsel the injured worker about the perceived non-cooperative behavior, pointing out:

1. What the injured worker is doing specifically that is considered non-cooperative behavior and attempt to find out why the behavior is occurring.
2. What the injured worker needs to do to correct the behavior.
3. A specific timeframe for correcting the behavior.
4. What is likely to happen should the non-cooperative behavior continue.

If the vocational rehabilitation counselor feels it is appropriate to discontinue the vocational rehabilitation benefits for reasons other than a return to suitable employment or injured worker is “Not Entitled” to vocational rehabilitation services the counselor must provide the injured worker, Department and adjuster a 10 day notice indicating that vocational rehabilitation will be discontinued and the justification for such a termination. This is done by the submission of a Vocational Rehabilitation Closure Report and all relevant written documentation.

Discontinuance of VR benefits based on a return to suitable employment may not be submitted for approval by this office until the injured worker has in fact returned to the suitable employment for 60 days. The vocational rehabilitation counselor may not anticipate the return will exceed 60 days and therefore submit the Discontinuance Request early.