

## PUBLICATION

### Employer entitlement to employee medical information

November 18, 2019

When an employee has a medical issue (physical or mental) and needs disability support, the employer has a responsibility to accommodate the employee but only to the point of “undue hardship”. It becomes an “undue hardship” to the employer when it is disproportionate to the cost, management of the workforce, operation of the employer’s facilities, or one of several other factors.

Accommodating an employee’s disability involves aspects of human rights, privacy, occupational health and safety legislation, and employment/labour law.

An employer will require some medical information to satisfy its duty to accommodate, but they must act properly or they risk being exposed to potential liability.

Employers may be in breach of their obligations under privacy and human rights legislation or common law if they:

- request more information than they are entitled to
- fail to keep that information confidential
- they use that information improperly

The duty to accommodate is very fact-specific, but accommodation might include:

- flexible work schedules
- time off for recuperation
- modifying job duties or assigning the employee to different tasks
- modifying workplace policies
- providing additional or modified tools and equipment

For an employer to determine *how* to accommodate an employee’s disability, they are allowed to ask the employee for a limited amount of medical information, including:

- information that is necessary to manage the working relationship
- information relevant to the length of the absence from work
- information about limitations/restrictions to accommodate the employee
- whether those limitations/restrictions are temporary or permanent

Employees are required to cooperate with an employer's reasonable information requests. Employees who fail or refuse to provide medical information can be subject to discipline or even dismissal.

The employee's obligation to cooperate does not replace the employer's duty to accommodate an employee's disability to the point of undue hardship. In many cases that duty to accommodate could include providing further opportunities or extensions of time to provide relevant medical information.

When an employee provides medical information, that information should be held in confidence by the employer. Medical information is highly private and an employer must take steps to restrict access to those employees who genuinely need to know. Even then, the entirety of the medical information should not be accessible unless it is necessary.

As an example, a supervisor might need to know that an employee cannot operate a forklift for the next six months, but the supervisor does not need to know that the reason is due to medication that the employee is taking to treat a medical condition.

Once medical information has been provided the employer must ensure that it is used for legitimate purposes, such as:

- Verifying that there is a medical reason for an employee being away from work;
- Understanding an employee's restrictions and limitations; and
- Determining the types of accommodation (if any) that would be reasonable to allow the employee to return to work.

Keep in mind that employees have a right to privacy regarding their medical information, and employers do not have an absolute right to medical disclosure.

Should you require legal advice on an employment law-related matter, you can contact our offices and ask to speak to a lawyer in our Employment Law team.