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Introduction

Many people with a mental illness work productively, and have support strategies that work for them and their place of employment. For most, however developing a mental illness can result in disruption to everyday living, with education, employment, relationships and social activities all affected.

Having a secure job is a key part of many people’s journey of recovery from mental illness, and the question of whether to disclose a diagnosis of mental illness to an employer raises a number of concerns, particularly regarding discrimination or stigma.

Both State and Federal Governments have laws that are intended to make sure people with a mental illness or disability get the same opportunity as everybody else to gain safe, productive employment and it is illegal to discriminate against someone in job interviews or at work because they have a mental illness.

Equal opportunity and anti-discrimination laws have been developed to create a level playing field for all job-seekers and employees. Anyone applying for a job needs to have the skills necessary to do the key tasks listed in the position description. If the person has the skills, but their mental illness means they might have problems with the way the job is done, the employer must try to help. If the way the job is normally done can be changed, and if that change is reasonable and safe, the employer must consider making those changes.

This booklet covers some of the issues that need to be considered when making the decision regarding disclosure at work. It explains how to talk about having a mental illness without being treated unfairly, and what to do if someone is treated unfairly because they have a mental illness.

1 Disclosure

Disclosure refers to the sharing of information about your experience of mental illness. You may choose to talk to your employer at the time you apply for a job or only talk about your mental illness once you have started working. Before deciding whether or not to disclose, you need to think about what, how and when to do this so that you get the best result. You also need to know what can and can’t happen to you after you have disclosed.

Why disclose you have a mental illness at work?

You might disclose your history of mental illness because you prefer to be open about your experience and are confident enough to talk about it.

You might choose to disclose after you’ve started work and have demonstrated you can do the job but want to discuss how you will manage in the event of becoming unwell.

You might choose to disclose because you are experiencing health problems, or the work has become stressful as a result of changes made. Things like moving offices, different co-workers, or changes to the way things are done can be unsettling and may trigger a recurrence of symptoms. If any of these changes make it difficult for you to work comfortably and safely, you are entitled to support to do your job. If you need support at work you may need to disclose some information about why support is required.

You only need to tell your employer about your mental illness if it affects your ability to do your job. If you can’t work for too long without a break, or you need extra help learning new things, you are entitled to support. Whatever the reason, your disclosure makes it possible for your employer to understand what support you need and what changes to the job might help you.

Why you might not disclose

There are a lot of reasons why you might not want to disclose your mental illness. For most people the main reason is the fear that if they tell someone they won’t get the job or they will be treated differently to other employees.

When you must disclose

You must tell your employer some things about your mental illness if there could be a risk to someone’s safety. These are explained in more detail below.

You will need to tell your employer if your illness could create a safety risk in the workplace

You don’t have to tell anyone about your mental illness unless there’s a possibility your safety, or that of other people is at risk.

Common safety issues for people with mental illness at work include:

• Taking medication which affects your ability to drive or operate machinery safely
• Not being able to concentrate for very long, or forgetting instructions
• Becoming too elevated to do accurate work
• Losing touch with reality, e.g. becoming paranoid, delusional which may affect your ability to make sensible decisions

You don’t need to tell your employer everything about your mental illness, just enough for them to know what to do to make the workplace safe.

For example: “I have a medical condition which means I sometimes forget things. It helps me if you write down important information” or “I can become paranoid at times and need to ‘reality check’ with my co-workers to keep myself focused on the job.”
You need to be frank with your employer so that they know enough to make your job safe.
If you are not sure whether your illness is a safety risk, or what to tell your employer, you should talk to your employment consultant if you have one, or to your doctor.

1.1 When to disclose?
There are various times that you might decide to tell people at your work about your illness. This could be at the job interview, once you have been in work for a while, or perhaps only if a problem develops.

Disclosure during recruitment
Disclosure during the recruitment process will allow you and your employer to look at any issues that may affect your ability to perform the role as a result of your mental illness.
Reasons you might choose to disclose during recruitment include:
- Where there is a safety issue
- If you need adjustments put in place to help you do the job
- In order that your employer knows what to do if you become unwell

Disclosure during employment
After you have been working for a while and feel confident and trusted in your job, you might want to tell people about your experience of mental illness. Alternatively, you might need adjustments to better meet the key tasks of the job, or because you become unwell, or something at work has changed that makes things difficult for you.

Disclosure due to ill-health
There may be periods of ill health that affect your ability to work. If you feel yourself becoming unwell, you may need to disclose your mental illness to your employer.

There are various ways your employer can help you through periods of illness, including:
- Providing sick/personal leave payments at half pay for extended periods
- Providing work from home, reduced hours or casual work
- Helping you establish an income protection scheme
- Providing above award sick leave provisions, including unpaid leave options

It is also important to know that your job may be protected if you become unwell and need a longer period of time off than normal. If you start feeling unwell, you should speak to your employment consultant if you have one, or doctor to get more advice about what to do. The Jobs in Jeopardy program listed later in this guide provides support to people who may be at risk of losing their job as a result of ill health.

Disclosure due to performance management
If an employer notices the quality of your work slipping below a reasonable level, they will probably need to take steps to do something about it. If that happens to you, it is important to know how to respond. If your performance is deteriorating because of your illness, you may need to tell your employer about your illness. They need to know so they can try to make changes to help you. Your employer might also ask you to have a medical assessment. A doctor will be able to check whether you are well enough to continue in that role safely and productively.

You need to be aware that if your work is failing for other reasons than your health, your employer can undertake all the normal performance management steps, such as discipline, warnings and potential loss of job.

Disclosure by another party
You may accidentally disclose your mental illness directly to fellow workers through general chat, or someone you know may disclose your illness to a colleague. If you learn that people are talking about your mental illness, and you weren’t the one who told them, you should let your employer know.

Your employer must take action to protect against any gossip, rumours or discrimination that could occur.

It is also a good idea to keep a record of who you decide to tell. If your personal information goes further than the people you’ve discussed it with, it will be easier for your employer to respond to the situation.

Disclosure during the termination process
If your employer decides to end your employment, they must be able to show what you have done wrong, and that they’d given you a chance to fix it. If you feel that your illness was one of the reasons your employer is unhappy about you, you may have been discriminated against.

Medical assessments at work
If your employer thinks that you are not well enough to do your job they may ask you to see a doctor for a medical assessment. Your employer might be concerned because you have needed to use a lot of sick leave, or because of the way you behave, or because you are not doing well in your job.

In most cases, the doctor only needs to tell your employer about what parts of your job you need assistance with. The doctor should not tell your employer the name of your illness, what medication you take, or anything about your illness that is not relevant to your work.

When an employer is interviewing people for a job vacancy they are allowed to ask all applicants to have a medical assessment to ensure that there are no safety problems. An employer can ask an applicant with any health condition including mental illness to have a medical assessment to see what help they need to do the job. They cannot ask someone to have a medical assessment in order to discriminate against them.

If your employer wants to talk to you about your health at work they should talk to you in private. They can ask general questions about how you are managing at work and if you need support. You don’t have to disclose your illness or the treatment you are receiving. If you are asked questions about whether you can manage specific tasks or if you can work safely you must answer honestly.

If you think that your employer is being unfair in the questions they are asking, or if you are worried about a medical assessment, you can talk to the Victorian Equal Opportunity and Human Rights Commission or your employment support worker, or doctor. The VEOHRC number is given at the back of this booklet.
2 How does the law protect me?

The law protects people with a mental illness or disability in two ways. Both State and Federal law protect the privacy and confidentiality of information you share with an employer. Your State’s equal opportunity law protects you against discrimination.

2.1 Confidentiality and privacy

Your employer has a duty to protect your personal information. They may only collect health information that relates to your ability to do your job effectively and safely, and it should be stored in a secure place.

Under some circumstances an employer can share information with others. For example a senior manager or the Human Resources department may need to know about your illness in order to make changes to your job or to address safety issues.

If, for some reason, your employer needs to disclose your personal information, they should inform you first. They should explain the reason for sharing your information and give you a chance to think about it. If you need to check whether your employer’s reasons for disclosing your information are lawful you should speak to your employment support worker or one of the organisations listed at the end of this booklet.

2.2 Discrimination

Discrimination is treating someone less favourably because of a particular feature like disability, race or gender. If an employer treats a person with a mental illness less favourably than others during any part of the employment process, it is considered discriminatory in the eyes of the law.

In simple terms the law says:

- If you can do the main parts of the job, you should be considered fit for the job.
- If you have difficulties doing your job, and these are related to your illness/disability, your employer should provide assistance for you to overcome them if possible.
- Your employer has to protect you from being treated unfairly or harmfully by your co-workers.
- An employee with a mental illness cannot be paid less or made to work under less favourable conditions than others.
- An employer cannot exclude an employee with a mental illness from opportunities for promotion, training or transfer.
- An employer may not sack or discipline someone for having a mental illness.

Types of discrimination

Direct discrimination

Direct discrimination happens when an employer treats an employee/jobseeker with a mental illness unfairly compared to other people in a similar situation.

For example: Matilda has bipolar affective disorder and has been hospitalised several times in the last two years. Her new employer knows this and offers her employment at a lower hourly rate than her co-workers because she is ‘unreliable.’

Indirect discrimination

Indirect discrimination is when an employer has a rule or way of working that is the same for everybody and makes no reasonable allowance for the different needs of an employee with a mental illness.

For example: Anton has social anxiety and finds being in groups of people very stressful and tiring. His manager insists that the whole team meet together twice a week to discuss how work is progressing.

Vicarious liability

The employer is also responsible for the behaviour of other employees in the workplace. An employer has a duty to protect all their employees. If one employee harasses, discriminates against, or harms another and the employer doesn’t take steps to prevent the harm, the employer can be found to be vicariously liable – treated as though they’d caused the harm themselves.

For example: Hung Le has a facial tick that can be quite severe at times. One of his co-workers clowns around a lot and one of his favourite ‘jokes’ is to mimic Hung Le. Nothing is done to stop this behaviour.

When is it not discrimination?

If you can’t do the job, even with reasonable changes made to allow for your support needs, it is not discriminatory to refuse to employ you, or to end your employment.

If you experience discrimination at work, contact the Victorian Equal Opportunity and Human Rights Commission or your employment support service.
3 The right person for the job

Discrimination law is about ensuring everyone has equal access to employment. The first step to thinking about these issues is to work out if you can do the main tasks of the job. If you can do the job but need some help because of an illness or disability your employer must try to change the way the job is done to help you.

To test whether you are the right person for the job, the law follows these three steps:

• Can you perform the inherent requirements of the job?
• Are there workplace adjustments that you need to do the job?
• Would any adjustments cause the employer undue hardship?

3.1 Inherent requirements

Inherent requirements, often listed as ‘key tasks’ in a job description, are about what needs to be achieved in a job. How the job is done is often not an inherent requirement.

If you don’t already have one, ask your potential employer for a clear position description, so you can sit down and work out exactly what you can and can’t do. If you are not sure whether you can meet the inherent requirements of the job it is a good idea to talk to an employment consultant or your doctor.

What are inherent requirements?

• Working productively and achieving the required quality of work.
  
  For example: As a supermarket checkout operator you may be required to scan and pack items at a particular speed and not make too many mistakes. Inherent requirements: speed and low error rate.

• Working safely, not endangering co-workers, customers or people visiting the workplace, and not damaging any property.
  
  For example: Working in a car-yard you might need to drive the cars without any risk that you could have an accident. Inherent requirement: safe-driving skills.

• Working in a team and getting on with others.
  
  For example: You work in a retail store in a small team where it is important to get along in order to have a pleasant work environment and get the job done. Inherent requirement: good customer service skills.

• Some tasks might not be done very often but are still inherent requirements.
  
  For example: If you work at a swimming pool, you need know how to provide first aid even if you don’t use this skill all the time. Inherent requirement: working knowledge of first aid.

What are not inherent requirements?

• Particular ways of doing a task.
  
  For example: If you work in a nursery and you are expected to count stock in the afternoon when you find it is easier to concentrate in the morning.

• Tasks that are only done occasionally and that someone else on the team could do.
  
  For example: If you work in a factory and are required to answer the phone one afternoon a month.

• Having good social skills if you don’t work with people as part of your job.
  
  For example: If you work as a software developer and mainly work alone.

• A customer preference is not an inherent requirement.
  
  For example: If you work in a shop and a customer requests that someone else serve them.

• Activities to do with the workplace, which are not part of your job.
  
  For example: Attending work-related social events.
3.2 Workplace adjustments

A workplace adjustment is a change to how the job is done or how the workplace is structured. If you have an illness or disability that means some part of the job is difficult for you and there is a reasonable change which would fix this your employer must seriously consider it.

A workplace adjustment can be a fairly simple change to the way the job is done or how the workplace is structured, such as:

- Changes to start and finish times, or allocation of hours or rosters
- Providing a workplace buddy or mentor
- Providing screens for people who are easily distracted or need privacy
- Allowing you to have small personal items in the workplace, or to use an MP3 player
- Adjusting the standard approach to supervision
- Accommodating a support worker or trainer to work alongside you at certain times
- Providing you with extra training, or training for your co-workers

There’s no rule about the type of adjustments you can ask for, as long as they are not unreasonable and they help you get the job done. Job Access (which is listed at the end of this booklet) can help you understand workplace adjustments.

The employer might suggest you have an assessment to see what adjustments you need. They can organise this for you.

3.3 Undue hardships

If you need adjustments to the workplace, your employer must make those changes unless they are unreasonable, or cause an undue hardship. An undue hardship is where the difficulty of making the adjustment outweighs the benefit.

Why an adjustment might be unreasonable:
- It makes too many demands on the workplace
- It would cost too much
- It would have a negative impact on other employees or customers
- It would cause health and safety issues.

If you need to ask for a workplace adjustment, it will help if you can go to your employer with some practical suggestions about the changes you need. If you have an employment support worker, you can ask them to help you plan or you can call Job Access. If you can come up with several different ways of changing the workplace to help you, there will be more chance for your employer to pick one that’s reasonable.

If the employer can prove the adjustment would cause undue hardship, they can terminate or refuse employment without unlawfully discriminating against you.

4 How to disclose

What you tell people about your mental illness is up to you as long as you share any safety issues with your employer.

Here are three examples of how much you could say:

- You might just talk about a symptom of your illness that is making things hard for you.

Example: “I have a bad memory and I find it hard to remember all the instructions you have given me”.

- You might talk about your illness but not name it or provide many details.

Example: “I have a medical condition and one of the symptoms is that I become very anxious sometimes”.

- You might want to tell your employer the name of the illness, what treatment you receive and what the symptoms are.

Example: “I have a medical condition called bipolar affective disorder. I receive treatment for the illness from my GP and a psychiatrist. I take medication and am generally very well. Sometimes I can seem a bit chatty and excited and it helps if I can go for a short walk around the block if I am becoming too talkative”.

In most workplaces managers don’t need to know too much about your personal life. Generally it is enough to share:

- What treatment you receive
- Any symptoms you have which might affect your work or safety
- Any triggers that might make your illness worse
- What kind of help you will need if you become unwell

When you are talking about your mental illness it can be a good idea to include positive things about yourself. You want to show your employer that, even though you have health issues that might make work difficult at times, you are enthusiastic, hard-working and dedicated to the job. Having the strength and courage to overcome hardship is a quality that most people admire, and many employers will recognise them as assets to the workplace.
4.1 Who to tell
Generally, it is best to disclose to the person who is most responsible for you at work, such as:
- Your immediate supervisor or team leader
- A higher level manager
- The human resources manager or equal employment opportunity officer

Talking with an employment consultant, union representative, support worker, friend or carer before telling your employer is useful. They can help you plan your disclosure and support you if things don’t work out.

4.2 What Can an Employer ask at the interview?
Employers can ask a jobseeker questions about their illness when this knowledge is necessary to:
- Find out if the jobseeker can perform the inherent requirements of the job safely
- Find out what workplace adjustments may be needed
- Determine other rights and entitlements, such as sick leave

Employers cannot ask about:
- Specific details of a person’s mental illness, treatment or history
- Information that will be used for discriminatory purposes

Employers must ensure they do not ask unnecessary questions that may discourage you from applying for a job.

First questions to ask yourself:

1. How much information do I want to share?
   - Relevant symptoms of my illness or effects of medication that impact on my work
   - Information about my illness in general, but not its name or many details
   - The name of the illness, what treatment I receive and what the symptoms are

2. What are the private things about me that I don’t need to share with my manager?
   - Problems you have with your partner, friends or family
   - Problems you have had in the past
   - Symptoms which don’t affect your work

3. Who can help me disclose?
   - Employment Consultant or support worker
   - Carer, friend, family member
   - Victorian Equal Opportunity and Human Rights Commission
   - GP/clinician/psychiatrist

4.4 Can I perform the inherent requirements of the job?

5. Planning your disclosure

Planning when to disclose and what information you wish to share with your employer is important. It will help you convey a clear message to your supervisor or employer about your strengths as a worker, and any support needs that you may have. It is important to think about what questions you may be asked so that you can prepare your answers.

5.1 Steps for planning your disclosure

- Use the following checklist as a guide. You may wish to go over this with a trusted family member, friend or support worker.
- Make a time to talk privately with your employer. It can be useful to give some warning. You could say “Could we make a time to talk privately? I have a health issue I would like to talk to you about.”
- Don’t forget to talk about your strengths and your loyalty to the workplace.
- Give your manager time to think. They might need time to think through what you have said.
- You may choose to keep a written record of information you have shared, and with whom.

- See your doctor regularly and s/he thinks I am well enough to work
- I take medication and my illness is well managed
- I have a psychiatrist, support worker, carer etc who help/s me manage my illness
- I have been well for a number of months or years
- Although I have a mental illness it doesn’t interfere with my ability to work
5.2 What support do I need?

Some managers may not respond well to a member of their staff disclosing a mental illness. It is important to think through what you will do if you don’t get the response you expected. If this happens to you take time to think about it, talk with your support people or the Victorian Equal Opportunity and Human Rights Commission before you respond.

5.3 Extended leave entitlements

Mental illness is episodic, which means that there may be periods of ill health when you need time off to rest and recover. If your employer knows that this could be the case, they can work with you to plan for absences and support you when you are ready to get back to work.

The Fair Work Act requires employers to hold an employee’s job if an employee is ill. That is generally up to three months, or several weeks over a year. There are exceptions to this for an employer if it would cause undue hardship.

If you do need to take a long period of time off because you are unwell, your employers should make a plan for your return to work. They are not obliged to pay you anything above sick leave, but they may consider:

- Providing above-award sick leave provisions
- Offering sick/personal leave payments at half pay to make it stretch further
- Offering work from home, reduced hours or casual work when the employee is well enough to do some work

Fair Work Australia can give you advice about extended leave if you need it (1300 799 675).

Key points:

A There are many benefits to disclosing mental illness in the workplace.

B You may choose to disclose in a formal meeting with your manager, or in a more relaxed and informal way.

C Regardless of how and when you choose to disclose, you are always entitled to your privacy and confidentiality, and to be protected against discrimination.

D Employers must focus on your skills and experience, and assess your ability to perform the inherent requirements of the job properly and safely.

E To help employees with mental illness perform the inherent requirements of the role, an employer must make reasonable adjustments.

F Employers can apply for government funding to cover expenses related to these adjustments. However, if an employer can show that making these adjustments would place undue hardship on the business it is not discriminatory for them to refuse employment.

6 Resources

**JobAccess**

JobAccess is an information and advice service funded by the Australian Government. It offers help and workplace solutions for people with a disability and their employers.

Phone: 1800 464 800


**Employment Assistance Fund**

The Employer Assistance Fund helps people with a disability and their employers by providing financial assistance for work-related equipment, modifications and services.

Phone: 1800 464 800


**Workplace Adjustment Toolbox**

The online Workplace Adjustment Tool can be used to source practical ideas and solutions for workplace modifications and adjustments to assist people with a disability to overcome barriers within the workplace.


**Jobs in Jeopardy**

Job in Jeopardy assistance is immediate support to help employees who are likely to lose their job as a result of their disability, illness or injury. Contact Centrelink for more information.

Phone: 13 27 17


**Fair Work Online**

Comprehensive information and advice about Australia’s new national workplace relations system from the Fair Work Ombudsman.

Phone: 13 13 94

http://www.fairwork.gov.au

**Worksafe Victoria**

Worksafe Victoria has an advisory service that can provide answers to questions about work safety.

Phone: 1800 136 089 (toll free) or (03) 9641 1444

http://www.worksafe.vic.gov.au
Contacts

Victorian Equal Opportunity & Human Rights Commission (VEOHRC)

The VEOHRC helps people resolve complaints of discrimination, sexual harassment and religious vilification by offering a confidential, free and impartial complaint resolution service with the aim of achieving a mutual agreement.

Phone: 1300 292 153 or (03) 9032 3583.
www.humanrightscommission.vic.gov.au

SANE Australia

SANE provides factsheets that are authoritative, up-to-date, and easy-to-read explanations of a range of mental health problems and related issues. Information and advice is also available by calling the SANE Helpline.

Phone: 1800 18 SANE (7263) 9-5 weekdays EST.
www.sane.org

The Mental Health Legal Centre

The Mental Health Legal Centre provides a free and confidential legal service to anyone who has experienced mental illness in Victoria where their legal problem relates to their mental illness.

If you need to talk to a lawyer ring the telephone advice line on Monday, Wednesday and Friday between 3.00 p.m. and 5.00 p.m. or Tuesday and Thursday between 6.30 p.m. and 8.30 p.m. on (03) 9629-4422 Country Callers: 1800-555-887

Please note that this service is only available to Victorian consumers about their own issues.

Other useful links

Disability Discrimination Act
Disability Discrimination Act 1992 (Cwlth)

Privacy Act
Privacy Act 1988 (Cth)

Health Records Act
Health Records Act 2001 (Vic)

Mental Health Act
Mental Health Act 1986 (Vic)

Equal Opportunity Act
Equal Opportunity Act 2010 (Vic)

Acknowledgements

Social Firms Australia would like to acknowledge Ms Eileen Scott and Mr Ron Lane, of Garland Hawthorn Brahe, for their legal advice in the production of this booklet.

Social Firms Australia would like to acknowledge that this booklet has benefited from previous work done by the Victorian Human Rights and Equal Opportunity Commission, the Australian Human Rights and Equal Opportunity Commission, the Canadian Mental Health Association, and the Sainsbury Centre for Mental Health.
Social Firms Australia is grateful to the Legal Services Board for funding the development of this project.

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