

PSA WINS CHANGE IN POLICY

In late 2017 the PSA became aware of DFSI's internal policy for service checks for recruitment. Part of said policies gave authority to hiring managers to consider any prospective employee's sick leave history (12 months' history) and workers' compensation history (five years) when they are undertaking background checks as part of recruitment. This health information was being provided to hiring managers by People and Culture staff.

As the union representing many staff within DFSI, the PSA has an overriding obligation to assess all practices and policies used by DFSI – to be assured that those practices and policies sit within the current legislative framework.

To that end we wrote to the Department, explaining our concerns that DFSI's practice does not appear to comply with the PSC Guidelines on service checks for recruitment, and expressing our view that employers are required by law to avoid discrimination against all prospective employees during the recruitment process.

Sick leave

We drew attention to existing cases that have been supported by the Anti-Discrimination Board that note that taking sick leave into account for a person with a disability (medical condition that is defined as a disability) where taking sick leave can be described as a characteristic of their disability, is discrimination. If the person needs more sick leave than normal this may come under reasonable adjustment.

It is NSW public sector policy to make adjustments in employment to meet the needs of people with a disability and the legal defence of unjustifiable hardship to a request for reasonable adjustment does not apply in the case of a request by an existing employee. An existing employee who has a disability and requires services or facilities in order to carry out the inherent requirements and job demands of a position must be provided with those services or facilities.

It is NSW public sector policy that the defence of unjustifiable hardship only applies in relation to a job applicant or dismissed employee. We also noted that these service checks using sick leave and workers compensation were only being conducted on existing employees currently working in the public service.

In addition, we explained that taking carers leave, as part of your sick leave is also a characteristic of people with carers' commitments therefore it discriminates against those with carers commitments.

Workers' compensation

In relation to workers' compensation we explained that the requirement to check a candidate's workers' compensation history over the previous five years would be against the law where that information is being used to deny a prospective candidate's application. It does not relate to their ability to perform the job.w

DFSI Revises its procedure

Since bringing this matter to the attention of the Department in November 2017 the PSA persisted



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with correspondence and JCC agenda items requesting DFSI withdraw its practices to bring its service checks into line with legislative requirements.

In October 2018, the Department advised the PSA that it was reviewing all of its pre-employment checks, and its service check process was to be updated to remove the requirement for sick leave and workers compensation history.

In January 2019, again the Department advised the PSA it had revised its procedure based on a number of factors, including:

- » input from the DFSI Diversity Council regarding disadvantage to staff with disabilities of carers responsibilities;
- » PSC advice on the benefits of such checks as an indicator of successful performance in the role; and
- » how the practice appeared to be in conflict with the Department's approach to 'reasonable adjustments' and the Premier's targets on diversity.

PSA welcomes this decision and we think the Department's decision to revise was in significant part because of the pressure coming from PSA delegates.

Finally

The PSA raised that hiring managers would still have absolute discretion to be able to access these records, to which the Department responded: "the only time that Managers would have access to sick leave records is for staff who are in their reporting line (via MSS). Our recruitment advisors provide support to hiring managers and see committee reports, these factors cannot be relied upon in making a selection decisions."

Latest

We understand the HUGO intranet information has not yet been updated to reflect the DFSI commitment to remove said service checks

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