TEAMSTERS LOCAL UNION NO. 31
AFFILIATED WITH TEAMSTERS CANADA AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Employers' Right to Medical Information – What do You Have to Give Them?

The employer's demand for medical information can be a constant problem for people who are disabled from illness or occupational injury. There's a whole body of law around this issue but it never seems to stop employers from trying to get their hands on information they are not entitled to.

This article talks about the law limiting what employers can ask for **unless you have a specific provision in your collective agreement that allows them to get certain information**. Check your collective agreement first.

Employers don't have an unlimited right to ask for whatever information they want, and above all, they do not have the right to contact an employee's doctors except in very limited circumstances.

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The most common cases where employers ask for medical information are:

- When an employee is off for a lengthy period,
- Where an employee wants to come back to work after being off for a lengthy period, or
- Where the employee needs an accommodation.

There is a process that has been established as the “least intrusive” approach to getting medical information – that is, they should ask for only that information that is absolutely necessary. If an employer thinks that the medical information a worker has provided is insufficient, the employer should tell the worker what they want and give her an opportunity to provide it.

If the worker is unable to get the information requested (and does not object to providing it, i.e., doesn’t think it's an unreasonable request by the employer), the two parties may agree to having the worker see an independent medical professional for an opinion – that is, an independent medical evaluation (IME). This does not mean just going to a doctor the employer names. It should be an agreed third party physician that the union and worker find acceptable.

Unless the collective agreement provides specifically for it, it is never recommended to allow the employer to contact the worker's doctor directly. This is almost always a bad idea. The doctor may say one thing and the employer may hear another. Or the employer may interpret what the doctor said wrongly. If you weren't part of the conversation, you don't know what was actually said. This is not uncommon on WCB files where a board doctor will call up a worker's physician and then put a memo on the file which relates what the worker's doctor said. The family physician may disagree that that's what they said. Or the WCB doctor may formulate the question based on information you dispute. This never ends well for the worker.

Unfortunately, we can't stop board doctors from calling an injured worker's doctor; but unless your collective agreement specifically provides for it, you can certainly stop an employer doctor from calling your physician. They should never do so without express permission from the worker.

The bottom line for this whole are of law is that:

The right to manage does not confer direct access to its employees' physicians on
demand, and without first exhausting the least intrusive means to answer reasonable inquiries. That principle rests on arbitral recognition of an employee's "strong right to privacy with respect to their bodily integrity and medical treatment."

An employer's right to require employees to provide medical information to manage absenteeism, to ensure workplace safety, to administer claims for disability benefits, to facilitate the accommodation process or to fulfill a duty to enquire about a disability, must be balanced against the employee's fundamental right to privacy regarding their medical information. This assessment demands appropriate regard for the elevated privacy interest attached to the doctor-point relationship. (The Government of BC and the British Columbia Crown Counsel Association 2019 CanLII 118409 (BC LA))

The other thing to remember is that the employer must limit the information they want to very specific and narrow grounds; no broad, sweeping fishing expeditions. For example, a nurse who was off work due to a physical disability, was asked by the employer to provide evidence of mental health. This was not permitted by the arbitrator.

Only in very rare circumstances is an employer entitled to know an employee's diagnosis. And if the situation does permit them to ask for that information, they must very strictly limit who has access to the information after they get it.

Questions like: “what medications are you taking” can lead to an obvious diagnosis, for example, chemotherapy, or psychotropic medications for mental illness. Questions should not be asked if the answer will make the employee’s diagnosis obvious.

In cases of workplace injury, the *Workers' Compensation Act* strictly prohibits the use of any information on the files for anything other than adjudication (or appeal) of a claim. *The Act* makes it an offence to unlawfully share information.
Arbitrator, Jim Dorsey, stated in *United Steelworkers, Local 7884 and Fording Coal Limited* (1996 BCCAAA No. 94):

Confidentiality of medical records is a basic right to human dignity. Restoring and
supporting dignity and the accompanying personal confidence is a therapeutic part of recovery, rehabilitation and adapting to life with a disability. Breaches of privacy may work against recovery.

Certainly in many arbitrations and compensation cases, the lack of respect for a worker’s privacy and dignity have contributed to worsening their condition, or preventing recovery, particularly in cases of psychological injury and illness.

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A famous BC arbitration award, *Victoria Times-Colonist and Victoria Newspaper Guild, Local 233,* unreported, Feb. 12, 1986, stated the following:

…it is important to recognize that there is nothing inherent in the employer-employee relationship which vests in an employer a discretionary right to compel employees to compromise their right of privacy through the disclosure of personal medical information. In particular, that is not a discretion that falls within the retained rights concept which vests in an employer those rights coincidental with the management and direction of the enterprise and the work force which have not been bargained away. An employer can only intrude upon the privacy of an employee if it has a legitimate business purpose tied to the employer-employee relationship which justifies the intrusion.

Unions and advocates need to be vigilant about not caving in to unreasonable demands of employers for private medical information. You are entitled to protect your basic human right to privacy and human dignity.

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