

Obtaining a medical report on an employee

This advice note summarises the law in England and Wales regarding an employer's right to request a medical report on an employee or worker, the steps that an employer must take and an employee's rights following such a request.

Introduction

During employment, an employer may be likely to need medical evidence to:

- Identify an underlying medical condition;
- Obtain a prognosis;
- Help determine if and when an employee might return to work following sickness absence;
- Help determine whether an employee is disabled under discrimination law;
- Help determine whether reasonable adjustments are required;
- Consider whether an employee will qualify for any benefits under a permanent health insurance scheme.

There are certain procedural steps an employer must follow when requesting a report. These are outlined below.

Where to obtain medical evidence?

When obtaining a report, the options are:

- GP or Consultant;
- Occupational Health;
- Access to Work.

Request for a medical report

A request for a medical report should not be a general request for information about an employee's medical condition but should be limited to that which is directly relevant to the particular purposes for which it is obtained, i.e. the employee's ability to carry out his or her duties in the job. Overly intrusive questioning or requests for irrelevant information run the risk of breaching the employee's right to privacy or the Data Protection Act 1998, or being discriminatory under the Equality Act 2010.

Here are some example questions an employer could ask:

- What effects will the illness will have on the employee's ability in his or her job?
- What is the likely timescale for return to work?
- What is the overall prognosis?
- Is the expert of the opinion that there are any short-term or permanent reasonable adjustments the employer could make to the job and how would the adjustments assist the employee?
- Will the employee need to continue with any medication and/or medical treatment following his/her return to work? If so, will the medication and/or treatment affect the employee's ability to undertake his/her duties and/or necessitate any time off work?

- Is the health problem likely to recur or affect future attendance?
- Would alternative employment be suitable?

In the case of repeat absences, an employer should:

- Look at the effect of the pattern of absences on the employee's colleagues, department and the employer's business;
- The likelihood of continuing absences and the impact they are likely to have;
- How the position can be reviewed; and/or
- Whether there are changes to the employee's job or redeployment opportunities that would assist in attendance and reduce the effect on colleagues or the employers business.

In the case of long-term absence an employer should look at:

- The likely date for return and whether the employer can continue to wait for the employee to return;
- Whether the employee perceives they can return to their previous job and what adjustments can be made;
- What alternatives the employee may wish to explore: redeployment or application for employment benefits;
- The mechanics of a return to work programme; and/or
- Whether government agencies, charitable bodies and other industry and specialist organisations can provide assistance to the employee while they are absent or to the employer in considering adjustments to the workplace or job.

An employer should provide the medical practitioner with:

- Any relevant documentation relating to the employee's job such as a job description or person specification;
- Details of any previous assessments or adjustments made to their duties or working conditions;
- Copies of any policies, where the medical expert is being asked to advise on the eligibility of early retirement or a Health Insurance Scheme.

Access to Medical Reports Act 1988 (AMRA)

AMRA covers employees and most workers where a medical report on the physical and/or mental health of an employee is prepared by a medical practitioner who is, or has been responsible for the clinical care of the employee.

AMRA sets out procedural safeguards to protect the employee, stipulating that:

- The employer must give to the employee written notification that they intend to apply for a medical report;
- The employer must give the employee a statement of their rights under AMRA;
- The employer must obtain the employee's written consent to the examination and preparation of the report;
- The employee must have the opportunity to see the report before it is sent to the employer (if an individual asks to see the report before it is sent to the employer, they have 21 days to contact the medical practitioner directly in writing to request access to the report);
- The employee may refuse to allow the report to be disclosed to the employer.

The employer should provide the medical practitioner with a copy of the employee's written consent when requesting a report.

An employee's rights under AMRA

An employee has the right to:

- Withhold consent;
- To consent and agree that the report can be sent directly to the employer; or
- To consent and request to see the report before it is supplied to the employer.

Where an employee requests to see a report before it is sent to the employer, the employer must inform the medical practitioner when making its request and, at the same time, must notify the individual that its application has been made.

The employee has 21 days from the day the application is made to contact the medical practitioner directly in writing and request access to, or a copy of, the report. If they fail to do so, the medical practitioner can send the report to the employer.

An employee has the right to request that the practitioner amend the report.

However, the medical practitioner is not obliged to do so. As a result the employee can:

- Agree to the report being issued unchanged;
- Request the practitioner attach a statement setting out the employee's views and objections to the report; or
- Withdraw consent for the report to be issued.

An employee has the right to ask the medical practitioner for a copy of the report at any time up to six months after it was supplied.

Information exempted from access

The medical expert is not obliged to show the individual any part(s) of a report where they believe it would cause serious harm to the individual's or a third party's, physical or mental health, or where it would reveal information about or identify a third party, unless that party has consented or is a health professional who is (or has been) involved in the care of the individual.

An individual has the right to be informed if any part(s) have been withheld and to withhold their consent to the report being supplied to the employer.

Charge

The doctor is entitled to charge a reasonable sum for supplying the report. It is standard practice for an employer to cover any charges if the individual is still working for it.

Enforcement

An individual can apply to the county court for an order compelling their employer to comply with any of the provisions of AMRA. An employer's failure to comply will not result in any damages or fines. However, it could be referred to in tribunal proceedings.

The employment contract and AMRA

If the contract of employment contains an express right for the employer to require the employee to undergo a medical examination, the employee will be in breach of contract if they refuse.

Any contractual provisions will not prevent AMRA's procedural requirements applying.

Dismissal following refusal to consent

If an employer has dismissed an employee who refused to provide medical evidence or to consent to a medical report on grounds of incapacity may argue that the dismissal was fair for the following reasons:

- Wording of any express contractual term requiring consent;
- Full explanation of the need for a medical report;
- Warning the employee of the likely consequences of failing to consent;
- The nature of the employee's job;
- Obligation on the part of the employer to report any incidents, injury or illnesses caused by a workplace accident or conditions under health and safety legislation;
- The reason for the employee's refusal to provide consent.

If you would like further advice on this topic or more specific information please contact Nick Jones on 0117 904 5912 or njones@lyonsdavidson.co.uk

The purpose of this general advice note is to provide a general summary of information around a specific topic. It should not however be taken as legal advice and should not be relied on as such. We recommend that you always obtain specific legal advice in respect of a particular issue or matter. Please contact our employment team if you have any questions about anything related to the subject matter of this note.

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