

ATTENDANCE MANAGEMENT AND SICK LEAVE

EMPLOYER GUIDE

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INTRODUCTION TO THE GUIDE

GUIDE'S PURPOSES

CSSEA created this Attendance Management Guide to help member employers develop a systematic approach to bolster attendance and address absenteeism. The guide describes attendance management “best practices” and provides related resources.

The guide describes the approaches employers may take in the face of two different types of absenteeism: non-culpable and culpable. Non-culpable (or uncontrollable) absenteeism relates to absences based on legitimate illnesses or disabilities which employers must accept under Human Rights laws, until the point of “undue hardship” is reached. Culpable (or controllable) absenteeism relates to conduct that an employee has the ability to correct; for example, failing to provide proper proof of illness or follow agreed upon collective agreement processes, or claiming paid sick leave for improper purposes.

The Guide also provides members with information and materials on how to:

- Establish an attendance management program.
- Monitor employee attendance under the program.
- Raise awareness in employees about their attendance and to enroll their support in improving it.
- Identify what excessive absenteeism is for the purpose of taking further action.
- Request proof of illness or additional proof of illness.
- Respond if the proof is not properly provided.
- Make informed decisions on how to respond in particularly challenging situations.

“Attendance management programs” are intended to address non-culpable absenteeism, while “sick leave policies” address culpable absenteeism. The first part of this Guide will outline the elements of attendance management programs, and the second part outlines the elements of sick leave policies.

THE GUIDE AND THE COLLECTIVE AGREEMENT

For those employees of CSSEA members who are governed by the terms of a collective agreement, the attendance management process must not be inconsistent with or in conflict with the collective agreement. This Guide is drafted with the terms of the collective agreement in mind.

WHAT IS AN ATTENDANCE MANAGEMENT PROGRAM?

An attendance management program (AMP) is generally viewed as a positive approach to absenteeism which applies principles of behavior modification to achieve improved attendance at work. Although it may need lead to unfavourable employment consequences for continuing poor attendance levels, the emphasis is on incentives and recognition, and effective employee relations management and communication.

An AMP is one of the most effective tools in promoting regular attendance. An AMP is generally acceptable in the workplace if it sets out: the employer's expectations for consistent and regular attendance; promotion of wellness; procedures for notifying the employer of absences; how attendance will be monitored; and how continued absences will be addressed. As mentioned above, AMPs are used to address "non-culpable" absenteeism. Sick leave policies to address "culpable" absenteeism will be discussed later in this Guide.

Employers in Community Social Services have the right to institute these programs for its unionized workforce as long as they satisfy the "KVP" criteria (named after the leading arbitration case on when employer policies are reasonable in a unionized environment, which can be found at *Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co.*, 16 L.A.C. 73, [1965] O.L.A.A., No. 2):

- the policy is not inconsistent with the collective agreement;
- it is not unreasonable;
- it is both clear and unequivocal;
- the employer brings the policy to the attention of the affected employee(s) before acting on it; and
- the employer consistently enforces the policy.

The content of a sample AMP policy and procedure is attached at **Appendix 1** and can be adopted to suit your particular organizational environment.

Despite the view that these policies are reasonable in meeting the "KVP" test, Employers should also be aware that there are differing views of AMP's. An Employer's view typically is that AMP's are necessary to support the underlying legal relationship in an employment contract, under which an employee provides services in exchange for wages and benefits. If an employee is absent, regardless of the reason, that employee fails to deliver their part of the bargain and the employer is not receiving a benefit for the payment of wages and benefits.

Absenteeism is costly in this Sector. The average sick leave absence rate for a full-time employee in Community Social Services is approximately ten days per year. But, the costs extend far beyond the wages of the absent employee. While there are the tangible costs such as sick leave pay and staff replacement costs, there are also the intangible costs such as loss of productivity and efficiency, diminished employee morale resulting from potential workload issues and perceptions of why staff are absent, reduced quality or disruption of services, and time spent in recruiting, orienting, and deploying replacement staff.

An employee and union may not share the view that AMP's are necessary or implemented properly. Employees who are subject to AMP's may not understand the reasons or goals of the Program. They

may believe that they are not responsible for absences due to sickness or injury because they are “uncontrollable”, and may feel that any discussion about those absences is harassing and uncaring. They may feel singled out and treated unfairly. And if they do not understand the reasons for attendance management and the support that is available, they may be unwilling to cooperate. Unions may share some of the employee’s concerns about attendance management. Fairness and consistency in application are often important, as they will want to ensure that all employees are treated equitably. Unions will also want to ensure that an employer is meeting its duties under the collective agreement and under law, including the duty to accommodate employees whose absences are caused by a disability.

DETERMINING WHICH APPROACH TO FOLLOW

NON-CULPABLE VERSUS CULPABLE ABSENTEEISM

In order for any attendance management, or alternatively any sick leave, initiative to operate effectively, an employer must understand the distinction between culpable and non-culpable absenteeism so that it knows which approach to apply based on the type of absence.

Employers will apply their AMP in cases of “non-culpable” or “innocent” absenteeism and will apply their sick leave policies in cases of “culpable” behaviour associated with absenteeism. Sometimes, attributes of both non-culpable and culpable behaviour are present, potentially complicating the choice of approach to take.

Non-Culpable or Innocent Absenteeism

This refers to absences outside the employee’s control, not involving any fault on the part of the employee, such as those caused by legitimate illness or disability. These absences will be addressed under the AMP in a supportive, non-disciplinary manner where the employer and employee aim to have conversations informed by facts (statistics) about the trends in the employee’s absences, and by the underlying reasons. In that way, the facts are brought to both parties’ attention and both can then work on strategies to support regular attendance in the future.

If attendance issues are the result of a disability, human rights law requires the employer and employee (and union) to develop reasonable accommodation options up to the point of “undue hardship”. What constitutes undue hardship will depend on the specific circumstances of the employer, employee, and disability. Ultimately, an employee may be terminated for innocent absenteeism if attendance is not likely to improve in the foreseeable future. It frequently takes considerable time and attention to supporting the employee to attend work on a regular basis before termination can be considered. Arbitrators have accepted that employers may be inconvenienced to some degree by an employee who is disabled, and that employers must do what they can to support employees to attend at work within an acceptable frequency. Only as a last resort, when the employer has reached the point of “undue hardship” in all of the circumstances, will a termination be appropriate. This step of last resort may be taken on the basis that there is a failure to fundamentally fulfill the employment bargain (compensation for work performed), rather than fault on the part of the employee.

IMPORTANT:

Prior to terminating employees for non-culpable absenteeism, employers must ensure they have met any applicable duty to accommodate requirements and that the unionized long-term disability (LTD) provisions do not apply.

CSSEA recommends that you speak with your advocate/consultant when you believe you are getting to this point under your AMP.

Culpable Absenteeism

This refers to absences that are not due to a legitimate illness, injury or disability. Such absences are the result of some wilful or “controllable” conduct of the employee, and involves an element of intent. These absences may be characterized by malingering or claiming sick leave for reasons other than sickness. They may also include failing to properly respond to reasonable proof of sickness requests by the employer, and not following the collective agreement by failing to participate in the mandatory *Early Intervention Program* or provide proper notice of an absence under an Employer’s Sick Leave policy. See **Appendix 7** for sample content for a Sick Leave policy.

When an employee is absent from work for culpable reasons, it may be appropriate for the employer to respond with progressive discipline. This may ultimately result in the employee’s dismissal, depending on the nature of the conduct and the employee’s history of discipline.

“Hybrid” Situations

Sometimes it is difficult to discern between whether conduct associated with absenteeism is culpable or non-culpable. Where this occurs, as a practical matter, it may be best to treat the specific conduct as non-culpable until such time as there is sufficient proof that the employee could exercise control over the conduct. Dealing with the conduct in a non-disciplinary manner does not ignore the problem as it still ensures that the conduct is brought to the employee’s attention, discussed, and expectations re-stated.

SETTING THE STAGE: POLICIES AND PROCEDURES

CLARITY, CULTURE, AND LEADERSHIP

It is critical to have foundational pieces in place prior to implementing an AMP; this starts with ensuring that up-to-date policies and procedures are in place.

In the absence of clearly written and well-communicated policies, an unclear or equivocal approach to absenteeism may aggravate the problem and create a void in which a culture conducive to absenteeism flourishes. For example, if “mental health days” are sometimes taken by staff, they may acquire a quasi-legitimate status if they are not addressed. This kind of absenteeism can have a contagious effect – employees will notice their co-workers’ absences and reasons, and think it is acceptable for them to also be absent for the same reasons. Management inaction may be seen as acceptance of them. Ultimately, the responsibility lies with the employer to set expectations for attendance and the legitimate reasons why an employee can be absent from work due to sickness.

As a best practice, many employers ensure that the senior executive team leads the way in modeling and communicating these expectations. Further, to ensure that the organization maintains a focus on developing and maintaining a wellness culture, **accountability for attendance and sick leave management must reside with a senior executive** to ensure that the policies are properly developed, communicated, implemented, evaluated and revised on a periodic basis across the organization.

Once policies and procedures are drafted and finalized, and accountability assigned for the program to a senior executive, the focus would then turn to communicating the new or updated policies and procedures with all affected staff. Training/in services would be provided as necessary, based on the extent of the changes. An employer will find it difficult to rely on the terms of a new/updated policy if employees are not made fully aware of new expectations. All updates communicated and training provided should be documented for future reference in case proof is necessary.

After implementation of the new/changed policy, it then becomes important to apply it consistently and on an ongoing basis. Policies are sometimes challenged when employees and/or unions can point to examples when employees in similar circumstances were not subject to the same rules as an aggrieved employee.

Finally, it is important to build a systems where the policies are periodically reviewed and evaluated based on changes in legislation, applicable case law, and effectiveness. If changes are made, then re-engage the steps outlined above.

Attendance management policies are meant to provide employers with a systematic approach to addressing absenteeism in a supportive, non-disciplinary way. Sick leave policies are also supportive but do identify employment consequences for inappropriate use of sick leave. Details of developing and implementing both types of policies (Attendance Management – Non-Culpable, and Sick Leave - Culpable) are reviewed in the Sections that follow.

BUILDING AND IMPLEMENTING AN ATTENDANCE MANAGEMENT POLICY

EVALUATING YOUR CURRENT ATTENDANCE MANAGEMENT POLICY

When considering the development of a new attendance management policy or evaluating an existing one, several key characteristics are essential for the policy to remain valid and enforceable.

An attendance management policy must:

- Be consistent with the collective agreements.
- Be reasonable.
- Be clear and unequivocal.
- Be brought to the attention of employees affected before the organization acts upon it.
- Contain clear notice of the consequences of a breach of the policy.
- Be consistently enforced.

These are the essential elements for any employer policy to be valid in a unionized environment, based on the leading “KVP” case referred to earlier. More specifically, characteristics of an attendance management policy should also include:

1. A policy statement with goals and objectives. For example, to encourage and promote employee wellness and regular attendance and to accommodate disabled employees.
2. A constructive and supportive tone.
3. A distinction between culpable and non-culpable absenteeism.
4. The objective that it be consistently applied, but flexible enough to permit support tailored to individual circumstances. For example, if attendance concerns are caused by a disability, a process is established to customize an accommodation plan.
5. A method for calculating absenteeism rates and averages against which employees will be measured and a process for regularly tracking and reviewing employee attendance with alerts for supervisors.
6. A method for regularly communicating with employees about their attendance rates, patterns, e.g., frequent absences adjoining days off), and impacts.
7. A process outlining how and when employees are required to report absences and the consequences of failing to follow the process.
8. A recognition that the collective agreements require all employers to participate in an early intervention program, which means that all regular status employees who are absent due to illness for a minimum agreed period of time will participate in the EIP and get appropriate support.

9. A process for acknowledging good attendance.
10. Acknowledgement of access to the grievance procedure flowing from a disagreement with an employer decision under the policy.
11. Clarification of the roles and responsibilities of employees, supervisors and managers.
12. A progressive process for handling ongoing attendance concerns with individual employees, while recognizing the requirement to consider each individual's particular circumstances.

Making Attendance Management a Priority

Attendance management initiatives should be endorsed by the highest level of management in your organization. All levels of the organization should be committed to implementing the policy. Supervisors and managers should not feel that their attendance management efforts will be wasted because of a lack of follow through and support by senior management.

Successful attendance management also requires the involvement of the employees who must understand the high cost of absenteeism, current absenteeism rates and employer goals for improvement. The purpose of providing this information is to make regular attendance a personal priority for all staff. With regular attention paid to the AMP and reinforcement of its importance at every level of the organization, it will remain a priority.

THE ROLE OF MANAGEMENT IN THE ATTENDANCE MANAGEMENT PROCESS

Key Responsibilities

Attendance management is a collective process. A single person on the executive team should be accountable for the AMP. Having said that, this does not relieve all management personnel, including supervisors, of their responsibilities to promote and administer the Program.

Attendance Management Coordinator

An attendance management coordinator should be responsible for overseeing the overall administration of the program, ensuring consistent application, reviewing statistical data and recommending which employees should be counselled. Depending on the size of the employer, the coordinator may be the same person as the executive team member accountable for the program. Responsibilities include:

- Ensuring standards are updated and reasonable in application.
- Ensuring records are complete and accurate.
- Meeting with managers on a regular basis to review absenteeism statistics and employee action plans.

Managers

Managers have a key operational role in absenteeism control. Responsibilities include:

- Monitoring daily absenteeism and recording it appropriately.
- Ability to differentiate between culpable and non-culpable absences.
- Reviewing absenteeism statistics and providing advice and assistance to staff.
- Jointly developing action plans with specific employees needing support.
- Ensuring follow-up when necessary.

Supervisors

The supervisors are the eyes and ears of the employer. Supervisors must be conscious of employee absenteeism rates and trends and will probably be in the best position to recognize absenteeism patterns (like regular Friday or Monday absences, for example). Supervisors should work with managers to determine when there is a problem and how it can be resolved.

IMPLEMENTING AN ATTENDANCE MANAGEMENT POLICY AND PROGRAM

Communicating the Policy to Employees

Once the policy has been updated, it is crucial that employees are informed of and understand the attendance management program. This will require that all staff, ranging from management, supervisors and other personnel involved are properly trained and have a consistent understanding of the purpose, function and requirements of the AMP.

Once the formal written policy is developed or updated, all staff should be oriented to it, read it and have a copy of it available for easy reference (e.g., on the staffnet). In addition, all newly hired staff should also be oriented to it, read it and have it readily available to them.

Periodically, you may wish to provide employees with pamphlets summarizing and highlighting the key components of the program in order to provide positive reminders of the Program and the need for satisfactory attendance.

Role of the Union in Policy Implementation

Union cooperation is not necessarily required to implement workplace policies and practices. However, there is nothing to gain from springing an absenteeism policy on the union and its members without warning.

Union acceptance of an attendance management policy may prevent subsequent challenges to the policy's validity and enforceability based on unreasonableness or inconsistency with the collective agreements. Union involvement, where appropriate, may also have a positive effect on employee cooperation.

While it would be beneficial, the union does not need to expressly approve of the policy. If it shares any concerns about it, some may be valid and worth considering or resolving. At the very least, union feedback allows employers to assess any potential weaknesses in the policy before it is finalized and implemented, or before specific aspects of the policy become live disputes.

Measuring Absenteeism

A certain number of employee absences due to sickness are to be expected as part of a normal employment relationship. However, when the number and frequency of absences exceeds the norm, employers begin to be concerned about employee wellness and the ability to manage an effective workforce.

In establishing attendance averages upon which to base employee follow-up, the focus will be on absences related only to illness or disability for which a greater awareness might lead to effective supports being put in place, and therefore improved attendance. AMPs are often intended to assist staff who have frequent, sporadic absences for which no supports are in place, and do not typically flag for action single legitimate, significant absences or documented chronic disability. For example in many programs, absences which are already being supported through WorkSafeBC, LTD, acceptance into a disability management program, and approved accommodations/gradual returns to work are excluded from the calculation of attendance averages.

Further, other approved leaves will not be included in the calculation of absenteeism rates, such as:

- Annual vacations
- Statutory holidays
- Regularly scheduled days off
- Employee use of banked overtime
- Maternity/Parental leaves
- Other employer approved leaves under the collective agreements

Upon isolating leaves due to illness or disability for which there are no other supports, employers then assess the total number of days taken and number of incidents of continuous absences. These numbers are compared to the employee's particular work unit, workplace, and organization as a whole.

The absence rate is expressed as the total number of hours or days of absence and the occurrence rate is expressed as the total number of incidences of absence (e.g., six incidents of absences totalling 15 days of work). An employee who missed one hundred days in one occurrence (due, for example, to an injury sustained in a car accident) will not typically present the same absenteeism problem as an employee with one hundred absences over forty-five different occurrences (each of a shorter duration and for different reasons).

These rates are calculated for individual employees and also for the particular work groups to arrive at averages for the applicable work groups.

ILLUSTRATION:

Allison is a full-time regular employee who is scheduled to work five days a week, eight hours per day. Last year, she was absent due to illness for a total of twelve days: she missed two days in February due to the flu and ten days in November due to pneumonia.

There are fifteen employees in Allison's work group. All are full-time regular employees, scheduled for five days a week. For this group, the total number of shifts missed last year was 163 and the total number of absence occurrences was 98.

Allison's absence rate = 12 days / 96 hours

Allison's occurrence rate = 2

Group total absence rate = 163 days / 1,304 hours

Group total occurrence rate = 98

Average absence rate (group) = 163 (1,304) / 15 employees = 10.87 days (86.93 hours)

Average occurrence rate (group) = 98 / 15 = 6.53 per employee

COMPARISON OF ABSENCE AND OCCURRENCE RATES:

Allison			Group	
12 days of absence	vs		10.87 days of absence	
96 hours	vs		86.93 hours	
2 occurrences	vs		6.53 occurrences	

Identifying if You Have Cause for Concern

When determining whether there is cause for concern regarding an employee's record of absenteeism, the employee's record must be reviewed regularly with attention paid to any of the following characteristics:

- The frequency and/or duration of absences is excessive in relation to the average of the applicable work unit, or threatens to become excessive.
- The absences have persisted for a lengthy period of time in relation to the employee's overall period of employment.
- The absences reveal a regular pattern in terms of:
 - The day of the week, shift hours, shift location or the period immediately preceding or following a holiday or days off.
 - The reasons provided by the employee for the absence.
 - The consistency or frequency of the absence.
- The absence demonstrates a marked change from previous attendance levels.

Average absenteeism rates and incidents may not be the only benchmarks an employer establishes to assess acceptable attendance goals for the organization. Benchmarks may include:

- Determining if the absenteeism rate is increasing and whether sick leave budgets are sustainable.
- Costs of overtime and hiring temporary employees.
- Determining which areas have the highest and lowest levels of absenteeism.
- Comparing absenteeism with certain times of year (absenteeism is likely higher during cold and flu season).

Once these other benchmarks are established, they also can be used as thresholds for determining which employees have unacceptable levels of attendance and in what circumstances. This will be helpful for identifying causes and supporting the generation of strategies to address absenteeism.

Record Keeping

An employer won't know if there is an attendance concern without the data supporting it, and to that end, proper reporting and record keeping is a critical element of any AMP.

The following information should be tracked and available for review:

- Calendar of absences for each employee showing days, duration, and which can reveal patterns of absences, if any.
- Nature of absences as described by employee or ascertained by employer.
- Costs, inconvenience or inefficiencies caused by the absences, such as:
 - Amount of notice of absence received by the employer.
 - Whether the absent employee was replaced.
 - Whether the replacement cost was at overtime rates.
 - Whether there was an impact on the level of service provided due to the absence.
- Whether a medical certificate was submitted.
- Whether paid sick leave was claimed, or unpaid leave sought.
- Referrals to the Community Social Services Early Intervention Program (CSSEIP - see below).

To ensure records are complete and accurate, there must be a process in place for reporting absences. This process should include:

- Who to call (supervisor, record keeper).
- What to report (how long employee is expected to be away and nature of illness).
- When to call (as much notice as possible).

All communication with the employee, through meetings, letters or otherwise, should be recorded and preferably stored in the same records system for ease of access to all related information.

Meeting with Employees

Once you have gathered sufficient information, you will then be poised to meet with employees whose attendance records raise concerns. Preparation for these meetings will involve the following steps:

- Gather and review attendance records to assess overall absenteeism rates and determine if the employee's absenteeism is, in fact, excessive.
- Review attendance records to determine if there is a particular type or trend to the employee's absences.
- Prepare a visual calendar with absent days highlighted to illustrate the extent of the problem and so that the statistics can be discussed easily.
- Collect all previous correspondence with the employee, such as previous meeting minutes and letters of understanding.
- Adopt a supportive mindset and come to the meeting prepared to brainstorm ideas with the employee for an action plan to improve attendance.
- Review the attendance management policy and have it on hand for easy reference during the meeting.

The meeting itself will involve the following typical steps:

- Introductions and purpose of the meeting; supportive in tone; factual.
- Review statistics compiled and work unit/organizational information. An employee must be made aware that her absenteeism has attracted your attention and why, and that it is causing concern.
- Review reasons for absences – confirm the reasons set out in the records
- Review causes; has there been medical, other assistance sought; have examinations taken place?
- Are there personal or financial problems which could be the cause?
- Are there any dependencies or addictions present?
- Remind employee that absences are not culpable but improvement is necessary to meet the organization goal of regular attendance.
- Encourage employee to deal with the root cause and commit to improve attendance within a specific timeframe.
- Determine if and how the employer may be of assistance in improving the employee's attendance rate.
- Schedule the next meeting date (usually within three months) for the purpose of checking in and support, and following up on the action plan.
- Reduce the discussion points of the meeting to writing, particularly the agreed upon plan for improvement. It is prudent to include in the letter that it is not disciplinary in nature and will not be used as part of the employee's discipline history.

Strategies for Difficult Conversations

Meetings with employees about their absenteeism may be difficult, particularly if employees are feeling like they are being judged or may be subject to discipline. Specific strategies can make these conversations easier, such as:

- Being clear that the purpose of the meeting is to be supportive by reviewing statistics and generating understandings of causes/factors that could lead to effective solutions.
- Show empathy: make it clear that your goal is to improve attendance and help, not punish.
- Focus on the statistics/behaviour and use objective descriptions rather than subjective judgments (e.g., "statistics show that you miss one day per week", rather than "you are lazy").

- Encourage a positive approach: while the causes/factors must be identified and discussed in the meeting, the main purpose is to work together on a solution and create an action plan.
- Express encouragement and confidence that attendance will improve upon implementation of the action plan.

Recognizing Improvement and Maintaining Satisfactory Attendance

Improved attendance will not happen overnight. It requires continuing effort, encouragement, and positive reinforcement. Follow-up is an important aspect of attendance management. Those employees who have improved their absenteeism rates must not be forgotten. They should be provided with positive recognition for improved or maintained attendance levels. Some methods of positive reinforcement adopted by employers include:

- Scheduling follow up meetings to report out on improvements
- Letters sent periodically to employees with good or improved attendance records.
- Prizes, coupons or gift cards for good or improved attendance.
- Public recognition by supervisors of employees with good attendance records.

Grounds for Termination

Although dismissal for innocent absenteeism is a last resort, it may be possible to do, if it can be shown that:

- The employee's absence record is excessive as determined in the context of the employer's work units and broader organization.
- The employee is unlikely to be capable of regular attendance in the future.
- The employee was advised that her attendance record is unacceptable and requires improvement.
- The employee was advised that employment was in jeopardy and was given a further reasonable opportunity to improve attendance.
- If the reason for the employee's absence is a disability, the employer has fulfilled its duty to accommodate the employee to the point of undue hardship under Human Rights legislation and case law.
- A termination would not adversely affect any entitlements to long-term disability benefits.

CSSEA recommends working through the details of a prospective non-culpable dismissal with CSSEA staff before proceeding with a termination.

Sample documents relating to an Attendance Management Program and referred to in the above discussion can be found at the following Appendices:

- Appendix 1** Attendance Management Program Policy
- Appendix 2** Attendance Management Checklist for Managers
- Appendix 3** Sample Letter to Employee following Attendance Review Meeting
- Appendix 4 to 6** Sample Letters to Employee and Physician with Attached Medical Information Form

THE COMMUNITY SOCIAL SERVICES EARLY INTERVENTION PROGRAM (CSSEIP)

WHAT IS CSSEIP?

The CSSEIP is an agreed upon disability management program which supplements CSSEA members' attendance management programs. It is a collaborative program established under the CSSEA employers' and unions' collective agreements that is designed to assist employees who are absent for a minimum number of consecutive days with treatment and return to work plans.

The program is mandatory for regular full-time employees who have been ill or injured for five consecutive scheduled working days, and regular part-time employees who are eligible for LTD and who have been ill or injured for eight consecutive calendar days. Employees meeting these thresholds must be referred by their employers to the EIP for support.

In turn, employees meeting these thresholds are required to participate in the EIP with the aim of securing professional disability management support and returning to work sooner than if they were left on their own to rehabilitate. CSSEIP provides for a customized return-to-work plan based on the specific needs of an absent employee.

The program is sponsored by CSSEA and the Union Bargaining Association (UBA), and disability management services are typically provided by the LTD benefits provider with which the employer contracts. The disability management team includes employers, employees, unions, physicians and other health benefits providers.

HOW CAN CSSEIP HELP?

Once the employer refers an employee to the program, EIP staff contact the employee immediately for intake purposes. In circumstances when the EIP could be of assistance to the employee, it will send the employee an intake package that includes an authorization to release detailed medical information on a confidential basis to a team of health care professionals, and an occupational fitness assessment (OFA) form for the employee's physician to complete. The OFA provides information to the EIP professionals about the employee's illness or injury and helps to establish an anticipated return to work date.

This information is used by the EIP service provider to substantiate that the absence is legitimate, and also to develop a rehabilitation and return to work plan tailored to the employee's specific circumstances. The individualized plan may ensure that medical services are provided in a timely manner, thus facilitating an early return to work process. A Medical Case Manager (MCM), who is usually an occupational health nurse or registered nurse, monitors the individualized plan to ensure a safe and timely return to work.

The MCM provides a planned approach by:

- Coordinating and reviewing the medical care plan and the response to treatment.
- Referring the employee to appropriate medical or rehabilitation treatment.

- Developing a customized return to work plan that will accommodate the limitations and capabilities of the employee.

All parties involved are encouraged to work together to facilitate a return to work so as to minimize the cost and disruption of an employee's absence due to illness or injury.

The CSSEIP can be viewed as a part of an employer's AMP, which the employer contracts with a third party professional to administer. Employees who meet the CSSEIP absence thresholds and who are participating in the Program do not need to be actively managed by the employer and the AMP can be suspended for the period that an employee is participating in the CSSEIP and being supported to return to work. If an employee does not meet the CSSEIP absence thresholds, or is not otherwise participating in the CSSEIP, (e.g., when the case file is closed by the EIP service provider due to successful return to work, or lack of proper participation), then the employer's AMP can be actively re-engaged for the employee.

For more information, go to the CSSEA website at www.cssea.bc.ca under Health and Welfare Benefits or contact your HRLR Consultant. The website contains resource materials agreed upon by CSSEA and the Bargaining Association such as the CSSEIP policies and procedures and template letters that can be used by employers in specific circumstances.

BUILDING AND IMPLEMENTING A SICK LEAVE POLICY

This section of the Guide addresses culpable absenteeism management. As mentioned at the outset of the Guide, culpable absenteeism is characterized by conduct that is intentional or than an employee has the ability to correct, and is not characterized by absences due to legitimate sickness or disability.

Culpable absenteeism may trigger the application of an employer's sick leave policies or collective agreement provisions to assist in correcting behaviour inconsistent with established rules of conduct or collective agreement provisions. This may be accomplished through coaching and/or discipline.

There are a number of examples of culpable absenteeism that employers in this Sector may experience. They may range from not following collective agreement advance notice provisions of reporting sickness/readiness to return to work in accordance with policies and procedures, to not sufficiently proving that an absence was due to sickness in circumstances that would justify providing proof. Failure to provide proper proof of sickness that is appropriate in the circumstances could result in discipline being imposed for conduct that is contrary to employer policies and the terms of the collective agreement.

Discipline for failure to provide proper proof of illness sometimes arises when an absent employee is not actively participating in the CSSEIP after being properly referred to it, or when the circumstances surrounding the absence cast doubt on it being a legitimate sick leave. Where an employer has some reasonably based doubt about the legitimacy of an absence due to sickness, proof of illness may be required of an employee. Typical labour relations principles support the proposition that employees who take leave, particularly when the leave is paid for by the employer, may be required to prove the authenticity of the leave. For sick leave purposes, an employee may be required to prove that sickness or injury led to an inability to attend to work duties. If this proof requires the payment of a fee to a physician (for a medical note), the employee is responsible for paying the fee, except in the circumstances specifically agreed to (see example below), as part of the onus to prove the legitimacy of an absence from work.

The request for medical information to substantiate the existence of a debilitating illness or injury is balanced by the employee's right to privacy. An employer may only incur into that right to privacy on a reasonable or "need to know" basis for purposes such as determining the authenticity of the leave or the benefit claim, workforce planning and coverage, etc. The occasional sick day not accompanied by extenuating circumstances will rarely support a reasonable request for proof.

When is it Reasonable to Request Proof?

As mentioned, every sick leave request need not be supported by proof. Indeed, it would be counterproductive to ask for proof each time, given the time and resources involved. An Employer may request proof of sickness in circumstances that include the following (this is not an exhaustive list but illustrative only):

- Where the Employer has reasonable grounds relating to the authenticity of the absence, for example, the employee was known to be working at another workplace or attending an event concurrent with a scheduled work shift, or the employee reported sick for the same work shift(s) for which a different leave of absence was denied;

- Where the employee has patterns to the absences from work; for example, the employee is often absent on the same day (e.g., Tuesdays) or on days often adjoining scheduled days off.
- Excessive absenteeism (e.g., above the average of the employee's department or of the organization – see also the attendance management principles outlined in previous sections).

When proof of illness is requested based on reasonable grounds, the employer should make the request prior to the employee's return to work so that there is an opportunity to secure the proof while the employee is still sick, and that as accurate a verification can be provided as possible. Paid sick leave, if available, should not be granted until the employer is satisfied that the absence was due to sickness or injury. If denying the paid leave, an employer should provide the reasons for rejecting it, either that no proof was given or the proof was not sufficient to support the absence in the circumstances. The nature of the proof may depend on whether proof was previously requested, or the severity of the absences.

For example, for an employee with an otherwise good attendance record, proof of illness from a physician may not be necessary; it may suffice that the proof originates from an employee's partner describing the symptoms of the employee's sickness or injury. In other cases of patterned absences, it may become necessary to request the employee's physician to provide the proof in the form of a doctor's note. If the patterns continue, it may become increasingly important to request more details of the employee's sickness, although a diagnosis is not required under the collective agreement. If there is sufficient proof that the patterns are legitimately based, the employee would likely be subject to the employer's attendance management program, described in previous sections of this Guide.

Where increasing detail is required by an employer, it is prudent to cite the reasons why and the request may need to be accompanied by the identification of employer data on patterns, frequency, etc., that supports the increased incursion into the employee's privacy. It may be sufficient for a first medical note for an employee to simply read that the employee was off sick "for medical reasons". However, this may not suffice for subsequent absences, and may not suffice to prove illness if, for example, the employee was only seen by a physician after the illness ran its course, it appears that no physical examination was conducted, or where the employee was seen by others at another event/workplace. In these cases, requests for more detailed information confirming sickness can be requested, and the employee should be asked to return to their physician to secure the additional information before any sick leave is payable.

If an employee continues to demonstrate patterned or excessive absenteeism, increasingly detailed requests of proof of sickness may be required, and until attendance improves, employees may also be requested to attend to their physician for future absences due to illness to secure the necessary proof.

The above principles apply for absences of five (5) days or less and is based on general labour relations principles that permit confirmation of the employee's illness or injury and the estimated duration of the absence. Any cost associated with providing this proof is borne by the employee claiming the paid benefit.

Under the CSSEA Collective Agreements, for absences greater than five (5) consecutive work days for full-time employees (eight (8) calendar days for part-time employees), a more detailed proof of illness/injury is required. In cases where the employee is participating in the CSSEIP, the detailed medical information is shared with the Disability Management Provider, not the Employer. In cases where the employee is not participating in/not been accepted into the CSSEIP, a Medical Information Form awarded by Arbitrator Wayne Moore for the Community Social Services sector should be used for

the employee to take to the physician. Note that under the terms of use of this Form, the Employer is responsible for paying the associated physician fees to complete the Form. See **Appendix 6**.

Physicians have an obligation to provide employers with accurate information about employee conditions. See the Standard of Practice from the College of Physicians & Surgeons of British Columbia found at **Appendix 8**.

Recall that employees cannot be disciplined for being sick. Legitimate sicknesses, proved as needed, are deemed to be non-culpable and are not subject to correction by discipline. Discipline, however, may follow for failing to properly prove sickness, as set out in the collective agreement, and for being on an unauthorized leave of absence when they do not prove sickness. In addition, employees may be denied their sick leave benefits if they do not properly prove sickness.

Repeated failures to properly prove sick leave would be subject to the progressive disciplinary process (written warnings, suspensions, and ultimately termination of employment). In some cases of serious sick leave fraud, it may be appropriate to bypass the written warning and/or suspension stages. These cases must be assessed on their individual merits and consider the seriousness of the conduct and any aggravating/mitigating factors before discipline is levied.

If an employee has been away for a lengthy period and has not been supported to return to work under the CSSEIP, an employer may require the employee to prove their fitness to return to work prior to being cleared to return to work, to ensure that they are not a risk to themselves, clients, or other employees. In these cases, the Employer would request that the employee have their physician complete the same Medical Information Form awarded by Arbitrator Moore (see above), prior to being cleared to return to work. This Form can be provided to the employee when she indicates that she is ready to return to work. An employee should notify the Employer as soon as possible of this intention.

A sample Sick Leave Policy is found at **Appendix 7**.

SPECIFIC ISSUES AND SPECIAL CASES

This section addresses a number of specific issues and special cases that may arise when administering an attendance management program or sick leave policies. Many of these issues are complex and are only discussed in a cursory manner to alert you to the need to seek further assistance. Some of these issues have also been discussed elsewhere in this Guide, but reproduced here for convenience.

MEDICAL INFORMATION AND PRIVACY

Generally speaking, an employer is only entitled to inquire into the medical condition of employees in limited circumstances and only as necessary for the purpose of managing the workforce. An employer's right to obtain medical information is balanced against the employee's privacy rights. As a result, employers will not likely have the right to require an employee to provide a medical certificate to prove illness for every absence; this would usually be seen as an excessive and unnecessary intrusion into the employee's privacy.

When proof of sickness is properly requested, the information needed should be related to whether the absence is valid and when the employee can be expected to return to work and perform full duties, for workforce planning purposes. Therefore, as awarded by an industry arbitrator (Wayne Moore) in 2015, employers are typically only entitled to proof from a physician that an employee has an illness or injury and the estimated duration of the absence. There may be unique circumstances that would justify a request for additional information, such as in the case of an established pattern of absences indicating potential abuse. These circumstances should be clearly identified in support of the need for additional information, and may include other reasons such as:

- A medical certificate that describes an illness unrelated to the sick leave period claimed.
- A medical certificate that is based on an examination that occurred after the illness ended.
- A medical certificate that is not based on an examination, e.g., based on the doctor's conversation with the employee.
- A medical certificate that is incomplete or inconsistent with surrounding information.
- Other employees or sources who indicate the employee was not ill during the relevant period.
- The nature of the restrictions and limitations may indicate the need for a specialist to assess the employee (the attending physician might need to be questioned on their qualifications to assess the particular condition).

In the case of a continuous absence of more than five work days (eight calendar days for part-time employees), the employee must be referred by the employer to the CSSEIP (see above). In that case, the CSSEIP program staff secure the necessary medical information to support the employee. If the employee does not participate in the CSSEIP, the employer may request information from the employee's physician as set out in the Medical Information Form (**Appendix 6**) awarded by Arbitrator Moore: reference *CSSBA and CSSEA*, June 26, 2015, for the actual case.

The Medical Information Form is intended to secure information on:

- Confirmation that the employee is disabled from work.
- The confirmation is based on a current assessment of the employee.
- The date(s) on which the physician assessed the employee.

- The prognosis or expected date of return.
- Whether there are any work restrictions or limitations arising from the illness or disability.

Requests for medical information under the Form are accompanied by the employee's job description so that the physician can assess the restrictions and limitations in light of the job duties and responsibilities.

The Form may also be accompanied by the College of Physicians and Surgeons' Policy on Medical Certificates. **Appendices 4 to 6** are sample letters to an employee's doctor, requesting a medical certificate. See also Appendix 8, the College of Physicians and Surgeons' Policy on Medical Certificates.

In the case of a return to work after a lengthy absence (at least in excess of five days), proof that the employee is fit to return to her duties may also be required to ensure an ability to perform the full scope of the work and to perform it safely without risk to the employee and/or other employees and clients. The request for medical clearance may also be secured from the same Form as above.

STEPS TO ENSURE PRIVACY AND CONFIDENTIALITY OF MEDICAL INFORMATION

Privacy rules require that personal medical information collected by an Employer for legitimate, work related purposes be properly protected from disclosure. Some disclosure may be necessary to administer the employment relationship or may be required or authorized by law (e.g., disclosure to insurers, benefits carriers, WorkSafeBC, the CSSEIP).

Nevertheless, employers should limit the number of personnel who can access this information preserve confidentiality. It should be limited to those who "need to know" as part of their job responsibilities, for example the Human Resources Manager or assigned designate. In extraordinary circumstances, limited information may need to be disclosed to others, for example, when necessary to investigate the legitimacy of an absence or an option for accommodation. In those case, be clear on the reasons why disclosure is necessary.

The following are some steps to take to preserve confidentiality:

Inform of Confidentiality

If information must be disclosed to employees other than the Human Resources Manager/designate, they should be told that the information must only be used for the limited purpose it is shared, and that it must be kept confidential, and that it be destroyed after use.

Separate from Personnel File

Medical information should be kept in a separate file in human resources. Medical information should not be included in the employee's general personnel file or with other employee records; there is less control over access.

Information Under Lock and Key

Medical information files should be kept in a secure location. There should be controls in place with respect to the locked location and the number of keys in circulation amongst identified individuals.

Limit Electronic Transmission

Generally, email and fax transmissions should be used only when systems are in place to exercise control over confidentiality. If email is used, the medical information should be password-protected. If it is transmitted by fax, the sender should verify the fax number, contact the recipient before sending, and contact the recipient to ensure receipt.

Separate Fax

If medical information is received in the human resources office by fax, the fax machine should be in an area away from the general public and, ideally, in a room with restricted access. Any medical information taken off the fax machine should be placed in an envelope, sealed and placed on the recipient's desk. Medical information should not be left on or near the fax machine.

Destroy Copies

Do not make or keep more copies of faxed or emailed material than required. Securely destroy extra copies.

THE DUTY TO ACCOMMODATE

Human rights law requires employers to engage in an accommodation process with employees who have a mental or physical disability that impacts upon their ability to properly perform work duties. Engagement in the accommodation process must continue until the point of "undue hardship" is reached for an employer. Simply dismissing an employee for innocent (non-culpable) absenteeism without first discharging the duty to accommodate is prohibited by law.

What is "Undue Hardship"?

The requirement that employers must engage in accommodation efforts to the point of undue hardship before dismissing an employee means they must accept some degree of hardship in the face of a disability affecting work performance or attendance. This involves making more than a negligible effort in accommodating the employee, but it is not necessary to meet unreasonable employee demands such as placing the employee in a job that she is not qualified for or cannot perform safely. Whether accommodation efforts have reached the point of undue hardship will be determined by consideration of factors that include:

- Financial cost
- Safety concerns
- Interference with negotiated collective agreement rights
- Morale of other employees
- Size of the organization
- Ability to move the employee to other positions or locations

What is a "Disability"?

In general, a disability is a state that is involuntary, has a degree of permanence and impairs the person's ability to carry out the normal functions required of them at work. The protection afforded

under human rights law extends not only to discrimination based on a disability, but on discrimination based on a perceived disability, in relation to work activities.

While the *BC Human Rights Code* (the Code) is silent on the definition of a “physical or mental disability” in an employment setting, Human Rights Tribunals found the following to be a non-exhaustive list of conditions that are afforded a form of protection against discrimination:

- Obesity
- Diabetes/insulin dependencies
- Hypertension
- Allergies and asthma
- Drug and alcohol dependency
- Sleep disorder
- Depression
- Stress-related disorders
- Panic/anxiety disorders
- Migraine headaches

Who is Responsible for Accommodation?

Although employers have the obligation to accommodate disabled employees to the point of undue hardship, the employee and the union must also participate in the process in a reasonable manner.

Employer’s Responsibility

If you know or should know that an employee has a disability, you must:

- Obtain information about the extent to which the disability affects the employee’s ability to perform the job.
- Compare the employee’s limitations to the demands of the job.
- Act in good faith and make every reasonable effort to find accommodation to bridge the gap between the limitations and job demands.

Employee’s Responsibility

An employee with a disability is obligated to:

- Inform the employer of the disability.
- Provide details on the restrictions and limitations on the ability to perform the job.
- Be prepared to consider reasonable accommodation proposals (a perfect solution may not be achievable, nor is it required).
- Provide a reasonable explanation for refusing good faith accommodation proposals made by the employer.

Union's Responsibility

The Union must:

- Engage in consultative, cooperative discussions with the employer.
- Fairly consider the extent to which accommodation proposals affect the rights of other employees and consider relaxing collective agreement requirements should it become necessary.

Accommodation Options and Limits

The duty to accommodate is not limitless; unreasonable options to accommodate do not have to be accepted. While a perfect solution may not be found, employers must still consider and weigh the adoption of reasonable accommodation options short of undue hardship. Some examples of accommodations options include:

- Modifying the duties of the employee's current position.
- Offering an alternate vacant position, with or without modification.
- Bundling available tasks to create productive work.
- Making ergonomic changes to work station, equipment or facilities.
- Offering rehabilitation and employee assistance programs.
- Altering the work schedule.
- Relaxing attendance requirements.
- Granting a temporary leave of absence.

Employers are not required to:

- Create a job where productive duties do not exist.
- Satisfy unreasonable demands.
- Ignore job qualifications or safety requirements.
- Provide special layoff protection.

Where an employee has been enrolled in the CSSEIP, the CSSEIP provider can assist the employer, employee and union in determining work restrictions and limitations due to the disability and reasonable accommodation options to be considered. The medical knowledge of the provider combined with the workplace knowledge of the employer should support reasonable return to work and/or accommodation options being chosen.

SUBSTANCE ABUSE AND ADDICTION/DEPENDENCY

Substance addiction or dependency is recognized by human rights law as a disability. As a result, employers must accommodate addicted employees to the point of undue hardship where their addiction affects their work in the same way employees with other types of disabilities would be accommodated. Not every case of absenteeism involving an addicted employee requires accommodation, however. There must be a causal link between the addiction and the absenteeism.

In some cases of addiction, there may be elements of culpable and non-culpable behaviour. If misconduct occurs (e.g., theft of drugs), it may be related to the addiction, but the mere presence of an addiction does not necessarily eliminate the employee's control over her actions. Depending on the nature and severity of the addiction, the employee may still bear responsibility for misconduct and can be held accountable through the disciplinary process.

An addiction/dependency can present unique challenges for employers in the accommodation process as employees may deny the existence of it in the first place. An employer cannot accommodate a disability that it has no information from the employee about. Nevertheless, if other evidence suggests that an employer ought to have known about a drug or alcohol dependency, it may have an obligation to inquire further into the employee's condition and offer to assist through means such as the CSSEIP or an employee assistance program.

Another unique challenge for employers is the likelihood of relapse. The duty to accommodate may require an employer to make allowances for relapse – but how many must be tolerated? An employee may need to be accommodated through more than one relapse until there is no objective evidence that further accommodations will reasonably succeed in returning the employee to regular attendance. A formal last chance agreement between the employee, union, and employer may need to be entered into that obligates the employee to participate in concrete treatment steps and abstinence, and which stipulates that further breaches will result in undue hardship being reached, justifying severance of employment.

AGING WORKFORCE

An aging workforce may also contribute to higher absenteeism or performance issues. Attendance issues caused by disabilities or inabilities related to age trigger the same accommodation processes as absenteeism caused by other disabilities. A person's age (over 19 years old without an upper limit) is a protected ground of discrimination under the *BC Human Rights Code*. Employers must gather the necessary medical information, make individualized assessments about what older workers can do, and fully explore reasonable options to accommodate the employees to the point of undue hardship.

STRESS LEAVE

As with other types of sick leave claims, the questions that an employer must address when approving a stress related sick leave is whether the nature of the employee's absence is the result of a physical or psychological condition that disables the employee from attending to work duties.

People handle stresses differently and some may experience stress but not be disabled from working. To be eligible for an authorized sick leave, the stress must manifest itself into symptoms that are severe enough to disable an employee from performing work duties. Symptoms of stress may include:

- Inability to focus due to serious anxiety/depression
- Nausea
- Fatigue due to sleeplessness or prescribed medications
- Pain due to headaches or migraines

As with other claims for sick leave, when reasonably asked, employees must provide employers with reliable information which establishes a causal link between the nature of the illness and the inability to work. In appropriate circumstances, a medical note will be required.

In appropriate circumstances, stress may also give rise to a Workers' Compensation claim. WorkSafeBC will consider and grant compensation coverage for mental disorders in either of the following circumstances:

- 1) if it is a reaction to one or more traumatic events arising out of and in the course of employment, or
- 2) if it is predominately caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of employment.

In addition, for compensation to be provided, the mental disorder must be diagnosed by a psychiatrist or psychologist.

WSBC law and related policy states that the mental disorder cannot be caused by a legitimate employer decision relating to employment. If a mental disorder is caused by any of the following decisions or actions, it will not be eligible for compensation coverage:

- a change in work or working conditions
- discipline
- termination of employment
- workload and deadlines
- work evaluation
- performance management
- transfers, lay-offs, demotions, and reorganizations

USE OF SURVEILLANCE TO SECURE PROOF OF SICK LEAVE FRAUD

In rare circumstances, an employer may resort to the use of surveillance when it has strong suspicions of sick leave fraud. In those cases, the proof of sickness received from the employee's medical practitioners may be insufficient to support a legitimate absence in the face of other compelling information.

If surveillance is being considered, it must be used with caution. It is highly recommended that advice be sought prior to engaging in surveillance, given the intrusion into employee's privacy and the associated costs to an employer.

Surveillance should be used as a last resort; other options should be assessed to obtain the same information. Surveillance evidence improperly secured will not be allowed as evidence in an arbitration hearing if the discipline is based on that evidence. In addition to assessing whether the gathering of surveillance evidence was reasonable and necessary in comparison to other alternatives available to the employer, an arbitrator may also assess whether the surveillance itself was conducted in a reasonable manner (for example, whether the evidence was gathered in a public space where the employee has little expectation of privacy).

More detailed information and resources on surveillance and privacy rights can be obtained from the Office of the Information and Privacy Commissioner at www.oipc.bc.ca.

APPENDICES

APPENDIX 1 - SAMPLE ATTENDANCE MANAGEMENT POLICY

POLICY

At [AGENCY NAME], our employees deliver high quality services that our clients rely on. In order to deliver high quality services, employees are expected to attend work as scheduled and on a regular and consistent basis. We will work proactively with our employees to support them in meeting our attendance expectations.

The attendance management program is designed to help [AGENCY NAME] better understand issues that are causing employees to have challenges attending work on a regular basis. It focuses on providing support to employees and operates in collaboration with other existing programs, such as the Community Social Services Early Intervention Program (CSSEIP), WorkSafeBC, and long-term disability.

[AGENCY NAME] assists employees to meet attendance expectations by: promoting employee wellness, maximizing employee engagement at work, communicating with employees regarding attendance concerns, providing sick leave and health benefits, working with employees and the [UNION] in providing early intervention and modified or graduated return to work programs, and accommodating employees with disabilities pursuant to human rights legislation.

Program purpose

Our attendance management program is designed to address the issue of employee absenteeism due to illness or injury in a positive manner and to assist in meeting organizational goals of regular attendance to deliver high quality services to our clients. The program provides guidance to managers for managing attendance concerns through communication with employees. It will be applied fairly and in a flexible manner that is appropriate to each individual employee's attendance and/or health concerns.

The program is designed to address non-culpable absenteeism; that is, absenteeism where the legitimacy of the employee's absences is not in issue but the level of absenteeism is a concern. The program is not disciplinary in nature.

Where absenteeism is culpable in nature, it will be dealt with outside of the parameters of this Program and under the appropriate sections of the Sick Leave Policy and/or the collective agreement.

Responsibilities and expectations

A senior executive is to be accountable for the overall development, implementation, and review of the program.

A program coordinator (who may also be the senior executive) is to be accountable for the administration of the program.

Managers are responsible for implementing the program including reviewing employee attendance.

All staff are expected to attend work on a regular and consistent basis.

All staff are responsible for taking proactive measures that will assist them in meeting attendance expectations, such as general health promotion measures, as appropriate, and are expected to cooperate with their physicians' recommendations.

All staff are expected to follow [AGENCY NAME] Sick Leave policy and procedures in relation to advance notice of absence and return to work, communicating with supervisors/designates on the status of absences, what supporting medical information can be collected, and any other procedures applicable to sick leave absences. Please refer to the *Sick Leave Policy and Procedures* (see Appendix 8 of this Guide for a sample).

If absent for five consecutive shifts or longer, full-time employees will be referred to the CSSEIP and will be required to fully participate in its processes, including the provision of medical information which will be kept confidential amongst health care professionals to confirm illness and appropriately support employees to return to work. If absent for eight (8) consecutive calendar days or longer, part-time employees will be referred to the CSSEIP and will also be required to fully participate in the CSSEIP.

If any regular status employee is absent for an occupational illness or injury, they will be referred to the CSSEIP immediately instead of after the 5 or 8 day eligibility periods.

PROCEDURE

Advance Notices, Communications, Supporting Medical Information in relation to Absences

Procedures relating to advance notice of absence and return to work, communicating with supervisors/designates on the status of absences, what supporting medical information can be collected, and any other procedures applicable to sick leave absences are found in [AGENCY NAME] *Sick Leave Policy and Procedures* (see Appendix 8 of this Guide for a sample).

Attendance standards

Employee attendance will be compared to the annual median absenteeism in [AGENCY NAME]. Absenteeism that exceeds the median absenteeism level in [AGENCY NAME] is an indicator of an attendance concern. However, there may be occasions when absenteeism above the median level does not indicate an ongoing attendance problem (for example, where an employee is absent for a period of time due to a single injury or illness).

Employees who are incapable of regular and consistent attendance in the foreseeable future may be subject to termination based on an inability to fulfill terms of employment to support delivery of high quality client services. [AGENCY NAME] will communicate expectations to employees and offer assistance in meeting acceptable attendance levels before such a step is taken.

Attendance reviews

Managers are expected to review employees' attendance records on a quarterly basis or more frequently as appropriate. Employees who have been identified as having attendance concerns may be monitored in accordance with the goals of the program.

Attendance reviews will address the following statistics:

- Total number of days absent.
- The incidence of absences, i.e., number of occurrences of absenteeism as opposed to the duration of the absence).
- Absences adjoining days off, vacation or other leaves.
- Absences occurring at the same time each year.
- Other patterns emerging.

Attendance management intervention/meetings with employees

Where an employee's attendance is not meeting expectations, the manager will meet with the employee to discuss attendance concerns. These meetings will be documented in a letter placed on the employee's personnel file.

1. First meeting with the employee

The manager will meet with the employee and review the attendance concern. The discussion with the employee will include the following:

- Reviewing the organization's requirements of regular attendance.
- Advising the employee of her absenteeism to date and how this compares with the median absenteeism in the organization.
- Advising the employee of any patterns of absences that are of concern.
- Advising the employee of any impacts of the absences.
- Asking the employee whether there is any underlying issue of which the organization should be aware that may be responsible for her absenteeism.
- Advising the employee of the availability of the Employee and Family Assistance Program.
- Advising the employee of the availability of the CSSEIP as appropriate.
- Asking what plans the employee has to improve attendance.
- Setting specific goals for improvement of attendance.
- Setting a date for a follow-up meeting within the next three months.

The discussion will be documented in a letter to the employee.

2. Second meeting with the employee

If the employee's attendance has improved to a satisfactory level by the time of the second interview, the manager will confirm the attendance has improved and encourage the employee to continue her efforts in this regard. The discussion will be documented in a letter. The manager will advise the employee that attendance will continue to be reviewed and that a further meeting may be scheduled should further attendance concerns arise.

If the employee's attendance has not improved to a satisfactory level, the manager will meet with the employee to discuss the ongoing attendance concerns. The discussion with the employee will include a review of the following:

- Reviewing the organization's requirements of regular attendance.
- Reviewing and confirming the first meeting with the employee.
- Advising the employee of the absenteeism to date and how this compares with the median absenteeism in the organization.
- Advising the employee of any patterns of absences that are of concern.
- Advising the employee of any impacts of the absences.
- Inquiring into why, in the employee's opinion, the goal for improved attendance has not been met.
- Confirming whether there is any chronic medical condition or disability that is affecting the employee's ability to attend work regularly.
- Confirming whether there is any other factor in the employee's life of which the organization should be aware that is affecting the employee's ability to attend work regularly.
- Advising the employee of the availability of the Employee and Family Assistance Program.
- Advising the employee of the availability of the CSSEIP as appropriate.
- Confirm and/or modify the previous specific plan the employee has to improve attendance.
- Setting specific goals for improvement of attendance.
- If applicable, requesting the employee provide a medical certificate from a physician of her choosing attesting to the medical condition of the employee.
- Setting a date for a follow-up meeting within the next three months.

The discussion will be documented in a letter to the employee.

3. Third meeting with the employee

If the employee's attendance has improved to a satisfactory level by the time of the third review, the manager will confirm attendance has improved and encourage the employee to continue her efforts in this regard. The discussion will be documented in a letter. The manager will advise the employee that attendance will continue to be reviewed and that a further meeting may be scheduled should further attendance concerns arise.

If attendance has still not improved to a satisfactory level, the manager will meet with the employee to discuss the ongoing attendance concerns. The discussion with the employee will include a review of items set out for the second meeting and, in addition, the following items:

- Emphasizing the organization's ongoing concern regarding absenteeism and lack of improvement.
- Alerting the employee that ongoing absenteeism that does not meet expectation of regular attendance in the foreseeable future may jeopardize employment.
- Asking the employee to provide any information that may be affecting an ability to attend work regularly in the future, given the ongoing failure to meet an acceptable level of attendance in the past, so that assistance may be offered as appropriate.

The discussion will be documented in a letter to the employee.

4. Further meetings and warnings

If the employee's attendance has improved to a satisfactory level by the time of a further review,

the manager should confirm in writing that attendance has improved and encourage the employee to continue her efforts in this regard.

Where the employee's attendance has not improved to an acceptable level, the manager will review the employee's attendance records, patterns of absenteeism and the reasons given by the employee for the absenteeism in determining how to proceed. Further interviews similar to the third interview and letter may be appropriate, with further warnings that place the employee on notice that her employment may be terminated if attendance does not improve. Assistance from the Employer will continue to be offered.

Prior to termination for non-culpable absenteeism, there will be a careful examination of all of the circumstances surrounding the employee's absenteeism. The employee will be provided a final warning setting out the attendance required and the period during which attendance will be monitored, as well as offers of support. The employee will be advised that should attendance fail to meet the established target level, employment may be terminated. The employee will again be asked to provide any information that may be affecting an ability to attend work regularly in the future, given the ongoing failure to meet an acceptable level of attendance in the past, so that assistance may be offered as appropriate.

Accommodation of employees with disabilities

[AGENCY NAME] will work together with the employee, the [UNION], and the CSSEIP as applicable, to seek a reasonable accommodation for those employees who establish the existence of a disability impacting on the performance of work duties.

Employees are expected to provide medical information that will assist in determining the restrictions and limitations that arise from the disability and in searching for a reasonable accommodation.

The [UNION] will be invited to participate in meetings along with the unionized employee to identify restrictions and limitations, and to explore potential accommodation options.

Employees are expected to fully participate in accommodation efforts and plans reached.

Related Resources and Documents:

CSSEIP – for a description of the Early Intervention Program, roles and responsibilities, and sample employer letters, see www.cssea.bc.ca.

Attendance Management Checklist for Managers (see Appendix 2 of this Guide).

Sample letter to employee following attendance management meeting (see Appendix 3 of this Guide).

Letters to employee and physician requesting additional medical information attaching the Medical Information Form and College of Physicians and Surgeons of BC Practice Standard (see Appendices 4, 5, 6 and 8 of this Guide).

Sick Leave Policy (see Appendix 7 of this Guide).

APPENDIX 2 - ATTENDANCE MANAGEMENT CHECKLIST

The following checklist provides employers with a guide to the essential steps, as well as some necessary questions to consider, when addressing attendance concerns.

STEP 1 - REVIEW OF ATTENDANCE DATA BY MANAGER

Gathering and reviewing attendance statistics.

YES NO

1. Does the manager have a system for reviewing attendance records for each employee in the department on a regular basis?
2. Does the manager regularly review (on a quarterly basis) the attendance records?
3. Does an employee's absenteeism rate:
 - Exceed the median average level within the employees' group?
 - Show a distinct change from previous rates?
 - Demonstrate a perceived pattern of absences, e.g., Mondays?

If "YES" is checked on any of these questions, the manager should proceed to Step 2.

STEP 2 - INFORMAL DISCUSSION WITH EMPLOYEE

The purpose of this discussion is to obtain information from the employee about which factors may be causing absences and what can be done to improve them. This meeting is not disciplinary in nature, and the topic areas discussed are as set out in the policy.

DONE

1. Schedule a private meeting with the employee
2. Discuss attendance data and any underlying reasons for concern
3. Inform the employee of the effect her absences are having at work
4. Give the employee an opportunity to provide reasons for the absences
5. Discuss plans that could be put in place to support improvement

If the attendance record continues to be problematic, the manager should proceed to Step 3.

STEP 3 - FORMAL REVIEW OF ATTENDANCE RECORD

The purpose of this discussion is to obtain information from the employee about which factors may be causing absences and what can be done to improve them. This meeting is not disciplinary in nature, and the topic areas discussed are as set out in the policy.

YES NO

1. Has the manager examined the employment history to determine:
Length and type of employment?
Attendance history?
2. Are there workplace dynamics (e.g., co-worker relationships) that may be affecting the absenteeism?
3. Are there any medical issues involved?
Has the employee provided any written or verbal information?
Is the manager aware of any recent or chronic health problems?
4. Are there any personal issues or family problems which may be affecting the employee's attendance record?
5. Are attendance problems likely to continue?

If the answer to the last question is "yes", the manager should proceed to Step 4.

STEP 4 - FORMAL MEETINGS WITH THE EMPLOYEE

The purpose of these meetings are to support the employee to attend work regularly, not to threaten the employee. The manager and employee will work together to develop a personal action plan to minimize future absences. In order for the meeting to be successful, demonstrated concern for the wellbeing of the employee is essential, and the topic areas to be discussed are as set out in the policy, for example:

1. Before the meetings, collect and have available all background information obtained from the review of the attendance record.
2. Open the meeting by explaining the purpose and objectives of the meeting.
3. Review with the employee the attendance record, summarize previous discussions that have been held.
4. Encourage the employee's participation in the discussion and in obtaining any further relevant information that might affect attendance.
5. Identify options to help resolve attendance issues.
6. Agree on an action plan with the employee.
7. Establish review dates for action plan.
8. Obtain the employee's commitment to try to improve attendance.

9. Conclude meeting by clearly outlining action plan, defining expectations and goals.
10. Write a follow-up letter to the employee, confirming the action plan.

STEP 5 - FOLLOW UP

DONE

1. Continue to regularly review employee attendance
2. Encourage and support improvement

YES NO

3. Has the employee's attendance record significantly improved and the action plan been achieved?

If the answer to the last question is "no," consult with your human resources department or your HRLR Consultant to assess the next steps.

APPENDIX 3 - SAMPLE LETTER: ATTENDANCE REVIEW MEETING

Each communication with an employee concerning their attendance must be tailored to meet the specific circumstances. This is a sample letter that could be adapted as necessary to confirm discussions after attendance management meetings in the early stages of the Program. All of the elements of this letter would be reviewed during the meeting with the employee, with the letter simply confirming the discussions held.

[TO BE RETYPED ON AGENCY STATIONERY]

[DATE]

[EMPLOYEE NAME]

[ADDRESS, CITY, PROVINCE, POSTAL CODE]

Dear [EMPLOYEE]:

Re: Attendance Meeting

This letter serves to confirm our meeting on [DATE] regarding your attendance at work.

As discussed, a review of your attendance record from [REFERENCE PERIOD or X to Y] indicates that you have been absent on [X] occasions and missed a total of [X] days [or SHIFTS]. A copy of your attendance record is attached.

Your absenteeism rate during this period exceeds [THRESHOLD AVERAGE FOR AGENCY AND/OR WORK UNIT AVERAGE, AS APPLICABLE] of [X] occasions of absence and [X] days/shifts absent. Your rate of absenteeism requires immediate and significant improvement.

Attendance will continue to be monitored and reviewed again in [DATE (THREE MONTHS)] time.

The validity of the reasons for your absences is not being questioned. However, high levels of absenteeism have an adverse impact on co-workers and the service we provide. In order for [AGENCY NAME] to operate efficiently and effectively and deliver the highest quality of care, you are required to attend work on a regular and consistent basis. We would like to support you in improving your attendance.

Please be assured this is not a disciplinary letter. Rather it is meant to draw your attention to the requirement of regular attendance in the future and our efforts to support you in achieving this.

[Option 1 - If Employee has Access to Employee and Family Assistance Program]

We are committed to working with you to support you in your role as [JOB TITLE]. If you are experiencing any personal difficulties which you feel may be affecting your ability to attend work on a regular and consistent basis, we have an Employee and Family Assistance Program which may provide you with support. The EFAP service can be reached at [PHONE NUMBER]. Please also feel free to

discuss this with me on a confidential basis or consult your family physician or other health professionals to provide you with support.

[Option 2 - If Organization has no Employee and Family Assistance Program]

We are committed to working with you to support you in your role as [JOB TITLE]. If you are experiencing any personal difficulties which you feel may be affecting your ability to attend work on a regular and consistent basis, please feel free to discuss this with me on a confidential basis or consult your family physician or other health professionals to provide you with helpful support.

If you have any questions or would like to discuss this further, please do not hesitate to contact me at [PHONE NUMBER].

Sincerely,

[NAME AND TITLE OF MANAGER]

APPENDIX 4 - SAMPLE LETTER: REQUEST FOR FURTHER MEDICAL INFORMATION

[TO BE RETYPED ON AGENCY STATIONERY]

[DATE]

[EMPLOYEE NAME]

[ADDRESS, CITY, PROVINCE, POSTAL CODE]

Dear [EMPLOYEE]:

Re: Request for Further Medical Information

We write to request further information concerning your current absence and the prospect for your return to full duties.

[Briefly describe absence or series of absences (particularly their duration) and circumstances as understood by the Employer.]

You have reported that you have been unable to attend for health reasons. Although you have provided doctor's notes with respect to your absence, they have not provided sufficient information to assist us in understanding the ongoing nature of your sickness, when you are expected to return to work and whether you will be able to return to full duties on an ongoing basis. As you have been absent from work due to sickness for more than five (5) days and are not enrolled in the joint union/employer Early Intervention Program, we are requiring you to take the attached form to your attending physician and authorize him/her to fully complete it.

Please return this fully completed form to me by [DATE (reasonable period of time from delivery of this letter)].

Please do not hesitate to contact me if you have any questions.

Yours truly

[NAME AND TITLE OF MANAGER]

APPENDIX 5 - SAMPLE LETTER TO PHYSICIAN: REQUEST FOR PHYSICIAN'S STATEMENT

This sample letter is to be attached to the sample letter to the employee found at Appendix 4.

[TO BE RETYPED ON AGENCY STATIONERY]

[DATE]

[NAME AND ADDRESS OF ATTENDING PHYSICIAN]

Re: [NAME OF EMPLOYEE]

Dear [NAME OF ATTENDING PHYSICIAN]:

We are writing to request you provide us with information concerning the above employee's recent absence from work.

[EMPLOYEE NAME] has been employed with us since [DATE], in the position of [TITLE]. That position has the following duties:

- [JOB DESCRIPTION; ADD EFFORT REQUIRED TO PERFORM DUTIES, IF SIGNIFICANT]

Over the last [RELEVANT PERIOD], the employee has been absent from work on [X] occasions, missing a total of [X] days [OR SHIFTS] of work.

In order for us to manage her absences/effectively schedule replacement staff and determine whether any supports or accommodation are necessary, we have requested that you complete the attached Physician's Statement.

If you have any questions or concerns regarding this request, please do not hesitate to call me. I thank you in advance for your assistance.

Yours truly

[NAME AND TITLE OF MANAGER]

cc [EMPLOYEE]

APPENDIX 6 - CONFIDENTIAL MEDICAL INFORMATION FORM

This is to be attached to the letter to Physician found at Appendix 5 of this Guide:

PHYSICIAN FORM A

Documentation of Employee Absence from Work Due to Illness and/or Injury

1. You are being requested to complete this form because the Employer has requested that your patient provide documentation regarding their current absence from work due to illness and/or injury.
2. The completed form is to be given to your patient.
3. Please confine your comments to the requested information only.
4. Please reference the attached Job Description for the applicable work duties.

Patient Name: _____ Employer Name: _____

Date of Injury/Illness: _____ Date of Assessment: _____

Date of Next Appointment: _____

Is this an occupational injury/illness?

☐ Yes ☐ No

Step ONE:

Is the patient able to return to work in any capacity at this time? ☐ Yes ☐ No

If no, what is the estimated date of return to work, if known _____

If the patient is able to return to work at this time are they able to perform the full duties indicated on the attached Job Description? ☐ Yes ☐ No

If no, please complete **Step 2** and the **Physician Form B (located below)**.

Step two:

Does the patient require a return to work on a graduated basis? ☐ Yes ☐ No

If yes, please provide additional information by completing **Physician Form B (located below)**.

Does the patient require a temporary accommodation? ☐ Yes ☐ No

If yes, what is the anticipated length? _____

Does the patient require an ongoing accommodation? ☐ Yes ☐ No

If yes, please provide additional information on **Physician Form B (located below)** and anticipated length of accommodation _____

Have you recommended a treatment plan for your patient? ☐ Yes ☐ No

If yes, is the patient following the treatment plan? ☐ Yes ☐ No

Has your patient been referred to a medical specialist? ☐ Yes ☐ No

PHYSICIAN INFORMATION

Name of Attending Physician (please print)

Family Physician ☐ Yes ☐ No

Address City Province Postal Code

Phone Number Fax Number

Physician's Signature _____ Date: (month, day, and year): _____

Please return the completed form to your patient. It is your patient's responsibility to provide the completed form to their Employer in a timely manner.

We will pay in accordance with the Doctors of B.C. - BCMA fee schedule A00060 (Minimum \$10.00 - Maximum \$43.05). Please mail your invoice to the employer. Please note, we require original invoices not faxes. Thank you.

Employer: _____

Address: _____

PHYSICIAN FORM B

***Indicate patient's physical and/or any other medical limitations - not diagnosis.**

Physical Limitations	Duration/Comments
----------------------	-------------------

In an 8 hour day the employee may:

Walk:	0	1	2	3	4	5	6	7	8 hours	☐ No restriction	
Stand:	0	1	2	3	4	5	6	7	8 hours	☐ No restriction	
Sit:	0	1	2	3	4	5	6	7	8 hours	☐ No restriction	
Drive:	0	1	2	3	4	5	6	7	8 hours	☐ No restriction	

Provide an explanation of the driving limitations: _____

Vision: ☐ Acuity _____ ☐ Depth _____ ☐ Perception _____

Hand/Wrist: ☐ Single grasping ☐ Pushing & pulling ☐ Keyboarding ☐ No restriction _____

Stair Climbing: ☐ None ☐ 2-3 steps ☐ Short flight ☐ No restriction _____

Ladder Climbing: ☐ None ☐ 2-3 steps ☐ Short flight ☐ No restriction _____

Lifting Floor to Waist: ☐ <10 kg ☐ <25 kg ☐ No restriction _____

Lifting Floor to Shoulder: ☐ <10 kg ☐ <25 kg ☐ No restriction _____

Above Shoulder Activity: _____

Below Shoulder Activity: _____

Cognitive/Mental Limitations	Duration/Comments
------------------------------	-------------------

Attention and Concentration: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Learning and Memory: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Decision Making: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Judgment: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Organization and Planning: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Social Interaction: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Communication: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Adaptation: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Deadlines: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Management of Staff: ☐ Mild ☐ Moderate ☐ Severe ☐ No restriction _____

Other: _____

Please provide necessary details about any restrictions or medical limitations you have identified.

Any limitations on current work schedule? ☐ Yes ☐ No

If yes, _____ days/week, _____ hours/day _____ starting date _____ end date.

Please return the completed form to your patient. It is your patient's responsibility to provide the completed form to their Employer in a timely manner.

We will pay in accordance with the Doctors of B.C. - BCMA fee schedule A00060 (Minimum \$10.00 - Maximum \$43.05). Please mail your invoice to the employer. Please note, we require original invoices not faxes. Thank you.

Employer: _____

Address: _____

*Additional medical information may be required.

APPENDIX 7 - SAMPLE SICK LEAVE POLICY

POLICY

1. Every employee is responsible for attending work as scheduled.
2. Sick leave is provided as a form of insurance to help with salary continuance during periods of personal illness or injury. Sick leave is not to be used for any other purpose than the disability of the employee from performing their work duties.
3. To ensure proper staffing, employees must notify their immediate supervisor/designate when unable to attend work as a result of personal illness or injury, with as much advance notice as possible of the start of the shift. The notification is to include the general nature of the illness (not diagnosis) and the anticipated duration of the absence. Messages left with employees other than the immediate supervisor/designate will not be considered acceptable notice to the Employer.
4. Staff members should not attend work when contagious. Employees who must leave work prior to the completion of their shift due to illness must notify their immediate supervisor/designate prior to leaving work.
5. For shorter term absences of five (5) days or less, employees shall maintain daily contact with their supervisor/designate regarding the status of the sickness/injury and expected return to work date. For absences longer than five (5) days where the employee has been referred to the CSSEIP or where it is known that the absence will be for a specific period, daily contact is not necessary.
6. The employee will provide as much advance notice as possible of return to work. If replacement staff has been arranged and the employee returns to work without sufficient advance notice, the returning employee's services may not be required and they may be placed on unpaid leave until the employee is next scheduled for work.
7. Access to sick leave, including proof of sickness, shall be governed by the terms of the applicable collective agreement. Employees will earn and utilize sick leave credits in accordance with the terms of the collective agreement.
8. A medical report from a qualified medical practitioner may be requested to validate an absence due to sickness and/or to collect information that may support improved attendance under the Attendance Management Policy.
9. Where sick leave misuse/fraud is suspected, the human resources manager/designate may, in accordance with the applicable privacy legislation, collect from or disclose to organizations for which the employee in question works personal employee information, including work schedules. By employees receiving this policy, they are deemed to have read it and to have been provided with notice of such collection or disclosure in circumstances when sick leave misuse/fraud is suspected, pursuant to applicable privacy legislation.

10. Employees who continue to be off work following the expiration of their paid sick leave may be placed on leave of absence without pay in accordance with the terms of the applicable collective agreement.
11. If eligible for sick leave pay, the employee must confirm the claim in writing upon return to work.

PROCEDURE

An employee who will be absent from work due to sickness/injury must notify their immediate supervisor with as much advance notice as possible. The supervisor will complete the sick leave absence reporting form (attached) upon notification.

The employee and supervisor are to maintain regular contact during the absence. It is the supervisor's responsibility to ensure that the employee maintains ongoing communication regarding the status of the illness and expected return to work date. The supervisor will request/review any supporting documentation as required.

A medical certificate from a qualified medical practitioner may be requested in appropriate circumstances, before the employee returns to work. Examples of circumstances include but are not limited to employees:

- Whose absenteeism exceeds the organization/work unit average absenteeism rate
- Whose absenteeism incident or pattern is of concern
- Who are on a lengthy sick leave absence and not participating fully in the CSSEIP
- For whom there is information indicating that they may not be disabled from working.

Where the absence is for five (5) days or less, the employer may request confirmation of illness or injury and the estimated duration of the absence in a form necessary to convey this information. The request will be made of the employee. The confirmation may come in the form of a medical certificate. If the employee is requested to attend at their medical practitioner, the following basic confirming information may be requested:

- The general nature of the illness and/or confirmation that the employee is not able to perform work duties due to illness/injury
- The dates the employee is ill/injured
- The date medical attention was received
- The expected date of return to work, if known.

The attached sick leave confirmation form may be used to collect this information. In appropriate circumstances, additional information may be requested.

Where the absence is for more than five (5) days, the employer may secure medical information about the illness or injury by requesting the employee to attend at their medical practitioner. The attached Medical Information Form and cover letters are to be used to collect this information. (see Appendices 4 to 6 of this Guide for the attachments)

Absent employees will notify their supervisor with as much advance notice as possible of intention to return to work so that necessary staffing adjustments or requests for additional information can be made.

The employee, immediately upon return to work, completes the employee section of the sick leave absence reporting form (attached) and returns it to the supervisor.

The supervisor retains the completed sick leave absence reporting form in a confidential and secure place.

Graduated/Modified return to work

Based on the absent employee's restrictions and limitations, and/or consistent with the principles of the duty to accommodate disabled employees, the department manager, in consultation with the human resources manager, employee, union, and/or the CSSEIP case manager, as appropriate, will participate in return to work discussions to explore graduated return to work and/or accommodation plans that may include performing modified duties, ergonomic adjustments, working in a different job, reduced hours or other reasonable and appropriate options. Return to work discussions will be informed by the necessary medical information.

Full return to work

Based on the nature of the illness/injury and the length of absence, the supervisor may request a medical report from the returning employee indicating fitness to return to their full range of duties. Prior to returning to work from a Workers' Compensation leave or LTD leave (where WSBC or the LTD carrier has not provided confirmation), the employee is to provide the department manager/designate with a medical report indicating fitness to resume a full range of duties without work limitation.

The Medical Information Form is to be used for this purpose.

Long-term disability (LTD)

The human resources manager/designate informs employees of their eligibility to apply for long-term disability benefits and coordinates the application process in conjunction with the CSSEIP Provider.

At the same time, the department manager contacts an eligible employee to discuss their ability to return to work.

If the employee does not anticipate recovering and returning to work prior to the end of the LTD qualification period, the employee is sent information and appropriate forms to initiate a LTD claim.

The human resources manager/designate completes the employer's Statement and submits this along with the completed claimant's statement and physician's statement to the insurance carrier.

The supervisor maintains ongoing contact with the employee regarding the illness/injury, expected return date, and status.

If an employee's claim for LTD is rejected, the employee returns to work immediately or if appealing the adjudication, applies for a leave of absence without pay for the duration of the appeal period.

Confirm the specific LTD application and adjudication processes with the LTD Provider.

SICK LEAVE ABSENCE REPORTING FORM

PART 1 - To be completed by the **supervisor/designate**, for all unscheduled employee sick absences

Employee Name: _____ Date and time of call: _____

Date(s) of absence: _____

Reason for absence:

Sick leave ☐
Worker's compensation leave ☐

Expected length of absence: _____

Signature of supervisor or designate: _____

PART 2 - To be completed by the **employee** immediately upon return to work from sick leave or workers' compensation leave and returned to the supervisor/designate

Date(s) of absence: _____

Nature of illness (diagnosis not necessary):

Was medical attention sought?

YES ☐
NO ☐

Is sick leave pay being claimed?

YES ☐
NO ☐

Signature of Employee: _____ Date: _____

THIS FORM CONTAINS CONFIDENTIAL INFORMATION AND WILL BE RETAINED IN A SECURE LOCATION.

SAMPLE MEDICAL CONFIRMATION FORM (MAY BE USED FOR ABSENCES OF FIVE (5) DAYS OR LESS)

CONFIDENTIAL - SICK LEAVE CONFIRMATION FORM

To the physician:

_____ has been asked to provide their supervisor with a medical note confirming the reasons for being absent from work.

Date(s) of absence: _____

PHYSICIAN'S STATEMENT:

Following examination, I hereby certify that the above named person was unable to attend work on the following date(s):

due to *(describe nature of illness/injury – diagnosis not required)*:

This illness/injury prevented him/her from working because:

(Describe reason(s) employee was unable to perform job duties (restrictions/limitations))

This individual was seen by me regarding this illness/injury on _____
Date(s)

I estimate they will be able to return to work on: _____
Date

Physician

Date

APPENDIX 8 - COLLEGE OF PHYSICIANS & SURGEONS OF BRITISH COLUMBIA

Practice Standard - Medical Certificates and Other Third Party Reports

Physicians are frequently asked to provide medical certificates for employees upon request from a patient's employer to meet attendance management or sick leave policy requirements. To support the provision of the most accurate and complete medical information possible, physicians may be reminded of the Practice Standard applicable to the provision of the information by employers attaching it to the Medical Information Form. As of November 2013, the following Practice Standard was in effect. To ensure currency of the Practice Standard, please refer to the College website at: <https://www.cpsbc.ca/for-physicians/standards-guidelines>.



College of Physicians and Surgeons of British Columbia

Practice Standard

Medical Certificates and Other Third Party Reports

Preamble

This document is a standard of the Board of the College of Physician and Surgeons of British Columbia. It also offers some broader guidance on this issue, which physicians should consider before they provide medical certificates or reports to patients who may use these documents to obtain workplace accommodation or insurance benefits from employers or other third parties. Such requests may originate from government departments or agencies (e.g. WorkSafeBC), private non-governmental sectors such as lawyers, the Insurance Corporation of British Columbia, and other insurance and disability carriers.

This document must be read in conjunction with [Independent Medical Examinations](#).

College's Position

Physicians are ethically and legally obliged to provide reports on patients they have attended, even when they have not seen them for some time and are unable to provide a current report.

Physicians are frequently asked to provide medical certificates for a patient's employer or another third party such as a disability insurer. When a request has been received, the physician is required to respond in a timely manner, with objective medical information in spite of pressures to advocate on behalf of the patient. The physician is expected to differentiate between objective medical information and opinion.

Physicians must recognize that employers and their insurers will be relying on the information provided to them by the physician in making a number of decisions concerning financial and other entitlements.

Physicians may be subpoenaed as witnesses, required to produce clinical notes and examined and cross-examined under oath about the information already provided by them in medical certificates or other forms.

Physicians should also be aware that if they provide misinformation, or erroneous or unfounded opinions, employers and insurers who have relied on such representations may have claims for damages against the physician.

The College may consider the provision of untruthful information or inappropriate delay in producing medical certificates or reports as professional misconduct.

The following guidelines are suggested:

- Physicians should ensure that they have received the patient's valid and documented consent to provide any information to an employer or other third party. Consent should include discussion about the scope, purpose and likely consequences of the disclosure of their personal health information and the fact that relevant information cannot be concealed or withheld.
- Because it may be difficult to confirm what information was provided to an employer or other third party in a verbal or telephone conversation, physicians are advised to avoid verbal communication unless the patient is party to that conversation.
- Statements made should be truthful and based upon objective clinical information about the patient and not simply a repetition of the patient's self-diagnosis.
- Medical information should be presented in a clear and factual manner, with opinions that are supported by objective medical evidence.
- Conjecture, speculation and inappropriate advocacy in medical certificates or reports should be avoided.
- Physicians should provide medical certificates or reports in a reasonable timeframe; this is usually considered to be within 30 business days of the request but may in some situations be shorter.
- If they are unable to respond within a reasonable timeframe, physicians should communicate directly with the third party and negotiate a new timeframe, or provide the reasons why they cannot comply.
- If a patient was not seen during a period of disability or illness, an opinion about retrospective diagnosis may be provided but the fact that the patient was not seen during that period should be clearly stated.
- Before giving an opinion on a patient's fitness to perform a specific activity or job, physicians should ensure that they have accurate information about the activity or the requirements of that job.
- Physicians should not disclose more information than is covered by the patient's consent or requested by the third party.
- Fees should be discussed with the requesting third party in advance of the report preparation. Fees charged should be fair and reasonable—reflecting the work required—and consistent with the *Doctors of BC Guide to Fees* for non-insured medical services.
- Physicians may request, but they must not demand, payment in advance for their professional services. A report cannot be withheld contingent on pre-payment.
- Fee disputes between physicians and lawyers can be referred to the Medical-Legal Liaison Committee of Doctors of BC.

Physicians may seek advice on this issue by contacting the College and asking to speak with a member of the registrar staff.

Guiding Ethical Principles

CMA Code of Ethics

Responsibilities to the Patient

16. In determining professional fees to patients for non-insured services, consider both the nature of the service provided and the ability of the patient to pay, and be prepared to discuss the fee with the patient.
31. Protect the personal health information of your patients.
32. Provide information reasonable in the circumstances to patients about the reasons for the collection, use and disclosure of their personal health information.
33. Be aware of your patient's rights with respect to the collection, use, disclosure and access to their personal health information; ensure that such information is recorded accurately.
35. Disclose your patients' personal health information to third parties only with their consent, or as provided for by law, such as when the maintenance of confidentiality would result in a significant risk or substantial harm to others or, in the case of incompetent patients, to the patients themselves. In such cases take all reasonable steps to inform the patients that the usual requirements for confidentiality will be breached.

Resources

For more information, go to:

The Canadian Medical Protective Association

- Legal liability of physician for medical certificates
http://www.cmpa-acpm.ca/cmpapd04/docs/resource_files/infoletters/1994/com_il9410_3-e.cfm
- Timely responses to requests for reports
http://www.cmpa-acpm.ca/cmpapd04/docs/resource_files/infoletters/2008/com_il0830_1-e.cfm