

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

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 employees from the interpretive bulletin. It 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. Employees, employers, unions and doctors all play a role in gathering reasonable medical information on an employee's disability.

- **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.
- **Employers** play a key role in requesting relevant medical information.
- **Doctors** are expected to respond to requests from patients for medical information.

In this publication, employees will find:

- information on the rights and responsibilities of an employee in providing medical information;
- 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 supply information on accommodations, a disability leave, or returning to work after a medical leave.

What information can an employer request from an employee 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 an approximation of the date they are expected to return to work.

Generally, employees have a right to privacy regarding their medical information. To assess an employee's needs, the employer may request information that only:

- 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 a diagnosis.

What information can an employer request when an employee wants to return to work after a medical absence 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. An employee who is requesting accommodation at work may need

to supply additional information to help the employer and employee decide:

- what duties are available that the employee is able to perform;
- what accommodations are necessary; and
- whether the accommodations are possible without creating undue hardship on the employer; 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.

An employee may be asked to provide information such as the following so that the employer can 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.

The employee, the employer, and the union, if there is one, have a duty to cooperate in the accommodation process. An employee cannot refuse a reasonable solution just because they prefer a different kind of accommodation.

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

Privacy and confidentiality

Employees have a right to privacy regarding their personal medical information. The employee must work with the employer to keep the lines of communication and cooperation open. Therefore the employee

has a responsibility to cooperate in the process by providing the medical information necessary to explain an absence or support an accommodation request.

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.

An employee generally has a right to confidentiality regarding their medical information within the workplace. The sharing of confidential medical information in the workplace is limited to those who need to know for specific purposes, such as arranging modified work.

Contact with the employer

An employee is usually expected to report an absence from work as soon as possible and, if at all possible, before they are expected to show up for work. If requested, an employee is expected to make every reasonable attempt to get a medical note to explain the absence. An employee can expect some contact from the employer during a lengthy absence, but not so much that the employee feels harassed.

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

The employee usually supplies medical information from their own doctor as to whether they are fit to work or require an accommodation at 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 their 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.

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, it may be necessary to choose another specialist whom the employee and employer agree upon to resolve the conflict.

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. An employee who feels that they are being terminated or disciplined for a disability-related absence should provide the employer with medical information to support their claim. An employee who has not revealed a mental health issue or addiction problem that is affecting their ability to work should seek

help from a doctor or addictions expert and provide information about their disability to the employer as soon as possible.

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. **Employees may want to use the attached *Sample Medical Absence Form* and *Sample Medical Ability to Work Form*** when seeking medical information from their doctor.
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. 

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.

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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"/>