

Australia Post Policy on the management of employees with non-work related medical restrictions

Non-Work Related Medical Restrictions Policy (NWRMRP)

Workplace Relations & Policy

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AUSTRALIA POST POLICY ON THE MANAGEMENT OF EMPLOYEES WITH NON-WORK RELATED MEDICAL RESTRICTIONS

1. Application

Australia Post's policy in relation to the management of employees with non-work related medical restrictions, applies to all instances of non-work related injury or illness that restrict an employee's capacity to safely undertake his or her job.

The policy replaces the '*Procedures for Line Managers on the Management of Employees with Non-Work Related Medical Restrictions*' which was issued in November 1998.

The policy requires the accountable manager to take action based on an assessment of factors such as the 'inherent job requirements' of an employee's nominal position against an employee's medical fitness for duty. The document provides guidance on such matters, but management will need to exercise judgement on the need to seek additional expert advice from myHR.

2. Management Overview

Within Australia Post there are employees who, for medical reasons, are unable to perform fully productive work. The Corporation's objective is to address these situations in a way that is fair to those involved and consistent with the business needs of the Corporation.

In relation to **injury or illness** that is **work related**, Australia Post will continue to meet its statutory obligations under the provisions of the *Safety, Rehabilitation and Compensation Act, 1988* and appropriate policy has been implemented to this effect.

Where an **illness or injury** is **non-work related**, management has the responsibility to ensure the employee is given the opportunity to upgrade to full duties, wherever possible, within a 'reasonable' time. Australia Post therefore allows such employees to perform restricted duties for a maximum period of three (3) months where medical information supports the appropriateness of such duties *and* the employee's restrictions can be accommodated at his or her workplace.

If the employee's inability to perform his or her job because of his or her disability can be overcome through the provision of assistance in the form of reasonable adjustment(s), Australia Post has an obligation to make that adjustment(s).

If, the employee is unable to perform the 'inherent requirements' of his or her nominal position within the time-frame allowed under the policy, even with 'reasonable adjustment', management will consider redeployment options and if unsuccessful, retire the employee after a continuous absence on sick leave of up to 78 weeks including up to 52 weeks of continuous paid sick leave, depending on the employee's credit.

The above is an overview only. It is important that all managers and supervisors make themselves familiar with the policy in its entirety.

3. 'Inherent Job Requirements'

The 'inherent requirements' of a job are those requirements necessary for the job to be carried out, or which are the essential elements of that job, and which cannot be reasonably allocated to another position.

Relevant factors in determining what the 'inherent requirements' of a job are, may include the following:

- a. the work required of other employees in the same or comparable positions;
- b. evidence of additional work required of comparable employees during periods of heavy work load;
- c. the circumstances under which the work is to be performed;
- d. the terms of any awards, agreements or competency standards applying to the job;
- e. the duty statement; and
- f. any other laws that may affect the mandatory requirements or qualification for the job.

4. Provision of Restricted Duties

4.1 Required medical information

All decisions regarding the provision of restricted duties **must** be based on current medical information *and* the ability of the employee's workplace to accommodate the employee's medical restrictions.

The current medical information is to be obtained by the employee (at the employee's expense) from his or her doctor. This medical information must include:

- a. the nature of the employee's medical condition;
- b. the employee's specific medical restrictions;
- c. the period for which the restrictions are required;
- d. when it is likely the employee will be able to resume the 'inherent requirements' of his or her current position; and
- e. if appropriate, details of any recommended upgrading schedule.

A line manager may require an employee to attend a medical assessment with a medical practitioner nominated by Australia Post where he or she is of the opinion that an employee has a physical or medical inability to meet the 'inherent requirements' of the employee's position.

Determining whether or not to accommodate an employee with non-work related medical restrictions in the workplace requires a degree of judgement on the part of managers.

As the nature of the medical restriction or disability will vary from case to case, managers will need to decide whether the employee will be able to perform the '**inherent requirements**' of his or her **nominal position** (if relevant, with 'reasonable adjustment') based on current, clear and complete medical information.

4.2 Provision of incomplete or unclear medical information

Where the medical information initially provided by an employee from his or her doctor is unclear and/or does not contain all the required information, the employee will be given up to two working days* to obtain this (at the employee's expense) and will, if the employee is at work, be provided with suitable duties during this time. Thereafter, the employee will be directed onto (or directed to remain on) sick leave until all the required medical information is available to enable the manager to make a fully informed assessment of whether or not the employee's restriction(s) can be accommodated.

* An extension of up to a further three working days may be granted where the employee cannot provide that information within two working days due to the non-availability of his or her treating doctor. In such circumstances, the employee must provide supporting evidence of the non-availability of the treating doctor.

4.3 Pre-requisites for the provision of restricted duties

Once the manager has received clear and complete medical information, restricted duties may be provided to employees with non-work related injuries or illnesses. Restricted duties are only provided to employees who are unable to perform the 'inherent requirements' of their job on a temporary basis. Where a permanent change in the form of a service or physical change is required, this is considered under 'reasonable adjustment', which is covered in section 5 of this policy.

All of the following requirements must be met in order to provide restricted duties:

1. The provision of restricted duties does not impact on compliance with the requirements of the *Safety, Rehabilitation and Compensation Act 1988* or Australia Post's conditions of license to administer workers compensation claims and rehabilitation under that same Act;
2. the workplace is able to accommodate them in genuinely productive work; and
3. prior consideration has been given to the following **criteria**:

- a. The nature of the condition and medical prognosis indicates a **high potential** the employee will be able to perform the **'inherent requirements'** of his or her nominal position, within a **'reasonable timeframe'**;
- b. A 'reasonable' duration for the provision of restricted duties, is to be established by the workplace manager based on the nature and prognosis of the employee's medical condition. However, the **maximum duration** for the provision of **restricted duties** is **three (3) months**;
- c. In **exceptional circumstances only**, an extension beyond the three-month period will be considered. Such an extension will only be granted:
 - i. after a comprehensive review has been conducted by the workplace manager; *and*
 - ii. where, prior to a three month extension, current medical information is provided by the employee, as part of this review process, to establish an estimated timeframe for the employee to perform the 'inherent requirements' of his or her nominal position; *and*
 - iii. the current medical information indicates that there is a **high probability** the employee will be able to return to work and perform the 'inherent requirements' of his or her nominal position, within a further three month period; *and*
 - iv. the parties agree to a revised set timeframe, with a maximum extension of three months duration.
- d. The workplace's ability to accommodate the medical restrictions imposed on the duties to be performed by the employee (recognising that priority is to be give to the provision of restricted duties to employees who have work related injuries/illnesses);
- e. The operational and cost effectiveness to the workplace of providing restricted duties to employees with non-work related injuries can be demonstrated; and
- f. The employee's motivation to return to productive work.

4.4 Employee involvement in the consideration of restricted duties

If suitable duties are readily identified and can be provided, the workplace manager will advise the employee of those duties and discuss with the employee his or her responsibilities including the provision of medical certificates while modified duties are being provided under the policy.

If suitable restricted duties cannot be readily identified and/or are not readily available in the employee's workplace, the employee is to be encouraged to attend a voluntary meeting with the workplace manager the purpose of which will be to discuss the inability to provide restricted duties and to consider the suggestions the employee may have in this regard. It is

reasonable to expect that the issue of 'reasonable adjustment' would also be discussed at this meeting. (See Section 5 below.)

If the employee is at work on the day that clear and complete medical information is received, the discussion should be scheduled to take place during that shift. If the employee is currently at home and unable to work but has a medical certificate finding him or her fit to return on restricted duties in the near future, organise a time within the next two working days, during the employee's shift. (An employee who is on sick leave and attends the meeting will not be regarded as being on duty.)

The employee must be advised that he or she may have a representative, who may be a union representative, present as a support during the discussion. An employee who is not at work can request the discussion to take place by phone.

Note: The non-availability of an employee's preferred representative and/or the employee's declining of the invitation to attend such a discussion at the appointed time will not delay the making of a decision regarding a direction onto sick leave.

During the discussion fully explain to the employee why restricted duties cannot be provided and ask the employee to suggest what restricted duties he or she thinks are available.

If a suggestion put forward by the employee cannot be accommodated, the employee must be provided with clear and factual reasons for this.

5. 'Reasonable Adjustment'

5.1 Employee involvement in the consideration of 'reasonable adjustment'

If a manager is still unable to provide restricted duties after taking into consideration the employee's suggestions, consideration must at that same meeting with the employee be given to assessing the employee's restrictions against the principles of 'reasonable adjustment'. The employee is to be requested to suggest the 'reasonable adjustment'(s) he or she believes would assist him or her in being able to perform the 'inherent requirements' of his or her position. The employee must be advised that he or she may have a representative, who may be a union representative, present as a support during the discussion.

5.2 What is 'reasonable adjustment'

'Reasonable adjustment' does not require an employer to alter the nature or the 'inherent requirements' of the employee's job, to assign the performance of some inherent requirements of an employee's job to another employee or to create a different job. Rather it is a question of overcoming an employee's inability, by reason of disability, to perform his or her job through the provision of assistance in the form of adjustment which is considered to be reasonable.

Reasonable adjustment is not defined, however examples of reasonable adjustment may include:

- a. adjustments to the workplace, including additional equipment or facilities;
- b. adjustment to work methods;

- c. adjustment to work arrangements, including in relation to hours of work and use of leave entitlements;
- d. adjustments to work related rules or other adjustments to enable a person to comply with rules as they exist;
- e. access to training or other forms of opportunity to demonstrate or develop capacity in a position;
- f. providing training to other employees or supervisors.

If, with reasonable adjustment, the employee would be able to perform the 'inherent requirements' of the job, Australia Post has an obligation to make that adjustment.

Three specific examples of possible applications of 'reasonable adjustment' are:

- i. Adjustment made to the handle mechanism of a buggy for a PDO with a shoulder injury thereby allowing him to continue to undertake his walk beat duties;
- ii. The modification to a brake lever on a motorcycle to allow a PDO with a leg injury to be able to use the brake lever and so continue to be able to ride the motorcycle and perform his delivery duties;
- iii. Accommodating an employee with a restriction on lifting weights greater than 10 kilograms by modifying the work organisation within a workplace.

The question of whether such an adjustment/modification would impose an 'unjustifiable hardship' on Australia Post and would therefore be regarded as unreasonable, involves consideration of the following factors:

- a. the nature of the adjustment;
- b. the financial cost of the adjustment;
- c. the practicability of the adjustment; and
- d. the impact of the adjustment on the operations of the workplace, including the impact on the ability of other employees to perform their duties in a productive and safe manner.

5.3 'Reasonable adjustment' accommodated

An employee accommodated under the principles of 'reasonable adjustment' must be sent a letter outlining the adjustment process and the conditions that apply namely that:

- a. 'reasonable adjustment' only applies to the employee's current position and does not apply to any transfer or promotion for which the employee may apply for;
- b. the employee's restrictions will continue to be accommodated under 'reasonable adjustment' as long as his or her restrictions remain the same and it is operationally

feasible. If the employee's medical restrictions increase in severity or there is a change in operational requirements, the employee's case will be reviewed.

6. Restricted duties not provided and /or 'reasonable adjustment' not accommodated

If suitable restricted duties cannot be provided or 'reasonable adjustment'(s) made, even after the discussion with the employee, it will be necessary for the employee's manager to:

- a. document all steps taken (including all the suggestions for restricted duties and/or 'reasonable adjustment' made by the employee and, in the case of any that were not adopted, the specific reasons for their non-adoption);
- b. refer the information to myHR who will review the process for approval;

Human Resources will determine whether to direct an employee onto sick leave under the policy. The work area cannot direct an employee onto sick leave until approval to do so is given by myHR. The only exception to this is where the medical information initially provided by an employee is incomplete or unclear. (See sections 4.2 and 8a.).

7. Handling of Conflicting Medical Information

Where an employee presents with medical information which conflicts with previously provided medical information (eg; an employee with long standing 'permanent restrictions' and 'unfit for duty' suddenly provides a new medical certificate that states 'no or minimal restrictions') myHR will consider all of the following options and determine which of them is the most appropriate given the particular circumstances of the case under consideration:

- a. request the employee to clarify, query or seek further information from the medical practitioner who has issued the medical certificate;
- b. refer all the available medical information to Australia Post's medical consultant for advice;
- c. request Australia Post's medical consultant to contact the medical practitioner(s) who supplied the medical information (with the employee's permission);
- d. have the employee examined by an Australia Post nominated medical practitioner.

8. Employee Directed Onto Sick Leave

Note: Managers are required to sensitively manage directing employees off on sick leave.

After following all the steps outlined above, a manager may, subject to the approval of Human Resources, require the employee to take sick leave in all of the following circumstances except for 8a. below which does not require the approval of myHR:

- a. where the medical information initially provided by an employee is unclear or does not contain all the required information in order to assess the possibility of providing restricted duties **and** the employee has not provided this information within two working days of a written request from Australia Post to do so. Such direction onto sick leave, will remain in force pending the provision of the requested medical information. The employee will be advised, in writing of what is required of him or her in order to return to work;
- b. where the medical information indicates the employee is unlikely to be able to undertake the 'inherent requirements' of his or her nominal position within 3 months;
- c. where the employee has been provided with restricted duties for a period of three months (maximum six months due to exceptional circumstances) and 'reasonable adjustment' has been considered as per section 5, based on current medical evidence, and the employee is still unable to undertake the 'inherent requirements' of his/her nominal position;
- d. where the workplace cannot accommodate the medically certified restrictions.

9. Consideration of Redeployment Prior to Directing an Employee onto Sick Leave

Except in the circumstances outlined in section 8a. above, before an employee can be directed onto sick leave, the person with the authority to make this direction will look at redeploying the employee to a vacant position that is:

- a. immediately available;
- b. either at the same or lower level than the employee's nominal position;
- c. would otherwise be subject to external recruitment; and
- d. the employee could perform the inherent requirements of the position after appropriate specified training.

No employee is to be forced to accept such redeployment and if a lower level position is accepted, salary maintenance will not apply.

10. Consideration of Employees Directed onto Sick Leave For Filling of a Temporary Position, with Non-Standard Duties, at Employee's Level

Managers must consider all employees in their business unit who have been directed on sick leave under the policy whenever they organise cover for employees on long-term leave and the

filling of short term vacancies, B-class positions or permanent vacancies. A record of this consideration must be made and maintained on file.

Employees who are directed onto sick leave must be considered in relation to other staff with possible claims to the position eg employees who are excess or unattached or have a compensable claim under the *Safety, Rehabilitation and Compensation Act 1988*.

Employees considered for any such position must be at the same designation as the available position and an employee cannot be directed to take up an offered temporary or permanent position.

Note: Employees directed onto sick leave under the policy can apply for transfer to another designation and will be placed on the relevant transfer list, however they will not get preference over employees already on the transfer list. They may also apply for temporary and permanent positions at a higher designation and will be considered on merit.

11. Medical Certificate Requirements Whilst Employee Directed Onto sick Leave

11.1 Restrictions temporary or of an unknown duration

Employees directed onto sick leave with temporary restrictions or restrictions of an unknown duration are required to provide new medical information on the expiry of their current medical certificate or, if the certificate has no end date, within one month of being directed onto sick leave.

11.2 Permanent restrictions

Employees directed onto sick leave with medically certified *permanent* restrictions are not required to provide ongoing medical information. However, they may provide new medical information at any time and their case will be reviewed based on that medical information.

12. Review of Employee's Medical Condition

12.1 Employee requests for review

Where an employee is directed onto sick leave (or directed to remain on sick leave) under the policy, he or she may provide new medical information at any time and the employee's case will be reviewed based on that medical information. Australia Post may arrange an assessment for an employee by an Australia Post nominated doctor, or to ask an Australia Post nominated doctor before any direction on sick leave can be revoked.

12.2 Maximum period of leave

myHR will continue to manage the cases of employees directed onto sick leave in accordance with the provisions of Clause 21 of the *Australia Post Enterprise Agreement 2013*. If, after the expiry of the employee's sick leave entitlements (up to 78 weeks continuous absence including up to 52 weeks of continuous paid sick leave, depending on the employee's credits), the

employee is still unable, based on current medical evidence, to perform the 'inherent requirements' of his/her nominal position, and is unable to be redeployed, steps will be taken to retire the employee in accordance with the clause 3(c) of the *Australia Post Principal Determination* (Principal Determination).

13. Consideration of 'Redeployment' Before Prospective Medical Retirement

13.1 Assessment

Where it is clear that an employee will not be able to undertake the 'inherent requirements' of his/her nominal position, and is facing the prospect of management initiated retirement, an assessment should be made of the scope for redeployment to other work.

This assessment should take account of:

- a. the capacity of the employee to undertake other work within the Corporation, having regard to the limitations/restrictions resulting from the medical condition based on current medical evidence, and the medical standards applicable to other positions being considered;
- b. the outcome of discussions with the employee regarding their preferences and the reasonableness of acceptable redeployment in terms of type of work, location, hours and level;
- c. the employee's suitability for other work in terms of skills, aptitude and experience; and
- d. the availability of potential suitable vacancies.

13.2 'Reasonable adjustment'

Australia Post is **not** required to apply the 'reasonable adjustment' criteria outlined in Section 4 above when considering redeployment. This legal obligation only applies to the employee's nominal position.

13.3 Additional costs associated with redeployment

'Reasonable' efforts are to be made to redeploy employees with medical restrictions who are facing medical retirement which may involve some retraining and/or work trials.

The extent to which Australia Post is prepared to incur additional costs in providing redeployment will need to be judged in the context of the particular circumstances involved, on a case by case basis, having regard to:

- a. the potential for successful long term redeployment in a position where the employee can perform the 'inherent requirements' of that position;
- b. the employee's aptitude and previous work performance and conduct history; and

c. the employee's length of service.

13.4 Selection for redeployment

Employees in this category of non-work related medical restrictions are not entitled to the same priority treatment in the selection process as is given to employees on statutory rehabilitation programs and surplus staff.

13.5 Salary maintenance

If redeployment involves transfer to a lower level, there are no salary maintenance arrangements.

13.6 Redeployment processes

Each Manager will be responsible for determining the practical arrangements needed to put this redeployment policy into place, within the context of the policy.

14. Retirement of Employee

If, after consideration of all of the above options, the employee is unable, based on current medical information, to discharge the 'inherent requirements' of his or her nominal position within the stipulated 'reasonable' timeframes, a further reasonable adjustment assessment must be undertaken based on current medical evidence. The purpose of the reasonable adjustment assessment is to determine whether, the employee is capable of performing the inherent requirements of the job with reasonable adjustment. Refer to section 5 of this policy for further information regarding reasonable adjustment.

If no reasonable adjustment can be provided to enable the employee to meet the inherent requirements of their nominal position and all aspects of this policy have been complied with, Australia Post will retire the employee under Clause 3 (c) of the Principal Determination.

The sole criterion for deciding to recommend the retirement of an employee who has a long term injury or illness should be the likelihood of the employee being able to fulfil the 'inherent requirements' of the employee's nominal position (even with reasonable adjustment) within a 'reasonable' timeframe.

An employee may not be retired before the end of an initial 3 month period in accordance with section 772(1)(a) of the Fair Work Act 2009 (Cth) (including Reg 3.01 of the Fair Work Regulations) or while the employee is on sick leave in accordance with Clause 21 of the Australia Post Enterprise Agreement 2013 (up to 78 weeks continuous sick leave absence including up to 52 weeks of continuous paid sick leave, depending on the employee's credit).

An employee has the right to appeal against the retirement decision.

15. Appeals Process

15.1 Medical Restrictions Board of Reference

An employee who is directed onto sick leave by Australia Post in accordance with the policy can, if he or she believes that the decision was harsh, unjust or unreasonable, appeal that decision to the Medical Restrictions Board of Reference.

This Board of Reference was initially appointed under section 131 of the Workplace Relations Act 1996 in late 2002, then as a private arbitrator from 5 July 2006 as a result of the Work Choices legislative reforms to the Workplace Relations Act 1996. It can only determine:

- a. individual grievances in relation to a decision by Australia Post to direct that employee onto sick leave under the policy; and
- b. whether that decision by Australia Post was harsh, unjust or unreasonable.

15.2 Factors considered by Medical Restrictions Board of Reference

In determining whether Australia Post's decision to direct an employee onto sick leave was harsh, unjust or unreasonable, the Medical Restrictions Board of Reference will take into consideration:

- a. the medical evidence on which Australia Post based its decision;
- b. the employee's medical condition and work restrictions at the time the employee was directed onto sick leave;
- c. the 'inherent requirements' of the employee's position;
- d. whether Australia Post has complied with the terms of this policy;
- e. the employee's compliance with the reasonable requests by Australia Post under the policy; and
- f. any other circumstances that the Board of Reference thinks is appropriate.

15.3 Powers of the Medical Restrictions Board of Reference

After hearing the appellant and Australia Post, the Medical Restrictions Board of Reference may, if it determines that the decision to direct the employee onto sick leave was harsh, unjust or unreasonable, make one or more of the following determinations, namely that Australia Post:

- a. revoke its direction to the employee that he or she remain on sick leave;
- b. re-credit any leave credits used by the employee, while on a period of any paid leave, as a result of the direction by Australia Post;
- c. make a payment to the employee in respect of the actual wages (ordinary wages plus shift penalties if appropriate) lost as a result of not being in attendance at work during the period that the employee was directed onto sick leave;

- d. make available to the employee, under this policy, work in the employee's actual position, provided he or she can meet the 'inherent requirements' of the position;
- e. look at the redeployment opportunities in accordance with section 9 – 'Consideration 'Redeployment' Prior to Directing an Employee onto Sick Leave' of this policy.

15.4 Appeal application form

An employee who wishes to appeal Australia Post's initial decision that he or she be directed onto sick leave will be required to complete a form titled '*Application for a Board of Reference under the Australia Post Non-Work Related Medical Restrictions Policy*'. (See Attachment 1.) The application will *only* be accepted by the Medical Restrictions Board of Reference *if* the aggrieved employee:

- a. has been directed onto sick leave by Australia Post in accordance with the non-work related medical restrictions policy; and
- b. has notified Australia Post of his or her intention to appeal Australia Post's decision that he or she be directed onto sick leave, within 7 days of that decision; and
- c. either he/she or his or her representative (who may be a union representative), has participated in discussions with a state representative from Australia Post about the employee's case, within 7 days of the employee notifying Australia Post of his or her intention to appeal; and
- d. lodges the appeal within 14 days of Australia Post's decision to direct the employee onto sick leave.

The completed application form must be sent to:

Workplace Relations Coordinator
15/111 Bourke St
MELBOURNE VIC 3000

15.5 Appeal process

The appeal process will be informal and although the employee may choose to be represented by another person (who may be a union representative), that person cannot be a legal practitioner.

An appeal will be best defended by closely following the policy, and by documenting each step of the decision making process.

15.5 Review of Medical Restriction Board of Reference Determination

Either the employee or Australia Post may apply to Fair Work Commission (the Commission) for a review of a determination made by the Medical Restrictions Board of Reference.

Such an application must be made to the Commission (and a copy provided to the other party) within fourteen (14) days of the Board's determination. The Commission may extend this time at its discretion.

The circumstances in which Australia Post would seek a review of a Board determination would be if there was a significant issue of law or a significant flaw in the determination relative to the evidence that was presented to the Medical Restrictions Board of Reference.

15.6 Grievances

Any other decision made under this policy including medical retirement may be appealed by an employee through the Grievances procedures at Clause 5 of the *Australia Post Principal Determination*.

15.7 Further information

More detailed information or advice on specific matters can be obtained from myHR.