
Disclosure of a worker's compensation claim information for the purpose of pre-employment screening

The *Workers Compensation and Injury Management Act 2023* (the Act) which comes into operation on 1 July 2024, introduces provisions to prevent disclosure of a worker's compensation claim history for the purpose of pre-employment screening.

Key Points

Section 506 of the Act introduces provisions to prevent disclosure of a worker's compensation claims for the purpose of pre-employment screening.

The intent of these provisions is to prohibit discriminatory practices such as where a worker is asked to disclose any worker's compensation claim as part of pre-employment screening and prohibit any person from disclosing information about a worker's compensation claim made by a worker for the purpose of pre-employment screening.

Under the Act, a penalty of up to \$10,000 may be imposed on an individual for unlawful disclosure of information about a worker's compensation claim.

Advice and Consideration

To assist employer and employee compliance with the new provisions on disclosure of information on a worker's compensation claim for the purpose of pre-employment screening, it is recommended agencies review their recruitment and selection practices to ensure that:

- during the application process, an applicant is not required to disclose any details of current and/or historical worker's compensation claim(s). This may include applicant questions -
 - in RAMS
 - on any hard copy or electronic application for vacancy form(s)
 - in any other on-line application process or system.
- during the pre-interview, interview, post-interview and/or any other pre-employment screening process, an applicant is not asked to disclose any details of current and/or historical worker's compensation claim(s).
- a person does not disclose information about a worker's claim for compensation to another person for the purpose of providing information to that person about the applicant's suitability for employment. This may include -
 - a panel member or any other person disclosing information about an applicant's current and/or historical worker's compensation claim(s) to any other person for the purpose of pre-employment screening
 - a person called upon to be a referee disclosing information about an applicant's current and/or historical worker's compensation claim(s) for the purpose of pre-employment screening.

Frequently Asked Questions

Q. Under what circumstances will the prohibition on disclosure of an applicant's claim history apply?

A. The Act prohibits workers from being required to disclose current and/or historical worker's compensation claims to employers seeking access to claim records as part of pre-employment recruitment practices. The prohibition does not apply in relation to information disclosure to facilitate return to work programs or the provision of a suitable position for workers that do not have the capacity to work in their pre-injury position.

Q. Disclosure of an applicant's claim history has been used to assess whether an applicant is physically capable to undertake the duties of a position. How can an employer fulfill their work, health and safety obligations under the new provisions?

A. Employers will continue to be able to meet their work, health and safety obligations and ascertain if an applicant is able to carry out the inherent requirements of the position (for example – through pre-employment medical assessment) but cannot enquire about any current and/or historical worker's compensation claims.

Q. My agency has commenced, but not finalised, a recruitment process (in RAMS) before 1 July 2024. The applicant questions ask an applicant to disclose details of current and/or historical worker's compensation claim(s). The questions cannot be amended or changed in RAMS until the recruitment process is finalised. How does the agency ensure compliance with the Act?

A. To minimise the risk of non-compliance with the Act you should consider including a statement in the selection report, which the selection panel signs, to confirm the panel did not consider any information relating to current and/or historical worker's compensation claim(s) when making a decision on an applicant's suitability.

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