



Managing Ill and Injured Employees

Belinda Winter

Legal risks

- Discrimination
- Unlawful / unfair termination
- Adverse action
- Bullying
- WorkCover
- Breach of Contract
- Breach of Industrial Instrument
- Breach of Privacy
- Misrepresentation
- Workplace Health and Safety



2

Work related or not?

- No WorkCover for non-work related illness or injury
- All other legal risks apply



3

Privacy

- If medical condition may impact on ability to perform inherent requirements of job then employers have a right to know
- Supervisor and HR need to stay informed



Medical examination

- Employers can direct employees to undergo an independent medical examination on reasonable grounds
- Always follow contracts, policies and specific legislation
- Brief Doctors carefully – GIGO



Accessing medical records

- Cannot use a WorkCover document for the purposes of employment
- Need employee's written consent to access medical records



Light duties

- Employers don't have to create a "light duties" position
- **BUT** duty to make reasonable adjustments
- Reasonable adjustments does not mean permanent changes to inherent requirements



Termination of employment

- Rehabilitation complete or limited prospects of improving in medium to long term
- Unable to fulfil the inherent requirements of original position
- Twelve month rule
WorkCover



Tips for employers

- Know your legal obligations
- Don't be afraid
- Keep communication lines open
- Be proactive
- Document everything





COOPER GRACE WARD
LAWYERS
www.cgw.com.au

Thank you

Belinda Winter

T 61 7 3231 2498

E belinda.winter@cgw.com.au
