

# Building eQuality in the workplace

## Injured Workers



### What the law says

It is against the law to discriminate against an employee because of an injury. In Victoria, employers are also liable (legally responsible) for the behaviour of their staff. This means that complaints can be made against the employer, as owner of the organisation, for the discriminatory conduct of employees.

### Discrimination against injured workers includes:

- sacking or demotion
- denying or limiting access to promotion, transfer, performance bonus pay, training or any other benefits
- unreasonable workplace policies, practices and procedures that they cannot comply with compared with other employees.

### Equal Opportunity laws apply to:

- all stages of employment, including recruitment, returning to work, dismissal and retrenchment
- full-time, part-time, casual, temporary workers, probationary workers, contract workers, those on commission, or job applicants
- injuries that have occurred at work or outside of work.

### Recruitment

A job applicant with an injury should be assessed on their ability to do a job, not whether or not they have an injury.

### It is against the law to ask job applicants:

- whether they have ever made a workers' compensation claim
- how many days sick leave they took in the previous year
- questions about their health that do not relate to the job requirements.

### Tips to avoid discrimination in recruitment

- ✓ avoid personal questions about health and injury; instead ask about capacity to travel or ability to meet the requirements of the job
- ✓ avoid assumptions about what an injured person can and can't do; instead ask about the applicant's skills and abilities
- ✓ avoid questions about WorkCover claims; avoid assumptions about the suitability of the applicant based on past WorkCover claims
- ✓ only use pre-employment medical tests to assess the applicant's ability to carry out the essential requirements of the job; testing should not cover the applicant's general health or medical conditions that would not affect the person's ability to perform the work.



For more information on pre-medical testing, ask for a fact sheet or visit our website [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

## In the workplace

An employer is not expected to keep a position open indefinitely or make unreasonable adjustments to accommodate a worker if they are unable to perform the job in the long term.

An injured worker needs to be given time to recover and be accommodated in their return to work. Reasonable adjustments should be made to help them return to work, but these should not cause unjustifiable hardship to a business. For example, a small business would not be required to make extensive alterations to a work vehicle to allow an injured worker to drive if the cost of such alterations was too high.

## Workplace injuries

An employer has responsibilities under the Accident Compensation Act if an employee is injured at work. These allow injured employees to return to work when they are well enough and to access an occupational rehabilitation program if required.

### An employer must:

- hold the injured person's position open for 12 months
- help a worker return to their job if they are capable of doing so within 12 months of an injury
- help a worker to return to different or modified duties within 12 months of an injury - if they are fit for work but not for their previous job.

## Non-workplace injuries

Discrimination against an injured worker is against the law regardless of whether the injury was sustained at work or

outside the workplace. However a worker's entitlement to compensation may vary according to where and how the injury occurred. A worker who has been discriminated against because of an injury may make a complaint to the Victorian Equal Opportunity and Human Rights Commission regardless of whether the injury is work-related or not.

## Occupational health and safety

An employer must provide a safe working environment. An employer can refuse to employ an injured worker or allow them to return to work in order to protect the health, safety or property of any person including the job applicant. An employer must consider if there are any alternatives to this action.

## Case Study

Donna, a data entry operator, has an accident outside work which means she is permanently unable to use the computer keyboard with her left hand. The employer can show that Donna is incapable of performing the essential requirements of the job and it is unreasonable to expect them to provide an alternative means of doing the job.



For more information on employers' general rights and obligations, case studies and tips on avoiding discrimination in the workplace visit our website [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

## More Information

The Victorian Equal Opportunity & Human Rights Commission offers training and education consultancy services in equal opportunity policies and practices. Training can be delivered onsite throughout Victoria or at our training centre in Melbourne. Please telephone **(03) 9281 7168** for more information.

The Commission also offers a free telephone advice service.

**Disclaimer** This information is intended as a guide only. It is not a substitute for legal advice.



**Victorian Equal Opportunity  
& Human Rights Commission**

**3/380 Lonsdale Street Melbourne Victoria 3000**

Advice Line: **(03) 9281 7100** | Phone: **(03) 9281 7111** | Fax: **(03) 9281 7171**

TTY: **(03) 9281 7110** | Toll Free: **1800 134 142** (country callers) | Interpreters: **(03) 9280 1995**

Email: **information@veohrc.vic.gov.au** | Website: **www.humanrightscommission.vic.gov.au**

Authorised by the Victorian Equal Opportunity & Human Rights Commission, 3/380 Lonsdale Street, Melbourne, Victoria 3000.

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