Working with IBD
A Guide for Employees

Managing Crohn’s disease or ulcerative colitis in the workplace
Did you know?

- 2.1 million Australians of working age have a disability.
- A disability is any condition that restricts a person’s mental, sensory or mobility functions. It could be caused by accident, trauma, genetics or disease.
- A disability may be temporary or permanent, total or partial, lifelong or acquired, visible or invisible.
- 90 percent of disabilities are invisible.
- The Disability Discrimination Act 1992 requires employers to provide adjustments whenever it is necessary, possible and reasonable to do so. These adjustments could be any administrative, physical, or procedural accommodations made in a workplace to enable a person with a disability to work effectively, such as an enlarged computer screen or flexible hours.
- Australian research indicates that 86 percent of all such adjustments cost less than $500 and most can be implemented quickly. Government financial assistance may be available to employers in some cases.


www.humanrights.gov.au

The Cost of IBD

- Inflammatory Bowel Disease (IBD) is more prevalent than epilepsy, multiple sclerosis, rheumatoid arthritis, eczema and schizophrenia.
- The burden of disability for people living with IBD is comparable to that for people living with rheumatoid arthritis, severe asthma or amputation of an arm.
- Disability due to IBD is more severe than living with Type 1 diabetes or epilepsy.
- The economic cost of IBD in Australia is $2.7 billion annually.
- Loss of productivity accounts for more than half the $500 million financial cost of IBD.
- Productivity costs include absenteeism, workplace separation, early retirement and premature death.

Source: Access Economics Report 2007 “The Economic Costs of Crohn’s Disease and Colitis in Australia”

www.crohnsandcolitis.com.au
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*Working with IBD: A Guide for Employees*
IBD and the workplace

If you have Crohn’s disease or ulcerative colitis – the two main conditions described by the medical term inflammatory bowel disease (IBD) – you may have concerns about employment.

Whether you’re seeking employment for the first time or are planning a return to work after diagnosis, disease flare-up or surgery, there are several things you’ll need to consider to make the transition as successful as possible.

- How has my condition affected me physically and emotionally?
- What is the law with regard to employment?
- How do I make a disability discrimination complaint?
- Do I have to tell my employer about my IBD?
- Should I tell my co-workers?
- Can Centrelink help me through this process?
- What other services are available to support me with these changes to my life?
- Does my diagnosis affect WorkCover or OH&S requirements at work?
- Am I still entitled to insurance through my superannuation company?
- What if I need to stop work?
- What happens with my sick leave if I have a disease flare or require surgery?
- How can I return to work successfully after a long time away?

In this employee guide, we’ve set out to answer these questions in a simple and informative manner. Our aim is to support you in finding employment or returning to work so that you can live your life as you see fit. We also consider how you may be protected by the law.

How has my condition affected me physically and emotionally?

The physical and emotional impact of IBD is something you’ll need to consider carefully when applying for a new job or planning a return to work.

The physical symptoms of IBD – such as that “can’t wait” feeling and the extra tiredness and fatigue – are more obvious and so are the questions you’ll need to ask yourself:

- What are the physical demands of the job?
- How well will I be able to cope with the job duties?
- Does the job suit my circumstances?
As a start, you might consider making a list of the tasks that a role would require. Can you do all these tasks? How well could you cope with the tasks on a bad day or if you needed to be away for some days? Does the medication you’re taking affect you in any way? For example, do you have joint pain as a result of taking corticosteroids?

Employers are often able to be flexible with some tasks required in your role. However, you still must be able to perform the essential duties of a role. This is referred to in the Disability Discrimination Act 1992 as meeting the “inherent requirements of the job” and is discussed in more detail in the section, “What is the law with regard to employment?”

You’ll also need to consider the physical aspects of the work environment. For example, people who work on building sites or who need to travel for work (e.g. sales representatives) might not always have immediate access to toilets. You’d need to consider whether this type of job is right for you.

Perhaps less obvious, but equally important, is the emotional toll of IBD. This is often undervalued when planning a return to work. You’ll need to ask yourself:

- How well do I cope with stress these days?
- How well have I accepted the fact that I’m now living with IBD?
- How willing am I to let others support me on those “not so good” days?

Stress is inevitable in any job so you’ll need to be realistic and consider what your new level of manageable stress might be. If your IBD has made you feel depressed, have you considered getting treatment?

Now might be the perfect time to consider your work/life balance:

- Do you need to work full time?
- How about job sharing, working from home or a part-time position with flexible hours?

Each case of IBD is individual so there are no right or wrong answers to these questions. You simply need to address them honestly and fairly – for your own benefit and that of your employer.
Workplace discrimination

What is the law with regard to employment?

Many people with IBD don’t consider their condition to be a disability. However, the *Disability Discrimination Act 1992* provides several definitions of disability. Those that apply most to IBD are:

- total or partial loss of a part of the body
- malfunction, malformation or disfigurement of a part of the person’s body.

The fact that IBD may go into remission or that the symptoms can be controlled by medication does not prevent it from being covered by the *Disability Discrimination Act 1992*.

Some states have their own disability discrimination laws which use slightly different definitions of disability but are substantially the same. Here we’ll refer mainly to the federal *Disability Discrimination Act 1992*.

Key points of disability discrimination law and employment

Disability discrimination is unlawful only in some areas. In terms of employment, the *Disability Discrimination Act 1992* states that an employer cannot discriminate against any persons in their terms and conditions of employment during the application process or in promotion or dismissal.

According to the *Disability Discrimination Act 1992*, it is unlawful for an employer to:

- directly discriminate* against an employee because of their disability
- indirectly discriminate† against an employee because of their disability
- refuse to make reasonable adjustments for a person’s disability
- harass an employee because of their disability
- require an employee with a disability to provide information that might be used to discriminate against them
- victimise an employee because they have made a disability discrimination complaint.

* Direct discrimination occurs when someone is treated less favourably, or is proposed to be treated less favourably, than someone else in similar circumstances who does not have a disability. Less favourable treatment may include being ridiculed or denied something to which the person was entitled.

† Indirect discrimination occurs when someone is expected to meet some sort of criteria that they are unable to meet because of their disability, and these...
criteria are probably able to be met by someone else without a similar disability. For indirect discrimination to be unlawful, the expectation or criteria placed on the person with a disability must be something that is “unreasonable in the circumstances”. For people with IBD, an example of indirect discrimination in the workplace may be limiting the number of toilet breaks that workers can take during a shift.

Meeting the “inherent requirements of the job”
The Disability Discrimination Act 1992 states that employees are not obliged to meet all the requirements of the job, only the really essential ones. This is called meeting the “inherent requirements of the job”. For example, a data-entry clerk must be able to type on a computer, but would not be required to sit at a desk as they might be able to stand. Employers have a responsibility to inform employees about the essential requirements of the job.

However, if someone is unable to perform the main tasks or a majority of the main tasks of a job (i.e. is unable to meet the “inherent requirements”) because of their disability, even after reasonable adjustments are made to accommodate them, it may be lawful to dismiss or not employ that person.

An employee must also be able to perform the inherent requirement of a job safely in order to ensure a safe workplace for all employees, as covered by the Occupational Health and Safety Act 2004. Situations that require protection of the health and safety and/or property of any person, including the general public, can be grounds for rightful discrimination. The opportunity also exists for employers to gain court approval to discriminate lawfully.

The legal aspects of employment differ somewhat in each State or Territory. If you have any queries or concerns, you’re advised to consult with an advisor at the Disability Employment Network or in the disability legal profession. These services are government funded and provide free advice. For more information, contact the JobAccess Advisers on 1800 464 800 or visit www.jobaccess.gov.au.
Workplace discrimination

How do I make a disability discrimination complaint?

If you feel you’ve been discriminated against in the workplace, denied a job or unfairly dismissed because of your IBD, you may have the right to make a complaint. However, you’ll need to consider this very carefully as the process can be slow and highly stressful.

There are several avenues to making a complaint. The most appropriate one will depend on your individual circumstances. Legal action under disability discrimination law is only one of several options.

In most cases it would be best to try to resolve the issue with your employer before taking it any further. As a start, you could have an informal conversation with your employer or manager to let them know your concerns about how you feel you’ve been treated. If the situation doesn’t improve, you could make a formal complaint through your employer’s internal grievance procedure.

Beyond that, legal action can be taken in several different areas of law and at several different levels (e.g. individual or collective action). It’s always wise to seek legal advice before making a disability discrimination complaint.

For more information or to get help in writing and lodging a complaint, contact the federal Human Rights and Equal Opportunity Commission or the equivalent body in your State or Territory. They can’t give you legal advice but can help you to understand the things you’ll need to do and make sure that you follow the right procedure. For more information, visit their website at www.hreoc.gov.au.

Do I have to tell my employer about my IBD?

It’s understandable that you may have concerns about disclosing your condition to an employer for fear of being at a disadvantage. Some examples of possible reasons to disclose or not disclose your IBD are provided below. You may have other reasons depending on your own individual circumstances.

Reasons to disclose

• Skills and knowledge gained through having IBD may be relevant to the job
• Need to request a workplace adjustment or modification, either now or in future
• Employer has a strong equal opportunity policy
• To promote the fact that IBD does not hinder peoples’ ability to work successfully
• Your employer may have greater empathy for sick leave as needed
• To ensure your own safety and that of your co-workers (OH&S).

Reasons to not disclose
• IBD has no possible impact on job
• Fear of discrimination (this is illegal if experienced)
• Your IBD may be in remission
• You may not consider your IBD to be a disability or affect your ability to work
• Your employer may not consider it important to know

Generally, you don’t have to tell your employer about your IBD unless:
• you’re asked directly about any known health conditions that might impact on your job performance
• it’s an occupational health and safety risk
• it’s stipulated in your contract of employment.

Even then, you cannot be forced to disclose your condition, but there may be consequences if you do not and you may wish to do so in order to prevent any possible repercussions should knowledge come to light. If you’ve deliberately misled an employer or given false answers to questions asked at recruitment or interview, there may be lawful cause for dismissal or for choosing not to employ you.

Given the nature of IBD and its symptoms, it’s likely that you won’t be able to keep your condition under wraps for too long, especially during times of disease flare-ups. So the issue really becomes one of “when” rather than “if”. You’ll need to gauge what you think the reaction of your employer will be and perhaps enlist the support of your doctor, trade union representative or disability employment advisor if necessary.

There are certain advantages to disclosing your condition sooner rather than later. It may come as a great relief not to have to try to hide it any longer and you may gain the support of your manager and colleagues once they’ve understood what’s going on. Disclosing your condition is also helpful if you need to request workplace adjustments under the Disability Discrimination Act 1992.

It may come as a great relief not to have to try to hide it...
Workplace adjustments

Under the Disability Discrimination Act 1992, employers must take reasonable steps to accommodate their employees’ disabilities. For a person with IBD, some examples of reasonable workplace adjustments include:

• time off for medical appointments or treatment
• later starts
• shorter, different or flexible working hours, including job-sharing, part-time or working from home
• unlimited toilet breaks
• locating your workstation closer to the toilet
• providing a car parking space close to the workplace entrance
• re-allocation of certain duties among other staff members.

If you’ve not declared your IBD beforehand, an employer may be justified in declining to make adjustments for you. Also, employers may not be required to make workplace adjustments if they can show it would be an “unjustifiable hardship” for them to do so. This hardship may be defined as a large financial burden, detriment to other staff members or if the adjustment compromised the effectiveness of the business as a whole.

In cases where adjustments are more expensive, such as installing separate toilet facilities, it’s possible that your employer may qualify for financial assistance through the Workplace Modifications Scheme. Before approaching your employer to discuss such an option, it would be wise to consult with an advisor who can review your case and recommend suitable adjustments based on your individual circumstances and the level of funding that may be available to your employer.

For more information, contact the JobAccess Advisers on 1800 464 800 or visit www.jobaccess.gov.au.

Privacy and confidentiality

Employers have a responsibility to respect the privacy of all job applicants and employees, and to ensure that any information provided to them is treated appropriately. This means that any information you disclose to them about your condition must be regarded as confidential.

Also, your employer can’t force you to see a company doctor or sign authorities without your consent to obtain medical reports from your doctors. There are some exceptions to this rule e.g. for Workers’ Compensation claims.
Your employer must also respect your wishes with regard to telling others in the workplace about your condition, including the management team.

**Should I tell my co-workers?**

The decision to tell others in the workplace about your condition is your own to make. However, there are some advantages in letting key people know, especially your manager and immediate co-workers.

It can be quite stressful trying to hide your symptoms or the need to take medications, not to mention continually coming up with novel excuses for absences or late starts! If your fellow workers know that you’ve got a chronic medical condition and understand what it means, they’re more likely to give you the support and assistance you require. This can help create a more harmonious working environment. If your colleagues don’t know about your condition, they may jump to wrong conclusions or believe you’re getting preferential treatment, especially if your employer has made workplace adjustments for you. Co-workers often need to be involved in workplace adjustments (e.g. re-allocation of certain duties or cover for toilet breaks, etc). They’re more likely to co-operate if they understand the reasons behind the request.

It may also be a great relief to be able to talk openly about your IBD and it’s a good opportunity to show others that a chronic medical condition hasn’t stopped you from getting on with your life. Understandably, you might feel embarrassed having to explain something as personal as the frequent need to rush to the toilet and might not know how best to approach it. As a start, it might be helpful to give your manager and fellow co-workers this booklet. That could break the ice and give them enough information to feel comfortable asking other questions.

Explaining that IBD is not infectious is particularly helpful, as this may be a concern to some people. It may also be useful to explain that IBD is different from Irritable Bowel Syndrome (IBS).

If you don’t feel comfortable telling your manager and co-workers about your IBD yourself, you might consider enlisting the support of a friend or colleague, occupational health worker, trade union representative or disability employment adviser.
Support network

Can Centrelink help me through this process?
If your IBD is preventing you from working or being able to seek work, Centrelink can help.

Before approaching Centrelink, it’s best that you speak with your clinical team to get a clearer idea of where your condition may be heading in future. Explain to them that you’re thinking of applying for Centrelink support until you’re well enough to work again. Centrelink requires documented evidence for all medical conditions as well as the likely outcome of these conditions. So it’s important that you consider not just your primary condition of IBD but also the other possible effects it has on your life. These are considered secondary medical conditions and may include arthritis, depression, anxiety, insomnia, comprised immune functions, lethargy, nutritional imbalances, anaemia etc.

At present, there are three types of payments available for people with a medical condition who are looking for work:

- Newstart Allowance
- Disability Support Pension
- Sickness Allowance.

For more information about these payments and eligibility criteria, visit the Centrelink website at www.centrelink.gov.au. Each Centrelink office also employs a social worker who can work out the best type of payments for people in time of hardship.

What other services are available to support me with this change to my life?

Through Centrelink you may also be referred to Job Capacity Assessment, which is a department that reviews the medical evidence you’ve provided and assesses your ability to return to the workforce and participate in employment. Based on the assessment, you may be further referred to a service that is most appropriate for your personal circumstances.

Available services include:

- Job Network
- Disability Employment Network
- Vocational Rehabilitation
- Personal Support Program.

These services are all federally funded and are free of charge for persons who meet the eligibility criteria.

For more information about these services, contact the JobAccess Advisers on 1800 464 800 or visit www.jobaccess.gov.au.
Another government-funded service is the Allied Health Plan, which entitles you to receive six discounted sessions with an allied health professional via your Medicare card. For example, you could consult with a psychologist to prepare yourself psychologically for a return to work, or consult with a physiotherapist to help build your muscle capacity and endurance after a long period of illness. Application forms for the Allied Health Plan need to be completed by your doctor.

**Does my diagnosis affect WorkCover or OH&S requirements at work?**

**WorkCover**

WorkCover is workplace injury insurance that covers people who are injured at work or who become sick because of something that happened at work. A diagnosis of IBD is not a reason for a WorkCover claim as it is not directly related to work. On the other hand, your IBD does not prevent you from being covered by this insurance in the event of a work-related injury or illness.

It’s possible that a work-related injury or illness may bring on a disease flare or co-incide with a disease flare. WorkCover providers understand that people with disabilities may have individual or particular needs to consider in order for them to return to work safely, and have developed the WorkCover Disability Action Plan. If necessary, and working in conjunction with your employer, your doctors and yourself, a WorkCover return-to-work co-ordinator will draw up an action plan specific to your circumstances to help facilitate your transition back to work.

For more information about WorkCover, visit the website relevant to your State or Territory.
OH&S
Under Occupational Health & Safety (OH&S) legislation, employers must ensure the health, safety and welfare at work of all employees. To meet these responsibilities employers are obliged to provide:

- safe premises
- safe machinery and substances
- safe systems of work
- information, instruction, training and supervision
- a suitable working environment and facilities.

As discussed in the section, “What is the law with regard to employment”, the inherent requirements of a job include reasonable occupational health and safety standards. If an employee is unable to work safely, the employer is required to make reasonable adjustments to the workplace to ensure the employee’s health and safety at work, unless such adjustments would cause unjustifiable hardship to the employer or business.

In many work situations, having IBD will not put your own safety or that of other employees at risk. But there are some circumstances where it might, such as operating heavy machinery or working in the fire brigade or on a production line. You’ll need to assess your own situation carefully. If you think there’s even the slightest possibility that your IBD may put yourself or your co-workers at risk during the course of your work, it is best to tell your employer about your condition immediately.

Am I still entitled to insurance cover through my employer’s funds?
When applying for a job, it’s possible you may be asked about any known health conditions for employment superannuation or insurance purposes. With most funds you’re entitled to some disability cover, even if you already have an existing disability. If you are asked, you must disclose your IBD or a future claim may be rejected.

You may also have income protection insurance (also called Salary Continuance Insurance) through your employer, an association or from a personal policy. With some employer’s income protection policies, leaving work may affect your right to claim in future.

If you’re not sure of your rights or if you feel you’re being “mucked around” by an insurance company, you’re advised to seek professional advice.

If you don’t get a job or insurance cover because of your disability, you may have reason for making a disability discrimination claim.
What if I need to stop work?

If you need to stop work altogether because of your IBD, you may be eligible for employment termination payments such as redundancy benefits, payment in lieu of notice or an *ex gratia* lump sum. This will depend on your individual work circumstances. The type of payment and the amount you’re paid may also depend on why you leave work and whether it’s voluntary or not. It may also affect the amount of tax you’ll need to pay.

You may also be able to claim a disability lump sum or pension through your superannuation fund. Most employment superannuation funds include disability benefits – usually lump sums – if you’re no longer able to do your usual job or other suitable work on a permanent basis. Some superannuation funds also pay disability pensions if you can’t work for now, even if it’s not permanent. Other funds allow you to continue your disability cover even after you leave work, provided that you take up the option within one or two months or if there is enough money in the fund to keep the insurance cover going. With most superannuation funds you can make a disability claim at any time, but with some funds, terminating your employment may affect your right to claim the monthly payments.

If your doctors agree that you should stop work because of your disability, you’ll need to consider the various options. It’s best that you don’t resign, sign any papers or make a claim before getting professional advice. If you’ve already left work, you should get advice straight away.

If your superannuation or insurance claim is rejected, you can appeal to the courts, to the Superannuation Complaints Tribunal or to an insurance complaints scheme.
Sick leave

What happens with my sick leave if I have a disease flare or require surgery?

All employees (except casual employees) are eligible for sick leave in the event that they suffer a personal illness or injury. In general terms, this amounts to 10 days a year for full-time employees and is pro-rata for part-time employees. But given the nature of IBD, it’s possible you’ll need to be away from work for longer periods of time in the event of a severe flare-up or to have surgery.

As described in the section, “Am I still entitled to insurance cover through my employer’s funds?”, you may have income protection insurance (also called Salary Continuance Insurance) through your employer, an association or from a personal policy. Under some policies you are covered even if your IBD is predated becoming a member. Some employers provide this type of insurance as a benefit for all employees, so it’s worth checking out as it could be something to negotiate with your employer. Otherwise, you might consider applying for personal income protection insurance through the various insurance companies.

How can I return to work successfully after a long time away?

It’s not uncommon for people to lose confidence about being able to return to work after periods of sick leave, even after a relatively short time away. Keeping in touch with your employer during your absence can help ease this process. An occasional phone call or email to your manager or close colleague may be enough to make you feel like you’re still ‘in the loop’. The level of contact can be increased as you get closer to a return.

It’s important that you’re involved in planning your return to work, as this gives you the opportunity to voice any concerns you may have and request any workplace adjustments. If you’ve been away from work for some time, a phased return might be the way to go. This could involve working only a few hours a day at first and gradually increasing your hours as your health improves. Other useful strategies to consider in the early stages of a return to work are taking on a lighter workload or working from home if possible.

It might all feel a bit strange at first, especially if you’ve just been diagnosed with IBD, have had a particularly severe flare-up or have recently undergone surgery. Will your colleagues understand
what you’ve just been through and what might lie ahead? Will they think you’re weak and can’t be relied upon anymore? These are common concerns and are perfectly understandable. But don’t write off your co-workers too soon! With a bit of knowledge about your condition and what its implications are, they’ll be more inclined to give you the support and encouragement you need to make a successful return to work. See section, “Should I tell my co-workers?”

A return to work could affect your chances of getting superannuation or insurance disability benefits, although a return to work with a new employer could mean you can get new disability insurance, even covering your IBD. It’s important to get legal advice before you return to work.

Remember, the three main factors known to be important in terms of working successfully are:

1. maintaining a positive attitude
2. not denying the challenge of living with a chronic condition
3. seeking the support and understanding of other people.
4. get legal advice about your superannuation & insurance entitlements.

The choice is yours. Now just go for it!
Crohn’s disease or ulcerative colitis shouldn’t stop you from living your dream.

Crohn’s & Colitis Australia™ are aiming to raise awareness of the workplace and career challenges facing many people living with Crohn’s disease or ulcerative colitis.
Information Sources

*Employment and IBD: a guide for employees.*
National Association for Colitis and Crohn’s Disease (NACC).
www.nacc.org.uk

*Using Disability Discrimination Law.*
Victoria Legal Aid. August 2008

*Work, Superannuation and Disabilities.*
Maurice Blackburn Lawyers.
John Berrill, Lawyer
Andrew Weinmann, Solicitor

Disability Discrimination Legal Service
www.communitylaw.org.au

Centrelink
www.centrelink.gov.au

Human Rights and Equal Opportunity Commission
www.humanrights.gov.au

JobAccess
www.jobaccess.gov.au

Australian Bureau of Statistics
www.abs.gov.au