

## James Hardie signs Enforceable Undertaking after discrimination breach

1 June 2012

Building materials company James Hardie Australia Pty Ltd discriminated against a prospective male employee in Perth by refusing to employ him because of a physical disability, the Fair Work Ombudsman has found.

James Hardie has agreed to pay the man \$30,000 compensation and revamp its workplace policies to ensure future compliance with workplace laws, following an investigation by the Fair Work Ombudsman.

The prospective employee applied for a job at James Hardie in 2010 as a business development manager.

James Hardie offered the man the position, but failed to inform him at the time the offer was conditional on him satisfactorily completing a medical assessment.

The advertised position did not mention any physical requirements of the job, but the applicant agreed and disclosed a long-term shoulder injury. A medical assessor reported that because of the injury, there were restrictions and injury risks associated with him performing tasks such as lifting heavy products and climbing ladders and scaffolding at building sites.

The applicant did not get to see the medical report before James Hardie subsequently withdrew the job offer, despite the Fair Work Ombudsman's concerns that physical work was not an inherent part of the business development manager's position.

The Fair Work Ombudsman investigated the matter after the applicant lodged an official complaint and determined that James Hardie's actions breached the anti-discrimination provisions of Australia's workplace laws.

Fair Work Ombudsman Nicholas Wilson says it is unlawful to refuse to employ a person on the basis of a physical disability that does not affect the employee's ability to perform the main tasks associated with the position.

"It is the Agency's view that this worker was able to perform the main tasks associated with the business development manager position and that it was clearly open to James Hardie to make minor adjustments to the role to avoid him having to perform physically demanding work," Mr Wilson said.

"Employers need to ensure that medical assessments are confined to assessing a worker's ability to perform tasks that are an inherent part of the position and that, unlike James Hardie, they do not jump to conclusions based on the results without adequate consideration and consultation with the worker."

Following the co-operation of James Hardie, the Fair Work Ombudsman has entered into an Enforceable Undertaking with the company as an alternative to litigation.

As part of the Enforceable Undertaking, the company has agreed to apologise to the worker and pay compensation for the economic loss and the stress, hurt and humiliation it caused him.

James Hardie has also agreed to:

- donate \$10,000 to the AED Legal Centre, established by the Association of Employees with Disability to support workers with disabilities,
- place an advertisement in The Weekend Australian newspaper detailing its breaches and apologising for them,
- place anti-discrimination messages on staff notice boards at James Hardie business premises,
- develop systems and processes to ensure ongoing compliance with the Fair Work Act,
- commission training on anti-discrimination laws for its human resources staff and managers with recruitment responsibilities,
- establish an ongoing anti-discrimination training program,
- review its recruitment and discrimination policies, in particular in relation to the use of medical examinations, and report the results of the review to the Fair Work Ombudsman.

Mr Wilson says it is important for employers to treat workers fairly and be aware of their obligations under workplace laws.

Under the Fair Work Act, it is unlawful to discriminate against employees and prospective employees on the grounds of pregnancy, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

Discriminatory behaviour can include refusing to employ, promote or train a worker, dismissing an employee, threatening to dismiss an employee or denying training and promotion opportunities.

Mr Wilson says every employee has the right to work without fear of discrimination and information about what sort of behaviour constitutes unlawful discrimination is available on the Agency's website.

"Employers who have fair and transparent selection processes for recruitment, promotion, training and other business systems will be well placed to cultivate fair workplaces free of discrimination," he said.

[Enforceable Undertaking James Hardie Australia Pty Ltd \(PDF 3.7MB\) \(www.fairwork.gov.au/ArticleDocuments/720/Enforceable-Undertaking-James-Hardie.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/720/Enforceable-Undertaking-James-Hardie.pdf.aspx)

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