

Verifying Employee Medical Absences With or Without a Doctor's Note: The Glenn Commandments



Making employees who call in sick furnish a doctor's note used to be standard operating procedure for just about any company. Now it's highly problematic, especially in Ontario, BC, and other provinces where [employment standards laws](#) now ban employers from requiring doctors' notes to verify an employee's need for [sick leave](#) and other short-term medical leave. The point of the new restrictions is to spare overtaxed medical providers the administrative burdens of having to write notes for every patient who catches a cold or other minor illness forcing them to stay home from work. But taking doctors' notes off the table opens the door to abuse. So, how can employers and their HR directors verify that employees who call in sick are really sick without a doctor's note?

Employee Self-Certification of Short Absences

One alternative to doctors' notes is self-certification of short medical absences. **Strategy:** Adopt an HR policy that requires employees who miss 3 or fewer days of work to complete a written form listing the reasons for the absence and certifying that those listed reasons are true either via email during the absence or in hardcopy on the day they return. Like the [HR Insider template](#), your Self-Certification form should:

- Explain that the form is a substitute for a doctor's note.
- Emphasize the company's trust in its employees to provide honest information about their absences.
- State that the form is required only for short absences of 3 days or less.
- Require employees to list the absence's total number of days in duration, including date it began and the date of return to work.
- Require employees to list the reasons for the absence in a way that doesn't violate their rights under privacy laws (which I'll explain in the next section).
- Ask employees if they saw or sought the advice of a doctor or medical professional and if Yes, who and how, and if No, why not.
- Require employees to certify that the information they provide is true and acknowledge that deliberately listing untruthful information is grounds for

discipline.

- Indicate the employee's consent to let you verify that information.

Ensure Self-Certification Doesn't Violate Employees' Privacy Rights

Details about an employee's illness or injury is protected information under the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) and provincial personal privacy laws. However, employers are allowed to collect, use and disclose protected information without consent to carry out legitimate and essential business functions related to managing their employees. Verifying the need for sick days and medical absences is generally recognized as one of those legitimate employment functions.

However, you're only allowed to collect, use and disclose only the minimum amount of personal information necessary to perform that function. When dealing with absences lasting just 1 to 3 days, all you really need to verify is that the employee was incapable of working due to an illness or injury. You don't need to know what illness or injury they were diagnosed with, which medications they took or other details about the case that have no bearing on whether they were capable of working while they were out.

Best Practice: Include clear language explaining these principles in your [self-certification form](#) so that employees understand that you're not requiring them to disclose protected information about their health.

Takeaway: When It's OK to Require Doctors' Notes

Although HR directors need to be aware of the new restrictions, the mandatory doctors' note policy remains an essential tool in managing employee absences. Requiring an employee to provide a doctor's note is still allowed and may even be required for purposes of:

- Verifying longer medical, injury and disability-related leaves.
- Enforcing an attendance management or other probationary arrangement requiring employees to improve their attendance.
- Confirming that employees qualify for sick pay, workers' comp, disability, and other employment benefits.
- Determining staffing arrangements necessary to cover for the absent employee.
- Verifying entitlement to other medical and health-related employment standards leaves of absence for which requiring a doctor's note isn't expressly prohibited.

Just keep in mind that the privacy restrictions pertaining to self-certification that I discussed above also apply to doctor's notes. **Practical strategy:** Ask doctors to provide only the information you need to determine how the employee's medical situation affects their ability to do the job, when they can return, the capabilities they'll have upon returning, etc. Phrasing the questions right will be key to compliance.

Verifying that the Employee Is Really Sick

Information You Need: Verification from a medical source who's seen or been in contact with the employee that they're really ill/injured and need to stay home:

WHAT YOU CAN'T ASK

- "What's wrong with the employee?"
- "Does the employee have [a specific disease, e.g., the measles or COVID]?"

WHAT YOU CAN ASK

"Does the employee have an illness or medical problem that requires them to be absent from work?"

Determining How Long the Employee Will Be Absent

Information You Need: The expected duration of the absence so you can make alternative staffing arrangements.

WHAT YOU CAN'T ASK

"What's the employee's diagnosis?"

WHAT YOU CAN ASK

"What's the employee's prognosis?"

Determining If the Employee Is Contagious

Information You Need: Whether the employee will pose a danger to others upon returning and if so, what precautions are necessary.

WHAT YOU CAN'T ASK

- "Does the employee have coronavirus or another contagious illness?"
- "Is the employee contagious?"

WHAT YOU CAN ASK

- "Does the employee's condition pose a hazard to others at the workplace?"
- "What measures are appropriate to protect the employee's co-workers from contracting what the employee has?"