

## Five Things You Should Know When Returning to Work after a Traumatic Brain Injury

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Individuals who sustain a traumatic brain injury (TBI) typically have to make many adjustments in their lives as a result of their injury. Often, if the injury is severe, extended periods of rehabilitation are necessary before the individual can return to the life they had prior to the injury. Many individuals never fully regain the skills and functioning they had prior to the injury. However, with appropriate support and adequate accommodation, many people with TBI are able to return to work and be successful.

For someone with a traumatic brain injury, the thought of returning to work or getting a job may seem overwhelming. However, there are a number of things that will help make the process a little easier. They are:

1. Knowing what services are available to help.
2. Knowing about the protections provided by the Americans with Disabilities Act.
3. Knowing what to say to an employer.
4. Knowing about accommodations and what the employer must supply.
5. Knowing what to do if unlawful discrimination occurs

1. Services available through the Department of Vocational Rehabilitation, Ticket to Work and similar Programs.

Vocational Rehabilitation (VR) provides services to individuals with disabilities who desire to return to the workplace. Their job is to remove barriers to employment. VR counselors can provide job training, help locate an appropriate position and help provide some of the needed support, both on and off the job site that will increase the likelihood of success on the job for their client. VR's ability to assist people has recently been helped by the Ticket to Work program. SSI and SSDI beneficiaries now have "Tickets" authorized by the federal government to choose a provider (called an Employment Network) to provide services to help gain and maintain employment. For more information about the Ticket to Work Program or VR, call 1-800-229-1647 (V/TTY)

There may be other groups in an area that can assist an individual with a brain injury as they transition back into the workplace. For example, a child who suffers a brain injury while still in school may be eligible for transition services related to employment through Special Education or Section 504 of the Rehabilitation Act. The Area Agencies that are part of the Developmental Services System may have responsibility to provide employment related services for persons who sustain brain injury under 21. Similarly, the Community Mental Health Centers may have an obligation in this area for those survivors who are eligible for their services. The Brain Injury Association of New Hampshire (1-800-773-8400) can provide information about such groups as well as other resources that may be helpful.

2. Protections provided by the Americans with Disabilities Act (ADA) to persons with TBI and other individuals with qualifying disabilities.

The Americans with Disabilities Act \* is a federal law that provides protection to employees and job applicants with disabilities. If an individual with a brain injury has the required education, experience, credentials or license to qualify for an available job and is able to perform the essential functions of a job, with or without accommodations, the ADA prohibits the employer from treating that person differently from any other employee or applicant. If

reasonable accommodations are needed in order for the employee to do the job and the employee requests them, the ADA requires employers to provide reasonable accommodations to that person.

### 3. What should individuals say to an employer about their brain injury?

If an applicant with a brain injury thinks that mentioning their disability may hurt their chances of getting a job, do not have to mention the disability during the interview or hiring process. After the person is hired, if they feel they will need reasonable accommodations to perform the job, they can mention their disability then.

If reasonable accommodations (e.g. a reader) are needed for the interview or hiring process, the disability and need for an accommodation should, of course, be mentioned. Also, if the disability may be obvious to a potential employer, it will generally make sense to mention it during the interview process. If no accommodations will be needed once hired and on the job, mentioning that fact could address any concerns of the employer. If some accommodations (like those mentioned in the next section) will be needed, that should be mentioned when the disability is discussed. Remember (a) the ADA prohibits the employer from discriminating because of a disability and requires the employer to provide reasonable accommodations to persons qualified to do the job, when they are needed and (b) employers are not allowed to ask an employee or an applicant about a disability unless the individual raises it.

Finally, it is important to have the individual with the brain injury work with a VR counselor or another counselor to determine what the affects of the injury have been. This is because many of the changes caused by a brain injury are not obvious to the person with the injury.

### 4. What types of reasonable accommodations must an employer provide?

An employer is required to make reasonable accommodations that are necessary to allow an employee to work successfully despite a disability. Generally, the employer must change or adjust the job and the work environment so that the individual with the disability is able to do the job. Reasonable accommodations must be tailored to the individual. This is particularly important for individuals with a brain injury where the affects vary so widely over time and may impact one or more of the following: balance, coordination, attention span, short or long term memory, stamina, ability to speak clearly and the ability to control emotions. The accommodations must be made available to the employee with the disability at no cost. Some examples of the accommodations or adjustments that can be made include:

- Shortened hours
- Modified equipment such as a desk chair with arms
- A tape recorder as a memory aid
- Computer programs that will help prompt the employee to stay on task or make lists for the employee
- Modifications of duties such as not having to answer phones if speaking clearly is a problem, as long as those duties are not basic to the job
- An available place for the employee can go to be alone to have some quiet time away from the pressures of the job
- Rest breaks to prevent stimulus overload and fatigue
- Job restructuring
- Part-time or modified work schedules
- Reassignment to a different position
- Acquisition or modification of workplace equipment or devices
- Training materials or policies in Braille or in simplified language

- Provision of readers or interpreters.

Remember that so long as the employee is able to the “essential functions of the job”, the employer must make accommodations that will allow the employee to function effectively despite any challenges that exist as the result of the injury.

If the individual is not yet employed or cannot go back to the previous employer, it is important to remember that the protections of the ADA also apply to job applicants. If accommodations are needed during the application process, the employer is obliged to provide those that are reasonable.

Reasonable accommodations must be provided during any pre-employment testing, during job training and during important meetings that employees are expected to attend, as well as on the actual job site. Such assistance as sign language interpreters are required if they are necessary for employees or trainees to participate in required training sessions and all accommodations are at the expense of the employer.

5. What are the remedies if an individual with a brain injury has complaints, feels discriminated against or that their rights are being denied?

a. ADA In addition to requiring that employers provide reasonable accommodations and prohibiting discrimination based on an individual’s disability, the ADA provides legal remedies if the employer fails to comply with its requirements. This process begins with the employee talking talk with your employer and stating their grievance. If the employer has a grievance procedure in place, that procedure should be used.

b. If that does not resolve the issue, the employee has the right to file a complaint with the New Hampshire Human Rights Commission (603) 271-2767), the state agency charged with the elimination of discrimination. A complaint to them must be filed within 180 days of the discrimination. Complaints can also be filed with the U.S. Equal Employment Opportunity Commission. (Voice 800-669-4000 TDD 800-669-6820) Assistance is if the employee decides to file a complaint. The staff of the Human Rights Commission can provide some assistance. The New Hampshire Disabilities Rights Center (DRC) (Voice and TDD 800-824-1721) may also be able to provide some assistance. The DRC provides legal assistance to people with disabilities for problems arising from their disability.

c. The DRC or the Client Assistance Project (800-852-3405) may be contacted with concerns or complaints concerning VR, and the DRC for concerns or complaints regarding the Ticket to Work Program or the other programs listed under Question 1 above.

\* The ADA protects individuals who have a physical or mental disability or have a record of having a disability or are regarded as having a disability which substantially limits one or more major life activities, such as walking, seeing, hearing, speaking, learning, breathing or caring for yourself from employment discrimination and applies to employers with more than 15 employees. The ADA prevents employers from discriminating based on a disability in all employment practices, including recruiting, hiring, firing, training, promoting, determining job assignments, pay, benefits, layoffs and any other employment related activity.