

Information guidelines

to support employees' safe and timely return to duty.

**Alberta Building
Trades Council**



"What information is necessary and why? And what do you do with it once you have it?"

In today's marketplace, losing the services of valued employees can have a big impact on business. Together employers and employees have built a competitive edge. Creating a supportive, safe return to work environment is a way employers and employees can protect shared investment and enhance shared opportunity. Part of what creates a supportive and safe return to work environment, is sharing appropriate information with appropriate stakeholders at the appropriate time in the appropriate manner.

Many employees who experience injury and/or illness are safely and efficiently returning to duty; with the coordinated support from their employer, attending physicians, and other stakeholders. There is a lot to be gained when the process is managed in a fashion that respects the privacy, dignity and reasonable business needs of the party's involved. The end result:

- ✓ a positive experience that enhances your work relationships and boosts staff loyalty;
- ✓ a streamlined and more efficient process – minimizing your costs;
- ✓ injured workers are given the opportunity to contribute to your workplace in a meaningful way throughout their recovery.

For excellent resources on implementing your own return to work program refer to the Industrial Construction Committee's "Stay in the Game" initiative at <http://www.industrialconstruction-committee.ca/> and/or Enform's Industry Recommended Practice at http://www.psc.ca/irp_summary/irpvol_10.htm.

Employers, unions and employees each have rights and obligations when a worker is injured and/or in the process of returning to full duty.

Human Rights Legislation places legal obligations on employers and unions to accommodate employees who have mental and/or physical ability limitations to the point of undue hardship. (This applies to both occupational and non-occupational related limitations.)

Human Rights Law places legal obligations on employees and unions to help facilitate the accommodation process.

Privacy Legislation makes employers, unions and employees responsible for the appropriate collection, use, and disclosure of employment information, including information that is medical or otherwise sensitive.

Failing to meet these obligations initiates most of the enquiries these agencies receive and needlessly diverts your time and resources away from efficiently running your business and from supporting your employees' recovery.

It doesn't
have to be a
hardship...

Knowing our
responsibilities
and rights,
coordinating
and having
the right
information,
is key.

Start with the following Principles:

- 1) An employer may request reasonably required medical information for the purposes of managing or administering the employment relationship.
- 2) An employee must provide medical information that is reasonably required for managing or administering the employment relationship.
- 3) An employer who is not satisfied with the medical information provided by an employee may have recourse but must act appropriately.
- 4) An employer has the right to satisfy itself that an employee is fit to return to work without danger to self or others.
- 5) An employer must respect the confidentiality of medical information and ensure that only those who "need to know" have access to it.
- 6) An employee may discuss privacy concerns about the requested medical information with their employer.

Factors to consider when (asking for/providing/or refusing) to provide personal information:

Employers need to ask themselves (and should document) the following questions:

- 1) What is the purpose for collecting and using the information I am asking for?
- 2) Is that purpose reasonably connected to managing or administering the employment relationship?
- 3) Is the requested information relevant to that purpose?
- 4) Is the requested information likely to be effective in meeting the organization's purpose?
- 5) Do I require the information I am asking for and if so, why do I require it? Who will have access to it and why?
- 6) How am I going to manage the information? Who will have access to it? How will I store it? When and how will I destroy it? How will I safeguard or protect the information?
- 7) Who can I consult? Where can I go for information before I make a decision?

Employees need to ask themselves (and should document) the following questions:

- 1) Am I giving my employer the information they need to support my recovery?
- 2) Do I think my employer is asking for too much information and if so what particular information concerns me?
- 3) Have I asked my employer why they are asking for the information that is concerning me?
- 4) If so have I explained my concerns regarding my privacy to my employer?
- 5) Can I see another way I can present my information that both helps my employer and respects my privacy?
- 6) If so have I communicated that option to my employer?
- 7) Who can I consult? Where can I go for information before I make a decision?

When things get a little off track...

Employer: What if you feel you are not getting enough information?

- 1) Self evaluate—ask yourself if you require the information for a lawful and reasonable business purpose.
- 2) If it is an occupational injury, contact a case manager at WCB to get information on what information might be appropriate to request. If it is non-occupational, consider contacting the Office of the Information and Privacy Commissioner and/or the Alberta Human Rights and Citizenship Commission for advice on how to proceed.
- 3) Talk to the employee—misinformation is worse than no information... dispel mistrust, explain the purpose for asking for the information, explain why you require the information, describe how it will be used, who it may be disclosed to.
- 4) Document decisions made and reasons for making those decisions.
- 5) Document any negative impact that insufficient medical information is having on your options to accommodate the employee. Document what you have done to try to obtain the information you require.

Employee: What if your employer seems unreasonable?

- 1) Do I understand why my employer is asking me for particular medical information?
- 2) Self evaluate—does my employer need the information they are asking for in order to accommodate me? Am I helping the process?
- 3) Make sure the employer understands “you are not playing games” and have real privacy concerns
- 4) If it is WCB related contact a WCB case manager for information, and you may want to consider approaching the Office of the Information and Privacy Commissioner for information as well.
- 5) If you think your employer is not truly trying to accommodate, you may want to contact the Human Rights Commission for advice.
- 6) If you happen to be employed at a worksite with union representation available to you, you should probably contact your union representative for advice.



Doing it right can minimize the impact of a work interruption, and build trust and loyalty in your workplace.

Also remember, employers and employees are responsible for ongoing updates on the status of the recovery... it is an interactive and ongoing communication process.

Resources

Organization

Alberta Human Rights and Citizenship Commission

www.albertahumanrights.ab.ca/

Alberta Medical Association

www.albertadoctors.org

Enform — The Petroleum Industry's Commitment to training and Safety

<http://www.psc.ca/index.htm>

Office of the Information and Privacy Commissioner

www.oipc.ab.ca/home/

Workplace Health & Safety

www3.gov.ab.ca/hre/whs/

Industrial Construction Committee on Workers' Compensation

<http://www.industrialconstructioncommittee.ca/>

Workers Compensation Board

<http://www.wcb.ab.ca/home/>

Areas of Expertise Include

Information about duty to accommodate, undue hardship, bona fide occupational requirements and/or human rights legislation, designed to ensure people are not discriminated on protected grounds, understanding disability. Workshops and other information resources are also available.

For a very helpful position statement "Clinical Resources" click on the home page, then "Policies & Positions" and "Early Return..."

This group works to coordinate an organized approach for continuous improvement in health and safety for everyone involved in or affected by the Petroleum Industry. They continually strive to eliminate the number and magnitude of work-related injuries and illnesses through the promotion of health and safety principles, processes and practices for everyone in the industry.

Promote improved and standardized petroleum industry health and safety practices that meet regulatory requirements throughout Canada.

Promote worker safety and their right and responsibility to refuse to perform unsafe work.

This office deals with information, collection, use, disclosure, retention, reasonable purposes, reasonable information use and disclosure of employees' personal information

Looking for information on the right to refuse, employer and employee obligations to the Act, hazard assessments, policy requirements? Visit the Human Resource and Employment website.

This committee is responsible for identifying and promoting best practices in injury prevention, disability management and the interpretation and application of the Workers' Compensation Act and policies. Deliverables of the ICC are developed in partnership with the Alberta Building Trades Council, Construction Labour Relations, Workers' Compensation Board – Alberta, Construction Owners Association of Alberta (COAA), Suncor Energy, Syncrude Canada Ltd., KBR, PCL Construction Leaders, and Fluor Constructors Canada Ltd.

The WCB provides injured workers with effective compensation and rehabilitation services helping them return to employment. Working with injured workers, employers and labour organizations to promote injury prevention and develop effective disability management services. The board maintains sound financial and administrative management as a business to ensure Alberta premium rates remain among the lowest in Canada.