

Negotiating work hours – your rights

One of the biggest legal issues for people with a disability who are in the workforce is whether they have the right to reduce their hours of work.

Many have great difficulty maintaining full time work and would benefit by a reduction in working hours either by working alternate days or reduced hours.

The transition from full time to part time work may be relatively smooth with the cooperation of treating doctors and a supportive employer. However, this is not always the case.

Some employers are unable or unwilling to accommodate people with a disability with requests to reduce their work hours, sometimes with the result that workers have to leave their job.

The question that is often asked is whether an employer can be forced to agree to a worker reducing their hours to part time because of a disability.

Until recently the answer was 'no'. However, several Court decisions might mean that workers with disabilities are able to reduce their work hours in some circumstances.

Generally speaking, under anti-discrimination laws, it is unlawful for employers to discriminate against workers because of disabilities. It is also unlawful for employers to indirectly discriminate against people

with disabilities by having in place a policy or practice that affects people with disabilities more than other people. However employers will usually be excused if their conduct was reasonable.

Over the years the Courts have interpreted the anti-discrimination laws and have limited them to discrimination against workers in the jobs they were employed to do. This meant that an employer could not be forced to offer a disabled employee different work or reduced hours because that would be a different contract of employment.

Whilst your employer might have had to modify your workplace to accommodate your disability (e.g. provide you with a fan or wheelchair access), they did not have to offer you part time work.

However, recent decisions made by the Federal Magistrates' Court might change this. The Court decided that it was unlawful indirect discrimination against women to refuse to allow them to return part-time from maternity leave. The women in the Court cases were awarded compensation against their employers under the *Sex Discrimination Act* because their employers had no reasonable excuse not to offer part time work.

For the same reasons, the *Disability*

Discrimination Act (Cth) and the *Equal Opportunity Act* (Vic) might protect people with disabilities being discriminated against by their employers refusing reasonable requests to work part time.

Many employers think that anti-discrimination laws are more powerful than they actually are, which can help you in negotiating a reduction in your work hours. However, keep in mind that anti-discrimination cases do not usually result in your work being changed. Most cases are settled for compensation, sometimes with the worker resigning from their place of employment.

It is also very important to consider whether going part time will have any effect on your superannuation and insurance rights.

Most workers are covered for disability benefits in their employment superannuation and many also have income protection. Sometimes those benefits can be reduced or even lost if you reduce your work below a minimum number of hours per week.

Before you decide to go part time, or stop work altogether it is important that you get advice about your rights. Maurice Blackburn have set up a free advice service for people with disabilities. If you would like to talk to someone about your situation please call Paul Watson on 1800 810 812.

For free advice at any time call

1800 810 812

www.mauriceblackburn.com.au

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