

Obtaining and responding to medical information in the workplace: A summary for employers

Introduction

The Alberta Human Rights Commission offers a detailed interpretive bulletin called *Obtaining and responding to medical information in the workplace*, which provides comprehensive information for employers, employees, unions and doctors about the human rights aspects of this topic. This publication summarizes the key points for employers from the interpretive bulletin. It will be particularly useful to small and medium-sized employers that do not have a disability management program.

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 (www.oipc.ab.ca);
- injuries at work should be directed to the Workers' Compensation Board (WCB) (www.wcb.ab.ca); and
- human rights matters should be addressed to the Commission (www.albertahumanrights.ab.ca).

Employers request medical information to make decisions about accommodating an employee or potential employee or to confirm an employee's absence for medical reasons. 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** are expected to respond to requests from patients for medical information.

In this publication, employers will find:

- information on requesting and responding to medical information from an employee;
- a *Sample Medical Absence Form* that may be used to confirm that an absence from work is for medical reasons; and
- a *Sample Medical Ability to Work Form* that may be used to provide the employer with the information necessary to make decisions about accommodating the employee, providing disability leave, or assessing if the employee can return to work.

What information can an employer request when an employee is absent for medical reasons?

When an employee is absent for medical reasons it is reasonable to ask them for medical information confirming that their absence is for medical reasons and for an approximation of the date they are expected to return to work.

Generally, employees have a right to privacy regarding their medical information. When requesting medical information related to 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.

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.

There are very limited circumstances when an employer is entitled to the diagnosis.

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

Accommodation means making changes to certain rules, standards, policies, workplace cultures and physical environments to ensure that they don't have a negative effect on a person because of the person's mental or physical disability or any other protected ground. For more information on accommodation, see the Commission interpretive bulletin *Duty to accommodate*.

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 and what, if any, accommodation is needed. Ultimately an employer must accommodate the employee unless such accommodation creates undue hardship for the employer.

When accommodation is necessary, the employer, the employee, and the union (if there is one) have a duty to cooperate in the accommodation process. 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 in a satisfactory and safe manner.

When may an employer ask for more medical information?

To determine whether the medical information supplied is sufficient, the employer must look at the individual facts of each case. 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 indicate the reason that this information is necessary;
- specifically identify the information that is being requested;
- remind the employee that all information will be shared only on a need-to-know basis; and
- continue to be open to any concerns an employee has about providing further medical information, and try to resolve these concerns with the employee.

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.

The employer is **not** entitled to:

- contact the employee's doctor by phone;
- terminate the employee before exploring the duty to accommodate to the point of undue hardship;
- demand a definitive opinion that the employee will have no further medical problems;

- request medical information that is not employment-related;
- release medical information to anyone other than staff who need it for a specific purpose; and
- know the employee's diagnosis, except in limited cases.

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 practises 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.

An employer must first try to get the medical information they require from the employee's doctor or specialist before requiring an independent medical examination (IME). Requiring an employee to submit to an IME by a doctor of the employer's choosing is intrusive and therefore should only be used after other avenues have been exhausted and unsuccessful.

Can a medical absence be a reason for discipline or termination?

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.

For questionable absences, 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 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.

Employees who have a mental illness or drug or alcohol dependency may not willingly supply necessary information. Unlike an employee with a physical disability, an employee with a mental illness may not 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 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.

How should medical information be managed in the workplace?

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.
- 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 generally recommended.
- Let employees know that the employer encourages early reporting of potential medical issues.
- Keep all medical information in strictest confidence. Release information only to those who need to know in order to accommodate the employee.
- Discuss individual needs with employees in return-to-work or accommodation situations.
- Review the attached sample forms along with current privacy and labour law statutes and cases to learn more about recent law related to medical information in the workplace.
- Ensure that there is a consistent approach to medical absences and return-to-work situations by using or creating forms such as the attached sample forms.

For more information

1. **The Commission interpretive bulletin *Obtaining and responding to medical information in the workplace*** offers a full discussion of this topic as it relates to employers, employees, unions and doctors. It is available at www.albertahumanrights.ab.ca under the “interpretive bulletins” quick link.
2. **Employers may want to use the attached *Sample Medical Absence Form* and *Sample Medical Ability to Work Form*** for use in their practices.
3. **The Commission’s interpretive bulletin *Duty to Accommodate*** provides more information on accommodation and undue hardship. It is available at www.albertahumanrights.ab.ca under the “interpretive bulletins” quick link.
4. **See your collective agreement, if one exists.** 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.
5. **The Commission offers a number of different workshops** that can help employees and employers understand human rights law and how to manage medical information in the workplace. Contact the Commission for more information. 

Contact us

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.

For our **business office and mailing addresses**, please see the **Contact Us** page of our website (www.albertahumanrights.ab.ca), or phone or email us.

Hours of operation are 8:15 a.m. to 4:30 p.m.

Northern Regional Office (Edmonton)
780-427-7661 Confidential Inquiry Line
780-427-6013 Fax

Southern Regional Office (Calgary)
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
1-800-232-7215 Toll-free within Alberta

Email humanrights@gov.ab.ca

Website 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 Human Rights Education and Multiculturalism Fund has provided funding for this publication.

Upon request, the Commission will make this publication available in accessible multiple formats. Multiple formats provide access for people with disabilities who do not read conventional print.

Sample Medical Absence Form

(To be completed by attending physician)

ADR2013

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)

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.**

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

(To be completed by attending physician)

ADR2013

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.**

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

(To be completed by attending physician)

ADR2013

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)

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)

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

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

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"/>