Guidelines for managers and supervisors of staff with disability or a medical condition

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‘Access to employment is fundamental to a person’s dignity and wellbeing and is a right that is protected under Victorian and Federal Equal Opportunity laws. Under these laws, a person with a disability who meets the genuine requirements of a job has the same right to be appointed to that job as anyone else.’


1. Introduction – Excellence through Inclusion

Monash University has been a proud supporter of disability access since the first meeting of the Vice-Chancellor’s Advisory Committee for the Handicapped, 13 July 1977. The Federal Disability Discrimination Act (D.D.A.) was introduced in 1992 and provides protection for everyone in Australia against discrimination based on disability. Disability discrimination occurs when people with a disability are treated less fairly than people without a disability. Disability discrimination also arises when people are treated less fairly because they are relatives, friends, carers, co-workers or associates of a person with a disability.

Monash University encourages diversity in its workforce and is committed to equal opportunity and social inclusion across its divisions and faculties in the belief that it leads to higher levels of job satisfaction and a more highly skilled and productive workforce.

Monash’s aim is to be recognised as a leading organisation which is inclusive of people who have a disability, in its roles as a public organisation, a provider of education, an employer of choice, a stellar research facility and a community leader.

1.1 Monash University’s Social Inclusion Strategy

Monash has articulated its commitment to the active inclusion of staff and students with a disability through its Social Inclusion Strategy. The strategy sets a clear objective for Monash to be an exemplar employer for people with a disability.

The Monash University Social Inclusion Strategy - Disability Plan 2010-2014 contributes to the University’s Social Inclusion agenda which aims to make positive changes over the next five years and is designed to:

- implement the University’s Equal Opportunity Policy and the key equity principles;
- embed the responsibility for the development and implementation of inclusive practices into the roles and activities of all members of the University community;
- demonstrate Monash’s commitment to supporting access to education and employment on the basis of merit;
- ensure the provision of accessible employment, educational and research environments;
- assist the University to respond to the Review of Higher Education which seeks to improve the educational outcomes for students from low socio economic backgrounds with a disability; and
- raise awareness of how to best foster a diverse community.
2. Disability and Work

Over two million working-age Australians – or almost one in six – have a disability. The term ‘disability’ can refer to a physical or mental condition, which could be short term, long term or permanent. Despite having a wide range of valuable skills and qualifications, people with a disability have notably higher levels of unemployment than the general community. Many job seekers and employees do not mention their disability because they fear discrimination or not being considered for jobs.

Australia lags behind the majority of Organisation for Economic Cooperation and Development (OECD) countries in employing people with a disability. Access to employment is fundamental to a person’s dignity and wellbeing and is a right protected under Victorian and federal equal opportunity laws. Under these laws, a person with a disability who meets the genuine requirements of a job has the same right to be offered that job as anyone else.

2.1 What the law says about disability discrimination

The term ‘disability’ is broad and includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities, including work-related injuries. The law protects people who have had a disability in the past and those who may have a disability in the future.

In Victoria, it is against the law to discriminate against an employee or job applicant because they have, or are assumed to have, a disability. Under the Equal Opportunity Act 2010, employers have a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible.

Employers are legally responsible for acts of discrimination, bullying and harassment, sexual harassment, victimisation and racial and religious vilification by their employees or agents that occur in the workplace or in connection with a person’s employment, unless they can show they have taken reasonable precautions to prevent such acts. Under the legislation employers have vicarious liability for the behaviour of their staff. If a particular staff member unlawfully discriminates, a complaint may be made against that staff member, as well as their manager or the University. The Equal Opportunity Act 2010 applies to employers of all sizes, and covers all types of workers – including full-time, part-time and casual employees, agents and contract workers, and trainees and apprentices. It applies to all stages of employment, including recruitment, returning to work after injury, illness or pregnancy, and dismissal and retrenchment.

2.2 How managers can support staff with a disability at work

Creating a discrimination-free workplace not only builds a productive and healthy workplace, but it also expands the pool of potential employees increasing the chances of appointing the best applicant possible. Finding and keeping qualified and committed employees is a difficult task for any employer. Employers who hire people with a disability generally find that these employees are loyal, have better than average productivity and above average attendance records.

Faculties and Divisions can make reasonable adjustments to their work practices or the physical facilities in their workplace in response to the needs of their team members with disabilities or a medical condition.

These guidelines have been designed to help managers and team supervisors to understand why and how these obligations must be met.
3. Always recruit the best person for the job
The University aims to recruit the brightest and best staff for each and every role. Appointments must be made on the basis of merit, applying the principle of achievement relative to opportunity and adhering to the principles of equity and equal opportunity employment. In every case managers and supervisors should choose the best person for the job, whether that person has a disability or not. In order to ensure the widest possible pool of quality applicants each step of the recruitment process should be non-discriminatory, including the position description, job advertisement, application forms, interview questions, aptitude tests, reference checks and the final appointment decision.

3.1 How important are position descriptions?
A position description is an accurate, concise description of the organisational location, primary objectives and key responsibilities of a position. All positions (both academic and professional) require a current and up-to-date, classified position description.

An effective position description enables the university to better define the knowledge, skill and attribute requirements of the role, creates role clarity for staff and supervisors, and assists in identifying the right candidate in the recruitment and selection process.

A position description is also an essential tool that is used when shortlisting candidates for interview. The selection criteria within a position description provides structure to assist the Selection Committee in developing effective interview questions and in identifying the applicant(s) best suited to perform effectively in the role in this environment, as well as for applicants to measure their own suitability.

A fair recruitment process does not focus on an applicant’s disability but concentrates on matching an applicant’s skill set against the essential and desired position requirements documented in the position description.

3.2 Monash advertises as a Fair and Flexible Employer
Approved job advertisements for Monash carry the Equal Opportunity Employer by-line with the Fair and Flexible logo. The by-line is a symbol of our commitment to non-discriminatory work practices.

An Equal Opportunity Employer
Fair and Flexible

The Fair and Flexible logo indicates that Monash has been recognised by the Victorian Government’s Working Families Council which rewards employers who have developed innovative programs in policy and practice that improve the work and family balance of their employees. Fair and Flexible Employer Award winners are able to promote themselves as employers of choice with the unique Fair and Flexible brand mark for 12 months and are recognised as progressive employers on the ways2work website.

The University is proud to have achieved a reputation as an employer of choice and will continue to be innovative and proactive in its social inclusion policy and practices.
4. The selection process - Reasonable adjustments

All facets of the application and interview process should accommodate applicants with a disability, such as ensuring access to buildings or providing assistive equipment on request. Applicants will be invited to apply for adjustments for the interview during the application process, which will be processed by the HR Business Partner responsible for the recruitment process. An applicant must not be excluded from consideration or appointment because they apply for adjustments at the interview.

If the preferred applicant with the disability would not be able to perform the genuine and reasonable requirements of the position when workplace adjustments are provided, a decision not to employ may be made.

An employer may refuse to employ or accommodate a person with a disability if this is reasonably necessary to protect the health and safety or property of any person or of the public generally.

Before taking this action, employers must make sure that assessments of the applicant’s abilities have been based on appropriate documentation and reasonable alternatives for accommodating the applicant have been investigated. A decision not to employ may in some circumstances be made if the adjustment is considered to impose unjustifiable hardship on the University. Please seek advice from your Lead HR Business Partner before making a final decision.

4.1 Can I ask about a disability during the interview?

While staff have a right to privacy, managers have a right to know if prospective members of staff have the physical and mental capacity to carry out the genuine requirements of a job. Members of an interview panel must take care when asking job applicants for personal information. Asking about an existing disability, particularly when it does not relate to the job, can embarrass or distract the applicant during the interview. Importantly also, asking for personal information that does not have a direct link to the job can make you vulnerable to a complaint of discrimination.

Never ask a job applicant if they have a disability. Instead ask about their ability to do the job.

If an applicant discloses a disability, or the disability is obvious you can find out whether the applicant is suited to the job by asking:

- if there is any reason why they could not meet the job requirements set out in the position description
- if they have any pre-existing impairment or illness that may be adversely affected by the job.
Asking about a person’s disability or injury or how they acquired their disability.

Ask if there is any reason why they could not do the job, or if they have any injuries that may be affected by the doing this job.

Making assumptions about what the applicant can and can’t do.

Ask about the applicant’s skills and abilities.

Asking questions about sick leave and WorkCover claims, or making assumptions about the suitability of an applicant based on those claims.

Assess the job applicant with an injury or disability, on their ability to do a job; don’t focus on their injury or disability.

5. **My staff member has disclosed a disability. What should I do?**

There is no legal obligation for a staff member to disclose a disability to their employer unless it is likely to affect their job performance or work safety. If a staff member discloses a disability, work with them to identify potential issues and find solutions.

Many staff may decide against disclosing their disability when they first get the job because they fear discrimination. Others may choose to not disclose because their disability does not affect their ability to perform the requirements of the job. But over time, circumstances can change. An employee may feel more confident about revealing their disability to their manager. Alternatively they may be expected to take on bigger workloads or more responsibility over time. In some instances their disability may have changed or deteriorated.

5.1 **Fair and flexible work arrangements**

Regardless of the circumstances, a person’s disclosure of disability should not be the focus of the management of their performance. To avoid discrimination complaints, make no assumptions about a staff member’s capacity to carry out the responsibilities of the job. Any concerns can be raised directly with the staff member with a view to finding a suitable resolution.

Work with your staff member to identify existing and potential issues, and explore solutions such as training opportunities or making ‘reasonable adjustments’ to the workplace. Use position descriptions to help you clarify the core job requirements. What is necessary to get the job done and what is incidental?

Maria suffered a car accident and has recently returned to work. She mentioned to her supervisor that she is struggling with full time work. Maria provided her supervisor with a doctor’s certificate and has agreed that she work shorter hours for six months and then they will review her situation.

5.2 **What are reasonable adjustments?**

Amendments to the Victoria’s *Equal Opportunity Act* (2010) place a positive duty on employers to provide a discrimination free workplace and not unreasonably refuse to accommodate staff with disability. To this end the University will negotiate and make ‘reasonable adjustments’ to accommodate staff with disability to ensure they can work safely, productively and are treated fairly.

‘Workplace adjustments’ and ‘accommodations’ are terms often used interchangeably to refer to the changes made to almost any aspect of work to ensure that staff with disability have an equal opportunity to achieve their full potential as employees. Adjustments may include such changes as the provision of support services (e.g. sign interpreters), accessible facilities (e.g. ease of access to...
buildings, pathways, ramps, doorways etc.), assistive technologies (e.g. voice recognition software) and/or the application of flexible work practices so as to facilitate the performance of work by an employee with a disability.

Many staff with disabilities do not require any adjustments in the workplace to carry out the genuine and reasonable requirements of their job. Some may only need minor changes at minimal costs. Others may benefit from access to assistive equipment or some structural change to work buildings.

5.3 Unjustifiable hardship
Under the law employers are obliged to make reasonable adjustments unless they would result in unjustifiable hardship. Whether an adjustment involves unjustifiable hardship depends on the circumstances of each particular case and may exist where the adjustment involves prohibitive financial costs, detriment to other staff or clients, or detriment to the effective organisation of work.

5.4 Document the steps taken in making reasonable adjustments
It is good practice to document conversations and resolutions as they occur. Emails may be an appropriate way to confirm shared understandings or to document agreed future actions.

Reasonable adjustments do not require provision of every adjustment a staff member requests. The adjustment must be necessary to enable the staff member to perform their job with a disability. It is reasonable to require your staff member to provide documentation from an appropriate treating professional in support of any application for ‘reasonable adjustments’ to the workplace. Examples of treating professionals may include an audiologist for hearing impairment, an ophthalmologist for vision impairment, a general practitioner or medical specialist for serious medical conditions, etc.

You are encouraged to also seek advice and assistance from your HR Business Partner when considering and prior to implementing workplace adjustments.

5.5 Is disability a public or private matter?
If a person discloses a disability this is health information and must be treated sensitively. Ideally seek the person’s permission to discuss the matter with relevant staff who can provide appropriate advice. Even if the staff member does not give permission to use their name, you can always seek advice, without disclosing identity, from relevant Monash services and it is important you do so to ensure the University discharges its obligations under the law.

Care should be taken not to speculate about whether a person has a disability. Health information and disability status have special protection under the law. Where a staff member’s actions are out of the ordinary but there is no disability disclosed, any response should be based on the staff member’s behaviour and not any presumed disability.
6. Performance management

The University is committed to supporting staff members in their performance and development by providing the tools and support that will enable staff to reach and maintain expected performance standards. Regular and informal feedback sessions provide an opportunity to raise problems or concerns regarding a staff member’s performance and/or behaviour at an early stage, and allows for strategies to be put in place to resolve these concerns prior to formal meetings within the performance development cycle and prior to formal counselling. If an issue of an underlying disability emerges during the performance development process, reasonable adjustments must be considered as a strategy to address the performance concerns. For further information, please refer to the Staff Development Procedure: Performance Development Process: Academic Staff and the Staff Development Procedure: Performance Development Process: Professional Staff.

Workplace adjustments are instituted to assist the staff member to meet the genuine and reasonable requirements of the position. Where the work role is suitable and adequate adjustments are in place workplace decisions, for example, assessing performance or providing salary increments can be evaluated independently of a consideration of the disability. If there is poor performance by the staff member feedback will need to be sensitively provided. Supervisors concerned about making these decisions can seek advice from their HR Business Partner.

Where it has been established (via an appropriate assessment process) that a staff member can no longer carry out the genuine and reasonable requirements of their current position the University may consider the option of alternative employment before considering termination of employment.

There may be options for employing the staff member in a different capacity within the current workplace. Advice must be sought from your HR Business Partner to ensure that all the relevant clauses of the Enterprise Agreement are followed when negotiating such significant workplace changes for your staff.

Monash HR may be able to facilitate placement of the employee elsewhere in the University if a suitable position is available.

Please contact your HR Business Partner for advice in the first instance. Where necessary, your HR Business Partner may escalate your query to Workplace Relations or to the Manager, Employee Assistance.

7. Reasonable Adjustments for staff who have a dependant with a disability

A staff member may require flexible workplace arrangements to assist in fulfilling their carer responsibilities. In these circumstances supervisors must not, in relation to the work arrangements of an employee, unreasonably refuse to accommodate the responsibilities that the employee has as a carer. Supervisors and managers must engage with the HR Business Partner immediately upon receiving a request for a flexible working arrangement to discuss the matter.

To assist managers and supervisors to manage and respond to those requests please refer to the Workforce Management Procedure¹ and Guideline²—Flexible Working Arrangements for Parents and Carers. This procedure also outlines the approval process for granting a flexible working arrangement.

The length of the period during which a workplace adjustment is in place will vary according to the

particular circumstances. Options to consider include flexible start and finish times, working from home or reduced working hours.

Your HR Business Partner can assist you to consider flexible options for staff who are carers.

**Siew requested approval to work part-time to provide carer support for her 2 year old who has cerebral palsy and requires regular speech and physio therapy. Her supervisor approved a 0.6 EFT and moved critical staff meetings to ensure she could attend and be kept up to date with work initiatives.**

8. Create a discrimination-free workplace – it is good for Monash.

To avoid any misunderstanding in the workplace, be proactive in raising awareness of the University’s commitment to equal opportunity and social inclusion. Just as you ensure the health and safety of your staff, make sure the workplace is free from discrimination and harassment.

The legislation defines discrimination as treating someone less favourably because of a personal characteristic (there are 17 personal characteristics protected under Victorian law, including impairment or disability). Discrimination may be less obvious if it is indirect such as when a policy or rule that treats everyone in the same way has an unfair effect on a particular group of people. Other less obvious forms of discrimination may occur as part of the work culture. Harassment because of disability, including insults or humiliating jokes, is also discrimination.

The requirement to provide adjustments for people with a disability applies to each stage of employment:

- Recruitment, selection and appointment;
- Training and career development;
- Probation, progression and promotion;
- Performance management; and
- Any other employment benefit.

Adjustments may be permanent or temporary depending on the nature of the disability and the current impact of the disability on the individual. Adjustments may include:

- Assistance to ensure there is no barrier in the selection process;
- Provision of specialized equipment, facilities or work related aids;
- Job redesign;
- Changes to work practices or arrangements;
- Training or retraining;
- Provision of information in suitable formats; and/or
- Modification to Monash work areas, including University common areas.

Employing people with a disability can help the University to develop a sustainable and competitive advantage. If we become an employer of choice for people with a disability we gain:

- A reputation for fairness and creativity;
- Loyal employees who give their best effort, building morale and increasing productivity;
- A more multi-skilled workforce;
- The opportunity to receive the contributions of talented staff who have a wide range of valuable skill sets and qualifications;
- Reduced staff turnover and lower recruitment costs; and
- Fewer staff complaints, disruptions and legal disputes.

\[\text{Ayesha required major surgery which would prevent her being able to attend work for 6-8 weeks. Her supervisor loaned her a laptop to enable her to work from home as part of her gradual return to work program. She was able to stay in touch with her colleagues via email, read and comment on draft documents and stay up to date with developments}\]

8. Where to find more information
There are a number of services available to assist you in providing the appropriate adjustments for staff with disability.

**HR Business Partners**
First point of contact for all queries regarding alternative work arrangement requests and managing staff with disability
Tel: 9902 0400

**Employee Assistance**
For expert advice on managing staff with disability and return to work arrangements and for return to work injury management
Manager Employee Assistance
Tel: 9902 9573
Email: joanne.turner@monash.edu

**Disability Contact Officers**
For a private conversation to explore options

**Occupational Health and Safety**
For assistance with workplace environment, including ergonomic equipment
Principal OHS Consultant
Tel: 9905 5696
Email: john.tsiros@monash.edu

**Counselling Services**
For assistance with stress, anxiety, depression, substance abuse, addictions, suicidal thoughts

**Preventing Discrimination and Harassment**
For information in regards to discrimination on the basis of disability
Tel: 9902 0248
[http://monash.edu/equity-diversity/discriminationharassment/contact-an-adviser.html](http://monash.edu/equity-diversity/discriminationharassment/contact-an-adviser.html)
Facilities and Services
For advice on the accessible built environment
Tel: 9902 0222
Email: fsd.feedback@monash.edu

eSolutions
For advice on the assistive software and accessible systems
Tel: 9902 0627
Email: pasquale.stella@monash.edu
9. Definitions

Built environment
The University seeks to ensure that the built environment, communication and other systems and resources are accessible to staff with disability.

Carer
A carer is a person on whom another person is totally or substantially dependent for ongoing care and attention. This does not include paid care. Carers provide care and support to family members and friends with a disability, mental illness or disorder, chronic condition, terminal illness or who are frail. Care giving may occur occasionally, continuously, in the short-term or over the long-term.

Carer responsibilities
Responsibilities as a carer, more specifically, the care and attention they provide to a child or to another person (such as parent, spouse, domestic partner, relative or friend) where that person is totally or substantially dependent on the staff member for care.

Disability
The definition of "disability" is broad. It includes some conditions not usually thought of as disabilities. Types of conditions include:

- loss of physical or mental functions, for example, a person who has quadriplegia, brain injury, epilepsy or who has a vision or hearing impairment;
- loss of part of the body, for example, a person with an amputation or a person who has had a pacemaker implanted;
- infectious and non-infectious diseases and illnesses, for example, a person with AIDS, hepatitis or tuberculosis, a person with allergies or who carries typhoid bacteria;
- the malfunction, malformation or disfigurement of a part of a person's body, for example, a person with diabetes or asthma or a person with a birthmark or scar;
- a condition which means a person learns differently from other people, for example, a person with autism, dyslexia, attention deficit disorder or an intellectual disability;
- any condition which affects a person's thought processes, understanding of reality, emotions or judgment or which results in disturbed behaviour, for example, a person with a psychiatric condition, neurosis or personality disorder;

and a disability is one that:

- is present; or
- once existed but doesn't any more, for example, a person who has had a back injury, a heart attack or an episode of psychiatric illness; or
- may exist in the future, for example, a person with a genetic predisposition to a disease, such as Huntington's disease or heart disease or a person who is HIV positive; or
- someone thinks a person has, for example, assuming a person living with someone with an infectious disease also has the disease or assuming that a gay man has HIV AIDS.
Genuine and reasonable (inherent) requirements

Disability law uses the concept of "inherent" or "genuine and reasonable requirements" of a position to describe those components of a job that must be performed. These requirements need to be determined in the circumstances of each job.

Care needs to be taken in determining what is essential to a job: what may appear essential may in fact be achieved in another way, may easily be done by someone else or may be excluded from the job or course with no real loss to work outcomes.

For example, in order to lecture in a University, appropriate qualifications are required and hence the stipulation of an appropriate university degree would be considered essential to that position. To require a driver's license, while desirable for travelling between campuses, would generally not be considered essential to the role of lecturer.

Reasonable workplace adjustments

‘Workplace adjustments’ and ‘accommodations’ are terms often used interchangeably to refer to the removal of barriers and changes made to almost any aspect of work to ensure that staff with disability have an equal opportunity to achieve their full potential as employees.

The requirement to provide adjustment for people with a disability applies to each stage of employment:

- Recruitment, selection and appointment;
- Training and career development;
- Probation, progression and promotion;
- Performance management; and
- Any other employment benefit.

Adjustments may be permanent or temporary depending on the nature of the disability and the requirements of the individual. Adjustments may include:

- Assistance to ensure there is no barrier in the selection process;
- Supply or modification of equipment, furniture or software;
- Job redesign, adjustment or flexible work arrangements;
- Training or retraining;
- Provision of information in suitable formats; and/or
- Modification to Monash work areas, including University common areas.

The University will make reasonable adjustments where such adjustments do not lessen work output requirements, lower work standards or otherwise place the university in a position of 'unjustifiable hardship' in relation to the management of its finances or the pursuit of its legitimate objectives. The criterion of reasonableness in the circumstances should be applied to all requests for adjustments and take into account all circumstances relevant to the job and the incumbent.
Unjustifiable hardship

Unjustifiable hardship is not defined by the law but is determined by having regard to all relevant circumstances of the particular case are to be taken into account, including:

- The applicant’s/employee’s circumstances including the nature of the disability;
- The nature of the employee’s role or the role applied for;
- The nature of the adjustment required to accommodate their disability;
- The University’s size and economic position and the impact on its business if the adjustment is made;
- The consequences for making or not making the adjustment for the University or the individual concerned.

10. Further references

*Disclosing disability in employment: information for people with disabilities and their advocates – June 2007*
http://www.victorianhumanrightscommission.com/www/access-to-employment/disclosing-a-disability

*Disclosure of disability*

*A brief guide to the Disability Discrimination Act (1992)*

*Australian Network on Disability*
www.and.org.au/
Provides a number of facts sheets covering training, hiring, interviewing and more

*JobAccess*

*Choosing your path Disclosure: It’s a Personal Decision*
http://pubsites.uws.edu.au/ndco/disclosure/