SANE

FACTSHEET

LEGAL RIGHTS & RESPONSIBILITIES AT WORK

QUICK FACTS

- People affected by the symptoms of mental illness have the same rights – and responsibilities – as other employees.
- An employer, too, has both rights and responsibilities.
- Understanding relevant legislation provides a helpful framework and guidance to 'do the right thing' for both the employee and employer.

WHAT ARE YOUR LEGAL RIGHTS & RESPONSIBILITIES

When someone is affected by mental illness, there may be no impact in the workplace at all.

If they are able to carry out their work as usual, then it remains a private matter like any other health issue which has no bearing on their job. If symptoms do affect their capacity to carry out duties or have some other effect in the workplace, then it can raise a host of legal issues for both the employer and employee.

Does someone have to tell their manager? What support is an employer legally bound to provide? What if the employer is worried about the impact on others? Can other staff be told? Or could the person even be sacked?

The law can sometimes appear complex, or even conflicting, when an employee is affected by mental illness. It's important to remember, therefore, that people affected by the symptoms of mental illness have the same rights – and responsibilities – as other employees. An employer, too, has both rights and responsibilities in managing employees who are affected.

Understanding relevant legislation will not only ensure the employer is legally compliant, it will also give everyone confidence to manage any issues which arise, providing a helpful framework and guidance to 'do the right thing' for both the employee and employer.

Three broad areas of legislation are relevant to managing any issues that arise in relation to an employee affected by mental illness.

Discrimination

Discrimination in the workplace against someone with a mental illness (or other disability) is

unlawful in Australia under the *Disability Discrimination Act 1992* (DDA). All employers have a duty to be aware of how their conduct should be guided by the DDA, as well as any relevant State or Territory legislation.

Privacy and Confidentiality

As with any other personal data they retain, employers have an obligation to ensure information about employees' mental health is not recorded or disclosed inappropriately, in accordance with the *Privacy Act 1988* as well as any relevant State or Territory legislation.

Workplace legislation

Employees with a mental illness have the same rights and responsibilities as others under the *Fair Work Act 2009* (FWA) as well as any relevant State or Territory legislation covering occupational health and safety (OHS) and other areas.

ADDITIONAL RESOURCES

- Fair Work Ombudsman
- Australian Human Rights Commission
- JobAccess
- Heads Up