

COVID-19 & Privacy Questions



Do I have an obligation to disclose that I have COVID-19 or that I have been exposed to it?

In normal circumstances, employers do not have a right to know an employee's diagnosis.

With the ongoing national effort to flatten the curve of the pandemic, employers who require employees to self-disclose would likely be deemed to be in compliance with their obligation to provide a healthy and safe environment for all employees.

In these circumstances, if someone in the workplace was known to have contracted COVID-19, an employer would be directed by public health authorities to inform the persons who had the most direct contact with the individual. Employer's rights would be limited to disclosing the information to those that need to know it.

Under legislation such as the federal *Quarantine Act* or emergency measures and public health legislation in provincial and territorial jurisdictions, public health authorities may direct employers to disclose personal health information to them about persons in the workplace who have tested positive or been directly exposed to persons who have tested positive for COVID-19 in order to reduce the propagation of the disease.

However, employers would still have an obligation to protect workers' privacy rights and would not be allowed to share an individual worker's personal health information with other workers who do not need to know the information.

Can an employer require me to provide medical documentation regarding my fitness to return to work after a COVID-19 illness?

On March 19, 2020 the Ontario government passed legislation Bill-186, *Employment Standards Amendment Act (Infectious Disease Emergencies)*, 2020, which provides that an employee will not be required to provide a medical note if they need to take a leave related to COVID-19. Similarly, an employee would not be required

to provide medical documentation upon return to work if they have had COVID-19.

In Quebec, the CNESST advise workers not to go to hospitals or medical clinics if they are not sick.

The Canadian Medical Association has called for the discontinuation of all medical notes in all jurisdictions during the COVID-19 crisis as this puts an unnecessary burden on the health care system.

However, if an employer has reasonable cause to believe based on consistent information that you may not be fit to return to work and may pose a risk to the health and safety of other employees, it may ask for additional medical documentation confirming your fitness to return to the workplace. This would be pursuant to the employer's obligation to provide a health and safe environment for all workers under applicable health and safety legislation and the CA.

The request for information should be limited to what is necessary to make the determination regarding your functional limitations but should exclude any information identifying a disability.

The employer may not unreasonably deny you the ability to return to work if it is relying on impressionistic or discriminatory information. In fact, doing so could constitute discrimination on the basis of perceived disability. This arbitrary action on the part of the employer could be grieved and an arbitrator could eventually require an employer to reimburse you for any leave or income lost as well as damages for pain and suffering.

Can my employer force me to get tested for COVID-19?

Public health authorities are currently not conducting any random testing for COVID-19. Testing is only being conducted in limited circumstances.

Therefore, unless you have been directed by a public health authority to submit to testing or there is a reasonable cause to question your fitness to work (i.e. due to COVID-19 symptoms exhibited), the employer would have no basis to ask or require that you be subject to an assessment and testing by public health authorities.

What if I refuse to disclose that I have COVID-19?

If you willfully refuse to self-disclose a highly contagious disease such as COVID-19, this could be in violation of health and safety legislation requiring employees to disclose workplace hazards as well as directives from public health authorities.

Discipline could result due to the significant health and safety risk you could pose to other workers. Further, it is likely that an arbitrator would find some measure of discipline to be reasonable. The fact that you intentionally refused to disclose would be an aggravating factor.

