

## Medical information and certificates

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What medical information does my employer have a right to ask for?



There are several situations in which members may find that they are asked by the employer for a medical certificate, or further medical information about the state of their health. Understandably, workers are touchy about these requests as they are deeply personal and potentially a serious invasion of privacy.

A body of law has developed around this area because it so frequently comes up in the workplace.

An area where the employer may have the right to request medical information is when an employee has been off sick for an extended period of time and the employer expresses concern about the workers fitness to do the job.

It is hard to argue with the need for a hospital to ensure that its paramedical professionals are fit to perform their duties. For example, if a pharmacist had serious health problems causing her to dispense the wrong drugs, the consequences might be disastrous.

Similarly, social workers and counsellors in the community carry great responsibility for the clients they serve; the employer has a high duty of care to ensure that all paramedical professionals are fit to perform their jobs without risk to the public. *But this right to ascertain the employees medical and psychological health is strictly limited by certain parameters set out in case law.*

Most of our contracts state only that the employee has to provide "proof of sickness" while off work, if requested by the employer (Paramedical Professional Collective Agreement article 19.04, Community Health Services and Support Collective Agreement article 28.3, Nurses Collective Agreement article 42.03).

Other than this express requirement, an employer must have a good reason to ask for medical information in order for an employee to continue to receive "sick pay." Most frequently such requests will arise where a member has been off ill for a protracted period of time. The law states that an employer may request an assurance from the employees personal physician that the employee is fit to return to work. In such cases, a letter from the doctor to that effect should suffice. Other than an assurance that the member can perform her duties, there should be no further details required.

Other situations giving rise to such a request may be where an employer has been asked to accommodate an employee and is disputing the level of required accommodation. As well, these employer requests may arise where an employer believes an employee is malingering and is not sick at all.

The union may enter into a dispute with the employer when the employer is not satisfied with the medical report provided and requests more extensive and detailed information.

We have had instances where employers have simply sent the employee a letter telling her to appear at a fixed appointment with a physician of the employers choosing for an "independent" medical examination. Under no circumstances will the union support such a directive by the employer. The case law is clear that an employee will not have to submit to an independent medical assessment "except in unusual circumstances."

The proper procedure, when an employer takes the position that they need further medical information, is to set out a request for what information they require. *If* the union feels that the request is a reasonable one that does not unnecessarily intrude upon the employees right to privacy, the request can be put to the employees doctor and a response provided. Only in cases where an arbitrator has found that the medical evidence provided by the doctor was insufficient or unreasonable, and the doctor refused to provide more satisfactory clarification, has the arbitrator determined that an independent medical may be necessary. Even at that point, the physician chosen should be mutually acceptable to both employee and employer.

There are many variations of this theme in day to day labour relations. The ground rule is this: if you feel that a request made by your employer for medical information is unnecessary or intrusive, *contact your local steward*. Make sure you get advice before putting any personal information into the hands of others.

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