

Disclosing Medical Information When An Employee Needs Workplace Accommodation for Mental Health Issues

The Employer's Duty to Inquire

Many employers are familiar with the duty to accommodate but don't always appreciate that it is made up of two components: the procedural and substantive duty to accommodate.

In the procedural component, you have a duty to inquire about the disability-related needs of the employee. This includes gathering information and medical documentation about how the employee's needs interact with the workplace. In some circumstances, the nature of an employee's health issues may make it difficult for the employee or the employer to identify that they have a disability, or that they have accommodation needs. This may be particularly true where there is a mental illness. The duty to inquire exists even if the employee has not requested accommodation. If you suspect, or should suspect, that there is a connection between a disability and an employee's job performance, you have a duty to "inquire" about that connection. This type of inquiry must take place before an employee faces adverse consequences for performance issues or misconduct.

The substantive component is where the employer puts the accommodation measures into place. Also considered is the reasonableness of the accommodation offered or the employer's reasons for not providing accommodation.

In order to meet your duty to inquire, you will need sufficient information while not violating the employee's right to privacy and confidentiality surrounding their health issues. Although many employees are reluctant to share information, they are legally obliged to provide appropriate medical information if they are requesting that their jobs be modified in some way for medical reasons.

While it may sometimes seem like they are at odds, both the employer and the employee are faced with essentially the same problems:

- how much medical information should be shared

- how the medical information is going to be used?
- where the medical information needs to come from

Employees are often hesitant to provide medical information to their employers. Medical information is extremely personal and employees may worry about what the employer will do with that information. This includes concerns like who will have access to the information, how long it will stay in the employee's file and whether it will affect their chances of advancement and promotion. Even with an employer with the best of intentions, sharing medical information could negatively influence the way the employee is perceived and treated in the workplace. That said, many employees with disabilities require workplace accommodation and in order to receive it, must be willing to share some amount of medical information.

You should resist the urge to make a blanket request for information without thoroughly assessing what information is required under the circumstances. Although it may be easier to ask that every employee provide the same medical information in a standard form, there is no "one size fits all" approach. Rather, employers are obligated to look at each situation independently, and determine what information is necessary to be able to fulfil their accommodation responsibilities.

For example, an employee suffering from social anxiety may request a quiet office rather than a cubicle to avoid any unnecessary interactions with others. Before providing the requested office, you would be entitled to medical information directly related to that request but not the employee's medical history. In other words, you would not be entitled to information about the employee's past history of diabetes or recent knee injury from playing tennis; only information that would support the need to work in a quiet place, free from interruptions.

Don't Give up Too Quickly

An employee may resist your request for medical information. This could be simply because they do not want to share the information or it could be that they are unaware that they have an illness or that it is impacting their workplace.

If you suspect that an employee is experiencing a disability, you may have to use a different strategy for soliciting information. Often, employees react more openly when presented with factual information about behaviour or performance and provided the opportunity to speak openly. You may try engaging an employee in conversation about their health-related needs by saying:

- I've noticed that you don't seem to be yourself lately. Is there anything you'd like to talk about?
- Your productivity numbers have fallen recently. I want you to be successful. Is there anything I can do to help you?

Ultimately, an employee may choose not to share information. However, before giving up, try to make the employee feel comfortable about sharing.

What Employers Need to Know

There is a common misconception that employers are entitled to know an employee's diagnosis. You may sincerely believe that this information is necessary to understand what the employee is facing and it may seem easier to accommodate the employee when you can anticipate what the challenges will be. However, the value of knowing the diagnosis is exaggerated and it may not actually assist you with understanding the individual's needs. Further, mental illness is often misdiagnosed so the diagnosis may change, in some cases frequently. Lastly, many people have pre-determined beliefs and judgments about what certain mental illnesses look like, which may be inaccurate and could lead to discrimination.

So what can, and should, you obtain in the accommodation process? While the exact type of information applicable will vary from case to case, the following is the type of information that employees generally need to support a request for accommodation.

- *Prognosis for recovery.* Whether the disability is permanent or temporary and the timelines for expected improvements.
- *Restrictions and limitations to performing job duties.* A detailed summary of what aspects of their job the employee can and cannot do.
- *Capabilities for alternate work.* If the employee cannot work in their regular position, what can they do?
- *Basis for the diagnosis.* You are entitled to know the examinations and testing that resulted in the medical conclusions, but not necessarily the results. This helps to support the legitimacy of the medical conclusions or recommendations.
- *Treatment, including medication, which may impact the employee's ability to do their job.* This information is important as it may highlight safety issues, such as side effects from medication.

- *Medical clearance to return to work.* Where an employee has been on a medical leave of absence, employers may, in some circumstances, be entitled to medical confirmation that he or she is able to return to work.

Where the Medical Information Comes From

The following are some potential sources of information regarding accommodation for mental health reasons:

- *Doctor's notes or reports.* If you ask the employee to provide a doctor's note, generally speaking you should pay for that report.
- *Medical Evaluation Form.* This is a form provided by the employer for the employee to have completed by his or her physician. It lists typical limitations or restrictions that the employee may have and any modifications that may be required. It can be a useful tool in determining how to best modify the employee's job.
- *Medical Specialists.* Some situations may benefit from the expertise of an occupational health specialist, who can provide specialized knowledge about how to accommodate certain restrictions in the workplace.
- *Independent medical exam ("IME").* An independent medical examination involves the employee being assessed by a third party physician who will provide an objective assessment of the employee's health concerns and provide recommendations for accommodation.

Generally speaking, you should start by requesting medical information from the employee's own doctor. If the employee's doctor is unable or unwilling to provide sufficient information, you may need to send the employee to an independent medical examination with an occupational health specialist.

Conclusion

Navigating the disclosure of medical information can be a difficult and emotional process. It is important that both the employer and employee treat the process with sensitivity and respect. Both parties have an obligation to be responsive and meet the requirement of exchanging enough medical information to ensure that a satisfactory accommodation solution is reached. Ultimately, both parties will benefit greatly if the employee is successfully accommodated in the workplace.