

# Is It Discrimination to Make Injured Worker Undergo Additional Medical Assessment?



Medical assessment to ensure a safe return to work is not disability discrimination.

## **SITUATION**

A worker with a work-related back injury undergoes a medical assessment before returning to modified light work in the plastics department. He reinjures himself a few days after returning and has to go back on leave for 6 months. A second attempt at a return produces the same results. Another month goes by and the worker is now ready for his third attempt at a return. But after the previous 2 setbacks, the company is worried about returning him to his old job in plastics, which happens to be the lightest work available, and requires him to undergo another medical assessment and produce a doctor's note confirming he's fit for work. The worker is fed up with assessments and sues the company for not letting him work 2 days a week to accommodate his medical needs and schedule.

## **QUESTION**

**Did the company's demands for medical information discriminate against the worker?**

1. Yes, because it interfered with the worker's opportunity to work due to a disability
2. No, because the company needed the information to determine if it was safe to let the worker return
3. Yes, because the worker had already undergone assessment for the same injury twice
4. No, because a work-related back injury isn't considered a disability

## **ANSWER**

1. The company didn't discriminate because it needed the worker's medical information to ensure he could return to work safely.

## EXPLANATION

This scenario, which is based on a BC case, illustrates some important principles about disability discrimination and a worker's right to return to work after an injury. Human rights laws ban employers from affording less favourable treatment to workers because they're disabled and require accommodations to the point of undue hardship. The company's demands for medical information did, in fact, interfere with the worker's opportunity to work because he was disabled. However, adverse treatment is allowed if the employer can show it's a bona fide occupational requirement (BFOR). To justify a workplace standard as a BFOR, employers must show that:

- They adopted it in good faith;
- They adopted it for a purpose rationally connected to the performance of the job; and
- Most difficult of all, the standard is "reasonably necessary" to accomplish that legitimate work-related purpose.

The BC Human Rights Tribunal found that the company's demands for medical assessment and a doctor's note met the BFOR test. The first 2 prongs were a slam dunk since the company had a responsibility under OHS laws to ensure the worker's safety. And while 3 medical assessments in the space of 7 months might seem excessive, the worker's history of relapses justified the company's concerns and its right to require further assessment and a doctor's note, the Tribunal concluded [[Tumber v. FlexiForce Canada and another](#), 2020 BCHRT 132 (CanLII), June 26, 2020].

## Why Wrong Answers Are Wrong

**A is wrong** because it doesn't account for the possibility of a BFOR defence. In other words, while the company **did** single out the worker because he was disabled, it had a legitimate reason to do so.

**C is wrong** because the circumstances in this case, including the worker's 2 previous relapses after returning from the injury, justified making him undergo another assessment.

**D is wrong** because a work-related back or just about any other injury that impairs a worker most definitely **is** a disability under human rights laws.