

EMPLOYEE RELATIONS UPDATE – MARCH 2004

MANAGING EMPLOYEES WITH A MEDICAL CONDITION OR INCAPACITY

Managing employees with a medical condition or incapacity at work can be a complex process when trying to balance the needs of the business and the affected employee, as well as complying with legislative requirements. This month, the ER Update broadly outlines a process for the effective management of staff who suffer an injury or incapacity at work.

Work related injuries:

The *Industrial Relations Act 1999* ('the Act') provides for protection of injured employees. Broadly speaking the Act defines an 'injured employee' as an employee who has been or would be found to be injured at work by WorkCover. The Act protects such employees from termination for a six (6) month period from the condition or incapacity arising.

Employers are obliged to rehabilitate employees in this circumstance, and the following steps need to be considered:

- 1) Assess whether the employee has a medical/physical condition/incapacity which makes them incapable of performing duties or puts them or others at risk.
- 2) A rehabilitation program should be implemented as per policy. The aim of the rehabilitation process is for the employee to resume their original position and duties.
- 3) If, after rehabilitation, an employee is able to return to their original position, the management of the workplace injury is complete.
- 4) If, after rehabilitation, an employee cannot resume their original position, a further assessment may be necessary to determine if the return will be in the foreseeable future:
 - a) If this assessment determines that the employee will recover, consider the operational requirements of the business and if it permits further recovery time. If so, waiting for the employee to return to work may be a possible outcome; or
 - b) If, after rehabilitation, business needs cannot provide further recovery time, or an assessment determines that the employee will not be able to return to normal duties, the role may be varied to allow the employee to continue working; or
 - c) Redeployment may occur.
- 5) Should these options not be feasible, and if six (6) months has passed since the condition or incapacity has occurred, termination of employment may be the option, as per the requirements of the Act and relevant policy.

The Act provides protection for employees regarding the termination of their employment for an unlawful reason, such as discrimination. As such, in managing employees with a medical condition or incapacity it is also important to consider the *Anti-Discrimination Act 1991* which protects injured employees from discrimination at work, including in the termination of their employment. Employers must demonstrate that they have taken all reasonable steps to accommodate an employee in recovering from a medical condition or incapacity.

It is important that employers have relevant and legislatively compliant policies in place to address these issues as they arise, and for employees to be aware of these policies.

Further Information

If you require advice and guidance in managing employees with a medical condition or incapacity, or in the establishment or review of relevant policies, please contact Kylie Reed on (07) 3839 1233/0414 353540 or kylie@mjsp.org.