

Conifer

Circular

CR No. **01/25**

RE: **REASONABLE MEDICAL INFORMATION AND SICK NOTE TEMPLATES**

FEBRUARY 18, 2025

(VIA E-MAIL)

TO: All Member Companies,

Recently, a member company sent us a generic Sick Note Template that some employees have been providing when absent from work due to illness or injury. The sick note template essentially states that sick notes are not necessary and place an unnecessary burden on the health care system.

Consequently, we sought a legal opinion to determine the validity of these Sick Note Templates and what to do in cases when only a Sick Note Template is provided by employees. Please find this legal memorandum attached.

Please contact the Staff of CONIFER at 250-564-5166 should you have any questions on the applicability of the advice contained in this memorandum.



Cam Meroniuk
Manager, Employment Relations

CM/kg
February 18, 2025

MEMORANDUM

To: Mike Bryce, Executive Director
CONIFER

Date: February 14, 2025

From: Michael R. Kilgallin and Lara Israel

File No.: CONIFER
1989-000

Re: Reasonable Medical Information and Sick Note Templates

Background

Some employees have provided a Sick Note Template¹ to CONIFER member companies when absent from work due to illness or injury. This Sick Note Template essentially states that sick notes are not necessary and place an unnecessary burden on the health care system. CONIFER is seeking advice on what to do in cases where only a Sick Note Template is provided by an employee.

Task

You have asked us to review employment standards and arbitration case law to determine if and how “reasonably sufficient proof” under section 49.1(2) of the *BC Employment Standards Act*, (the “**ESA**”) has been interpreted, and to further consider what employers can do in response when presented with the Sick Note Template.

It is important to clarify that employers can request or require medical notes or information from employees for different reasons. Each of the reasons will have their own justification thresholds, issues and consequences. The main four reasons are:

1. *ESA* - reasonably sufficient proof for the 8 injury or illness (sick) days;
2. Medical information to assess the duty to accommodate;
3. Unpaid medical leave beyond the *ESA* levels; and
4. Collective Agreement - Article XVII, Section 2, incorporates weekly indemnity under the Northern Interior Forest Industry Benefit Plan. Article XIX covers LTD benefits.

¹ <https://bccfp.bc.ca/about-us/new-resource-employer-sick-note-signed-by-bccfp-and-bc-family-doctors/>
<https://bccfp.bc.ca/wp-content/uploads/2024/02/2024-06-Updated-BCCFP-and-BCFD-sick-note.pdf>

These reasons are detailed below.

1. **ESA - Reasonably Sufficient Proof**

After setting out the 5 paid days and 3 unpaid days employees are entitled to per calendar year for illness or injury, section 49.1(2) states:

(2) If requested by the employer, the employee must, as soon as practicable, provide to the employer **reasonably sufficient proof** that the employee is entitled to leave under this section.

[Emphasis added]

Section 52.12 – COVID-19-related leave, has a specific subsection that states:

(5) An employer must not request, and an employee is not required to provide, a note from a medical practitioner, nurse practitioner or registered nurse for the purposes of subsection (4).

That language is not in section 49.1, meaning employers may be able to request “a note from a medical practitioner, nurse practitioner or registered nurse” for *ESA* sick days.

So “reasonably sufficient proof” is the clear legal test where the employee is using their 8 *ESA* sick days. In addition, employers are not strictly prohibited from requesting “a note from a medical practitioner, nurse practitioner or registered nurse” for *ESA* sick days.

We did not find any case law on how the *ESA* “reasonably sufficient proof” has been interpreted.

However, the Guide to the Employment Standards Act and Regulation (the “Guide”), which is not binding law², provides the following lengthy Policy Interpretation³:

Subsection (2)

This section sets out how an employer may exercise their judgement to request reasonably sufficient proof from their absent employee to support the leave entitlement.

Reason for leave

If requested, the employee must, “as soon as practicable”, provide their employer with reasonably sufficient proof to show that an illness or injury was the basis for their absence. The requirement to provide “reasonably sufficient proof” and to do so “as

² “This guide is an interpretation of the B.C. [Employment Standards Act](#) and [Regulation](#) to help provide a clear understanding of the law. **It is not a legal document** and should not be used as a substitute for legal counsel.”

³ <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/igm/esa-part-6-section-49-1>

soon as practicable” anticipates that both the proof and the timelines for providing it be reasonable in the circumstances.

Employers should allow a reasonable time frame for an employee to provide proof. For example, an employee might have limited ability to gather proof if they need the leave without warning. However, if the employee has electronic evidence that can be sent from home, it may be reasonable for the employee to send it while on leave. Employers should also consider the employee’s access to medical/health professionals or institutions, including any barriers to accessing medical/health professionals in short timeframes to obtain formal documentation to support the leave. Employers should also be aware of any privacy limitations when seeking medical information from employees.

Reasonably sufficient proof

“Reasonably sufficient proof” includes any adequate information that establishes or helps to establish that the employee’s absence is due to illness or injury. Illness or injury may be broadly defined and includes both physical and mental illness.

Not all health or medical related conditions, treatments, procedures or appointments fall within the definition of “personal injury or illness”. The reason for leave must be sufficiently connected to “personal injury or illness” to entitle an employee to a paid sick day or to require an employer to pay wages to their employee.

The facts must reasonably show the employee has an injury or illness that prevent or make it inadvisable for the employee to report to work for their scheduled shift. If the absence relates to a treatment, procedure or appointment, there must be a sufficient connection between the treatment, procedure or appointment and the employee’s illness or injury such as to trigger the leave entitlement.

Parties seeking to understand the scope of the entitlement may find it helpful to assess, in any given scenario, whether it appears more likely than not that if required, the employee would be able to provide “reasonably sufficient proof” of the illness or injury to support the leave. In the case of a routine health appointment for an otherwise non-ill/non-injured employee, it may be more challenging to obtain reasonably sufficient proof to support their inability or unfitness to attend work. Conversely, it may not be as challenging for an employee who is diagnosed with a medical condition and who is undergoing a non-elective treatment to obtain “reasonably sufficient proof” that they are or will be too ill to attend work for their scheduled shift.

The Act provides a direct mechanism to address any ambiguity or disputes on the entitlement to personal injury and illness leave in section 49.1(2). If the employee is able, upon the employer’s request, to provide “reasonably sufficient proof” to support the entitlement, that should guide the parties actions around this entitlement.

Determining what is “reasonably sufficient proof” calls for flexibility and a balancing of the rights and the obligations of the employee and the employer. The employee has a statutory entitlement to the sick leave, which is a job-protected leave under Part 6 of the Act. The employer has the right to manage its business and the workforce.

Proof of entitlement to sick leave may take many forms. For example, if it is reasonable in the circumstances, it could take the form of a receipt from a drugstore or pharmacy, a medical “bracelet” from a hospital, or a note from a doctor, nurse practitioner, psychologist, counsellor, or therapist. The proof requested should be proportionate to the leave and the surrounding circumstances.

What will be reasonable and sufficient in the circumstances will depend on all of the facts of the situation, which may include:

The length of the absence. For example, it may not be reasonable or necessary, depending on all the circumstances, for an employer to require an employee who only missed one day of work due to a migraine, absent any other extenuating circumstances, to provide a doctor’s note. Reasonably sufficient proof may amount to receiving enough credible verbal information from the employee to support the nature of the absence.

Whether there is an established pattern of absences. For example, if an employee alleges they are ill and takes sick leave only on each Friday before a statutory holiday weekend, it may be reasonable for the employer to require more stringent medical or other proof of illness even though the leave is only one day at a time.

Whether proof is available. For example, if an employer does not request a doctor’s note from their ill employee until that same employee has returned to work and is no longer ill, it may not be feasible for them to obtain sufficient proof to establish their previous illness.

What types of proof are available and the cost associated with obtaining such proof. For example, it may not be reasonable, depending on all the circumstances, for an employer to require an employee who earns minimum wage to obtain a doctor’s note to support every absence if the doctor charges the employee \$50 to obtain the note.

[Emphasis added]

Essentially, “reasonably sufficient proof” will vary depending on the circumstances of each *ESA* sick day absence, including how long the absence is, whether that employee has a pattern of absences, what kind of proof is available, and how expensive that proof is. The inclusion of the word “sufficient” indicates that employers cannot always expect to receive their preferred type of proof and need to accept proof that is “reasonably sufficient” for the circumstances.

In our opinion, for the 8 *ESA* sick days, the most an employer can expect to get from an employee, where it is reasonable to request, is a medical note from a doctor confirming the illness or injury and need for leave.

However, in our opinion, if a doctor’s note is reasonable in the circumstances to request, **the Sick Note Template is never appropriate proof of eligibility to take leave under section 49.1 because it does not actually prove anything.** Rather, it needs to be an actual note from a doctor.

If the employee states the cost of a doctor's note is the barrier to getting one, then an option to remove that barrier is for the employer to state it will either reimburse the employee or pay the doctor's office directly.

In addition, **just because it may not be reasonable to request a doctor's note, does not mean that the Sick Note Template will suffice as reasonably sufficient proof.** Rather, as set out in the Guide, there may be other reasonably sufficient proof the employer can request, depending on the circumstances, including "a receipt from a drugstore or pharmacy, a medical "bracelet" from a hospital".

Practically, it will be important to inform the employees as soon as possible (ideally right when they call in sick), that proof will be required, and for them to collect and retain all documents connected to the sick leave. If there is specific proof that is reasonable to expect, the employer can be specific in telling the employee what proof they are expected to collect, retain, and provide to the employer.

Finally, there is a risk that the employer asking too many questions and seeking too many details regarding the nature of the medical leave could be considered an invasion of the employee's privacy. Again, this will turn on context and reasonableness.

To summarize, where the 8 days sick leave is protected under the *ESA*:

- A. Consider the nature and context of the sick leave and decide if any proof is required (e.g. if it is the employee's first sick day in 6 months and there is nothing suspicious about it, then it may not be reasonable to request any proof beyond the employee's word).
- B. If proof is required, consider what type/level of proof is reasonably sufficient, and communicate that to the employee as soon as possible. The main two options being:
 - a. to collect and retain all documents connected to the sick leave, and provide a copy of the most applicable document to the employer; and/or
 - b. to get a doctor's note confirming the illness or injury and need for leave.

For either, if the employee has provided a Sick Note Template in the past, the employer can also expressly inform the employee that a Sick Note Template will not be accepted as reasonable proof.

- C. If proof is reasonably requested, and the employee only provides the Sick Note Template, the employer should:
 - a. inform the employee that is not acceptable (if not done already in B, above);
 - b. inform the employee to provide better proof (be specific in what type/level is being requested); and
 - c. not pay the *ESA* sick day(s) until reasonably sufficient proof is received.

In addition, if the employee continues to not provide the reasonably requested proof, the employer could treat the situation as AWOL and/or insubordination and progressively discipline the employee.

2. *Medical Information to Assess the Duty to Accommodate*

If an employee requests medical leave based on more serious and/or longer-term restrictions and limitations (which is likely connected to a disability protected under the BC *Human Rights Code*), an employer is required under the duty to inquire/accommodate to consider if that employee has a protected disability and if it can be accommodated at work. This could include modified duties and/or a graduated return to work. This obligation can be triggered even if the employee is not expressly asking for accommodation.

In order to properly assess the accommodation issues, the employer requires clear, current and credible medical information. Similar to the above *ESA* section, reasonableness and proportionality will be major factors. Meaning, the more serious/onerous the potential accommodation, the more comprehensive the medical information should be. Even if the employee still has *ESA* sick days to use, an employer can require more medical information under the duty to accommodate context.

It would not be reasonable for an employee to provide the Sick Note Template in the duty to accommodate context.

If the employee does not provide the medical information required to assess the duty to accommodate, they can ultimately lose their human rights protections for their failure to participate in the accommodation process. In addition, the employer could treat the situation as AWOL and/or insubordination and progressively discipline the employee.

3. *Unpaid Medical Leave Beyond the ESA sick days*

This reason will normally overlap in part with the above duty to accommodate and the below Collective Agreement weekly indemnity and LTD plans. For this reason, the employee is likely just seeking a longer medical leave, but not any accommodations (or the employer has explored accommodation options and none are possible without undue hardship) and is not on weekly indemnity or LTD benefits.

In that case, the employer is entitled to request clear, current and credible medical information to confirm the employee's status and if any changes are reasonably foreseeable. The frequency which updated medical information can be requested will depend on the medical information previously provided and when potential status assessments or changes were expected. Again, reasonableness will be the key factor.

It would not be reasonable for an employee to provide the Sick Note Template for a medical leave beyond the *ESA* sick days.

If the employee does not provide the medical information required to assess the medical leave, assuming they have a disability, they can ultimately lose their human rights protections for their failure to participate in the accommodation process. In addition, the

employer could treat the situation as AWOL and/or insubordination and progressively discipline the employee.

4. *Collective Agreement - Article XVII, Section 2, Incorporates Weekly Indemnity Benefits under the Northern Interior Forest Industry Benefit Plan and Article XIX Long Term Disability*

Employees are eligible to apply for and receive weekly indemnity benefits and/or LTD benefits. The weekly indemnity process is administered and adjudicated by the third-party provider, Pacific Blue Cross (“PBC”). The specific medical information required to receive these benefits is provided directly to PBC, and not disclosed to the employer. When employees go down this path, the employers will typically just get generic status updates from PBC (e.g. approved for benefits until at least [date]).

Obviously, the Sick Note Template would not be accepted by PBC for benefits.

If the employee is deemed to be ready to return to work, then the employer is entitled to more medical information to confirm fitness for duty and/or any accommodation considerations. That medical information can come from PBC and potentially the employee’s treating physician (if not inconsistent with the PBC information).

If PBC ends the employee’s benefits without a return to work plan or medical information, then the above reasons 2 or 3 will apply.

The same would apply for LTD benefits, which are administered by the IWA – Forest Industry LTD Plan.

Summary

There are different reasons and contexts where an employer may want or need medical information from an employee. The legal thresholds for the type of medical information requested will depend on the circumstances and reasonableness.

Where there is a reasonable basis to request medical information from an employee, the Sick Note Template should not be an acceptable document.

However, the Sick Note Template is likely intended to make employers give more consideration to what types of medical information or proof they are requiring from their employees, and whether it is reasonably justified.