



Employment FAQs

- Living with a chronic illness, such as a musculoskeletal condition, has the potential to impact your work life
- It's important to know your rights

Sometimes people who've been diagnosed with a chronic illness experience some difficulty or trouble at work. Quite often employers (and colleagues) don't know how to respond and don't know what their legal obligations are. This can cause you hurt or embarrassment, or bring about a change to your terms of employment you weren't expecting.

This information sheet sets out the top four things you need to know to assist you 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 don't 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're 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 muscle, bone or joint condition?

Generally, no. Disability discrimination law prevents employers from dismissing, passing over, demoting, reducing pay or any other less favourable treatment because of your condition. There's one major exception to the general rule, and that's if you can no longer perform the inherent requirements of your role. For example, if you're 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's 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.

An occupational therapist can provide information and advice on ways to modify a work space and work practices to assist you to continue your job.

Employers don't 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.

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're 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've just been diagnosed, do I have to stop work?

It's a decision for you about whether to continue in your job or stop work. You may need reasonable adjustments or modifications to your work to continue in your current job.

You may need to seek medical and legal advice to help you decide whether you should stop work. Don't resign your employment without speaking to a lawyer first.

I want to keep working. Can I?

Your employer can't dismiss you because of your condition and you shouldn't be forced into resigning your employment. However if you can't 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 can't perform the inherent requirements of your job.

When should I talk to a lawyer?

Don't make any major decisions about your future until you've sought legal and financial advice (including advice regarding your insurance and superannuation options).

It's 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 track of every meeting or conversation you have with your boss or colleagues about your diagnosis or generally about your condition. Note all interactions in your diary.

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 record of the event, so it's 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 don't disclose your doctor's recommendation to your employer until you've sought legal advice.

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

You may have to if it's reasonable and there's 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's 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.

Where to get help

- Your doctor
- Occupational therapist
- Legal adviser
- Financial adviser
- Musculoskeletal Australia
MSK Help Line: 1800 263 265

How we can help

Call our MSK Help Line and speak to our nurses. Phone 1800 263 265 or email helpline@msk.org.au.

We can help you find out more about:

- arthritis and musculoskeletal conditions
- ways to live well with these conditions
- managing your pain
- upcoming webinars, seminars and other events.

More to explore

- Fair Work Commission www.fwc.gov.au
- Australian Human Rights Commission – Disability Discrimination www.humanrights.gov.au
- Disability Employment Services www.employment.gov.au/disability-employment-services
- Occupational Therapy Australia www.otaus.com.au

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