

# Mental illness, your employment and the law

IF YOU HAVE A MENTAL ILLNESS, KNOWING HOW THE LAW PROTECTS YOU AND GUIDES YOUR EMPLOYER WILL HELP BOTH OF YOU MANAGE YOUR CONDITION APPROPRIATELY AT WORK.



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## What is my employer entitled to know about my illness and why?

If your employer believes that your mental illness is affecting or could affect the performance of your role or poses a risk to the health and safety of you or other workers, they may request that you provide a medical report confirming your ability to perform your role safely.

Your employer may ask you to provide a report from an independent medical practitioner rather than your own treating doctor. This will generally be a lawful and reasonable direction. Your employer may wish to provide the doctor with a list of questions regarding your ability to perform your role and what changes could be made to assist you. You will need to consent to any information being provided by the doctor to your employer.

It is not necessary for any medical reports provided to state the details of your illness – an explanation of how it will affect you in the workplace will suffice.

## Can my employer or colleagues treat me differently in the workplace because I have a mental illness?

State and federal legislation prohibits discrimination in your employment by your employer on the basis of mental illness.<sup>1</sup> Discrimination occurs where you are treated less favourably because of your mental illness or where you are disadvantaged on

account of your mental illness by being required to comply with an unreasonable requirement, condition or practice. It is also unlawful to be dismissed from your employment by reason of a temporary absence due to illness.<sup>2</sup>

However, it is not unlawful for your employer to take action which would otherwise be discriminatory if your mental illness means you are unable to perform some or all of the requirements of your role, including attending work and performing your role safely. Such action may include requesting that you take some leave, changing aspects of your role or in some cases ending your employment. Your employer is required to have first considered whether any reasonable adjustments could be made to assist you to perform your role (see below).

Under federal law it is also unlawful for your colleagues to harass you because you have a mental illness. Harassment can be described as repeated and unwelcome conduct that a reasonable person would consider offensive, intimidating or humiliating.

## If I have special needs as a result of my illness, what assistance am I entitled to receive in my workplace?

Your employer is required to make reasonable adjustments to how you perform your work (not to the role itself) if your mental illness means that you are unable to perform all of the requirements of the

role. Adjustments could include allowing you to work reduced hours or to work from home on some days, or providing time off for medical treatment. You should speak with your supervisor or a human resources representative if you require adjustments to be made. It is helpful to provide a letter from your doctor explaining the adjustments needed and how they will assist you in the workplace.

Your employer does not have to make an adjustment if it would be unreasonable in all the circumstances, taking into account the size and nature of their business, the nature of your role and the financial impact.

## What support and resources are available to help me deal with my mental illness in the workplace?

The Victorian Lawyers' Health Line ([www.viclawshealth.com.au](http://www.viclawshealth.com.au)) offers counselling, de-briefing and referral services to Victorian lawyers, law students, barristers, judges and other LIV members and is contactable on 1300 664 744. Many large employers also offer employee assistance programs that provide free and confidential short-term counselling and referral services to employees and their household members. ●

1. See the *Disability Discrimination Act 1992 (Cth)*, the *Equal Opportunity Act 2010 (Vic)* and the *Fair Work Act 2009 (Cth)*
2. An absence will not be temporary if it is longer than three months and you are not on paid personal/carer's leave for the duration of the absence (s352 *Fair Work Act and Regulations*).

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