



Workplace rights

One of the biggest legal issues for people with epilepsy who are in the workforce is whether they have a right to reduce their hours of work or take time off work. **Josh Mennen** from Maurice Blackburn Lawyers discusses your rights at work.

Seizures may affect people with epilepsy in the workplace. Many have great difficulty maintaining full-time work and would benefit by a reduction in working hours or taking some time off work.

The transition 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 epilepsy with requests to reduce their work hours or take time off, sometimes with the result that workers have to leave their jobs.

The question that is often asked is whether employers can be forced to agree to workers reducing their hours or taking time off because of epilepsy.

Until recently, the answer was probably 'no'. However, several Court decisions and some recent changes in the law mean that workers with disabilities may be able to reduce their work hours or take time off.

Generally speaking, under anti-discrimination laws it is unlawful for an employer to discriminate against an employee because of a disability. It is also unlawful for an employer to indirectly discriminate against a person with a disability by having in place a policy or practice that affects a person with a disability more than other workers. However, employers will usually be excused if their conduct was reasonable.

In the past few years some Court cases have accepted that it may be unlawful

sex discrimination for employers not to allow women to return to work part-time from maternity leave. For the same reasons, it may be unlawful disability discrimination to refuse reasonable requests from people with epilepsy to work part-time.

The most important changes have been the introduction of the Fair Work Act 2009 and the amendments to the Disability Discrimination Act in 2009 which make it unlawful for an employer to take detrimental action against an employee because of a disability and legally requiring employers to make reasonable adjustments to accommodate people with disabilities.

Accordingly, if you want to reduce your hours of work because of your epilepsy or even if you need to take some time off work, in most cases your employer will have to take reasonable steps to accommodate you.

If they don't, you may have a claim for compensation or perhaps for an order to force your employer to offer you appropriate work.

If you are considering ceasing work or reducing your work hours, speak to your doctor, get a certificate and then approach your employer to try to negotiate.

Warning

However, before you take any steps to alter your work, it is important to

consider whether going part-time or stopping work will have any affect on your superannuation and insurance rights.

Most workers are covered for lump sum disability benefits (called TPD) in their employment superannuation and many also have income protection insurance (called TTD). Sometimes those benefits can be reduced or even lost if you reduce your work below a minimum number of hours a week or stop work altogether for a period of time.

If you have to stop work because of your epilepsy or any other health problems, you may be eligible for a TPD lump sum or income protection monthly payments which can 'top-up' your superannuation to give you a retirement benefit. You might also be able to continue with your insurance cover, even if you start another job and get new superannuation disability cover.

It's really important that you protect your workplace rights and your superannuation and insurance rights, so get advice before you decide to go part-time or stop work altogether.

Help

Maurice Blackburn Lawyers has set up a disability help line (toll free 1800 196 050) which is a free service for people with epilepsy, their families and friends to find out what their rights and entitlements are.