

Work, Superannuation and Cancer

Introduction

One of the biggest issues facing many people with Cancer is when and how to stop work. For others the problem is how to keep working by cutting back their hours or changing to lighter duties. It's very important for people with Cancer to be aware of their rights and their employers' obligations to try to keep them in the workforce.

It's also very important for people with Cancer to be aware of their superannuation and insurance rights – in particular, disability benefits which can be claimed when they stop work.

General Rule – Employment Law

Employers must take reasonable steps to accommodate their employees' Cancer. This may take the form of:

- Changing your workstation by providing a supported chair, improving air-conditioning or moving into the ground floor;
- Allowing you to take time off work or get medical treatment;
- Changing your work duties in some circumstances;
- Allowing you to work part time.

Legally your employer doesn't have to offer you a different job although they can't terminate your employment for at least 3 months. Under some Workers Compensation legislation an employer must keep the job of a worker with a work-related disability open for at least 12 months.

Many employers know very little about Cancer and will be happy to help if you tell them about the problem.

However, if your employer won't help, you might have a legal claim. Under anti-discrimination laws or workplace relations laws, your employer may be forced to alter your working conditions or pay you compensation.

Do I Have To Tell My Employer?

Generally you don't have to tell your employer about your Cancer unless it's an occupational health and safety risk.

Also, your employer can't force you to see their doctor or sign authorities to get reports from your doctors. There are some exceptions such as for Workers Compensation claims.

However, in many cases telling your employer would be a positive move. It may help explain any problems you are having performing your work and may result in changes to your work which will mean you can continue to work productively.

It's important to assess what you think the reaction of your employer will be and maybe get the help of your doctor, union or a Cancer support group.

Stopping Work

If you think you will be stopping work, you might be eligible for employment termination payments such as redundancy benefits, payment in lieu of notice or an ex gratia lump sum.

The amount you get paid may depend on why you leave work and whether it's voluntary or not. It might also change the amount of tax you pay.

Don't resign or sign anything before getting advice. If you have already left work, get advice straight away.

Starting Work

Many employers ask job applicants to fill in health questionnaires or have medical check-ups. If you are applying for a job, you don't have to tell an employer about your Cancer unless it's relevant to the job.

You might be asked about health problems for employment superannuation or insurance. However, with most funds you can get some disability cover even if you already have Cancer.

If you don't get a job or insurance cover because of your Cancer, you might have a discrimination claim.

Superannuation

If you are thinking of stopping work because of Cancer, you might be able to claim a disability lump sum or pension under your superannuation fund.

Most employment superannuation funds include disability benefits – usually lump sums – if you can't do your usual job or any other suitable work permanently.

Some superannuation funds also pay disability pensions if you can't work for now – even if it's not permanent.

If your doctors agree that you should stop work because of Cancer, you should look at making a claim.

Other funds allow you to continue your disability cover after you leave work so long as you take up the option within one or two months.

With most superannuation funds, you can make a disability claim at any time but with a few funds if you terminate your employment it might affect your right to claim.

It's very important to get advice as soon as possible.

Insurance

If you can't work because of Cancer you might also have insurance policies you can claim on such as income protection, trauma, life insurance or mortgage protection and consumer credit insurance.

You might have an income protection insurance through your employer or an association or from a personal policy.

Again, with some employer income protection policies if you leave work it might affect your right to claim in the future.

If you're not sure of your rights or if you're being "mucked around" by an insurance company, get help.

Can I Appeal or Complain?

Yes. If you're discriminated against in the workplace or unfairly dismissed, you may have the right to appeal to a court or tribunal.

If your superannuation or insurance claim is rejected, you can appeal to the courts, to the Superannuation Complaints Tribunal or to an insurance complaints scheme.

It's really important to get advice about your rights.

Where Can I Get Help?

Maurice Blackburn has set up a free Super and Insurance Advice Service to give legal advice to people with Cancer and others.

Call John Berrill at Maurice Blackburn on (03) 9605.2792 for free legal advice.

Checklist

- If you have already stopped work because of Cancer;
- If you are thinking of stopping work because of Cancer;
- If you want to change your work hours or duties because of Cancer;
- If you are worried your employer might sack you;
- If you have been offered or might be offered a redundancy;
- If you are thinking of returning to work;

.....please get advice about your employment, superannuation and insurance rights BEFORE you do anything.

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Current as at June 2008.

Disclaimer

This brochure was prepared in June 2008. It is only a general guide to legal, superannuation and financial issues and is not a substitute for professional advice in these areas.