



# SAFETY AND FITNESS FOR WORK FACT SHEET

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## WORK HEALTH AND SAFETY OBLIGATIONS

Employers are legally required, so far as is reasonably practicable, to provide a safe and healthy workplace for workers. This includes both physical and psychological safety. Workers also have obligations to take reasonable care to minimise risks to their own safety and the safety of others.

The risks of non-compliance are not just a breach of work health and safety (**WHS**) legislation but also exposure to workers' compensation claims and/or unlawful discrimination claims.

## WHAT CAN EMPLOYERS DO TO PROMOTE SAFETY AND FITNESS AT WORK?

Employers can take a number of steps to mitigate health and safety risks, and promote wellbeing in the workplace. For example:

- Ascertain fitness for work through tailored pre-employment processes;
- Fitness for work assessments;
- Have the inherent requirements of the role clearly documented;
- Monitor health of workers – and if there are concerns regarding physical and/or psychological health, then take action;
- Have workers assessed against the inherent requirements of their role;
- Document fitness for work processes in policies and employment contracts; and
- Train managers in health and safety obligations and in fitness for work processes.

## PRE-EMPLOYMENT PROCESSES

An employer must ensure that employees are fit to meet the inherent requirements of their position and are able to perform work safely. Pre-employment processes may include:



- a) a functional assessment;
- b) pre-employment health questionnaire;
- c) psychometric testing; and/or
- d) drug and/or alcohol testing.

Pre-employment questionnaires should be directed at ascertaining whether the candidate is capable of fulfilling the inherent requirements of the role.

## WHAT ARE INHERENT REQUIREMENTS OF A ROLE?

The inherent requirements of the role are the key physical, cognitive and psychosocial demands of a position. They are characteristics or essential requirements of the employment, as opposed to peripheral requirements.

Understanding the inherent requirements of the role assists an employer with pre-employment processes, management of workers compensation claims, and determining an employee's ongoing fitness for work.

## MONITORING THE HEALTH OF EMPLOYEES DURING EMPLOYMENT

Employers should take a proactive approach to monitoring health – rather than waiting for an incident/injury to occur or escalate. Safety is fundamental irrespective of the worker's age.

A medical assessment may be needed where an employee sustains an injury or if the employer has concerns that the employee does not have capacity to undertake their role safely.

Some signs that medical information may be needed to assess fitness for work include:

- Visible physical issues or complaints (weight/back issues);
- Absenteeism patterns and decline in punctuality;
- Minor incidents/accidents; and/or
- Psychological health – change in behaviour/performance.

## UNLAWFUL DISCRIMINATION

Anti-discrimination legislation in all States and Territories, and at the Federal level, prohibits discrimination based on a broad range of protected attributes including age and disability.



## AGE DISCRIMINATION

For most professions, there is no compulsory retirement age for employees, and it is open to individuals to work as long as it is appropriate and safe to do so. Age discrimination is prohibited in relation to:

- Recruitment and job applicants - who is offered employment, the terms of employment, denying access to training.
- Employment - who is offered a promotion, access to training, termination or any other detriment.
- Contractors - terms, termination, access to benefits, other detriment.
- Provision of goods and services - refusing to provide, imposing discriminatory terms, other detriment.

It is irrelevant whether the “victim” is aware of the discrimination or considers the treatment less favourable.

The attribute (age) does not need to be the only or dominant reason for the treatment – it only needs to be a substantial reason.

## DISABILITY DISCRIMINATION

There is a legal obligation to make reasonable adjustments to accommodate an employee with a disability. This does not require an employer to modify the inherent requirements of the job.

What is a reasonable adjustment will depend on:

- the employee’s condition;
- their role;
- what can be reasonably accommodated by the employer.
- Employers are obliged to make reasonable adjustments to allow a person with a disability to perform the role safely unless such an adjustment would result in ‘unjustifiable hardship’ to the employer.

Reasonable adjustments for one worker do not need to be the same for other workers.