

When and Where Does the Employee Sign?

For managers and HR professionals attempting to manage HR employee health issues at work, referring employees to an occupational health professional and ensuring the appropriate consent forms are signed can be confusing. The purpose of this advice leaflet is to outline the current legislation that employers have to consider and to comply with and the scenarios where an employee's consent is required.

When management are attempting to manage an employee's poor performance at work, recurrent absences from work or a prolonged period of absence and these issues are thought to be due to health reasons. Consideration is often given to referring an employee to an occupational health service to be seen by either an occupational health physician or a specialist nurse.

Many employer's contracts of employment include sections requiring employees to comply with a referral to an occupational health service or with an employer's reasonable attempts to investigate employee health issues. If your company's contract of employment does not include such a provision, you may wish to consider this in the future.

Where contracts of employment do not include such a provision, the situation can be complex and confusing.

In the past, if an employee attended an occupational health appointment, their consent to undergo this assessment was considered to be 'implied' by the fact that they attended. In the 21st century, however, this is not considered by professional bodies or unions to be enough. Current thinking in many walks of life is that an individual has to be 'fully informed' with regards to their rights and responsibilities before commencing any process. This is the same with occupational health. The Faculty of Occupational Medicine, part of the Royal College of Physicians in the UK, recommend that an employee is fully informed of the nature of the occupational health assessment, the fact that a report will be forwarded on the employee's fitness or ability to maintain a satisfactory level of attendance to the employer and that an employee has access to a copy of this report, which is his/her right under the Data Protection Act (more of this later).

Preventative Healthcare have recently introduced an employee consent form. In our experience and also having talked to other providers within occupational medicine, if a case becomes contentious, such a consent form can protect both the employee and the employer.

If the employee wishes to obtain a copy of the occupational health professional's report, it is their right under the Data Protection Act. The Data Protection Act requires the employee to apply for a copy of the report in writing to the company's Data Protection Registrar. The company, having funded the occupational health review, technically owns the report. The Data Protection Registrar may be the HR manager or another senior member of staff within your company. On receipt of a written request for a report, the Data Protection Act requires the Data Protection Registrar of the company to provide the employee with a copy of the report.

Please note that it is not Preventative Healthcare's policy to release reports prepared for client companies to employees. We are requested regularly for such reports and Preventative Healthcare staff always refer the employee making the request back to their company, indicating that they will have to apply in writing to the company's Data Protection Registrar and encouraging them to do so.

If the employee indicates that they have been unsuccessful in obtaining a report from their employer and applies in writing to Preventative Healthcare under the Data Protection Act, Preventative Healthcare has legally to comply with the request and will provide a report to the employee.

What about the 'Access Form'?

The Access to Medical Reports Act 1988 consent form on the other hand is only used for GP or specialist report requests. The Access to Medical Reports Act only applies to doctors who have 'clinical responsibility for the patient'. It does not apply to occupational health doctors and nurses.

The Access to Medical Reports Act 1988 has the provision in it for the employee to view a report from their GP or specialist before it is released to Preventative Healthcare staff. The Access to Medical Reports Act 1988 also has the provision for the employee to request a GP or specialist to delete a section or change a section if they consider it inaccurate or do not wish it to be released. This obviously has implications for the occupational health staff and the employer. The Act, however, does require that the GP or specialist indicate in the report if an employee has requested a section be deleted or changed, but the GP or specialist cannot say what was deleted or changed. So the plot thickens!

We hope that this has been helpful. If you have any further questions or concerns, please do not hesitate to contact Penny Lovelock at phcohealth.co.uk or 01622 775289.