



Occupational Health And Safety

All employers have an obligation, under legislation and common law, to provide safe and healthy workplaces and to work against potential risks to the health and safety of employees.

Both State and Federal Government administer occupational health and safety legislation. There are two Acts administered by the Federal Government: the [Occupational Health and Safety](#) (Commonwealth Employment) Act 1991 (the OHS (CE) Act), and [the Safety, Rehabilitation and Compensation Act 1988](#) (the SRC Act).

Each state of Australia also administers state legislation. There are statutory bodies responsible for administering the Acts and managing the State's workplace safety, injury management and workers compensation systems. (Refer to the 'Resource' section below to access information about state statutory bodies.)

While the laws may differ in each state, they are based on the following principles:

- The employer should:
 - Identify potential risks,
 - Work to eliminate them from the workplace,
 - Control them so that there is no risk, or
 - Reduce the risk.
- An employee should not have to work in an environment or undertake work that puts them at risk.
- An employer has an obligation to protect the health and safety of their employees, regarding the actions of individual employees.

If employees have concerns about health and safety in the workplace, they should raise this with their supervisor or local health and safety committee or officer. An employee can also contact their union, the local Department of Labour or health and safety authority.

When considering disability discrimination law and Occupational Health and Safety, the employer needs to review the specifics of the situation, on a case by case basis and recognising the requirements of rework related adjustments with the Occupational Health and Safety acts.

The following information is an excerpt for the Human Rights and Equal Opportunity Commission that outlines occupational health and safety obligations, together with the requirements of the [Disability Discrimination Act](#):

Does The DDA Set Out All Of An Employer's Obligations Regarding People With A Disability?

No. The DDA applies in conjunction with other laws and standards regulating employment. Employers should note that in some areas they may have more extensive obligations under other laws including:

- state and territory laws regarding discrimination
- laws about rehabilitation or compensation of employees following an injury or illness
- laws about protection of health and safety
- laws about unfair dismissal.



How Can Employers Comply With The DDA As Well As Health And Safety Requirements?

The DDA itself does not set out in detail how it relates to health and safety issues. The following comments represent the Commission's opinion taking into account relevant case law.

People with a disability are entitled to equal protection of health and safety.

Non-discrimination in terms and conditions of work, as required by the DDA, includes equal protection of health and safety in relation to work for people with a disability as for other employees. This includes, as necessary, effective access to relevant information and training and any reasonable adjustments required to equipment, facilities or work procedures to ensure safety for all workers including people with a disability. In this respect, concurrent and similar obligations arise under the DDA and under occupational health and safety legislation.

A person who cannot work safely does not meet the inherent requirements of the job.

The DDA 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.

In *X v The Commonwealth* (2 December 1999) all members of the High Court emphasised that the inherent requirements of a job are not restricted to performance of the physical tasks involved. Justice McHugh commented:

"It would be extremely artificial to draw a distinction between a physical capability to perform a task and the safety factors relevant to that task in determining the inherent requirements of any particular employment. That is because employment is not a mere physical activity in which the employee participates as an automaton. It takes place in a social, legal and economic context."

The ability to work safely (that is, without unreasonable risks to others) has been previously noted by the Commission as an inherent requirement: see *Woodhouse v Wood Coffill Funerals* (Commissioner Innes).

For example: An employee complained that he had been discriminated against because of a requirement to wear a safety helmet, which caused him difficulty and discomfort because of his disability. Confirming a decision of a delegate of the Disability Discrimination Commissioner, the President found there had been no unlawful discrimination. He found that it was reasonable for the employer to require the employee to wear a helmet to comply with occupational health and safety requirements (25 October 1996).

However, this does not include restrictions or exclusions which are not justified by real risks or for which there are less restrictive alternatives reasonably available.

See also the comments on medical evidence in these notes.



In deciding whether a person can meet inherent requirements, possible reasonable adjustment must be taken into account.

In determining whether a person can perform the inherent requirements of a job, the Commission and the courts are 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. The concept of "unjustifiable hardship", as set out in section 11 of the DDA, is not restricted to financial hardship but includes consideration of any relevant detriment or benefit, including risks to health and safety.

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.

In *Woodhouse v Wood Coffill Funerals* the Commission accepted evidence that a pallbearer who could not carry coffins safely because of his disability would have been able to perform this requirement if he were provided with a small amount of training, which would not have imposed unjustifiable hardship. The Commission decided that it had been unlawfully discriminatory to dismiss him. The Commission said

The evidence is that Mr Woodhouse could not carry either a coffin or a stretcher containing a deceased person as smoothly as other employees of the respondent, and I accept the respondent's assertion that he could not do so in a manner which was safe for other employees. However, I also accept the evidence of Dr Baz that, with appropriate training, the complainant could have altered his gait so that he could have carried coffins more smoothly. The provision of such training would have constituted a minor expense to the respondent. It would have meant Mr Woodhouse taking time off to attend the necessary sessions, and relatively minor expenditure for the cost of such sessions. When weighed against the costs involved in losing a current employee (who was housed in the respondent's premises) and recruiting and training another, such costs would be very small, and would certainly not constitute an unjustifiable hardship to the respondent in terms of the Act.

It is incumbent on employers to ensure that their employees are appropriately skilled and qualified to carry out the work for which they are employed. This obligation not only involves general training for all employees. It involves specific training and support for an employee who is deficient in a particular area.

Health and safety must be protected by non-discriminatory means wherever possible.

The Federal Court is unlikely to accept that an exclusion or restriction on health and safety grounds is justified by the inherent requirements of the job where a non-discriminatory solution to the same issue is reasonably available. The other exemptions provided for in the DDA also require a close connection between the health and safety purpose to be achieved and the measures adopted.

There is an exemption in the DDA regarding infectious diseases - see section 48. This applies to measures "reasonably necessary" to protect public health and clearly is not a general licence to exclude or discriminate against people who have an infectious disease.

The more general exemption in DDA section 47 for actions in direct compliance with other laws (which applied regarding all other laws until 1 March 1996 and laws prescribed by regulation thereafter) would only protect actions taken for occupational health and safety reasons where these actions are "in direct compliance" with occupational health and safety laws.

The Commission regards this exemption as restricted to situations in which, if the discriminatory action is not taken, there will be a breach of occupational health and safety law. If there is an alternative means available of complying with occupational health and safety requirements, the discriminatory action will not be protected.



State Statutory Bodies Responsible For Administering State Occupational Health And Safety Legislation:

WorkSafe, Western Australia

<http://www.docep.wa.gov.au/WorkSafe>

NSW Workcover Authority

<http://www.workcover.nsw.gov.au/>

South Australian Workcover Corporation

www.workcover.com/

Victorian Workcover

www.workcover.vic.gov.au/

ACT Workcover

<http://www.workcover.act.gov.au/>

Queensland Division of Workplace Health & Safety

<http://www.deir.qld.gov.au/workplace>

Tasmanian Workplace Standards Authority

<http://www.wst.tas.gov.au/>

Northern Territory Work Health Authority

<http://www.nt.gov.au/wha>

WA WorkCover

<http://www.docep.wa.gov.au/WorkSafe>

References

Comcare Australia's Safest Workplaces website (2003)

URL: <http://www.comcare.gov.au>

Human Rights and Equal Opportunity Commission (2003) Disability Rights website URL:

http://www.hreoc.gov.au/disability_rights/

NSW Workcover Authority website (2003) URL:

<http://www.workcover.nsw.gov.au/>