

Navigating the Grey Areas in Employment Law

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MULTIPLE SCLEROSIS
AUCKLAND

**Hesketh
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Agenda

- **Human Rights -**
 - Prohibited grounds
 - Employment aspects
- **Privacy -**
 - Collecting Information
 - Using Information
 - Access to information
- **Employer Obligations –**
 - Employment Agreement
 - Sick leave
 - Flexible Work Arrangements
 - Health and Safety
 - Incapacity
- **Discussion/Questions**

Human Rights Act 1993

Prohibited grounds of discrimination include

Physical disability or
impairment

Physical or psychiatric
illness

Any other loss or
abnormality of
psychological, physiological,
or anatomical structure or
function

Reliance on a guide dog,
wheelchair, or other
remedial means

Human Rights Act 1993

- Unlawful to (on the basis of prohibited grounds)
 - refuse or omit to employ
 - offer or afford less favourable terms
 - terminate or subject to detriment
- Application Forms / Interviews must not indicate intention to discriminate
- Questions about medical status? **Only** in so far as it is relevant to the role.

Human Rights Act 1993

Exceptions in relation to disability

- Where the position means the employee could only do the job with the aid of special services/facilities and it is not reasonable to expect the employer to provide those services/facilities
- The work environment is such that the person would be at risk of harm (or putting others at risk) – unless the employer could reduce the risk by taking reasonable steps

Human Rights Act 1993

Qualification on exceptions

- If the employer could adjust the position so that the particular duties are done by someone else, without unreasonable disruption, the exceptions will not apply

'Positive discrimination'

- Done in good faith
- Assisting or advancing groups that need assistance in order to achieve an equal place with other members of the community

Privacy Act

- “Personal information” – information about an identifiable individual
- Information can only be collected for a lawful purpose
- Individual must be told why information being collected, what use will be made of it, what happens if it is not provided, and rights of access/correction
- Individual can access their personal information
- Information collected for a specific purpose can only be used for that purpose



Employer Obligations – Employment Agreements

Clauses to check for

Trial Period

Sick Leave

Medical
Assessment

Incapacity

Warranties /
Declarations

Employer Obligations – Sick Leave

10 days per annum after 6 months - **not** prorated

For when you or a person who depends on you for care is sick or injured

Proof of sickness/injury: 3 days or more - employee pays
Fewer than 3 days - employer pays

Medical appointments will depend on the circumstances but not guaranteed

Employer Obligations – Flexible Working Arrangements

Employee Request

- Request at any time, for any reason, as often as you like
- Request must be in writing and contain certain information including that the request is under Part 6AA of the Employment Relations Act 2000
- Flexibility as to hours, days, place

Employer Response

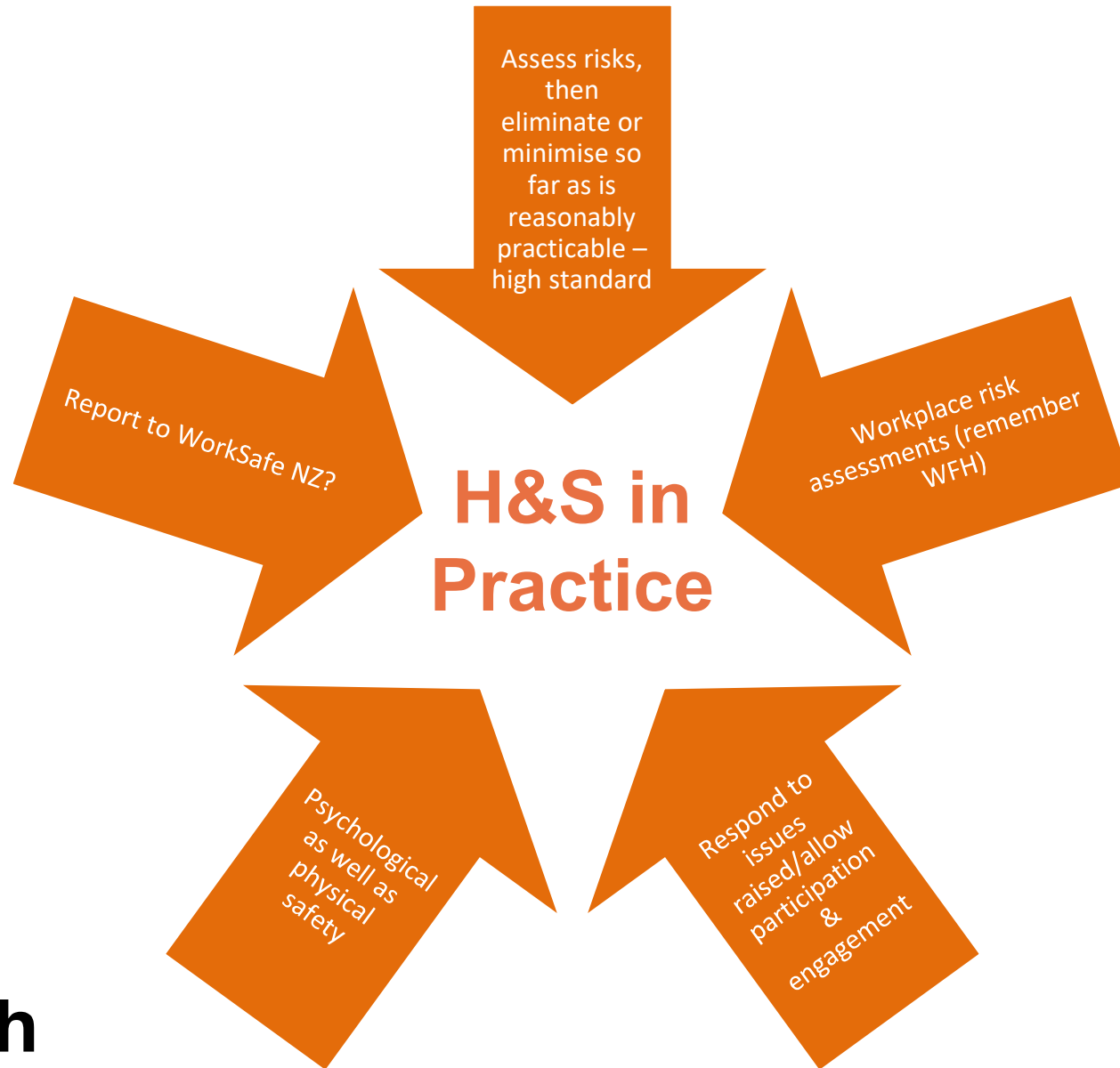
- Employer must respond as soon as possible but within 1 month
- Can only decline on certain grounds
- Different rules if you are covered by a collective agreement (i.e. you are a union member)

Employer Obligations – Health and Safety at Work Act

- A PCBU must ensure, so far as is reasonably practicable, the safety of its workers
- Work environment, plant, systems must be safe
- Information, instruction, supervision to protect from risks
- Health is monitored to prevent illness/injury from work



Employer Obligations



Termination for Medical Incapacity



Termination when an employee is incapable of ongoing performance of duties



Test for justification – was it a decision a reasonable employer could have made, and did the employer act in a way that a reasonable employer could have acted



No blanket rules for number of days' absence



All circumstances must be considered



When can an employer 'fairly cry halt'?

Resources

- <https://www.employment.govt.nz/>
- <https://www.whaikaha.govt.nz/support-and-services/education-and-employment/employment/>
- <https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/0d0258f22f/flexible-working-arrangement-guide.pdf>

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