

Fitness for Duty

- Dr Rob McCartney

As the rate and cost of work-related injuries does not fall despite continual improvement in safety systems we need to look towards behavioural factors and how best to manage these. Workplace Health and Safety Legislation obliges management and executive to control the risk of work-related injury and illness with severe penalties to individuals and organisations who fail. Management of health and safety includes ensuring that individuals are fit to perform the requirements of their positions without risk of injury to themselves or others.

Some employees will have or will develop significant underlying conditions or behaviours that put them at risk of injury or illness. This is the employer's problem! However, in managing this, a balance between the various legal obligations, including duty of care, disability discrimination and privacy needs to be considered.

In these cases the same risk management approach as you use with any other risk is appropriate.

Identify the risk

Who may present an increased risk of injury or illness?

Medical issue in workplace

Does the employee have a medical condition that may be impacting on their fitness to undertake the requirements of their position without increased risk of injury or illness?

Presents with certificate

If an employee presents with a certificate for suitable or light duties and/or indicates a medical condition that may impact on their fitness for duty,

Returning to work after significant absenteeism

Any individual who has a significant amount of absence due to illness or injury should be assessed for their fitness to return to work.

Recurrent work-related injuries

Employees who have a history of multiple work-related injuries may have an increased risk of injury due to an underlying medical condition or other human factor.

Under-performance/excess absenteeism

Are there concerns about productivity, performance or absenteeism, which may be the result of, or impacted by a medical condition?

Reasonable concerns

Any other concerns regarding fitness for duty that may have a medical component.

Drugs/alcohol

Are there concerns about drug or alcohol use impacting on the employee's fitness to undertake the duties of their position?

Analyse/evaluate the risk

To analyse and evaluate the risk, organisations need to consider using expert medical opinion to collect all the appropriate medical information, consider the information as well as the workplace factors and advise the organisation of the risk profile and how this can be managed.

Who should assist in the evaluation process?

The medical professional used to assist in the risk management process should:

- Have a good understanding of the workplace
- Be skilled at collecting the appropriate medical information
- Be skilled at determining the risk of injury or illness
- Be able to advise employers regarding management strategies considering relevant legal requirements
- Have excellent communication skills to communicate information effectively to employer and employees

Treat the risk (implement management strategies)

Implement risk management strategies such as restricted duties.

Monitor Outcomes

Monitor how the management strategies are working, this will probably include further assessment and review by the organisation's medical advisor.

What if the employee is not fit for duty?

If the employee is unable to carry out the essential and inherent requirements and presents a foreseeable risk to themselves or others, management strategies need to be implemented.

In considering this some further information should be considered:

- Prognosis – How long is the increased risk going to have a foreseeable impact on the employee?
- Is there any treatment/ rehabilitation?
- What can they do?
- Can the employer make changes to the workplace or work systems to accommodate the employee?

One of the most significant pieces of legislation impacting on “fitness for duty” management is the various state anti-discrimination legislation.

These Acts direct us that discrimination on the basis of certain attributes is prohibited. Such attributes include sex; marital status; pregnancy; age; race; and impairment.

Employers should be aware that it may not be unlawful to discriminate on the grounds of disability if reasonable exemptions apply.

Such exemptions (which vary from State to State) may apply for:

- Genuine occupational requirements
- Actions done in compliance with other legislation
- Actions reasonably necessary to protect public health
- Actions that are reasonably necessary to protect the health and safety of people at a place of work

Employers then have an obligation to provide reasonable adjustments (without ‘unjustifiable hardship’) in the workplace to accommodate individuals with disability.

For further advice on fitness for duty concerns, discuss with your organisation’s medical advisor or Dr Rob McCartney.

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