

Chapter 8

What if the injury happened outside of work?

Being injured or ill can unfortunately be a part of life. This can happen outside of work as well as at work. This chapter provides information on a workers rights and responsibilities if the they are injured or fall ill when they are not working.



Recovering from an injury outside of work.

Workers are entitled to use their sick leave and recreation leave to help them recover (most workplaces will allow a worker to use recreation leave at half pay to assist - check your enterprise agreement). If the worker needs further time off they can access their long service leave (if they have accumulated this) or special leave (if this is included in the enterprise agreement or award) or arrange leave without pay.

It is important that the injured worker makes sure they tell their employer as soon as possible what has occurred and keep them up to date throughout their recovery time.

Can a worker be fired while they are recovering?

Any attempt to fire a worker because of an injury or illness is likely to be seen as an unfair dismissal by the Fair Work Commission or the Industrial Relations Commission.

Most workers are entitled to take three months leave due to sickness (using leave entitlements or leave without pay) without the threat of being sacked.

A worker may also have capacity to take their employer to the Anti-Discrimination Commission. Please speak to the union about this. Remember: Any worker can be made redundant if there is a general restructure and a redundancy program is in place.

Medical retirement or unfit for work

Medical Retirement is a form of sacking a worker. A medically retired worker is generally not entitled to any additional payments beyond their normal entitlements (check with the award or agreement and with the union).

In all circumstances there is a process that must be implemented before an employer can medically retire an employee. Medical retirement is usually governed by the enterprise agreement or award so please contact the injured workers union for advice.

-  The worker may be able to access their superannuation (please refer the worker to their superannuation company for further details).
-  Some awards or enterprise agreements prevent a medically retired person from applying for a position in that company or service ever again.

Returning to Work

An injured worker cannot be discriminated against because they are ill, injured or have an acquired disability.

Most companies will provide workers with a return to work program for when the worker returns after their recovery.

The Federal government provides some Job assistance and financial support for retaining the injured worker's work and some worksite adjustments if the worker require these.

Disability Employment Services Providers

Disability Employment Services providers offer a range of services to support the injured worker's individual needs, including:

-  Help to prepare for work, including training in specific job skills
-  Job search support, such as résumé development, training in interview skills, and help in looking for suitable jobs
-  Support when initially placed into a job, including on the job training and coworker and employer support
-  Ongoing support in a job if required
-  The purchase of vocational training and other employment-related assistance
-  Access to help with workplace modifications, support services, and Auslan interpreting in the workplace

Disability Management Service

For people with disability, illness, or injury who needing help but do not expect to need long-term support in the workplace.

Employment Support Service

For people with a permanent (acquired) disability and with an assessed need for long term, regular, ongoing support at work.

Jobs In Jeopardy

If the injured worker are at risk of losing the injured worker's job. Job in Jeopardy Assistance can help by working with the injured worker and their current employer. It does not help the injured worker find a new job. Job in Jeopardy Assistance is free and is available through direct registration with a Disability Employment Provider. You do not need to be receiving a payment from the Department of Human Services or have an Employment Services Assessment to access Job in Jeopardy assistance.

Job in Jeopardy Assistance may include:

-  Advice about redesigning the injured worker's job so the injured worker can keep working
-  Having the injured worker's workplace assessed to see how it can be changed to make it easier for the injured worker to work
-  Having the injured worker's workplace changed so the injured worker can continue to work
-  Specialised equipment to help the injured worker do the injured worker's job

Accessing superannuation

If the worker are terminally ill or have a permanent incapacity the law may allow them to access their superannuation. Most of the grounds under which early access is permitted are administered directly by the superannuation funds so the worker should contact them.

Income Protection

Income protection insurance replaces the income lost through the workers inability to work due to injury or sickness. It is an important consideration for anyone who relies on an income. It is especially suitable for self-employed people, small business owners or professionals whose business relies heavily on their ability to work.

Income protection premiums may be tax deductible. It is wise to seek financial guidance on income insurance before taking it out.

Sickness Allowance through Centrelink.

Sickness allowance is a payment for people aged 22 years or older but under age pension age who temporarily cannot work or study because of an injury or illness. Eligibility:

-  Aged 22 years or older and have a job, or
-  Aged 22 years or older and getting ABSTUDY as a full-time student, or
-  Aged 25 years or older and getting Austudy as a full-time student, and
-  Under Age Pension age and meet an income and assets test

Note: The Workers income and assets could affect the amount of payment they receive.

If the worker qualifies for Sickness Allowance, they may be entitled to other payments and entitlements. Please check with Centrelink.

For all Federal government assistance please check with Centrelink or call JobAccess on 1800 464 800