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Privacy rights & workplace accommodations

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n the last column, we outlined your privacy rights when an employerasks for proof after missed work due to illness. This time, we take alook at a similar issue: when an employee is entitled to workplaceaccommodation due to disability or health issue, how much medicalinformation must be disclosed ?

Im returning to work after a serious injury. Because I can no longer perform the strenuous work Id been doing before, the union is negotiating a workplace accommodation and modified work schedule for me.

I will have more administrative duties and less patient contact. This saddens me because I love working with patients ... but I understand that its necessary for now. However, my employer is asking for complete disclosure of my entire medical file, which includes information about health conditions that have nothing to do with my injury or current disability. Are they entitled to this information?

When a disabled worker requests accommodation, employers often ask them for medical information. However, workers are becoming more aware of their right to privacy.

Courts and tribunals have recognized that disabled workers should not be subject to unnecessary questioning about their medical history. But, an employer requires information about the workers disability and restrictions.

The following principles may help union representatives as they guide disabled workers through the accommodation process.

The employer is entitled to -all relevant information about the workers disability, at least if it is readily

available. This includes information about the workers current medical condition, prognosis for recovery, ability to perform job duties, and capabilities to perform alternate work" (*Gordy v. Oak Bay Marine Management Ltd*.).

The employer is not entitled to medical information beyond what is relevant to the accommodation process.

What medical information is relevant will depend on the nature of the accommodation being sought. For example, an employer may be entitled to information about an workers medications if the work in question involves the use of heavy machinery.

In contrast, where a worker sought a leave of absence because of his depression, the employers insistence on knowing the workers -medications, dosages and length of time used" was found to be irrelevant (*Surrey School District No. 36 v. British Columbia Teachers Federation*).

Normally, a medical opinion from the workers doctor or specialist is enough to support an accommodation request. The employer may only ask the worker to be evaluated by a doctor of its own choosing if the employer has a reasonable basis for doubting the information provided by the workers doctor, or if the contract explicitly calls for this.

In preparing a medical report, doctors should not go outside their expertise. It is appropriate for a doctor to comment on the workers disability, restrictions, treatments and prognosis. It is rarely appropriate for the doctor to suggest a particular accommodation. For example, it is proper for a doctor to say that because of a back injury, a worker is unable to lift more than 10 kilograms, but it would not usually be the doctors place to say that because of a back injury, a worker should be transferred to a clerical position.

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