

SECTION 18 – AN UPDATE

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PART 1 :- The Employer's Duty to Provide Work

An employer must provide suitable employment to a worker who has an incapacity as a result of a work injury.

PART 2 :- The Exceptions

The duty does not apply if:

- (a) it is not reasonably practicable to provide [employment](#) in accordance with that subsection (and the onus of establishing that lies on the [employer](#)); or
- (b) the [worker](#) left the [employment](#) of that [employer](#) before the commencement of the incapacity for work; or
- (c) the [worker](#) terminated the [employment](#) after the commencement of the incapacity for work; or
- (d) new or other [employment](#) options have been agreed between the [worker](#), the [employer](#) and the [Corporation](#) under section 25(10); or
- (e) the [worker](#) has otherwise returned to work with the [pre-injury employer](#) or another [employer](#).

PART 3 :- Applications to the SA Employment Tribunal

A worker seeking employment with the pre-injury employer can apply to the Tribunal for an order that the employer provide employment specified by the Tribunal.

UPDATE

- No decisions in the Tribunal in relation to s18 at this stage.
- 1 case listed for Trial on 26 November 2015 (involving a registered employer).
- 11 applications lodged in the Tribunal so far.

URSULA'S APPLICATION

- Aged 54.
- Employed as a Baker's Assistant by a registered employer.
- Unable to return to suitable employment with the pre-injury employer - "detached" in 2013.
- The worker's employment was terminated in 2013 on incapacity grounds.
- Income Maintenance was discontinued.
- Miraculous recovery (but not a full recovery!).
- Section 18 application lodged.

What can we learn?

1. The options available to Ursula's employer.
2. The effect of termination of employment.
3. Unfair dismissal issue.

GRAHAM'S APPLICATION

- Aged 62.
- Employed as a Machine Operator at a mine site by a registered employer.
- Detached.
- Made redundant along with many other co-workers due to downturn in work in mining industry.
- Dispute about weekly payments.
- Section 18 application lodged.
- Section 18 of application withdrawn on basis of RTW SA paying a redemption.

What can we learn?

1. Cash grab?
2. Are we creating a culture where workers will expect to be paid to resolve s18 applications?

KAREN'S APPLICATION

- 55 year old enrolled nurse.
- Right shoulder injury in 2014 (with a registered employer)
- GP says worker cannot return to pre-injury employer.
- Still employed but not working.
- Section 18 application seeking “administrative tasks throughout the organisation”.

What can we learn?

1. There is no one way to respond to an application.
2. Worker's who are still in employment are making Section 18 applications.

Any Questions?