

Often when an injured worker returns to the job after a period of disability, the employer will offer him or her a position on a shift different from the one worked before the injury. Sometimes, this shift change can cause childcare problems for the injured worker's family, particularly for single parents. Can an injured worker rely on childcare concerns to turn down a position offered on a different shift without forfeiting weekly disability benefits? If you are facing a return to work and are worried about your childcare, a Raleigh workers comp attorney can help you navigate this issue.

## Understanding the Dilemma in North Carolina

If you are receiving workers compensation benefits, there may come a time when you are cleared to return to work. In situations where you are no longer able to perform at your prior position in the capacity you did prior to your injury, your employer is allowed to offer "suitable employment" that is consistent with the limitations caused by your injury. In some cases, this may mean offering you an entirely different position, while in others cases it may mean a reduction in your hours or putting you on a different shift. The question of what constitutes "suitable employment" is almost always focused on the employee's physical limitations. However, a conflict arises when the only suitable employment the employer offers gives rise to other problems, such as in the case where an employee is offered a position on a different shift that conflicts with their childcare needs. If you find yourself in this situation, we recommend that you contact a Raleigh workers comp attorney to discuss your options.

## Can You Decline Shift Work if It Conflicts with Your Childcare?

Unfortunately, the answer is somewhat unclear. In the case of [Cialino v. Wal-Mart](#), the Court of Appeals determined that an injured worker was justified in turning down a light-duty job on a different shift because of her childcare needs. Before her injury, Ms. Cialino had worked the night shift, while her husband who worked during the day cared for their children. Because no light-duty position was available at night, Wal-Mart required her to take a daytime shift, during which time Ms. Cialino had no one to care for her children. Because of this problem, she turned down the job offer.

Wal-Mart took the position that Ms. Cialino was not entitled to disability benefits because she refused a suitable position. The Court of Appeals held that Wal-Mart did not offer a suitable position, which strongly implies that Ms.

Cialino's childcare concerns were a legitimate reason for not returning to the daytime position.

## Amendments to the North Carolina Workers' Compensation Act

Subsequent to the Cialino decision, however, there were amendments made to the North Carolina Workers' Compensation Act – changes pushed by legislators concerned more about helping wealthy corporations and insurance companies than our state's workers. These amendments cast doubt on whether the decision in Cialino is still good law. The amendments alter the definition of what constitutes 'suitable employment' when the injured is still treating for his or her injuries. Under the new definition, a position is deemed suitable according to one of two situations:

1. Prior to reaching MMI (maximum medical improvement), the position offered is within the employee's medical restrictions as detailed by their health care provider; or
2. After reaching MMI, the position offered is one the employee is "capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury..."

While there is a lot to unpack here, it is interesting to note that if you have not reached MMI, you arguably may not be able to decline employment based on conflicts with your childcare. If you have reached MMI, the statute clearly suggests that your employer has to take into consideration factors beyond your physical limitations caused by your injury. In fact, the statute goes on to state, "No one factor shall be considered exclusively in determining suitable employment."

## The Law is Unsettled

One could argue that the amendments do not address the court's ruling in the Cialino case. At the same time, an argument can be made that concerns such as childcare can no longer be considered by courts. As such, parents who decline an offer to return to work because of childcare concerns may be at risk of losing their weekly disability benefits. The situation is indeed unsettled. If you have received a return to work offer that conflicts with your childcare, you should speak with a Raleigh workers' comp attorney before making a decision.

## How a Raleigh Workers Comp Attorney Can Help

As mentioned above, declining an offer of suitable employment could put your workers compensation benefits at risk. Many employers don't understand the extent of their obligation, and approach these situations with a "take it or leave it" mentality. An experienced [Raleigh workers comp attorney](#) can protect your rights by negotiating a better outcome with your employer - one that allows you to return to work and keep your benefits.

## Speak with a Raleigh Workers Comp Attorney at Martin & Jones Today

Employees who are injured typically can't wait to return to work, but unfortunately, employers can sometimes be inflexible. If you're [facing challenges](#) concerning your return to work, give us a call at 800-662-1234 or [send us an email](#) . We can schedule a free consultation to discuss your case and how we can help.