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Employer ordered to pay \$44,000 in damages to injured worker

Case highlights importance of reasonable adjustments and return to work policies, says lawyer



BY Fiona Terry / 24 Aug 2023 / Share

The importance of employers having correct frameworks in place to manage ill and injured workers was highlighted in a recent case.

In *Panazzolo v Don's Mechanical and Diesel Service Pty*, the employer was required to pay \$44,000 in damages by the [Fair Work Commission](#).

That came as a consequence of the employer failing to make reasonable adjustments following an injury, says Antonia Tahhan, an associate in corporate, commercial & workplace law at Chamberlains.

To avoid outcomes like this, employers and business clients should have policies in place to deal with this.

“The policies usually include what steps the employer and employee should follow if an employee suffers an injury, or they are ill,” she says.

“Those can be around management of injured workers and management of injury policies, return to work policies, and policies surrounding fitness for work, and also the steps that would need to be followed if an employee does say they are unfit to work.”

Having those policies makes things a lot clearer for both parties, she says. They would also usually include a direction for an employee to attend an independent medical examination.

“Once those independent medical exams happen, the employer will look at managing the injured or ill employee and how they can reintroduce them back into the workforce, or what steps will be followed if the employment can't be maintained,” she says.

Employer needs to look at reasonable adjustments

In circumstances where a person's unable to fulfill the requirements of their job, the employer needs to look at what reasonable adjustments can be made, says Tahhan.

In the recent case, [Panazzalo was an employee](#) of Don's Mechanical and Diesel Service. He suffered an injury to his wrist, outside of his workplace, after being assaulted while walking his dog. On returning to work, a medical professional declared he couldn't engage in heavy lifting for three months. Instead of offering him lighter duties though, his employer advised they required a medical professional to clear him for 'all duties' expected of a diesel mechanic, before he'd be allowed to return to work.

The Fair Work Commission held that the employer [unlawfully discriminated against](#) Panazzalo on the basis of his disability, breaching the Disability Discrimination Act 1992.

If adjustments can't enable the employee to work, sometimes termination does need to be looked at.

"In saying that, every state and territory has different rules and regulations around terminating workers who have a workplace injury," says Tahhan. "So the other layer that needs to be considered is whether the injury or illness resulted from the workplace because if it does, there are additional factors that need to be considered."

For example, in New South Wales, you can't terminate a worker for a period of six months from the notification of a workplace injury - employers need to consider that from a workplace compensation perspective."

Onus on employee to disclose injury or illness

Generally, the [onus is on the employee](#) to disclose if they have an injury or illness that will impact their fitness for work, says Tahhan. The obligation then sits with the employer to direct the employee to attend an independent medical exam. If someone's already had a medical professional declare they're not able to carry out their usual job, the employer can either accept that or still direct for an independent medical exam to take place.

There can be further assessment the employer may deem warranted and that's reasonable too, says Tahhan.

"In this recent case, they accepted that the employee couldn't do any lifting and said the employee couldn't return until he had a medical professional clear him for 'all duties'. The employee argued that reasonable adjustments weren't explored."

While it wasn't possible to redeploy Panazzalo for lighter duties temporarily, ultimately, it was found that the employer discriminated against him on the basis of the Disability Discrimination Act by failing to consider the reasonable adjustments.

“Whilst the employer argued that they didn't have light duties, it just wasn't explored in the way that it should have been,” she says.

Having a policy to conduct return to work meetings will see employers discussing with ill employees what their capacities are in transparent conversations, says Tahhan. This could also include directing the employee to attend a further medical exam to determine any parameters — such as heavy lifting — can enlighten an employer as to where else someone could be temporarily redeployed.

“So the employer saying, ‘We'll wait until you're fit for all duties’ isn't a reasonable response to the injury,” she says.

“We often advise our clients to engage an independent medical examiner, and send that medical professional the employee's position description - then the doctor will assess the injuries against the duties to determine what the person can do and the parameters around their injury. That way, the employer can properly consider opportunities for reasonable adjustments to be made.”

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