



MANAGING ABSENTEEISM – MEDICAL INFORMATION

Managing employee absenteeism is one of the most vexing problems facing human resource practitioners today. One of the ways to attempt to manage absenteeism is to require the employee to provide a medical certificate.

An employer is entitled to medical information reasonably necessary to enable it to make appropriate workplace assignments and decisions and to facilitate the accommodation process. An employer, in a union or non-union context, may require the following types of medical information, unless there is a provision to the contrary in a collective agreement:

1. existence of a medical condition that affects an employee's ability to perform job duties;
2. general nature of the condition;
3. date of onset of the condition;
4. date of any specialist assessments;
5. ability of an employee to perform work-related tasks now and into the future;
6. existence of any required accommodations;
7. any contributory work conditions leading to an employee's inability to attend at work;
8. steps an employer and employee can each take to reduce the time off work;
9. expected date of return to work; and
10. compliance with a recommended treatment plan.

An employer is normally not entitled to know an employee's diagnosis (except in the case of certain addictions), the treatment the employee is receiving, or to obtain reports from the employee's physician directly, or access the employee's medical records.

It can difficult to receive an appropriate response from an employee's physician. An employee may provide you

with a "prescription pad" medical certificate or a certificate that is incomplete, internally inconsistent, or ambiguous. For that reason, we recommend giving the employee a proper form to be completed by the physician.

If the physician does not provide the information required, you have several options. You may require the employee to go back to the physician to get a proper answer to your questions. In the case of an internally inconsistent or ambiguous medical certificate, you may be able to refer the employee to a physician for an independent medical examination (an "IME"). In a complex case, you could contact a health care professional to assist in preparing further supplementary questions to the employee's physician.

What can you do to protect your organization in future cases? You could consider making consent to an IME one of the terms of offer to new employees. You could also seek to negotiate, in a collective bargaining context, the right to have an employee submit to an IME. You would need to be careful in raising this issue, as employers already have this implied right in many circumstances; if you already have the right to require an IME and the union rejects your proposal, you could lose your right to require an IME.

With union and non-union employees, there can also be privacy issues related to requiring an employee to undergo an IME, so this has to handled properly.

There will continue to be a "push-pull" between employers and employees in this area. Early intervention is key to minimizing the impact of employee absenteeism on your business.

The content of this Newsletter is intended to provide information on Bull, Housser & Tupper LLP, our lawyers and recent developments in the law. The information contained herein is summary in nature, and does not constitute legal advice. For additional details or advice concerning specific situations please contact any member of our Labour & Employment Group.

“
*An employer
is normally not entitled
to know an employee's
diagnosis*
”



LABOUR & EMPLOYMENT GROUP



Larry Page
604.641.4902
dlp@bht.com

Howard Ehrlich
604.641.4901
hle@bht.com

Simon Margolis
604.641.4871
sbm@bht.com

Herb Isherwood
604.641.4818
hji@bht.com

Judith Macfarlane
604.641.4910
jam@bht.com

Ryan Berger
604.641.4956
rpb@bht.com

Christian Petersen
604.641.4903
cjp@bht.com

Taryn Mackie
604.641.4877
tlm@bht.com

Anthony Moffatt
604.641.4814
arm@bht.com

Andrew Schafer
604.641.4858
ans@bht.com



In a recent study, **Bull, Houser & Tupper** ranked 12th among the “Best Small & Medium Employers in Canada”.



**Bull, Houser
& Tupper** LLP

3000 ROYAL CENTRE . 1055 WEST GEORGIA STREET . VANCOUVER . BC . CANADA . V6E 3R3
PHONE (604) 687-1575 . FAX (604) 641-4818 . WWW.BHT.COM