

# Cancer and insurance, employment and legal issues



**This information sheet aims to provide guidelines about your insurance and legal options as a result of being diagnosed with cancer. To get the best advice we suggest you see a qualified insurance professional or lawyer who specialises in the area that you are interested in.**

To find someone who specialises in insurance you can contact Financial Advice NZ. For legal matters contact the New Zealand Law Society or District Law Society, or your local Community Law Centre. Contact details are provided on the last page of this information sheet. This information is general and applies to the whole of New Zealand.

## Personal insurance

Some people living with cancer may be able to claim or make use of various benefits from personal insurance

policies they hold.

### Life insurance

If you are terminal (your life expectancy is less than 12 months), most insurers will pay you the sum assured in advance. This will need to be verified by your specialist.

### Disability insurance policies

#### *Disability income or income replacement insurance*

A claim is made after the expiry of your waiting period and must be supported by financial and medical reports. The Benefit will be 'offset' by other income benefits you may receive e.g. employment sick leave, ACC or Work and Income benefits.

#### *Critical illness or trauma insurance*

The insurer usually pays a claim on the diagnosis of many cancers, providing your situation matches the policy wording conditions. Some cancers, especially those in the early stages, may not be covered to begin with. Some policies pay a partial benefit for less severe cancers.

#### *Mortgage replacement insurance*

If you have one of these policies, such as from a bank, it may have a disability extension. It could mean that either your mortgage payments are 'waived' by the insurer, or a claim may be payable for disabling or TPD (total and permanent disablement) benefit (see below).

#### *Total and permanent disablement benefit*

Commonly referred to as TPD, this may be claimed if you have been unable to work for a period of time (often six months) and it is determined that you are totally and permanently disabled with no likelihood of ever returning to work again.



## Waiver of premium benefit

This is a supplementary benefit that usually applies to all disability income or income replacement insurance policies. It may also apply to some life insurance policies and personal superannuation plans. It means that the insurer will 'waive' all future premiums whilst you are disabled.

## Health and medical insurance

Providing your cancer is not excluded as a 'pre-existing condition' your medical bills for treatment and operations may be reimbursed. This also depends on the benefits and/ or limitations of the particular policy you hold.

Insurers usually offer a pre-approval service that should be able to confirm whether your cancer procedure is eligible for cover and any limitations or exclusion conditions that apply.

You will need to provide the insurer with an estimate of costs from the health service provider and they will confirm the level of cover available, including any excess or part-payment that you may need to make. They may advise if any estimates exceed the policy limits.

Some insurers fund non-Pharmac approved medications (that are not government subsidised) up to a certain limit, so you can access treatment not available in public health-care.

You may also be able to claim for overseas treatments not available in New Zealand. They need to have been approved by the insurer and a cancer specialist. Some insurers may allow you to add more cancer cover to your policy, such as a lump sum payment, for an additional fee.

## Travel insurance

All travel insurance policies exclude pre-existing conditions and you need to be aware of this before you travel overseas. This means air fare cancellation and any costs related to your cancer while travelling abroad are not recoverable unless you've declared them and paid any additional premium required by your insurer.

New Zealand has reciprocal healthcare arrangements with Australia. This means treatment of any immediate or necessary health issue, should be covered while you are in Australia and before you return home. This does not extend to treatment in private hospitals or treatment that you have specifically traveled to Australia to have. Medical repatriation is also not covered.

When applying for travel insurance, be sure to answer all of the health questions carefully and fully disclose your pre-existing conditions. The insurer will make an assessment based on your current health and treatment status. You may find that some companies offer full cover at an additional

premium.

Others may decline full cover but offer partial cover with special acceptance terms or higher excess levels. If you're looking for travel insurance it is worth contacting the Cancer Society 0800 cancer help-line as they may know of some individual insurers who could help you. Or an insurance broker can help look for your best option.

## Sundry personal policies

Some credit card providers, employers, unions, credit unions and sporting or social clubs, have disability policies for their members. You should check your records with that organisation.

## Making claims and appeals

Insurance claims can usually be made at any time although it is better to make a claim as soon as possible. If the insurance company rejects your claim you can appeal their decision to the Insurance Ombudsman.

## Obtaining new insurance policies

If you already have a cancer diagnosis it may be difficult applying for a new policy for life and/or disability benefits, unless you have 'Guaranteed Insurability Rights' under an existing personal insurance policy.

You will be asked to complete a full medical statement for the insurer and you must disclose everything that you know. In New Zealand, because of the Human Rights Act, all insurance companies must genuinely attempt to offer you insurance. They will attempt to calculate their 'risk' and when they have, they will often charge a much higher premium – as your risk is now greater.

If they cannot calculate the 'risk', usually because there is too much uncertainty in the information they have to work with, they may defer making a decision, regardless of the type and stage of cancer, until your condition is more stable.



electronically, you'll need to bring or send it in.

## Employer superannuation plans

Many people living with cancer may be able to claim a lump sum or pension if they have a superannuation plan with their employer.

Superannuation plans often provide for a lump sum to be paid to you if you cannot keep working because of your illness. They may also pay a monthly benefit while you are sick.

If you are not sure whether you are entitled to any disability benefits, or if you cannot find any of your statements, you should ask your employer, your superannuation trustees, or someone who has expertise in this area. A new employer superannuation plan may offer death and disability benefits even though you have cancer, so if you are offered this, you should take it. Furthermore, if you leave your employer, be sure to 'convert' all your insurance benefits, within the prescribed period offered, as you do not have to complete any medical forms.

## Returning to work

If you stopped work because of cancer, return to work if your health improves and you feel that you are able to go back to work. You will not have to repay your superannuation contributions, or any monthly disability benefits received. If you are receiving a pension or insurance benefit, you have to tell the superannuation trustees or insurer when you return to work. If you do not tell them, you may be liable to repay any over-payments you have received. Your employer may restart your superannuation contributions.

### *Kiwi Saver*

You are able to take a contributions holiday for between three months and five years. You are able to withdraw your savings early if you suffer a serious illness or if you are experiencing significant financial hardship.

any medical forms.

## Income support

If you have to stop work because of a health condition, injury or disability, Work and Income (a section of the Ministry of Social Development) may be able to help you.

**It's important you contact them right away as there may be a stand-down period before you get any payment.**

You'll need a medical certificate from your GP or specialist. Some health practitioners send medical certificates electronically. If you already have a Work and Income client number, make sure they include that on the certificate. If your health practitioner doesn't send your medical certificate

### *Supported living payment*

This is a weekly payment to help you if you have or you are caring for someone with a health condition, injury or disability. You may be able to get the Supported Living Payment if you are either:

- permanently and severely restricted in your ability to work because of a health condition injury or disability
- caring full-time for someone at home who would otherwise need hospital-level or residential care (or equivalent) who is not your husband, wife or partner.

You must also be a New Zealand citizen or permanent resident who normally lives here, and who has lived here for at least two years at one time since becoming a New Zealand citizen or permanent resident. There is an income limit for this income support. For more detail go to their website at:

<https://www.workandincome.govt.nz/products/a-zbenefits/supported-living-payment.html>

### *Restarting work and the affect on your benefit*

If you start work again, your income support payments may be affected. You will need to keep Work and Income informed of any changes to your situation. They will be able to advise how lump sums from superannuation, Kiwisaver or insurance may be taken into account in an asset test.

### *Community Services card and other assistance*

You may also be able to get a Community Services Card from Work and Income to help with the costs of visiting your doctor, getting prescriptions and other services.

If you have dependent children 18 years and under, you may qualify for Family Support. Or you may be eligible for an accommodation allowance.

You may also be able to get other types of help through the health system, such as home support services or time off for caregivers. Please ask your GP for details.

### *Where can I get help?*

There are a number of voluntary organisations that may be able to give you advice. You may like to contact the Citizen's Advice Bureau, Age Concern, Superannuitants Insurance Services, or the Disability Information Service (see contact details on the last page of this information sheet).

You may wish to ask a lawyer who has expertise in superannuation and insurance for advice or see a financial advisor.

## Effects on employment

### *Looking for a new job after cancer: your legal obligations around disclosure of your cancer status.*

There is no obligation for a cancer survivor to disclose to a potential employer that they have had cancer/finished cancer treatment unless the potential employer asks. It's more common for potential employers to ask general health questions, such as whether the applicant has been diagnosed with or treated for any medical conditions which would affect the applicant's ability to perform the tasks of the position.

Questions that relate directly to performance of a position being applied for are likely to be lawful and are a common feature of employment forms. An applicant must answer these questions truthfully. For clarification, providing misleading information out of fear of discrimination is not an excuse for not answering truthfully.

Many employers will be supportive when an employee is diagnosed with cancer. However, if after a diagnosis of cancer you feel that your employer treats you unfairly or harshly, there are ways you can challenge this.

### *Termination of employment*

If you are dismissed or your employment is terminated, it may be a case of unfair dismissal, giving rise to a personal grievance under the Employment Relations Act 2000.

For initial advice and referral to a lawyer who specialises in this area, see the contact details on the last page of this information sheet. You can also contact the Employment Relations Mediation Service at Employment NZ.

### *Personal grievance*

Legal proceedings can be brought for a personal grievance under the Employment Relations Act 2000. Where an application is lodged, mediation between the parties can be arranged promptly by Employment NZ at no cost to you. A personal grievance may arise in the following situations:

- (a) the employee has been unjustifiably dismissed
- (b) the employee's employment, or one or more conditions of the employee's employment is affected to the employee's disadvantage by some unjustifiable action by the employer
- (c) the employee has been discriminated against in the employee's employment.

It is important to note that an application must be lodged within 90 days after the day on which the personal grievance occurred.

### *Unlawful termination*

In some cases, the termination of employment will be unlawful (illegal). A relevant unlawful reason for terminating a person's employment is discrimination on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, employment status, family status, pregnancy, religious or ethical beliefs, political opinion, ethnic or national origins. If you have cancer, the relevant reason here will be physical or mental disability.

Unlawful discrimination may happen when a person with a disability is treated less favourably than a person without that disability in the same or similar circumstances.

Unlawful discrimination may also happen indirectly in the case where a person with a disability is required to comply with a requirement or condition which, due to his or her disability, cannot be complied with, and which is unreasonable in the circumstances.

Further, an employer must not discriminate against an employee on the grounds of his/ her disability or impairment in:

- (a) the terms or conditions of employment or work
- (b) denying or limiting access to opportunities for promotion, transfer or training or to any other benefits connected with the employment
- (c) dismissing the employee or otherwise terminating employment
  - (a) retiring that employee, or requiring or causing that employee to retire or resign
  - (b) subjecting the employee to any detriment.

If you feel discriminated against, the law that is relevant is the Employment Relations Act 2000, the Bill of Rights Act 1990, and the Human Rights Act 1993.

If you believe that you have been unlawfully discriminated against because of a diagnosis of cancer you should seek legal advice. Go to [www.employment.govt.nz](http://www.employment.govt.nz) to access mediation. You can also contact the Human Rights Commission for help.

## Guardianship

After being diagnosed with cancer, you may have some concerns about your children and who will look after them if you die. In your Will you can say who you want to care and provide for your children. However, in the event that someone makes an application to the Family Court for guardianship of your children, the Family Court will consider your wishes, but will ultimately decide on the basis of what is in the 'best interests of the child'. If you have to stop work because of a health condition, injury or disability, Work and Income (a section of the Ministry of Social Development) may be able to help you.

- Legal Aid [www.justice.govt.nz](http://www.justice.govt.nz)
- New Zealand Law Society (National Office) [inquiries@lawsociety.org.nz](mailto:inquiries@lawsociety.org.nz)  
[www.lawsociety.org.nz](http://www.lawsociety.org.nz)
- Work and Income 0800 559 009  
[www.workandincome.govt.nz](http://www.workandincome.govt.nz)
- Public Trust 0800 371 471  
[info@publictrust.co.nz](mailto:info@publictrust.co.nz)  
[www.publictrust.co.nz](http://www.publictrust.co.nz)
- Community Law Centre Find the Law Centre in your area via [www.communitylaw.org.nz](http://www.communitylaw.org.nz)

## Further information

This information sheet is intended to be an information guide only and is not a substitute for legal advice. You are advised to check any detail with the appropriate professional advisor or lawyer. The Cancer Society's helpline is a New Zealand wide service that can answer further questions you may have, or refer you to appropriate services. You can call them on 0800 CANCER (226 237).

### Useful contacts

- Age Concern [www.ageconcern.org.nz](http://www.ageconcern.org.nz) See your local telephone directory for phone contact
- Citizen's Advice Bureau Phone: 0800 FOR CAB (0800 367 222) [www.cab.org.nz](http://www.cab.org.nz)
- Disability Information Advisory Service [www.minhealth.govt.nz](http://www.minhealth.govt.nz)
- Ministry of Business, Innovation and Employment [www.employment.govt.nz](http://www.employment.govt.nz)
- Employment mediation [www.employment.govt.nz/resolving-problems/stepsto-resolve/mediation](http://www.employment.govt.nz/resolving-problems/stepsto-resolve/mediation)
- Financial advice [www.financialadvice.co.nz](http://www.financialadvice.co.nz)
- Human Rights Commission 0800 496 877  
[infoline@hrc.co.nz](mailto:infoline@hrc.co.nz) [www.hrc.co.nz](http://www.hrc.co.nz)
- Insurance and Financial Services Ombudsman  
[www.ifso.govt.nz](http://www.ifso.govt.nz) [info@ifso.nz](mailto:info@ifso.nz) 0800 888 202
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