



Factsheet 5: Mental health and work: your rights and responsibilities

Do I have to disclose my mental illness to my employer?

If your mental illness does not affect your ability to safely do your job, then you do not have a legal obligation to disclose it to your employer.

You *may* be obliged to disclose your mental illness to your employer if:

- Your mental illness will affect your ability to do a particular job or task, and you would like your employer to make an adjustment for you (e.g. you will work the same hours but require more frequent breaks throughout the days);
- Your mental illness could reasonably be seen to create a health and safety risk to you and/or other people at work.

If you have a mental illness and are unsure about whether you are required to disclose this to your employer, then you should seek legal advice.

Can I take sick leave if I'm too mentally unwell to go to work, and do I need to provide my employer with a medical certificate?

All employees who are *not* casual employees in the ACT are entitled to a minimum of 10 days paid personal or carer's leave each year. If you are a casual employee or a contractor, then your entitlements will be different and depend on your contract with your employer. You may not be entitled to any paid leave.

Personal leave includes any kind of personal illness or injury which includes mental health conditions. If you are taking personal leave, you need to notify your employer as soon as possible.

Your employer may require you to provide a medical certificate for any paid personal leave taken as evidence that you are unfit to work, in particular if you take multiple consecutive days. The law allows your employer to ask you to provide a medical certificate for any period of paid personal leave you take, however employers may have policies

which tell you when a medical certificate will be required. This is usually included in your employer's leave policy, but your employer should also be able to advise you when a medical certificate will be required.

If you are unsure about your employment status or entitlements, then you should seek legal advice.

What are my rights if I feel that I'm being treated unfairly by my employer because of my mental illness?

In the ACT, there are employment and anti-discrimination laws that protect you from unfair treatment by your employer because of your mental illness. It is important to raise these issues with your employer, however if you don't feel like your concerns are being addressed, you may be able to take legal action. If you feel that you are being treated unfairly because of your mental illness, then you should seek legal advice.

I recently started a new job. When I told my employer I couldn't do a particular task because of my mental illness, they told me I wasn't the right fit for the job and fired me. What are my rights?

It is important to seek legal advice in this situation as your legal options will depend on lots of different factors, such as the nature of the role you have been hired to perform. Your employer is required to make reasonable adjustments to accommodate your mental illness, however you still need to be able to perform the essential requirements of the role. This means that if your employer makes reasonable adjustments and you still can't perform the role, they may be entitled to terminate your employment.

If you have been terminated, it is important to seek legal advice promptly as there are certain time frames for making unfair dismissal claims.

My employer says I'm a contractor and I don't have rights. Is this true?

Whether you are a contractor or an employee according to the law depends on many different factors. The main test is what is written in your contract. Even if your employer states that you are a contractor this may not be correct. Factors which may indicate if you are a contractor or an employee include:

- whether they have hired and pay you directly or they have hired and pay your business - (e.g. Do they pay "Mr J Smith" or do they pay "J Smith Operations")
- whether you wear a uniform or use equipment provided by your employer or if you own your own equipment
- how much control you have over the work that you do – (e.g. when the work is done, whether they set your hours, how much control they have over how you carry out your work).

In the ACT, even if you are a contractor, you are still protected by anti-discrimination laws that give you the right to not be discriminated against because of your mental illness.

If you are not sure whether you are a contractor or an employee and you think your rights are not being recognised by your employer, then you should seek legal advice.

What are my rights if I need my employer to make some adjustments to my working arrangements because of my mental illness?

The law requires your employer to make reasonable adjustments to ensure that you are not being unfairly treated or disadvantaged because of your mental illness. Whether an adjustment is reasonable will depend on lots of different factors, such as the type of work you perform, any unfairness or disadvantage you will experience if the adjustment is not made, and the business needs of your employer. Depending on these factors, you may be entitled to adjustments including flexible working arrangements, longer breaks, and additional time off work. If your employer has refused to make an adjustment to accommodate your mental illness which means you cannot perform your role, then you should seek legal advice.

I want to make a complaint that my employer has discriminated against me because of my mental illness. Where do I go?

Where you take your complaint will depend on the law you want to make your complaint under. Complaints under the ACT anti-discrimination laws can be made to the ACT Human Rights Commission. You may also be able to lodge a complaint in the Australian Human Rights Commission. Your options for making a complaint will depend on many factors, including how long ago the discrimination occurred and on your individual circumstances. It is important to seek legal advice about the best option for your situation.

Disclaimer

This Factsheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact our Mental Health Justice Clinic on 6218 7900.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.