

# Employment FAQ's for people with Spinal Cord Injury

Often people do not know how to respond to Spinal Cord Injury in the workplace. This document sets out the top four things we can advise to assist in the journey.

At Maurice Blackburn, we often see clients who have a spinal cord injury (SCI), and who are having trouble at work. Quite often, employers (and colleagues) do not know how to respond and do not know what their legal obligations are. This can cause you hurt or embarrassment, or bring about a change to your terms of employment you were not expecting.

This document sets out the top four things we can advise you to assist in your journey.

## You have rights

### Do I have to disclose my diagnosis to my employer?

You do not have to disclose your injury to your employer unless your disability has the potential to create an unsafe workplace for you or your colleagues. The practicalities of SCI mean it is likely certain aspects of your injury such as changes to mobility will be apparent to your employer regardless of your decision to disclose. Other possible impacts, for example bladder and bowel control issues, may not be as apparent and it is your choice to discuss this with your employer, or not.

### Can my boss fire me for having a spinal cord injury?

Generally, no. Disability discrimination law prevents employers from dismissing, passing over, demoting, reducing pay or any other less favourable treatment because of a disability. There is one major exception to the general rule, and that is if you can no longer perform the inherent requirements of your role. For example, if you are a Plumber you may no longer be able to meet the physical requirements of your role.

### Does my work have to accommodate my condition?

In most circumstances, yes. There is a positive obligation on employers to make reasonable adjustments to the way you perform work in order to accommodate your disability. What is reasonable is open to debate in the circumstances. Reasonable adjustments depend largely on the role, but may include things like adjustments to the workplace for increased accessibility,

allowances for longer periods to perform tasks, flexibility with time off work to attend appointments or the option to work from home. Employers do not have to provide reasonable adjustments if it would cause them an unjustifiable hardship (usually financial).

### What can I do if my colleagues treat me differently?

If your colleagues or manager discriminates against you or behaves unreasonably towards you, on a repeated basis, which causes you distress or anxiety you may have legal options. This could include under discrimination law and/or under the anti-bullying powers of Fair Work Commission. You should seek legal advice as to what your options might be.

### What if I need time off?

Ordinarily, your job is protected if you take less than three months off over a 12 month period (either consecutively or in broken periods). You are also entitled to access paid and unpaid sick leave (known as personal leave), and you may qualify for salary continuance insurance schemes. You may be required to provide medical evidence for the time off, and in some instances, having too much time off can limit your ability to perform the inherent requirements of the position.

### Does my carer have any rights?

Unpaid carers such as family and friends also have the protection of discrimination law. If your carer is treated less favourably at work because of caring for you, they may also have a legal claim to correct the behaviour.

## Get advice early

### I have a new SCI, can I return to work?

Notwithstanding the advice from your medical team, it is a decision for you about whether you return to work, or not. You may need reasonable adjustments to your work to continue in your current job. Seeking legal advice may help you decide whether you should stop work. Do not resign your employment without speaking to a lawyer first.

### I want to keep working. Can I?

Your employer cannot dismiss you because of your disability and you should not be forced into resigning your employment. However, if you cannot perform the inherent requirements of your job, you may be required to finish work. You can ask for reasonable adjustments to be made at your workplace. Remember, you may have disability insurance claims if you cannot perform the inherent requirements of your job.

### When should I talk to a lawyer?

Do not make any major decisions about your future until you have sought legal and financial advice (including advice regarding your insurance and superannuation options).

It is best to seek early advice, so that your decisions are informed, and you can make your next step armed with all the information.

## Write everything down

### What is the best way to prepare for a legal claim?

You should keep a diary note of every meeting or conversation you have with your boss or colleagues about your injury or generally about the impacts on your work performance.

Keep all documentation received from your employer (and your responses), and keep all your medical notes or reports in a safe place. It helps to keep it chronological!

Quite often lawyers need to rely upon those notes as a contemporaneous record of the event, so it is important to at least jot down the time, location and key comments made.

## Get a good doctor

### My doctor is recommending that I stop work, what should I do?

You may be able to make an insurance claim, but do not disclose your doctor's recommendation to your employer until you have sought legal advice.

### My employer is making me go to their doctor. Do I have to?

You may have to if it is reasonable and there is a lawful basis for your employer to direct you to see their doctor. Usually this is to assess your fitness to do the job (to see whether you can perform the inherent requirements of the position). There may be many reasons why it is not reasonable or not lawful to send you to a doctor. Seek legal advice as soon as your employer tells you to see a doctor.

You may also want to advise your own doctor.

**If you would like further information on any of these issues, please contact Maurice Blackburn on 1800 810 812 to book an appointment to see a lawyer - fees apply.**