



Non-work-related health conditions

The *Equal Opportunity Act 1984* and the *Disability Discrimination Act 1992 (Cth)* are applicable to all employers in Australia. These Acts require employers to provide appropriate support and assistance to employees who have a non-work-related disabilities. Employer obligations include keeping the employee's position open if there is evidence that they may be able to return to or remain in their role in the foreseeable future either in a full capacity or with reasonable adjustments.

It is good workplace policy to provide all employees an accessible and inclusive workplace to participate fully in all aspects of employment, including job design, redeployment, training and development and so on. Applying the principles of reasonable adjustment removes barriers to employment participation. Reasonable adjustments may be required for any number of health or personal circumstances, however it has particular reference to people with non-work-related disabilities.

Non-work-related disability can take many forms:

- It can result from accident, illness, congenital disorders or genetics.
- Physical, intellectual or mental health-related.
- It may be visible or hidden, permanent or temporary and may have a little or major impact on a person's life.
- It may affect mobility, ability to learn, or ability to communicate.

It is against the law to treat staff unfairly because of a disability, regardless of whether the disability is permanent or temporary.

Reasonable adjustments can include changes to work methods or arrangements, including in relation to hours of work, place of work or patterns of work. It can include purchasing equipment or making adjustments to existing technology, ergonomics, communications or information provision.

Reasonable adjustments do not include changing the inherent nature or requirements of the job or creation of an entirely new job. In addition, an adjustment is not reasonable if it causes unjustifiable hardship to the employer (such as excessive financial cost), if it requires an adjustment that is not possible because of external restrictions or if it would disadvantage other team members.

Reference guide for managing non-work-related disabilities

Written policy and procedure

- Have a written policy and procedure for the management of non-work-related disabilities.
- Ensure employees have a copy of the policy and procedure and clearly understand their rights and responsibilities.
- Have a policy that supports employees through flexible work practices and reasonable adjustments, including job re-design.

Identifying a disability

- Consultation must occur with the employee about any non-work-related injury, health condition or disability impacting their ability to carry out the inherent requirements of their position.
- In the event the issue cannot be resolved, which includes making temporary or permanent adjustments enabling the employee to remain in their position, the employer can request that an employee provide medical evidence and undertake a fitness to work assessment arranged by the employer (at the employer's cost).
- If an employee chooses not to attend a medical assessment, it is advisable for the employer to seek HR or professional advice at this point.
- A copy of any medical information obtained must be provided to the employee and not distributed to others without the employee's consent.

Making a request

- An employee and/or their line manager can submit a written request for reasonable adjustment that should include:
 - the adjustments proposed
 - the reasons for the adjustments
 - how the adjustment will improve the employee's ability to undertake their work.
- Evidence such as a letter from a medical practitioner will be useful in supporting the request.

Considering the request

- Each request or requirement for reasonable adjustment should be considered on its own merits based on the evidence available.
- Once approved, adjustments should be implemented in a timely manner wherever possible.

- Any delays related to equipment or services should be clearly communicated to the employee and their line manager.
- Where a request or requirement for an adjustment is declined, the employee should be provided a written explanation of the reasons.

Implementation and evaluation of workplace adjustments

- The type of adjustments offered based on the medical evidence should be discussed and agreed with the employee, and trialled through a return to work plan.
- Managers should organise a review meeting with the employee and line manager after an agreed trial to discuss whether the adjustment has been effective and to identify if further follow up is necessary.
- A revised job description should be developed that focuses on the reasonable adjustments.

Medical retirement or cessation of employment

- The employer may assess that the employee's long term health issues will affect their ability to safely continue in their position or fulfil the inherent requirements of their role or that no reasonable adjustments can be made.
- Alternatively, the employee may disagree with the reasonable adjustments offered or may request adjustments that the employer cannot reasonably make.
- Before making a final decision to cease the employment relationship, it is advisable that the employer obtains professional advice to ensure there are no breaches of legal obligations.

Privacy

- Employers must ensure the security and confidentiality of documentation relating to the employee's personal and medical information. The nature of the reasonable adjustments themselves are not confidential within the workplace.