

# Obtaining and responding to **MEDICAL INFORMATION IN THE WORKPLACE**



## INTERPRETIVE BULLETIN

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This publication discusses Alberta Human Rights Commission policies and guidelines. Commission policies and guidelines reflect the Commission's interpretation of certain sections of the *Alberta Human Rights Act (AHR Act)* as well as the Commission's interpretation of relevant case law. Case law includes legal decisions made by human rights tribunals and the courts. As the case law evolves, so do the Commission's policies and guidelines.

Commission policies and guidelines:

- ◆ help individuals, employers, service providers and policy makers understand their rights and responsibilities under Alberta's human rights law, and
- ◆ set standards for behaviour that complies with human rights law.

The information in this publication was current at the time of publication. If you have questions related to Commission policies and guidelines, please contact the Commission.

The Commission developed this publication with the help of external stakeholders who reviewed a draft of the publication. The Commission is grateful for the assistance stakeholders provided to help make the publication more useful to the target audiences.

## Introduction

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The Alberta Human Rights Commission receives many inquiries from both employers and employees about medical information issues related to medical absences and an employee's ability to work. The Commission has developed this publication, which includes a *Sample Medical Absence Form* and a *Sample Medical Ability to Work Form*, to help employers, employees and doctors achieve good communication and effective workplace accommodations for employees.

This publication discusses medical information as it relates to human rights issues in the area of employment only. It is for educational purposes and is not intended to be legal advice.

Questions about:

- ◆ privacy issues should be directed to the Office of the Information and Privacy Commissioner;
- ◆ injuries at work should be directed to the Workers' Compensation Board (WCB); and
- ◆ human rights matters should be addressed to the Commission.

More information about these organizations is included under the *Related resources* section of this publication.

In this document the term medical information is interpreted broadly. It refers to information coming from a medical professional or information that an employee chooses to share about his or her health.

Employers request medical information to:

- ◆ confirm an employee's absence from work for medical reasons;
- ◆ decide whether an employee is fit to return to work after a medical absence;
- ◆ understand an employee's restrictions and limitations in finding an appropriate accommodation;
- ◆ explore the type of accommodations that would be reasonable for an employee or potential employee who has a disability; and
- ◆ decide whether an employee or potential employee's disability can be accommodated.

In this publication you will find:

- ◆ common questions about medical information related to human rights issues in the workplace;
- ◆ a *Sample Medical Absence Form*;
- ◆ a *Sample Medical Ability to Work Form*;
- ◆ case law related to human rights and medical information in the workplace; and
- ◆ legal principles from the case law.

The Workers' Compensation Board (WCB) is mandated by law to make decisions about workers' compensation for employees. WCB has specific medical forms which apply only to WCB assessments. Even when an employee is not approved for WCB benefits, the employer still has a duty to accommodate the employee to the point of undue hardship. An employer has a responsibility under the *AHR Act* to look at the employee's illness or injury and make an assessment about accommodating the employee, separate from the WCB process.

## Who will benefit from reading this publication?

**Employers**, particularly small and medium-sized employers, that do not have a disability management system in place. These employers will find information to guide them when they are requesting medical information related to employee absences and to employees' ability to work. Large employers, who already have a disability management system in place, usually use trained occupational health and safety professionals to guide them.

**Employees** will find information to guide them when they need to be absent from work for medical reasons or return to work with or without accommodation.

**Unions** will find information to guide them in their role as employers and in providing support to members. They will learn what kind of medical information an employer needs and can request from an employee.

**Doctors** will find a *Sample Medical Absence Form* and a *Sample Medical Ability to Work Form* that are easy to use and can be adapted for their practices, as well as other information about medical absence requirements. They will gain an understanding of what information an employer needs from them.

Organizations that provide employee benefits will also find this bulletin useful to assist in their process of obtaining appropriate medical information for employees who are applying for benefits.



Employers, employees, unions and doctors all play a role in gathering reasonable medical information on an employee's disability.

- ◆ **Employers** play a key role in requesting relevant medical information.
- ◆ **Employees and unions** have a duty to actively participate in supplying information to support a medical absence or request for accommodation and to respond to employer requests for medical information.
- ◆ **Doctors** have a duty to respond to patient requests for medical information by releasing the information to a third party in a reasonable time frame.<sup>1</sup>

## What is a disability?

The *AHR Act* defines mental and physical disability in section 44:

**Mental disability** means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder.

**Physical disability** means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device.

The definition of disability is broad and therefore it is not possible to provide a complete list of conditions normally considered to be a disability under human rights law. Transitory or minor illnesses such as colds and flus are not normally considered to be physical disabilities. However, a perceived disability is protected. This is where a person is seen as having a disability and, as a result, treated in a discriminatory way.

## What information may an employer request from an employee who is absent for medical reasons?

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This section addresses what information an employer may request from an employee who is or will be absent for medical reasons. Included in Appendix 1 of this publication is a *Sample Medical Absence Form* that may be used in conjunction with this section. Medical information for the purposes of return-to-work accommodation is addressed in the next section.

When requesting medical information, the employer should consider:

- ◆ whether the information requested is needed to determine the employee's job responsibilities;
- ◆ whether the information is needed to accommodate the employee;

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<sup>1</sup> The College of Physicians and Surgeons of Alberta's policy *Physicians' Office Medical Records* states that a response to a request for medical information "... should be timely, generally within one to two weeks unless needed more urgently." | [http://uat-cpsa.softworksgroup.com/Libraries/Policies\\_and\\_Guidelines/Physicians\\_Office\\_Medical\\_Records.sflb.ashx](http://uat-cpsa.softworksgroup.com/Libraries/Policies_and_Guidelines/Physicians_Office_Medical_Records.sflb.ashx)

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- ◆ how the employee's privacy will be protected when the information has to be shared with other people; and
  - ◆ whether the request meets specifications of the collective agreement, if one is in place.

If the information is unrelated to the employee's job responsibilities or an accommodation, then the employee may choose not to release it.

## Requesting relevant medical information

To assess an employee's needs, the employer may request only information that is relevant to the employee's job duties. The employer does not have an unconditional right to full disclosure of the employee's medical situation. Some disability-related absences may not require medical documentation. For instance, short or infrequent absences will likely only require minimal medical information. However, an employee may need to provide more information to explain a series of many short absences. The amount of information required will depend upon the specific facts of each case. For instance, medical information about what job duties an employee is able to fulfill is not necessary until the time when an employee is seeking accommodation.<sup>2</sup>

To decide what type of information is reasonable to request, the employer must first determine why they need the medical information. Meetings between the employer and employee are a natural part of gaining the necessary information. However, once an employee is absent from the workplace, meetings are not recommended unless the employee is medically fit to attend a meeting. In a unionized workplace, members may ask their union for guidance. All parties are expected to keep an open line of communication to resolve conflicts over medical information.

When requesting medical information for a medical absence, the employer should ensure that the request:

- ◆ relates to the operation of the workplace and the job duties of the employee, and
- ◆ is relevant to the time period of the absence.

For instance, requiring information about past medical history is asking for too much information. Generally, employees have a right to privacy regarding their medical information.

For the most part, an employer is not entitled to the diagnosis but can ask about:

- ◆ the expected length of disability and absence (prognosis for recovery);
- ◆ whether it is a temporary or permanent absence; and
- ◆ other information, such as work restrictions, to assist with accommodating a returning employee.

There are very limited circumstances when a diagnosis would be required from the employee or their doctor.

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<sup>2</sup> *Peace Country Health v. United Nurses of Alberta*, [2007] A.G.A.A. No. 17 (Sims).

## Sharing medical information

Employees have a right to privacy regarding their personal medical information. Employers should only release medical information to staff who need it for a specific purpose. For example, an employee may need to drink water while using the cash register because they are taking a particular medication. Only the supervisor who received the doctor's note regarding this issue needs to know about the reason why the employee is drinking water while working with the public.

Employers who have occupational health or human resources departments use those departments to request medical information. Only those designated people receive the information from the employee's doctor and let the employee's supervisor know how long the employee will be absent or what specific return-to-work accommodations are reasonable. This information may be shared with other personnel on a need-to-know basis. However, a supervisor should only receive limited information and not the entire medical file. The Office of the Information and Privacy Commissioner of Alberta can provide more information on protection of privacy of medical information in an organization. See *Related resources* for contact information.

## Collective agreement


The employer/employee relationship may be governed by a collective agreement. Labour law cases and related legislation govern the kind of medical information that can be requested in the context of a collective agreement. Human rights law applies to a collective agreement even if it is not mentioned within the agreement itself. Both employers and employees may contact the union to request more information on labour law decisions as they relate to medical information and particular situations.

## What information may an employer request when an employee wants to return to work or needs accommodation at work?

When an employee is returning to work after a medical absence, the employer may request that the employee's doctor confirm in writing that the employee is fit to return to work. See Appendix 1 for a *Sample Medical Absence Form*.

If the employee's doctor has found that the employee can return to work with certain restrictions or limitations, the employer will need to know what those restrictions or limitations are to assess the employee's job duties. See Appendix 1 for a *Sample Medical Ability to Work Form*.

The Canadian Human Rights Commission has published *A Guide for Managing the Return To Work* (Online at: [www.chrc-ccdp.ca/publications/gmrw\\_ggrt/toc\\_tdm-en.asp](http://www.chrc-ccdp.ca/publications/gmrw_ggrt/toc_tdm-en.asp)), which is helpful in providing steps to follow for a return-to-work plan.



An employer should be prepared to provide the doctor with a list of the job duties or a detailed job description along with this form. If an employee's doctor finds that the employee is ready to return to work without restrictions, then the employee can return to work without any accommodation by the employer. For more information on accommodations, see the Commission's interpretive bulletin *Duty to accommodate*.

An employee who is returning to work may have provided some medical information already. However, when the employee is requesting accommodation, the employer may need more information. The additional information will help the parties decide what duties the employee is able to perform, what accommodations are necessary, and whether the accommodations are possible.

The employer may require information such as the following to determine what accommodations are necessary:

- ◆ whether the illness or injury is permanent or temporary;
- ◆ what restrictions and limitations an employee has; and
- ◆ whether a treatment or medication the employee is taking will affect the employee's ability to perform job duties.<sup>3</sup>

The employer does not have the right to ask for all of the above information in every situation. The employer may only ask for the information that is necessary to make decisions about accommodating the employee, providing disability leave, or assessing if the employee can return to work. Only in exceptional circumstances will the employer have the basis to request the diagnosis.

Employers must try less intrusive methods of obtaining clear medical information before requiring this information through other means. For instance, if an employee submits a short note from their doctor that the employee can return to work with modified duties, the employer may need more information on what restrictions or limitations the employee has. The employer can get permission from the employee to contact the employee's doctor for more information before asking for specific tests or an independent medical examination (IME). This is best done in written form such as a signed release from the employee and a written request from the employer to the doctor. This process is discussed further under *How may an employer respond to medical information?*

Employers should not make unnecessary inquiries about the employee to human resources staff or occupational health staff. For example, if a manager asks the occupational health nurse too many questions the nurse may feel compelled to share otherwise private medical information. The manager may discover information that affects their opinion on whether to provide modified work for the employee. Employers should ensure that they are not discriminating in the process of obtaining and responding to medical information.

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<sup>3</sup> *Capital Health Authority (Royal Alexandra) v. United Nurses of Alberta, Local 33 (Schram Grievance)*, [2006] A.G.A.A. No. 60 at para. 70, affirmed 2008 ABQB 126 (Alberta Court of Queen's Bench) | [www.albertacourts.ab.ca/jdb%5C2003-%5Cqb%5Ccivil%5C2008%5C2008abqb0126.pdf](http://www.albertacourts.ab.ca/jdb%5C2003-%5Cqb%5Ccivil%5C2008%5C2008abqb0126.pdf). See also *Peace Country Health v. United Nurses of Alberta*, [2007] A.G.A.A. No. 17 (Sims).



## Who is responsible for finding a reasonable accommodation?

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The employer, the employee, and the union, if there is one, have a duty to cooperate in the accommodation process. It is important to note that employers must advise employees what the consequences will be if an employee does not cooperate during the accommodation process. Failure to cooperate in the process may result in the employer denying the employee's request for accommodation. The specific responsibilities of each party are found in the Commission's interpretive bulletin *Duty to accommodate*.

Once the employer receives a request for accommodation, they have a responsibility to accommodate the employee to the point of undue hardship. The employee has a responsibility to work with the employer to find a reasonable accommodation. This responsibility includes providing the necessary medical information to the employer.

For instance, in one case an employee was injured on the job and went on sick leave. The Alberta WCB provided a note to the employer that the employee was capable of modified work. The note did not have details about the employee's limitations or capabilities. When the employee asked to return to work with light duties, the employer asked for a doctor's note outlining his limitations. The employee did not supply the note and refused to meet with his supervisor to discuss the situation. The Canadian Human Rights Commission found that the employee had "...breached his duty to facilitate the search for meaningful accommodation."<sup>4</sup> It is essential that an employee provide medical information so that the employer can make sure they are assigning duties the employee can perform safely.

An employee cannot refuse a reasonable solution just because they prefer a different kind of accommodation. For example, an employer may offer a short-term solution until the employee can return to regular duties. If this solution is reasonable from a human rights perspective, the employee has a responsibility to try it.

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<sup>4</sup> *Tweten v. RTL Robinson Enterprises Ltd. (No. 2)* (2005), 52 C.H.R.R. D/409 at para. 34 | [www.chrt-tcdp.gc.ca/search/view\\_html.asp?doid=587&lg=\\_e&isruling=0#999171](http://www.chrt-tcdp.gc.ca/search/view_html.asp?doid=587&lg=_e&isruling=0#999171)





# What are the rights and responsibilities of the employee in providing medical information?

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## Privacy

The employee has a right to privacy regarding their medical information and a responsibility to cooperate in the process of gathering medical information. Once an employee releases private information there is no way to take back that information and regain privacy. However, the employee must work with the employer to keep the lines of communication and cooperation open. The employee may choose to provide information even though there is a disagreement between the employer and employee on whether information is necessary. An employee who takes a steadfast position on not supplying a particular piece of information may find that, after a lengthy delay, the employer's position is held to be reasonable by a court, tribunal or labour arbitration board. In addition, the employer may instruct an employee to stay at home until they provide the specified medical information.

## Disclosing confidential medical information

Generally, an employee has the right to refuse to disclose medical information such as the diagnosis of their disability. Only in certain situations, depending on the specific facts, is disclosure of a diagnosis and other medical information, such as treatment information, necessary for the accommodation process. In addition, an employee generally has a right to confidentiality of their medical information. The sharing of confidential medical information is limited to those who need to know for specific purposes, such as arranging modified work.

## Contact from the employer

An employee is usually expected to report an absence from work as soon as possible and, if at all possible, before their next shift begins. If requested, an employee is expected to make every reasonable attempt to get a medical note to explain the absence. The employer will usually request a medical note for longer absences. A *Sample Medical Absence Form* for such situations can be found in Appendix 1.

An employee can expect some contact from the employer during a lengthy absence, but not so much that the employee feels harassed. For example, weekly contact over a period of months is likely too much if the employer already knows the date the employee is expected to return to work. An employee who feels harassed should inform the employer.

## Returning to work

If an employee's medical situation is complicated, and the employee has been away from work for a long period of time, the employer may ask for more information to make sure that the employee is fit to return to work. A *Sample Medical Ability to Work Form* for such situations can be found in Appendix 1. An employee must be willing to consider options for accommodation as there is no right to an ideal accommodation.



## Medical information from the employee's own doctor versus a specialist

The employer usually gets information from the employee's own doctor as to whether the employee is fit to work. In complex medical situations, where the employer requires more detailed information, the employee could suggest:

- ◆ getting further information from their family doctor;
- ◆ asking their family doctor to refer the employee to a specialist of his or her choice (the decision to refer is at the discretion of the family doctor);
- ◆ getting a consultation between an employee's doctor and a doctor chosen by the employer; or
- ◆ choosing a specialist that the employee and employer agree upon to conduct an independent medical examination (IME) when there is a difference of opinion between specialists, and an IME is required.

The employee may be required to have an IME if the case is heard by an arbitration board or court. For more information on independent medical examinations, see the section on *Requesting an independent medical examination* on page 13.

If there are conflicting medical opinions, the employee and employer must work together to find an agreed-upon specialist to conduct an IME and provide reasonable information. The employee and employer may agree on a new specialist who is not biased toward either of them. An employee may, at any time, refuse to see a doctor or specialist recommended by the employer. An employer may refuse to proceed without the necessary medical information and therefore ask the employee to stay home until the conflict is resolved. Generally, an employee cannot be disciplined for refusing to go to a doctor of the employer's choice. However, in both situations, continued communication and cooperation will decrease the chance of a problem developing.

## How may an employer respond to medical information?

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The employer's response to medical information depends upon their evaluation of the information. The employer may:

- ◆ find there is sufficient information for the employee to be absent;
- ◆ find there is sufficient information for the employee to return to their regular duties;
- ◆ use the existing information to evaluate what accommodations are needed; or
- ◆ determine that further medical information is necessary.

### **Determining whether sufficient medical information has been provided**

To determine whether the medical information supplied is sufficient, the employer must look at the individual facts of each case.<sup>5</sup> An employer will likely need more information when an employee is off for a longer period of time or requires accommodation. An employer may also require updated information if the employee is away on medical leave for an extended period of time. However, requests for information should not be so frequent as to harass the employee while on sick leave. With the employee's consent, the employer may ask the doctor or specialist when it will be reasonable to review the employee's status.

Before asking for more medical information, the employer should first determine whether the information that the employee has already provided can be used to assess the employee's situation. If not, and the employer decides to ask for more medical information, the employer should:

- ◆ inform the employee in writing that the employee needs to supply further medical information, and the reason that this information is necessary;
- ◆ specifically identify the information that is being requested;
- ◆ remind the employee that all information will be kept in the strictest confidence; and
- ◆ continue to be open to any concerns an employee has about providing further medical information, and try to resolve these concerns up front.

Employers requesting medical information normally pay for medical assessments if they are not covered by a medical or benefit plan. If a dispute arises over payment, it must be determined if the employer would be providing accommodation up to the point of undue hardship by paying for the assessment. If the employer would experience undue hardship, then they would not be required to pay. See the Commission's interpretive bulletin *Duty to accommodate* for more information about undue hardship.

If the employer is still unsatisfied with the medical information, they may ask for further information. However, the employer should use the least intrusive method possible to get only the information that is needed to assess the employee's situation.

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<sup>5</sup> See, for instance, *Peace Country Health v. United Nurses of Alberta*, [2007] A.G.A.A. No. 17 (Sims). Refer to the case law section of this publication.

The employer is **not** entitled to:

- ◆ **contact the employee's doctor by phone.**  
Even a confirmation that the doctor saw the employee should be made in writing. If the employee gives permission to contact the doctor directly, this contact should be made in writing. Talking to the doctor on the phone may result in confidential information being inadvertently released and a potential violation of the employee's privacy rights. The employee may also see it as intrusive and harassing.
- ◆ **terminate the employee before exploring the duty to accommodate to the point of undue hardship.**  
The employer may argue that the requested accommodation is an undue hardship. However, to determine this, the employer must examine the options available and the reasons these would result in an undue hardship to the employer. This is more than a one-time effort by the employer. For more information on accommodation and undue hardship, see the Commission's interpretive bulletin *Duty to accommodate*.
- ◆ **demand a definitive opinion that the employee will have no further medical problems.**  
It is unreasonable to expect a doctor to guarantee that an employee's disability is completely resolved or that they will have no further medical issues. Such a demand would reasonably be considered harassing.
- ◆ **request medical information that is not employment-related.**  
Only information that is related to the employee's ability to work is relevant to the analysis of an employer's needs. For instance, an employer does not need to know information about an employee's restriction on lifting if their job does not involve lifting.
- ◆ **know the employee's diagnosis, except in limited cases.<sup>6</sup>**  
To request a diagnosis, the employer must show that the information is necessary and that they have tried all other methods to assess the employee's ability to return to work or accommodation needs.  
  
If the employer can satisfy the legal requirement to show it is reasonable to request the diagnosis, then the employer must make sure the employee's privacy rights are protected.<sup>7</sup>

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<sup>6</sup> *Peace Country Health v. United Nurses of Alberta*, [2007] A.G.A.A. No. 17 (Sims).

<sup>7</sup> *York County Hospital Corp. and S.E.I.U., Loc. 204* (1992), 25 L.A.C. (4<sup>th</sup>) 189 (Fisher).

## Requesting an independent medical examination

An employer must first try to get the medical information they require from the employee's doctor or specialist before requiring an IME. Requiring an employee to submit to an IME by a doctor of the employer's choosing is intrusive. Arbitrators and courts are reluctant to require an examination by someone who is not chosen, or at least agreed to, by the employee. Some alternative and less intrusive steps that the employer can first suggest are:<sup>8</sup>

- ◆ requesting more information from the original doctor or specialist;
- ◆ requesting a new report from another doctor of the employee's choice; or
- ◆ agreeing with the employee on a new doctor to perform an IME.

An IME may be required where it has been agreed to in the collective agreement or decided by an arbitration or court proceeding.

IMEs and FCEs: An independent medical examination (IME) is an evaluation performed by a doctor who is not involved in the patient's care to establish if and how medical issues will impact on the employee's ability to perform their job duties. A functional capacity evaluation (FCE) examines an employee's physical tolerance related to strength, endurance, speed and flexibility.

An IME should be distinguished from an FCE. An FCE may not involve a doctor but someone such as an occupational therapist who assesses the physical capacity of an employee as it relates to their work responsibilities. An FCE has a different purpose than an IME and may be necessary to properly determine the abilities of an employee to carry out certain duties.

## What if different doctors give conflicting medical information?

Conflicting medical opinions between a family doctor and a specialist, between two specialists, or between a WCB doctor and an independent doctor are common. Usually the opinion of an independent specialist who practices in the area of the employee's disability will be accepted over the opinion of a family doctor.

If two specialists give conflicting information on an issue, then the employer should:

- ◆ review the information to see if it is in conflict on the pertinent points;
- ◆ check with a general practitioner to find out if the specialists are reputable in their area of expertise; and
- ◆ check with a general practitioner to find out if each specialist's area of expertise matches the disability that is being assessed.

It may be necessary to choose another specialist whom the employee agrees upon to resolve the conflict.

Sometimes there is a conflict between two specialists regarding disabilities that are new or not yet fully understood, such as chronic fatigue syndrome, irritable bowel syndrome, or multiple chemical sensitivity. A disability does not have to be accepted by all doctors in order for it to be protected by the *AHR Act*. The employer should find an expert in the area of the employee's disability who can properly evaluate the employee.

<sup>8</sup> *British Columbia (Public Service Employee Relations Commission) and B.C.G.E.U. (Teixeira) (Re)* (1998), 72 L.A.C. (4<sup>th</sup>) 309 at p. 320-1.



## Termination and discipline

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When a disability is one of the reasons for discipline or potential termination, the employer must take medical notes and other information about an employee's disability into consideration. The employer cannot simply look at the employee's absence record to determine if the employee can be disciplined or their contract terminated. The employer has a duty to accommodate the employee to the point of undue hardship. See the Commission's interpretive bulletin *Duty to accommodate* for more information about undue hardship.

### Misconduct

Medical information that becomes available after misconduct cannot be ignored. In a case where there was no previous medical information about an employee who suffered from a mental illness, an arbitrator found that the employer still had a duty to accommodate the employee after the employee's contract was terminated for misconduct.<sup>9</sup> The employee was involuntarily admitted to a mental health facility five days after he was fired. The arbitrator said that the employer found out about the disability a short time after the incident and that the employer should have examined their duty to accommodate the employee who, up until that point, had a clean employment record of 29 years.

### Excessive absenteeism

Absenteeism programs address absences that are otherwise preventable. An absenteeism policy is not the appropriate mechanism to address disability-related absences. While some absenteeism programs may discuss these kind of absences, it is important for employers to acknowledge that disability-related absences need different types of policies. For this reason, medical absences are best addressed through a disability management program.

For example, an employee who injured himself on the job gave his employer a doctor's note stating that the employee would be off for a few weeks.<sup>10</sup> The employer discouraged the employee from seeking medical attention from his doctor and also from applying for WCB benefits. Eventually the employer fired the employee for violating the company's absenteeism policy. The Alberta human rights panel said that the company had erred in applying an absenteeism policy to a disability-related workplace injury.

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<sup>9</sup> *United Steelworkers of America, Local 5885 v. Sealy Canada Ltd. (Bender Grievance)*, [2006] A.G.A.A. No. 8.

<sup>10</sup> *Gariano v. Fluor Constructors Canada Ltd.* (2006), 57 C.H.R.R. D/43 (Alta. H.R.P.) | [www.albertahumanrights.ab.ca/GarianoGiuseppen053006Pa.pdf](http://www.albertahumanrights.ab.ca/GarianoGiuseppen053006Pa.pdf)

## Questionable absences and refusal to supply medical information

If the employee's absence is questionable, the employer may decide to gather more information from the employee's health care professional, such as a doctor, specialist, mental health professional or physical or occupational health therapist. If the employee refuses to supply the requested medical information, the employer will need to review what it has requested and whether more information is actually necessary. The employee and employer may want to sit down to discuss possible solutions to resolve the dispute. An employer who actively explores potential solutions avoids a bigger problem and improves workplace relationships.

When an employee refuses to supply further medical information, it does not automatically mean that the medical absence is not supported by a doctor. It may be that the employee has another disability-related issue, such as a mental illness. An employee may also feel it is a violation of their privacy rights. It is in the employer's best interests to invite the employee to explain their refusal to provide the information and to explain to the employee the consequences of not providing the information.

Employees who have a mental illness or substance abuse issue may not willingly supply necessary information. Unlike an employee with a physical disability, an employee with a mental illness may not consciously be aware of the original onset of the illness or a relapse. An employee with an addiction issue may not have come to terms with their addiction and so may do everything within their power to hide and deny the illness. In these circumstances, it is important for the employer to take extra measures by:

- ◆ meeting with the employee, if they are still working;
- ◆ respectfully requesting the information; and
- ◆ explaining why the information is important.

If an employer suspects a mental health issue or addiction problem, it would be discriminatory to ignore the medical issue and simply take disciplinary measures.

When the employer has exhausted all avenues of seeking the needed information and concluded that this information is reasonably necessary, the employer may try another approach. Terminating or disciplining an employee for providing insufficient medical information could result in a claim of discrimination. On the other hand, if the employer has not received information in support of a medical claim, then the employer may decide to ask the employee to stay home from work until specific medical information is provided. It can be helpful to provide the employee with a detailed written request so they can share it with their doctor. If the employee refuses to provide any information to the employer, then the employer is relieved of their duty to accommodate. Both the actions of the employee and the employer will be considered when assessing a claim of discrimination.

## Managing medical information in the workplace

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Medical absences or requests for accommodation are usually supported by documentation from a doctor. A private medical matter becomes public because of the need to provide information on limitations and restrictions, and to prove eligibility for disability-related programs and benefits. An employee who has an ongoing disability may begin to feel overwhelmed by requests for medical information. Treating employees with respect and compassion will create the groundwork for a more positive experience. Employers can reduce the employee's worries about providing medical information by using these suggestions:

- ◆ Implement a disability management program that clearly explains the process of how a medical issue will be handled by the employer. Employees who are made aware of this policy up front will not be surprised that they need to document their disability with medical information.
- ◆ Meet employees individually early on so that specific issues regarding their disability can be addressed quickly. Once an employee is absent from the workplace, meetings are not recommended unless the employee is medically fit to attend a meeting.
- ◆ Let employees know that the employer encourages early reporting of potential medical issues.
- ◆ Keep all medical information in strict confidence. Release this information only to those who need to know about it so that they can accommodate the employee. Discuss medical information behind closed doors and only with those staff who need to know the details.
- ◆ Discuss individual needs with employees in return-to-work or accommodation situations. This is especially important in the context of mental illness, where certain workplace rules can have a disproportionate effect on the employee because of mental illness. Seek further medical information on how the employer can accommodate specific needs.
- ◆ Review the sample forms included in Appendix 1 in this publication, and privacy and labour law statutes and cases to ensure that your company is aware of legislation and recent cases in the area of medical information.
- ◆ Ensure that there is a consistent approach to medical absences and employees' return-to-work with accommodations, by using or creating your own forms such as the sample forms in Appendix 1.

*Treating employees with respect and compassion will create the groundwork for a more positive experience.*



## Appendix 1: Sample forms

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The *Sample Medical Absence Form* and the *Sample Medical Ability to Work Form* are included in this publication. The Commission developed these forms to assist employers and employees with common medical information issues that arise in the workplace.

- ◆ Employers may provide the forms to employees and ask that their doctors complete them.
- ◆ Employees may use the forms to get information from their doctors for their employers or benefit carriers.
- ◆ Doctors may adapt the forms for use in their practices.

The sample forms:

- ◆ are not intended to replace any medical forms that are required by WCB or a third-party insurer, or employer-prescribed forms for an employer-funded benefit plan.
- ◆ are intended to help small to medium-sized employers who do not have a disability management position to assist managers and employees with such matters.
- ◆ take into consideration the employee's right to privacy as well as the employer's right to all of the information that is reasonably necessary for a proper inquiry into accommodation.
- ◆ will remove the barriers that are created in workplaces by poor medical information, and thereby keep employees on the job.
- ◆ are not required by law in any situation.

The *Sample Medical Absence Form* provides general information on the employee's absence, doctor's name and medical checkup.

The *Sample Medical Ability to Work Form* provides more comprehensive information on limitations or restrictions that the employee has upon returning to work. It is intended to ensure that:

- ◆ the employer, not the doctor, decides which modified duties are available, and
- ◆ the doctor's information reflects a functional analysis of the employee's abilities rather than advice about which jobs the employee can do.

# Sample Medical Absence Form

(To be completed by attending physician)

**The purpose of this form is to provide the patient with the necessary information that they need to give to their employer to confirm that an absence from work is for medical reasons.**

## Notes to physician

1. This form is not intended for Workers' Compensation Board (WCB) purposes. For a work-related injury or illness, the required WCB forms must be completed.
2. Where choices are indicated below, please mark your selection.
3. Please keep a copy of this form.

When completing this form, disclose only information necessary to meet the purpose of the form. Typically, it is not necessary to provide a diagnosis or treatment information.

## Physician's name and address (typewritten or printed)

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I saw \_\_\_\_\_ on \_\_\_\_\_ .  
(Print patient's name) (Date)

I am satisfied that, for medical reasons, this patient **did not/will not** attend work,  
starting on \_\_\_\_\_ .  
(Date)

Given the health information before me (indicate  all that apply):

- This patient may/did return to work with no limitations on \_\_\_\_\_ .  
(Date)
- This patient needs further medical assessment before returning to work.  
Date of next appointment is (indicate n/a if not applicable) \_\_\_\_\_ .  
(Date)

My opinion is based on the factors indicated below:

- Information provided by the patient
- My examination of the patient and my assessment of the findings and health information

I have provided this form to the patient named above.

---

(Physician's signature) (Date)

**NOTE: Completion of this form is an uninsured medical service. There may be a fee to the patient for completion of this form.**

Alberta Human Rights Commission developed this form in consultation with the Alberta Federation of Labour, Alberta Medical Association, Alberta Workers' Health Centre, and the College of Physicians and Surgeons of Alberta. **This sample form is an appendix to the Commission interpretive bulletin *Obtaining and responding to medical information in the workplace*, which is available from the Commission or online at [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca).**

# Sample Medical Ability to Work Form (Page 1 of 2)

(To be completed by attending physician)

The purpose of this form is to provide the patient with the necessary information that they need to give to their employer to help the employer make decisions about accommodating the patient, providing disability leave, or assessing if the patient can return to work.

## Notes to physician

1. This form is not intended for Workers' Compensation Board (WCB) purposes. For a work-related injury or illness, the required WCB forms must be completed.
2. This form **does not replace** forms related to an employee's ability to work that are required by:
  - ◆ Workers' Compensation Board,
  - ◆ third-party insurers, or
  - ◆ employer-funded medical benefit plans.
3. Where choices are indicated below, please mark your selection.
4. Please sign and date both pages 1 and 2, and keep a copy of this form.

When completing this form, disclose only information necessary to meet the purpose of the form. Typically, it is not necessary to provide a diagnosis or treatment information.

## Physician's name and address (typewritten or printed)

I saw \_\_\_\_\_ on \_\_\_\_\_ .  
(Print patient's name) (Date)

Date of injury or illness \_\_\_\_\_ .  
(Date)

This patient is medically able to work with limitations or restrictions as of \_\_\_\_\_ .  
(Date)

## Restrictions or limitations (see page 2 for details)

In my opinion, these restrictions or limitations are:

- Temporary:       \_\_\_\_\_ days       4 to 6 weeks  
                          less than 2 weeks       6 weeks to 3 months  
                          2 to 4 weeks       more than 3 months

Permanent

Date of next appointment is (indicate n/a if not applicable) \_\_\_\_\_ .  
(Date)

My opinion is based on the factors indicated below:

- Information provided by the patient  
 My examination of the patient and my assessment of the findings and health information

I have provided this form to the patient named above.

\_\_\_\_\_  
(Physician's signature)

\_\_\_\_\_  
(Date)

**NOTE: Completion of this form is an uninsured medical service. There may be a fee to the patient for completion of this form.**

Alberta Human Rights Commission developed this form in consultation with the Alberta Federation of Labour, Alberta Medical Association, Alberta Workers' Health Centre, and the College of Physicians and Surgeons of Alberta. **This sample form is an appendix to the Commission interpretive bulletin *Obtaining and responding to medical information in the workplace*, which is available from the Commission or online at [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca).**

# Sample Medical Ability to Work Form (Page 2 of 2)

(To be completed by attending physician)

## Specific functional restrictions and/or limitations

Patient's name \_\_\_\_\_

Check  only those items that apply in Section A, and provide details in Section B.

### Section A                      Restriction    Limitation

#### Physical

	Restriction	Limitation
Sitting	<input type="checkbox"/>	<input type="checkbox"/>
Standing	<input type="checkbox"/>	<input type="checkbox"/>
Walking	<input type="checkbox"/>	<input type="checkbox"/>
Lifting	<input type="checkbox"/>	<input type="checkbox"/>
Carrying	<input type="checkbox"/>	<input type="checkbox"/>
Pushing/Pulling	<input type="checkbox"/>	<input type="checkbox"/>
Climbing stairs	<input type="checkbox"/>	<input type="checkbox"/>
Climbing ladders	<input type="checkbox"/>	<input type="checkbox"/>
Climbing scaffolding	<input type="checkbox"/>	<input type="checkbox"/>
Crouching	<input type="checkbox"/>	<input type="checkbox"/>
Crawling	<input type="checkbox"/>	<input type="checkbox"/>
Kneeling	<input type="checkbox"/>	<input type="checkbox"/>
Bending/Twisting/Turning	<input type="checkbox"/>	<input type="checkbox"/>
Repetitive activity	<input type="checkbox"/>	<input type="checkbox"/>
Sustained postures	<input type="checkbox"/>	<input type="checkbox"/>
Gripping	<input type="checkbox"/>	<input type="checkbox"/>
Reaching	<input type="checkbox"/>	<input type="checkbox"/>
Fine dexterity	<input type="checkbox"/>	<input type="checkbox"/>
Balance	<input type="checkbox"/>	<input type="checkbox"/>
Vision/Hearing/Speech	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify in section B)	<input type="checkbox"/>	<input type="checkbox"/>

Does patient require medical aids (e.g. splint, brace) or personal protective equipment (e.g. gloves, mask)?

No     Yes (specify in section B)

## Definitions

**Restriction:** This patient is advised not to perform this activity in any capacity.

**Limitation:** This patient is able to perform the activity in a reduced capacity. For example, the patient is not able to perform the job with the usual speed, strength or number of repetitions, or for the usual duration.

### Restriction    Limitation

#### Mental

	Restriction	Limitation
Thinking/Reasoning	<input type="checkbox"/>	<input type="checkbox"/>
Concentration	<input type="checkbox"/>	<input type="checkbox"/>
Memory	<input type="checkbox"/>	<input type="checkbox"/>
Critical decision-making	<input type="checkbox"/>	<input type="checkbox"/>
Interpersonal contact	<input type="checkbox"/>	<input type="checkbox"/>
Alertness	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify in section B)	<input type="checkbox"/>	<input type="checkbox"/>

#### Environmental

	Restriction	Limitation
Exposure to heat/cold	<input type="checkbox"/>	<input type="checkbox"/>
Exposure to dust/fumes/odors	<input type="checkbox"/>	<input type="checkbox"/>
Exposure to chemicals	<input type="checkbox"/>	<input type="checkbox"/>
Food handling	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify in section B)	<input type="checkbox"/>	<input type="checkbox"/>

#### Other

	Restriction	Limitation
Shift/attendance duration	<input type="checkbox"/>	<input type="checkbox"/>
Consecutive shift attendance	<input type="checkbox"/>	<input type="checkbox"/>
Shift work	<input type="checkbox"/>	<input type="checkbox"/>
Overtime	<input type="checkbox"/>	<input type="checkbox"/>
Operating vehicle	<input type="checkbox"/>	<input type="checkbox"/>
Operating equipment	<input type="checkbox"/>	<input type="checkbox"/>
Working at heights	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify in section B)	<input type="checkbox"/>	<input type="checkbox"/>

## Section B

Please provide necessary details about any restrictions or limitations you have identified. Typically, it is not necessary to provide a diagnosis or treatment information.

\_\_\_\_\_

\_\_\_\_\_

I have provided this form to the patient named above.

\_\_\_\_\_

\_\_\_\_\_

(Physician's signature)

(Date)

## Appendix 2: Case law

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Human rights case law is constantly evolving, based mostly on cases that come before the courts and human rights tribunals. Cases addressing medical information issues can also be found in the context of privacy law and labour law. While privacy and labour law cases are informative, the area of human rights has its own legislation and requirements to fulfill human rights obligations in an employment context. For more information on where to find privacy law cases, see the *Related resources* section.

This section outlines some of the key cases that have addressed medical information in a human rights context. The cases are listed in alphabetical order and come from a human rights tribunal, a labour arbitration board applying human rights principles, or one of the levels of court. A link is provided when the decisions are available on public websites. The decisions are also published in various publications such as the *Canadian Human Rights Reporter* (C.H.R.R.), which can be obtained at the Law Society Library which has various locations throughout Alberta. To find the Law Society Library nearest you, visit [www.lawlibrary.ab.ca](http://www.lawlibrary.ab.ca).


### 1. **Where there is a connection between an employee's medical condition and misconduct, the employee cannot be held responsible for the misconduct.**

Mr. Bender was terminated on April 12, 2002 for assaulting a co-worker and the plant manager. Five days later he was involuntarily committed to a mental health facility and diagnosed with a severe mental disorder. Mr. Bender had worked for the plant for 29 years and had a clean discipline record. The company argued that Mr. Bender was not suffering from a mental illness at the time of the assault and therefore it had a right to terminate him. It argued that the misconduct was deliberate and not caused by the onset of an acute manic episode.

The collective agreement prohibited discrimination on a list of grounds that did not include disability. The arbitrator noted that the collective agreement must meet the standards of Alberta's human rights legislation, which does include disability. The arbitrator reviewed cases and found that the question of whether the employer was allowed to terminate Mr. Bender's employment came down to whether Mr. Bender was responsible for his behaviour. The rule is: "Where an employee is suffering from a physical or mental disability that is implicated in the misconduct that has resulted in discharge, the conduct is not culpable."

The arbitrator examined two questions to determine whether this rule was satisfied:

1. Is there a pre-existing medical condition?
2. Is there a connection between the misconduct and the medical condition?



The arbitrator found that Mr. Bender's judgment on April 12, 2002 was impaired because of his mental disorder and therefore he was relieved of responsibility. The company argued that it had no duty to accommodate Mr. Bender because it had not been informed or given any medical information about the mental disorder. But the arbitrator found that, on the specific facts of this case, the employer did have a duty to accommodate Mr. Bender. The arbitrator found that the company failed in the accommodation because they took no steps to investigate Mr. Bender's situation or offer him disability benefits. After the assault, Mr. Bender began taking medication for his mental disorder. His behaviour stabilized and he had been working at a new job since then without an incident. The arbitrator reinstated Mr. Bender to his former position with the condition that he must continue medical treatment and notify the company if he stopped taking mood-stabilizing drugs.

*United Steelworkers of America, Local 5885 v. Sealy Canada Ltd. (Bender Grievance)*, [2006] A.G.A.A. No. 8.

## 2. **Accommodation must be reasonable, not instant or perfect.**

Ms. Callan worked for Suncor in a clerical position until she developed a debilitating disease. Her condition deteriorated rapidly and she became dependant on a wheelchair. When she returned to work she found that the workplace was not wheelchair accessible. She filed a human rights complaint alleging discrimination on the ground of disability and indicated the employer had not accommodated her disability. The complaint was dismissed, and the chief commissioner upheld the dismissal.

Ms. Callan sought a judicial review in the Court of Queen's Bench, asking for a review of the process the chief commissioner used in making the decision to dismiss the complaint. The judge quashed the decision of the chief commissioner and referred the complaint back to a human rights panel. However, Suncor and the chief commissioner appealed the Queen's Bench decision in the Court of Appeal.

The Court of Appeal overturned the Queen's Bench decision and found that the chief commissioner's decision was reasonable and therefore the case should not have been sent back to a human rights panel. The court concluded that Suncor had reasonably attempted to accommodate Ms Callan and said there is no duty of instant or perfect accommodation, only reasonable accommodation. The employee is not entitled to dictate the accommodation he or she will accept, nor is the employer required to accept the employee's own subjective assessment of his or her abilities.

*Callan v. Suncor* 2006 ABCA 15 | <http://www2.albertacourts.ab.ca/jdb/2003-/ca/civil/2006/2006abca0015.pdf>

3. **While an employer is not entitled to a diagnosis of the employee's disability, except in limited circumstances, an employer is entitled to specific information to assess a reasonable accommodation.**

Ms. Schram worked as a nurse on a 2/3 rotation shift at the Royal Alexandra Hospital. A majority of nurses voted to change to a 4/5 rotation. However, Ms. Schram had a variety of unspecified health issues that were made worse by working more than three shifts in a row. She was concerned about the new rotation schedule and therefore visited her doctor to discuss the matter. Her doctor advised that Ms. Schram should stay on the 2/3 rotation. Ms. Schram's supervisor sent the doctor's note to the Occupational, Health, Safety and Wellness (OHS&W) specialists with a note saying that accommodating Ms. Schram's request would be possible. OHS&W contacted Ms. Schram and asked her to fill out a Physician Modified Work Information Form, which asked for the diagnosis, medical tests ordered, prescribed treatment, description of signs, symptoms and objective findings, and a recommendation with respect to modified duties. The United Nurses of Alberta, Local 33 advised Ms. Schram not to complete the form, but instead to meet with her doctor to get the pertinent information. Ms. Schram met with an occupational health specialist who wrote a report on her condition. Ms. Schram submitted a summary of that report to OHS&W. Dr. Lee, a medical consultant hired by OHS&W to review employee health requests, denied Ms. Schram's request for accommodation because the request was not supported by current medical information. Dr. Lee felt that the summary report was too vague and did not include enough specific information about Ms. Schram's illness. He specifically mentioned that the summary report did not include a diagnosis, diagnostic tests, specific restrictions, and the expected duration of the disability. The union was opposed to the disclosure of an employee's diagnosis.

The arbitration board found that some of the information requested by OHS&W was unnecessary, but also that Ms. Schram had not provided enough information to find a reasonable accommodation. The employer was entitled to more information, which the employee refused to provide, and therefore it was reasonable to deny her request for accommodation. The arbitration board suggested that employers could request information such as:

- ◆ whether it is a temporary or permanent illness;
- ◆ what restrictions and limitations an employee has; and
- ◆ whether a treatment or medication the employee is taking will affect the employee's ability to perform job duties.

The Court of Queen's Bench affirmed the arbitration board's decision. The Court found that Ms. Schram had not provided enough information to prove she had a disability under Alberta's human rights legislation. Therefore, there was no need for the employer to enter into a discussion of accommodation or to meet the test

of undue hardship. The diagnosis is not required, but there must be information provided by the employee that links the symptoms to the accommodation being requested.

*Capital Health Authority (Royal Alexandra) v. United Nurses of Alberta, Local 33 (Schram Grievance)* [2006] A.G.A.A. No. 60 at para. 70, affirmed 2008 ABQB 126. | [www.albertacourts.ab.ca/jdb/2003-/qb/civil/2008/2008abqb0126.pdf](http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2008/2008abqb0126.pdf)

#### 4. **The universal application of an absenteeism policy to injured workers is discriminatory.**

Mr. Gariano was a construction worker, contracting for Fluor Constructors Canada Ltd. On January 23, 2002, Mr. Gariano sprained his left thumb, wrist and medial epicondylitis when he was pulling on a tarp on the job site. He visited the nurse and shortly after was given a modified work offer that stated that his progress would be continually reviewed to adjust the length of time he needed to be on modified work. Shortly after, Mr. Gariano was told that he was not eligible for re-hire for 90 days. Mr. Gariano then received a letter from WCB stating that he had tendonitis in his left wrist and thumb. In addition, Mr. Gariano was still experiencing pain. Two weeks later Mr. Gariano was fired for the following reasons:

1. He was not eligible for rehire.
2. He quit due to personal reasons.
3. He was discharged due to absenteeism because of no contact with supervision in over three consecutive shifts.

Mr. Gariano made a human rights complaint. Mr. Gariano had given the employer a medical slip from his doctor stating that he could not return to work for a few weeks. However Fluor Constructors was pressuring WCB to return Mr. Gariano to the worksite.

The human rights panel found that Fluor Constructors had discouraged Mr. Gariano from seeing his own doctor and tried to prevent him from taking a medical leave. There was some conflicting medical evidence, but it was the responsibility of the employer to work with WCB to clarify Mr. Gariano's work status. Mr. Gariano was terminated for absenteeism. However, the company made a mistake in applying an absenteeism policy to a workplace injury. The panel stated that an absenteeism "... policy does not supersede human rights law... Universal application of this policy to injured workers is discriminatory."

*Gariano v. Fluor Constructors Canada Ltd.* (2006), 57 C.H.R.R. D/43 (Alta. H.R.P.). | [www.albertahumanrights.ab.ca/GarianoGiuseppen053006Pa.pdf](http://www.albertahumanrights.ab.ca/GarianoGiuseppen053006Pa.pdf)



5. **The employer has an obligation to patiently and carefully assess the accommodation needs of a disabled employee.**

Mr. McLellan was a wood room cleaner who began having back pain. Mr. McLellan's doctor recommended that he take a temporary sick leave. During sick leave, Mr. McLellan discovered that he had degenerative disc disease. He returned to work and was given lighter duties. His employer was unsure how long it would be before Mr. McLellan could return to full duties. Mr. McLellan's illness appeared worse at the end of his first month back at work, so his employer terminated his position. The Nova Scotia Board of Inquiry ruled that the employer had not made the necessary inquiries to determine if Mr. McLellan's accommodation needs would result in an undue hardship to the company. Had the employer requested further information from Mr. McLellan's doctor, it would have discovered that Mr. McLellan would have been fit to return to full duties within a relatively short period of time.

*McLellan v. MacTara Ltd.* (No. 2) (2004), 51 C.H.R.R. D/103 (N.S. Board of Inquiry)

6. **It is the employee's responsibility to prove the connection between a symptom and a medical issue.**

Mr. Neumann worked for the Edmonton Public School Board as a supply custodian. His position was terminated in June 2002, in part because of his objectionable body odour. Mr. Neumann alleged that his body odour problem was caused by having polio in childhood. Neumann said that he would provide a note from his doctor confirming the link between body odour and childhood polio, but he never produced a letter. The human rights investigator found that Neumann had blocked attempted communications with his doctor and that no evidence supporting the link between body odour and polio had been provided. The employer was justified in terminating Mr. Neumann's position. His complaint was dismissed. Mr. Neumann sought a judicial review of the decision, but the Alberta Court of Queen's Bench and the Court of Appeal both dismissed his appeal.

*Neumann v. Alberta (Human Rights and Citizenship Commission)*,

[2005] C.C.S. No. 13751 (ABQB) |

<http://www2.albertacourts.ab.ca/jdb%5C2003-%5Cqb%5Ccivil%5C2005%5C2005abqb0694.pdf> and

[2006] C.C.S. No. 14839 (ABCA) |

<http://www2.albertacourts.ab.ca/jdb%5C2003-%5Cca%5Ccivil%5C2006%5C2006abca0407.pdf>

7. **Employers must ask for only the particular medical information needed on a case-by-case basis, and ensure they are not requesting more information than needed at any particular time.**

The Peace Country Health Region introduced new forms and procedures to manage sick leave under Article 19.04 of the collective agreement: “Employees may be required to submit satisfactory proof to the Employer of any illness, non-occupational accident or quarantine. Where the Employee must pay a fee for such proof, the full fee shall be reimbursed by the Employer.”

Under the new procedures employees who were absent for more than 14 days were automatically required to have a doctor fill out a medical form. The employer could also request the form at an earlier date, if warranted under the circumstances.

The forms included an open-ended release that authorized the employer to have unlimited communication with the employee’s doctor. The forms also asked for the employee’s diagnosis, treatment and tests.

The grievance arbitration board ordered that the employer cease using the forms because they violated the collective agreement. The board noted that employees have a right to privacy in their medical information. The forms, which included a blanket release to the employer to contact the doctor, were over-broad.

Employers are entitled to baseline information on an employee’s illness. There are less intrusive methods of gaining medical information than using a form which permits a “direct and unregulated pipeline to the employee’s health care provider.” The employer’s demand of a release, such as the one on the forms, goes beyond the scope of Article 19.04. Employers can gain the necessary medical information from employees by providing their questions, in writing, to the employee to bring to their doctor. The policy and forms introduced by Peace Country Health Region were unreasonable and not authorized by the collective agreement.

*Peace Country Health v. United Nurses of Alberta*, [2007] A.G.A.A. No. 17 (Sims).

8. **An employer should make a clear request for further medical information, including what kind of information is needed and the format in which it can be submitted.**

Mr. Trick had bipolar disorder and was off work on a medical leave. When he was ready to return to work, he contacted his employer to let them know. The employer provided Mr. Trick with a package of documents to be filled out by his doctor. Mr. Trick’s psychiatrist wrote that he was medically fit to return to work and forwarded the documents to the appropriate parties. Mr. Trick had difficulty getting

the other forms filled out. The employer argued that they needed more information to ensure that Mr. Trick was not a safety risk driving a car for a sales position. Also the employer wanted to ensure that Mr. Trick was able to interact with customers in social situations. The Alberta Court of Queen's Bench found that the employer had not requested any information from the doctor about Mr. Trick's ability to drive. Mr. Trick had told the employer, at a meeting, that he was having difficulty having the forms filled out by the staff that ran a day program where he was being treated. Mr. Trick had received clearance from his psychiatrist to return to work with no restrictions. The employer did not inform Mr. Trick that this was insufficient medical information or tell him that he would not be able to return to work until he provided further information. The Alberta Court of Queen's Bench said that the Mr. Trick had not resisted providing information to the employer and that he had done his best to provide the necessary information to the employer. No one asked Mr. Trick to clarify the psychiatrist's letter or told Mr. Trick he needed to supply more information. Therefore the Alberta Court of Queen's Bench awarded Mr. Trick compensation for lost wages and pension benefits as well as damages for pain and suffering.

*Gary Trick v. Federated Co-operatives Ltd.*, 2005 ABQB 587 |

<http://www2.albertacourts.ab.ca/jdb%5C2003-%5Cqb%5Ccivil%5C2005%5C2005abqb0587.pdf>

## Related resources

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### Commission information sheets

The Commission has summarized the key points from this interpretive bulletin in separate information sheets for each of these three audiences: employees, employers, and doctors. You can link to the information sheets at [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca) through the "Information sheets" quick link.

### Privacy

The following statutes govern privacy in Alberta:

- ◆ *Health Information Act* ("HIA")
- ◆ *Freedom of Information and Protection of Privacy Act* ("FOIP")
- ◆ *Personal Information Protection Act* ("PIPA")

For the text of these statutes, see the website of the Office of the Information and Privacy Commissioner at [www.oipc.ab.ca](http://www.oipc.ab.ca) and follow the links. Cases have been decided about medical information within the privacy law context. These can be found by searching online at [www.oipc.ab.ca/pages/OIP/default.aspx](http://www.oipc.ab.ca/pages/OIP/default.aspx). You can also find contact information for the OIPC on their website.

### Workers' Compensation Board

For information on workers' compensation, see the WCB website at [www.wcb.ab.ca](http://www.wcb.ab.ca).

## Contact us

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The Alberta Human Rights Commission is an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

### **Northern Regional Office**

800 Standard Life Centre  
10405 Jasper Avenue  
Edmonton, Alberta T5J 4R7  
**(780) 427-7661 Confidential Inquiry Line**  
(780) 427-6013 Fax

### **Southern Regional Office**

Suite 310, 525 – 11 Avenue SW  
Calgary, Alberta T2R 0C9  
**(403) 297-6571 Confidential Inquiry Line**  
(403) 297-6567 Fax

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

For province-wide free access from a cellular phone, enter \*310 (for Rogers Wireless) or #310 (for Telus and Bell), followed by the area code and phone number. Public and government callers can phone without paying long distance or airtime charges.

### **TTY service for persons who are deaf or hard of hearing**

(780) 427-1597 Edmonton  
(403) 297-5639 Calgary  
Toll-free within Alberta 1-800-232-7215

**E-mail** [humanrights@gov.ab.ca](mailto:humanrights@gov.ab.ca)

**Website** [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)

**Please note: A complaint must be made to the Alberta Human Rights Commission within one year after the alleged incident of discrimination. The one-year period starts the day after the date on which the incident occurred. For help calculating the one-year period, contact the Commission.**

The website links in this publication are provided as a service and were accurate at the time of publication. The Commission is not responsible for content of websites other than its own. If you have questions about website links or their content, please contact the administrator of the website in question.

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# Obtaining and responding to medical information in the workplace – Reader survey

Please help us improve this publication by answering any or all of these questions:

1. What information were you looking for in this publication?

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2. Please indicate  if you found:

all of the information  
you were looking for

most of the information  
you were looking for

none of the information  
you were looking for

3. Please indicate  how easy the publication was to understand.

very easy to  
understand

somewhat easy  
to understand

just right

somewhat difficult  
to understand

very difficult  
to understand

4. Please indicate  if the format (design) made the publication easy to read.

very easy  
to read

somewhat easy  
to read

just right

somewhat difficult  
to read

very difficult  
to read

5. What information could be added to this publication to make it more useful?

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6. Please list any other ideas you have for making this publication more useful.

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7. Please indicate  if you are:

- an employer
- a medical professional
- a union representative who provides support to members
- an individual seeking information about your human rights
- working in human rights, human resources, law or another field related to human rights
- other (please specify) \_\_\_\_\_

Thank you for taking the time to complete this survey.

Please mail or fax your completed form to:  
**Coordinator, Educational Resource Development, Education and Community Services**  
**Alberta Human Rights Commission**  
800 Standard Life Centre, 10405 Jasper Avenue, Edmonton, Alberta T5J 4R7  
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