

EMPLOYMENT RIGHTS – INFORMATION FOR PEOPLE WITH BOWEL CANCER

At Maurice Blackburn, we often see clients who have been diagnosed with an illness or disease, such as bowel cancer. Quite often, employers (and colleagues) do not know how to respond to the diagnosis, nor are they aware of their legal obligations. This can cause hurt or embarrassment or bring about an unexpected change to your terms of employment.

This document covers your legal rights as your symptoms 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 your ability to safely drive the train.

Can my boss fire me for having bowel cancer?

Generally, no. Disability discrimination law prevents employers from dismissing, passing over, demoting, reducing pay or providing 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 to accommodate your diagnosis and symptoms. What is reasonable is open to debate given the circumstances. Reasonable adjustments depend largely on the role but might 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 discriminate against or behave unreasonably towards you, you might have legal options.

Anti-discrimination laws and/or the anti-bullying powers of the Fair Work Commission might apply, so you should seek legal advice about whether you could make a claim.

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 might 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.

Bowel Cancer Australia Helpline
1800 555 494 | bowelcanceraustralia.org

Maurice Blackburn Lawyers
1800 810 812 | mauriceblackburn.com.au



Does my carer have any rights?

Carers also have the protection of discrimination laws. If your carer is treated less favourably at work because of their caring duties, they might also be eligible to make a legal claim to correct the behaviour.

It is vital to 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 might need reasonable adjustments to your work to continue in your current job. Seeking legal advice could, therefore, 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 simply because you have a disability and you should not be forced into resigning. You can ask for reasonable adjustments to be made at your workplace. However, if you cannot perform the inherent requirements of your job, you may be required to finish work. 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. Keeping it in chronological order is helpful. Quite often lawyers need to rely upon those notes as contemporaneous records, 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 might be able to make an insurance claim but do not disclose your doctor's recommendation to your employer until you have sought legal advice first.

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

You might 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 requirements of the position). It will only be reasonable if your employer pays and allows you paid time off work 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.

Need help?

Maurice Blackburn has successfully represented hundreds of patients and their families across Australia in complex and sensitive cases. To speak with a Maurice Blackburn lawyer call **1800 810 812**.

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