

## EMPLOYMENT FAQ'S FOR PEOPLE WITH CHRONIC ILLNESS

Often people do not know how to respond to Chronic Illness in the workplace. This document sets out the top four things we can advise to assist in the journey.

At Maurice Blackburn, we often see clients who have been diagnosed with a chronic illness, and who are having trouble at work. Quite often, employers (and colleagues) do not know how to respond and do not know what their legal obligations are. This can cause you hurt or embarrassment, or bring about a change to your terms of employment you were not expecting.

This document sets out the top four things we can advise you to assist in your journey.

What you need to do might change, depending on the symptoms you develop over time.

### You have rights

#### Do I have to disclose my diagnosis to my employer?

You do not have to disclose your diagnosis to your employer, unless your symptoms have the potential to create an unsafe workplace for you or your

colleagues. For example, if you are a train driver and one of your symptoms is fatigue, this may impact on your ability to safely operate the train.

#### Can my boss fire me for having a chronic illness?

Generally, no. Disability discrimination law prevents employers from dismissing, passing over, demoting, reducing pay or any other less favourable treatment because of a disability. There is one major exception to the general rule, and that is if you can no longer perform the inherent requirements of your role. For example, if you are a surgeon, and you develop tremors, you may be unable to meet the needs of your job.

#### Does my work have to accommodate my condition?

In most circumstances, yes. There is a positive obligation on employers to make reasonable adjustments to the

way you perform work in order to accommodate your diagnosis and symptoms. What is reasonable is open to debate in the circumstances. Reasonable adjustments depend largely on the role, but may include things like ergonomic chairs for stability, allowances for longer periods to perform tasks, flexibility with time off work to attend appointments or to cope with periods of exacerbated symptoms. Employers do not have to provide reasonable adjustments if it would cause them an unjustifiable hardship (usually financial).

#### What can I do if my colleagues treat me differently?

If your colleagues or manager behaves unreasonably toward you, on a repeated basis, which causes you distress or anxiety or exacerbates your symptoms, you may be able to seek a stop the bullying order at the Fair Work Commission.

For further information, contact us today:

1800 810 812 (business hours)  
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Your colleagues' behaviour might also constitute unlawful discrimination on the basis of your condition.

### **What if I need time off?**

Ordinarily, your job is protected if you take less than three months off over a 12 month period (either consecutively or in broken periods). You are also entitled to access paid and unpaid sick leave (known as personal leave), and you may qualify for salary continuance insurance schemes. You may be required to provide medical evidence for the time off, and in some instances, having too much time off can limit your ability to perform the inherent requirements of the position.

### **Does my carer have any rights?**

Carers also have the protection of discrimination law. If your carer is treated less favourably at work because of caring for you, they may also have a legal claim to correct the behaviour.

## **Get advice early**

### **I have just been diagnosed, do I have to stop work?**

It is a decision for you about whether you stop work, or continue in your job. You may need reasonable adjustments to your work to continue in your current job. Seeking legal advice may help you decide whether you should stop work. Do not resign your employment without speaking to a lawyer first.

### **I want to keep working. Can I?**

Your employer cannot dismiss you because of your disability and you should not be forced into resigning your employment. However, if you cannot perform the inherent requirements of your job, you may be

required to finish work. You can ask for reasonable adjustments to be made at your workplace. Remember, you may have disability insurance claims if you cannot perform the inherent requirements of your job.

### **When should I talk to a lawyer?**

**Do not make any major decisions about your future until you have sought legal and financial advice** (including advice regarding your insurance and superannuation options).

It is best to seek early advice, so that your decisions are informed, and you can make your next step armed with all the information.

## **Write everything down**

### **What is the best way to prepare for a legal claim?**

You should keep a diary note of every meeting or conversation you have with your boss or colleagues about your diagnosis or generally about your illness.

Keep all documentation received from your employer (and your responses), and keep all your medical notes or reports in a safe place. It helps to keep it chronological!

Quite often lawyers need to rely upon those notes as a contemporaneous record of the event, so it is important to at least jot down the time, location and key comments made.

## **Get a good doctor**

### **My doctor is recommending that I stop work, what should I do?**

You may be able to make an insurance claim, but do not disclose your doctor's recommendation to your employer until you have sought legal advice.

### **My employer is making me go to their doctor. Do I have to?**

You may have to if it is reasonable and there is a lawful basis for your employer to direct you to see their doctor. Usually this is to assess your fitness to do the job (to see whether you can perform the inherent requirements of the position). It will only be reasonable if your employer pays and allows you paid time off to attend the doctor. There may be many reasons why it is not reasonable or not lawful to send you to a doctor. Seek legal advice as soon as your employer tells you to see a doctor.

You may also want to advise your own doctor.

**If you would like further information on any of these issues, please contact Maurice Blackburn on 1800 810 812 to book an appointment to see a lawyer – fees apply.**

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