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The Productivity Commission
Disability Commission Act Inquiry
LB2 Collins Street East
MELBOURNE VIC 8003.

MY SUBMISSIONS: The DDA and making the DDA to work.

Was I aware of the Disability Discrimination Act specifically? My answer is "no". I say this because I am a bit confused. Is this DDA linked to the Equal Opportunity Act (Victoria) or to The Disability Discrimination Act (Federal) or to the Australian Industrial Relations Commission Act s170CK? If not, is this DDA a totally different and separate Act? If so, then this Act should be made known to people wanting to make a complaint. People should also be informed of their rights that in making a complaint under a State or Territory Law, then he or she can no longer make a complaint to the HREOC.

The Equal Opportunity Commission of Victoria do not send you specific guidelines on Disability Discrimination, the AIRC do not specify their guidelines on DD nor do you have any specific guidelines on the DDA (Federal). In the absence of this, a person experiencing DD does not know whether he or she could complain. Those who complained and had their complaints turned down by the Commission do not really know if the Commission's decision was in accordance with the guidelines. Even if it is not, the EOC says that the Commission has no power to review its decision or re-open a file on the basis that there is a disagreement concerning the decision it has made.

So if a person made a complaint of DD under a State or Territory law he or she cannot make a complaint to HREOC. But what happens if the person who made a complaint of DD under any of these laws, but their complaint was ignored, not properly addressed or totally discarded by the Commission set up under State or Territory Law? What if the Commission in a decision they have made directly or indirectly support DD of an employer?

In my opinion for the DDA to really work the DDA should be the final authority on deciding if a person was discriminated by his/her disability. If a person had made a complaint under a State or Territory law and it is proved that the complaint was not properly addressed by the law, then the DDA should have the right to intervene and set things right.

Now for an example, I complained to the Equal Opportunity Act (Victoria) on May 15 2000 that I have been on workcover leave due to extreme workplace related stress and I have been in negotiation with my employer with regard to my

returning to work. I sought assurance from my employer that I will be able to come back to work and carry out my duties in a workplace free from discrimination, victimization and harassment. However, my employer has told me that my return to work will be conditional upon my agreeing to carry out additional duties which were outside my role as a storeman. I told the EOC that I did not agree to my employer adding on to my duties and the only reason for them doing so was to cause me further stress.

The EOC in reply informs that the issues I raised in my return to work do not constitute impairment discrimination...

In one of an old guidelines of the EOC it says it is unlawful to discriminate against a person because he or she had a mental or physical disability unless they cannot do the work reasonably required of them...So for example it would be unlawful to make a person redundant because they had been off work due to an injury...

I complained to the AIRC in March 2002 about forced redundancy and claimed reinstatement. The Respondent's representative in his submission stated that there was a serious breakdown in the relationship between the Company and myself given that I had 12 months WorkCare leave due to stress up to Nov. 2000 and my reinstatement could well result in a similar situation.

In the AIRC decision dated 12 December 2002 the commissioner in his decision (on my application for reinstatement) states in paragraph (45) I turn now to the question of remedy. I accept the respondent's contention that reinstatement is not appropriate. I do so having regard to the nature of the relationship between the applicant and the respondent over the past two years and the fact there is now not a position at the Dandenong site...

Hence the Commissioner in accepting the Respondent's contention as one of the reasons as to why my reinstatement was not appropriate is by itself directly supporting the Disability Discrimination by my employer in not wanting to re-instate me because I suffered a mental disability.

I filed a new complaint of victimisation with the EOC with the help of one of their advisers. I was not told before my complaint was registered to select one law under which I wished to proceed. I was denied this opportunity by the EOC.

On August 6 2003 the EOC declined my complaint. In Paragraph 3 of this letter, the chief executive states, the RC has dealt with the alleged forced redundancy and found in your favour... In paragraph 4 the chief executive "it did not seem appropriate for the Equal Opportunity Commission to become involved in disputes arising from the IRC'S process or a decision on compensation in an unfair dismissal case.

Now in the EOC guidelines on redundancy and anti-discrimination laws...."Otherwise a person who has lost his or her job or had or received less than other workers with comparable backgrounds. maybe entitled to complain of unlawful discrimination".

1 complained to the EOC that I was made redundant and 1 received less than other workers with comparable backgrounds by the Commissioner order and unless this is corrected it amounts to unlawful discrimination under the EOC Act.

Hence here again the Commissioner of the AIRC knowing or unknowing committed an unlawful discrimination under the EOC Act and the EOC says it cannot act involved. Is that to say that the AIRC, the State or the Federal can committed an unlawful discrimination under the EOC Act and the EOC cannot get involved?

Hence once again 1 state that for the DDA to really work, the DDA should be the final authority on deciding if a person was discriminated by his/her disability. If a person had made a complaint under a State or Territory law and it is proved that the complaint was not properly addressed by the law, then the DDA should have the right to intervene and set things right.

In the circumstances mentioned it should not matter if a person made a complaint of DD under a State or Territory law he or she should be able to make a complaint to HREOC and especially so if be or she were not made aware of the different scopes and remedies for discrimination available under the state and federal laws. This will then create equality before the law for all the people with disabilities.

Yours Faithfully,

Ivor Fernandez