



Industrial Relations Education Session

Managing Ill and Injured Employees

House Keeping

- All participants to put themselves on mute
- Please use the chat feature to ask any questions you may have
- The questions will be monitored and answered at the end of the presentation

WE. ARE. PEAK.

Helping you achieve more

- ✔ Legal and Workforce
- ✔ Recruitment
- ✔ Consulting
- ✔ 24/7 Call Centre
- ✔ Training

Who We Are



Troy Wild



Nikki Holden



Natalie Todd



Melody Martin



Brian O'Shea



Andrew Frieberg

Why Peak Services

The numbers speak for themselves



Agenda

- Request to obtain medical information
- Direction to attend IME
- Medical terminations

Request to obtain medical information

- Personal Leave – medical detail to cover nature and duration;
- When should you request additional information (work and non work related):
 - ✓ Awareness of an injury or illness / surgery or medication;
 - ✓ Ongoing requirements for adjustments/modifications to duties;
 - ✓ Ongoing absence from duty due to illness or injury;
- Often employer is unable to rely on medical information provided by LGW/WorkCover.
- Refusal by employee to provide information?
 - ✓ Work health and safety obligations;
 - ✓ Failure to follow a reasonable direction;
 - ✓ Direction to attend an IME.

Direction to attend IME

- Consider obtaining report from treating Dr/specialist in first instance:
 - ✓ Concerns of bias;
 - ✓ Dr/Specialist refusal to provide Report – public health system;
 - ✓ Refusal by Employee;
 - ✓ IME may be requested later if medical information not sufficient or employer continues to hold WHS concerns;
- Ensure IME has access to relevant detail required:
 - ✓ Previous Reports provided by employee or other;
 - ✓ Access to relevant medical history of employee – obtain authority;
 - ✓ Employment documentation, PD, SWMS, history of adjustments etc;
- Ask the right questions and chose experienced/relevant IME.

Medical Termination

- Consideration of all Medical Opinion:
 - ✓ Can reasonable adjustments be made?
 - ✓ Timeframe of restrictions or incapacity?
 - ✓ Can an alternative position be identified?
- Is additional information required?
- Legal considerations:
 - ✓ General Protections – Section IR Regulations 2011, Temporary Absence – Section 10A;
 - ✓ Workers Compensation and Rehabilitation Act 2014 – Section 232B;
- Show cause medical termination;
- Decision to terminate – harsh, unjust or unreasonable?

Case Law

- *Ambulance Victoria v V [2012] FWAFB 1616*
- The employee was absent from work for a long period of time for medical reasons. It was found that there was no clear finding on medical evidence that the employee was unable to perform the inherent requirements of the position.
- Note: On appeal it was found by the full bench that there was no error in the first instance and the appeal was dismissed
- Order to reinstate employee with continuity of employment. Commissioner declined to make an order for loss of remuneration due to the amount not being quantifiable.

Case Law

- *J Boag & Son Brewing Pty Ltd v Button* [2010] FWAFB 4022
- The employee was employed as a brewery technician and suffered a congenital health issue that placed him on restricted duties. After numerous medical investigations the employer terminated the employment contract on the basis that the employee could not perform the inherent requirements of his substantive role and for breaching policy in relation to a drink driving offence.
- Initially found by the SDP to be unfair, which was overturned by full bench.
- It was found that the appropriate test for capacity involves the consideration of the inherent requirements of the substantive position and not the modified position. It was also found that the employee had breached a reasonable policy of the employer concerning drink driving.
- The application was dismissed.

CONTACT US

We're here for you

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