



Disclosure Anytime In The Job

Participation in employment is highly valued in society. Employment provides many positives such as an income, enhanced self identify, social relationships, and an increased range of skill development. Employment can also be taxing on an employee due to the amounts of energy and time required, and the need to balance work and life commitments.

Employees with a disability also have to manage their disability related needs including the impact of a busy work schedule on their health and well-being. It is possible that employees with a disability may be faced with the decision to disclose their disability when they are in their position of employment.

Should Disclosure Occur Anytime In The Job

The circumstances of an employee can change over time whilst in a position of employment. Changes may include:

- increased workloads
- career developments
- greater understanding of organisational policies and procedures
- the impact of their disability on daily activities
- acquiring a disability or chronic medical condition
- changes to their personal situation
- acquiring a disability as a direct result of work
- acquiring a disability due to the natural ageing process
- feeling more secure and comfortable in the job

All or any of these circumstances can be a catalyst for an employee to consider whether or not to disclose their disability while in the job.

Many employees choose not disclose their disability in the early stages of their job, sometimes for fear of discrimination, sometimes because they are able to manage their workload or they don't require any additional support. However, every employee's situation can change for a variety of reasons and this may impact on their decision to disclose.

Disclosure whilst in the job may occur as a **pro-active measure** or due to a **crisis** that requires some form of intervention:

Pro-active disclosure may occur due to:

- familiarity with work colleagues and management
- the need to promote the fact that people with disabilities can work in many positions of employment
- an understanding of the organisational policies that ensures non- discriminatory practices
- an understanding of new advancements in disability supports and equipment that may not have been known or recognised when first employed
- the need to implement work related adjustments to ensure a safe and healthy environment for the employee and other employees



Disclosure may occur due to a **crisis** and therefore may require support to be put in place to ensure that their job is not in jeopardy. Crisis disclosure may occur due to an employee:

- acquiring a disability that requires support and work related adjustments e.g. time off work, lighter duties, change to work hours, equipment
- experiencing a relapse or deterioration of their disability that previously did not require any form of intervention by the organisation
- being required to attend disciplinary meetings due to poor work performance. The poor performance may be related to the employee's disability and so disclosure may be required to inform management of these issues with the aim of developing work related adjustments. The aim of disclosure at this time is to alert management about the employees disability issues which should be discussed and addressed as priority before commencing with poor work performance procedures. Acting on disability issues includes working with the employee to identify work related adjustments to assist the employee to meet the inherent requirements of the position.

Why Employees May Choose To Disclose When They Are In A Job

Geoff's disability has recently deteriorated to the point that he is now unable to manage some aspects of his job. Geoff's psychiatrist has made some recommendations for changes in his work, which need to be negotiated with his employer. For this reason Geoff has decided to disclose his disability to negotiate implementing work related adjustments to enable him to manage his position of employment.

An employee may choose to disclose their disability whilst they are employed in a job because:

- their personal circumstances may change, such as acquiring a disability or medical condition
- they may experience a progression of their disability
- they may feel more comfortable and confident about disclosing in a familiar environment
- they may be confident to disclose their disability knowing that it will not lead to discriminatory attitudes and actions
- their job and conditions may have changed such as moving to a new work location, agreeing to take on additional duties, a new supervisor/manager and/or new colleagues any of which may highlight issues in relation to a disability
- they may identify a specific support that may not have been available when they commenced the job e.g. new software or hardware
- they may not be performing well in the job due to their disability and may need to explain the situation to their employer

Why Employees May Choose NOT To Disclose When They Are In A Job

Cara has previously worked in a position similar to her current role and therefore has an understanding of the position and its possible impacts on her disability. As a result, Cara has developed appropriate skills for managing her employment and therefore does not need to disclose her disability to her employer.

An employee may choose NOT to disclose their disability whilst they are employed in a job because:

- they can manage their job and the impact of their disability, without additional support or assistance
- they may have put in place adequate external structures to ensure that their disability does not impede their job
- they may feel like they would be treated differently or their disability would be perceived in a negative or discriminatory manner
- their disability may be in remission and therefore not considered relevant to the current position of employment
- they feel that they will be discriminated against or seen as less competent in the job



What To Disclose?

Employees need to prepare how they would like to disclose their disability. It is important that the information presented is clear and concise and relevant to the job. Very often it is not essential to disclose in-depth medical or personal information about a disability.

The type of information presented to the appropriate person may include:

- what the disability is
- why the employee has chosen to disclose their disability
- how the disability and life experiences may positively impact on the position
- the type of work related adjustments that would be required
- examples of how work related adjustments have benefited the employee in previous positions of employment, education environment and/or other experiences

To Whom Should Disclosure Occur?

It is important for employees to identify the right person to disclose to. The most appropriate person to disclose a disability to could be their employer, supervisor, or the human resources department. Some organisations may have support services such as equal employment opportunity units, equity/social justice unity or employee support staff that can provide advice, support and assistance in identifying and implementing work related adjustments.

External supports such as union organisations, disability specific programs, and/or friends may assist in formulating a plan prior to disclosing a disability. Work colleagues may also assist with this.

The Purpose Of Disclosing

Often employees choose to disclose whilst they are in a job because their circumstances have changed or requirements of their employment highlight issues around their disability. Sometimes the changes are of a crisis nature, whilst at other times they are a pro-active measure.

It is essential that employees state their purpose in disclosing. This ensures that the disclosure can achieve a beneficial outcome. Disclosure is most effective when the employee is *"...knowledgeable about their disability and (is) able to articulate both their disability-related needs and their unique talents."*(1)

It is important for an employee to try to obtain some space from their work environment to develop an effective plan for disclosure in the vent of a crisis. Use of sick, annual or long service leave may assist an employee to obtain advice, support and to investigate options before disclosing a disability in the workplace.

When disclosing a disability in the workplace, it is not usually necessary to provide a detailed account of the disability or medical condition. It is helpful for an employee to provide a clear statement about the disability, how it has impacted on their capacity to work and what specific work related adjustments and supports would be helpful in the job.



Employee: Rights And Responsibilities In Disclosing A Disability In The Job

Employees have a right to:

- have information about their disability treated confidentially and respectfully.
- appropriate and respectful questioning for the purpose of identifying work related adjustments required.
- know what happens to personal information provided to the organisation.
- have information about their disability used by the organisation only for the purposes of implementing work related adjustments in the workplace and to assess whether the inherent requirements of the position can be met

Responsibilities:

- to consider and/or obtain assistance in identifying strategies and suggested work related adjustments required to enable the employee to maintain their position of employment
- to recognise that disclosure at the point of crisis may not always ensure that work related adjustments can be easily or successfully implemented due to short time frames and the complexity of issues
- to disclose a disability if it is seen to impact on the job and the health and safety aspects of the work environment. In these circumstances, disclosing a disability is considered the right and proper action as work related adjustments can be investigated to reduce the occupational health and safety issues for the individual and associated work colleagues. Not disclosing may be in breach of Occupational Health and safety legislation
- to disclose a disability if the disability is impacting on the work performance. This is most relevant if disciplinary procedures are implemented to address the poor work performance. Disclosure at this time alerts management about the disability issues which requires them to address the issues, as priority, before commencing with poor work performance procedures. Acting on disability issues includes working with the employer to identify work related adjustments to enable inherent requirements of the position to be met.

Employer: Roles And Responsibilities

Role:

- to be non intrusive and respectful of the employee when they have disclosed their disability.
- to meet with the employee to discuss the employees issues and inform them about available support structures and service in the organisation
- discuss with the employee the type of work related adjustments that may be required for the job. Discussions may include identifying appropriate adjustments, and developing a 'Plan of Action' that outlines timelines for the implementation of the adjustments, support, training and follow up.
- to organise the work related adjustments required. If this task is to be delegated to a staff member, it is the role of the manager to ensure that the information is relayed in an accurate, non-discriminatory manner and that the task is followed through



Responsibilities:

- federal and state privacy acts provide a standard for organisations to be responsible in collecting, using and disclosing personal information as well as keeping information secure, being open about the collection and information handling practices and ensuring anonymity where possible.
- an employer's main obligations under the Disability Discrimination Act are:
 - not to discriminate directly by less favourable treatment
 - not to discriminate indirectly by treatment which is less favourable in its impact
 - to make reasonable adjustments where required
 - to avoid and prevent harassment.
- an employer is responsible for thoroughly assessing the employees request for work related adjustments before claiming 'unjustifiable hardship'. This includes assessing:
 - direct costs
 - any offsetting tax, subsidy or other financial benefits available in relation to the adjustment or in relation to the employment of the person concerned
 - indirect costs and/or benefits, including in relation to productivity of the position concerned, other employees and the enterprise
 - any increase or decrease in sales, revenue or effectiveness of customer service
 - how far an adjustment represents any additional cost above the cost of equipment or facilities which are or would be provided to an employee similarly situated who does not have a disability
 - how far an adjustment is required in any case by other applicable laws, standards or agreements
 - relevant skills, abilities, training and experience of a person seeking the adjustment.
- if an employer is notified in a disciplinary meeting that an employees poor work performance is attributed to their disability, which had previously not been disclosed, it is the responsibility of the employer to:
 1. stop the disciplinary process
 2. address the disability issues with the employee, in a sensitive manner, by identifying work related adjustments to assist the employee to meet the inherent requirements of the position.
 3. provide a timeline to implement the work related adjustments
 4. if poor work performance continues after the identified timeline, recommence the disciplinary process with the employee.

Note: the identification of disability issues should not be ignored or used as a means of terminating employment

- if occupational health and safety issues have been identified specific to a person with a disability, it is the responsibility of the employer to:
 - assess and identify the specific health and safety issues with the employee and other appropriate staff
 - implement appropriate work related adjustments to minimise the health and safety issues for the employee and the workplace and to enable the employee to meet the inherent requirements of the position. In the occupational health and safety area, reasonable adjustment might involve changes to make work safer for all employees. For example, safer manual handling practices, or substitutes for manual handling, make work safer for all employees as well as removing some barriers to workers with pre-existing injuries or disabilities. Other adjustments might address more specifically the needs of workers with a disability.



- The Disability Discrimination Act (DDA) 1992 provides that a person who cannot perform the inherent requirements of the job need not be employed and may be dismissed without unlawful discrimination occurring. Meeting reasonable occupational health and safety standards must be accepted as being among the inherent requirements of any job.
- Specific assessment of the possible risks of an employee with a disability in relation to occupational health and safety should **not** occur in the job unless:
 - reasonable occupational health and safety standards are accepted as being among the inherent requirements of the job. If the employee is able to meet the inherent requirements of the position, possibly with work related adjustments, then they should not be assessed as a possible liability. All applicants, including applicants with a disability, should be assessed in accordance with the inherent requirements of the job
 - it is used to identify work related adjustments for the individual to meet the inherent requirements of the position. In determining whether a person can perform the inherent requirements of a job, the employer is required to consider whether the person could perform these requirements if some adjustment is made, including adjustments to facilities, equipment, work practices or training. If such an adjustment would be effective it must be made, unless it would impose unjustifiable hardship on the employer or other affected parties.

Footnotes

(1) Scholl & Mooney, Undated Draft Document, Disclosure in work based learning programs
<http://www.cew.wisc.edu/ya/pdf/brief3.pdf>