



**Russell Kennedy**  
Lawyers



## Workplace Relations Checklist

### Adjustments to accommodate an injury or illness which is not work-related

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The WorkCover system establishes a clear return to work process to deal with work-related injuries and illnesses. However, when a worker's medical condition is not connected to the workplace, an employer's obligations regarding modified duties are not quite so clear.

Workers have varying rights to request changes to their duties and working arrangements under State and Federal anti-discrimination legislation, under and the *Fair Work Act 2009*. As well as grappling with those similar but slightly different obligations, employers also need to consider their obligations under the relevant workplace health and safety laws.

Here are some questions which you should consider when discussing a proposed modification to a worker's duties or working arrangements to accommodate a non-work-related medical condition:

- What is the overall purpose of the worker's role?
- What are the specific requirements of the job?
- Does the medical condition affect the worker's capacity to perform those requirements, or to fulfil that overall purpose?
- If the change is adopted, can the worker adequately perform the requirements of the job?
- Is it safe for the worker to perform the modified duties?
- If the modified duties are implemented, will that affect the health and safety of others in the workplace?
- For how long is the worker likely to need the modified duties?
- Do you have enough medical evidence to answer these questions?
- Does the proposed adjustment affect your ability to meet customer demand?
- Is there a significant financial cost arising from making the adjustment?
- Is the proposed adjustment sustainable for your organisation?

You should also bear in mind that a large, well-resourced organisation is likely to be held to a higher standard than a small business when determining whether it can reasonably accommodate modified duties.

It is important that you don't make assumptions about workers' medical conditions, and the practicability (or otherwise) of proposed modifications to working arrangements. We frequently see return to work processes giving rise to discrimination and general protections claims, so if you are considering rejecting a proposal for modified duties, you should seek legal advice.

If you are not certain about the answers to some of the questions above, you should seek legal advice and consider establishing a trial period to see what the modifications look like in practice. By the end of the trial period, you will be in a much better position to determine whether the adjustments are manageable for your organisation.

Please contact the Russell Kennedy [Workplace Relations, Employment and Safety team](#) if you would like advice on managing your return to work obligations for ill and injured workers.