



Keeping your health information private

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Recently, I missed work due to illness. My supervisor now wants proof. When I provided a note from my doctor attesting to the fact that I was ill, my supervisor said he needs more detailed information. How much health information is my employer entitled to?



Employers often want medical certificates, and sometimes they ask for a lot of information in those doctors' notes. How much information they can get depends on the collective agreement, but the general rule is that they are not entitled to more than they have bargained for.

For example, both the health science professionals and nurses contracts in BC stipulate that "employees who are absent from duty because of sickness may be required by the employer to prove sickness." The nurses agreement adds further that "a doctor's certificate may be requested for each leave of more than three (3) consecutive work days."

In each of these circumstances, the information required on the certificate will be subject to the limits of reasonableness, which means there is no cookie-cutter answer for different circumstances. It is not reasonable for employers to require proof for sporadic single-day use of sick leave.

What information an employer can reasonably require always depends on the circumstances. There are three general categories: certifying an absence due to illness, certifying fitness to return to work from illness, and seeking accommodation or modified work due to disability. These categories present an ascending scale of information requirements.

Employees generally need not provide much information to certify an absence due to illness. A doctor's note indicating that the doctor has seen you and that you are unable to work due to illness should suffice. The note may include a date of your anticipated return to work, *if known*. An employer requesting more information than that should be prepared to show a compelling reason, such as a well-founded suspicion of fraud.

The employer in most cases will not be entitled to a diagnosis or to wide-open access to an employee's doctor or medical records. Any form requiring such broad disclosure should be challenged. Call your labour relations officer for assistance.

In return-to-work circumstances, an employer might reasonably require more information. An employer is generally entitled to satisfy itself that an employee is fit for duty and is not a risk to herself or co-workers. This might mean that a doctor should indicate that she has reviewed the employee's duties and that the employee is capable of performing them.

There is no reason to provide diagnosis information, although in certain circumstances, where an employer can demonstrate a solid basis for it, an independent functional abilities evaluation might be required.

Where an employee is seeking accommodation, or modified work, an employer may be entitled to detailed

information about the employees restrictions, limitations, expectation of recovery, and other factors affecting the employees ability and accommodation needs. Even at this stage, an employer can probably not reasonably demand diagnosis information, but an independent functional abilities evaluation might reasonably be required.

It will be rare that an employer will be able to reasonably request information about an employees diagnosis. Yet, it is not uncommon for employers to produce forms requiring employees to execute broad releases of medical information. When members see such forms, they should contact their steward and / or labour relations officer, and the union will carefully consider whether the form violates the agreement or misleads employees about the level of information they must provide.

Arbitrators are increasingly sensitive to the privacy concerns of employees. Unfortunately, many employers are not. It is up to unions and employees to watch out for unnecessary or unreasonable intrusions on employee privacy. 

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