

A-Z Guide

Medical Certificates



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Use This Guide to Understand

- Who may issue a medical certificate
- What a medical certificate should contain
- How the Privacy Act is applied
- What the Holidays Act says
- When you may ask for a medical certificate for other reasons

What is a Medical Certificate?

A medical certificate is a certificate which is issued by a health practitioner registered under the Health Practitioners Competence Assurance Act 2003.

Medical certificates have a multiple of applications in the employment context and should be understood for what they are, and what they are not.

Your contractual right to request a medical certificate in some circumstances does not necessarily address the concern behind the request; the issues behind medical certificates should be understood and appreciated so important issues are not missed.

The information in this guide should be supplemented by referring to the following A-Z Guides -

- Disability
- Discipline
- Discrimination in Employment
- Incapacity
- Medical Examinations
- Privacy

What is the Purpose of a Certificate?

Medical certificates are issued by health practitioners to certify that the patient is either unfit for work or unfit to fulfil his or her usual duties but is capable of light duties for a period of time.

Unless a medical certificate is issued in relation to a work related injury, it is unusual for the certificate to reveal the medical reason behind it.

You may, for good reasons, want to know the reasons behind an employee being issued with a medical certificate. In this situation, the first source of information should be the employee. However, you should not be asking an employee about the reasons behind the medical certificate arbitrarily; the Information Privacy Principles of the Privacy Act 2020 (discussed more fully below) state that the collection of personal information about a person should be related to a lawful purpose.

If you have genuine concerns about an employee's wellbeing, and that concern is related to the issuing of a medical certificate, then you should discuss this with the employee. That discussion may lead to the employee authorising you to contact the issuer of the certificate so that you can discuss the employee's medical situation in greater detail with his or her doctor or midwife.

What Should be in a Certificate?

For the purpose of providing proof of sickness or injury under the Holidays Act 2003 for absence during the use of entitled sick leave, an employee needs only to provide a medical certificate from a health practitioner stating that-

- the employee is not fit to attend work because of sickness or injury; or
- the employee cannot attend work –
 - because the employee's spouse is sick or injured:
 - because a person who depends on the employee for care is sick or injured.

When a medical certificate is presented after a period of absence from work you should check that the dates match the period of absence.

You can request a medical certificate from an employee if the sickness or injury giving rise to the absence has continued for 3 or more consecutive days. This applies to entitled sick leave taken, under the Holidays Act 2003. You can require proof of sickness or injury within the 3 days (i.e. even for just one day of sick leave) as long as you tell the employee as soon as possible that proof is required and you agree to meet the employee's reasonable expenses in obtaining the proof.

Holidays (Increasing Sick Leave) Amendment Bill

On 24 July 2021, the Holidays (Increasing Sick Leave) Amendment Bill came into effect. As a result, employees are entitled to 10 days' sick leave, instead of 5 days. This applies to all employees, including part-time employees. This will mean that an employer may require proof of sickness or injury under the Holidays Act 2003 for absence during the 10 days minimum entitlement. Where you provide additional sick leave entitlements, you may make arrangements to request medical certificates in respect of each absence for those additional entitlements.

Where you are authorised to do so, you are entitled to require an employee to establish that there are no relevant health and safety reasons or hygiene reasons that would prevent them from working.

The New Zealand Medical Association advises its members that no registered doctor should issue a medical certificate which implies that the doctor either made observations of a patient, or completed an examination of a patient, if the doctor did not in fact make those observations or complete that examination.

Doctors must adhere to Medical Council guidelines when issuing medical certificates. The full Medical Council statement can be viewed at www.mcnz.org.nz. Medical certificates that do not meet these guidelines may be rejected. If you intend to take a firmer approach when requesting medical certificates, you should have clear policy in place.

The Privacy Act

The Privacy Act 2020 contains 13 Information Privacy Principles. The Principles are discussed below in the context of medical certificates and your interest in them. The entire obligation imposed by each Principle is not covered so the information presented should not be treated as exhaustive.

Principle 1: Purpose

As noted above, your collection of personal information about an employee must be related to a lawful purpose connected with an employment activity and the collection must be necessary for that purpose. If you have genuine concerns about an employee's wellbeing at work, perhaps because of safety, or perhaps because of a high level of absenteeism, then your collection of personal information will be within the parameters of this Principle.

Principles 2 and 3: Source and collection

As noted above, the primary source of personal information about an employee should be the employee. The employee is most likely to be the best source of information about his or her medical situation, and in most circumstances will cooperate with your request for more information. Cooperation is more likely if the employee understands why you are asking for more information and feels that you are concerned about his or her wellbeing.

You are obliged to inform your employee of the reasons for the collection of any personal information.

If your employee consents to you collecting personal information about him or her from the issuer of the medical certificate, then you have a number of options open to you. You and your employee could meet with the issuer for a discussion in person.

Alternatively, your employee could directly authorise the issuer to contact you by telephone for a discussion during which the employee may, or may not, be present. Finally, your employee could sign an authorisation form that is duplicated for the benefit of the issuer, so that you and the issuer can either meet privately or the issuer can send you fuller information from the employee's file / record.

If you plan to retain the information, you should tell your employee at the time of its collection that you plan to retain it and the period it will be retained for.

Principles 5, 6, and 7: Storage, access and correction

If you collect personal information about your employees and retain it in some form, most likely either in writing or electronically in their personnel file, then you need to ensure that its storage is secure against loss, use and misuse. If you store personal information about an employee then the information must also be readily retrievable so that the employee can have access to the information about him or her. If you hold personal information about an employee the employee concerned is entitled to request the correction of that information.

Principle 8: Accuracy

In the event that you obtain personal information, and record it if it is not already in writing, about an employee in relation to a medical certificate with the intention of using that information (in connection with the purpose for which it was collected) then you must take reasonable steps to ensure that the information is accurate, current, complete and relevant.

In this context then, if you were seeking to rely on a health practitioner's opinion in respect of your employee, you would be unwise to consider this as authoritative without putting the health practitioner's opinion to the employee for his or her consideration and comment.

Principle 9: Retaining information

Personal information should not be retained for longer than is required for the purposes for which it was collected for use. This is problematic in employment as an employee's immediate medical situation may appear only relevant at that time but it could also be relevant later on. Employment relationships can last a very long time. Provided the information is stored securely and the employee has been advised of its storage in relation to the purpose for which it was collected and the employee's right to access it, then the retention of personal information about an employee for the duration of the employment relationship (and perhaps a reasonable period after the employment has ended) will be within the parameters of these Principles.

Principles 10 and 11: Limits on use and disclosure

It almost goes without saying that personal information about an employee in relation to medical certificates may only be used for the purposes for which it was collected. You may seek the employee's authorisation to use it for any other purpose. It is also the case that personal information about an employee in relation to medical certificates cannot be disclosed to any other person or organisation unless that disclosure is one of the purposes in connection with which the information was collected, or the employee authorises the disclosure.

Contractual Issues

Employment agreements frequently include a contractual provision requiring employees to produce medical certificates when they are absent, due to illness or injury, for a specified time. Generally speaking, these contractual provisions are not multi-purpose and do not authorise you to request a medical certificate for reasons other than the reason outlined in the agreement or provision. The advice below addresses some drafting issues and some enforcement issues.

Sick leave

A contractual provision that entitles the employer to request a medical certificate after a specified period of absence should be clear and unequivocal. It should define any terms used in relation to the period; e.g. if the specified period is to be week, then it needs to be clear whether "week" means working week, calendar week, or any period of 5 or 7 continuous days. Any contractual provision should not be inconsistent with the provisions of the Holidays Act 2003, particularly in respect to minimum entitlements to sick leave.

Where an employment agreement grants an entitlement that is greater than that provided by the law, then the application of medical certificates to the granting, or declining, of that entitlement is a matter for agreement between you and the employee.

Contractual provisions should not be overly onerous or they will not be workable and will defeat the purpose for which they were included. The ability to address repeated, periodic, or prolonged absences should be considered.

Fitness for work

You may want to consider contractual provisions that give you the ability to request, or require, a medical certificate when an employee has been absent owing to illness or injury for a prolonged period of time, and you want to be reassured that the employee, or any other person, will not be harmed by returning to work.

The issue of medical certificates (and medical examinations) to establish a returning employee's fitness for work was explored by the *Employment Court in Radio New Zealand Limited v Snowdon*.

The Court's decision in that case suggests that, where it is fair and reasonable to do so, an employer could require an employee to provide a medical certificate establishing the employee's fitness to return to work even if that request required the employee to undergo a medical examination with the health practitioner of the employer's choice. One consideration in deciding whether such a request was fair and reasonable in the circumstances would be the nature of the agreement between the employer and the employee. If the agreement included a provision expressing this obligation in defined circumstances then it should not be unreasonable.

The Department Medical Practitioner with the Ministry of Business, Innovation and Employment's (formerly the Department of Labour) Occupational Safety and Health Service, Dr Chris Walls, has advised the medical profession that medical certificates intended to be presented to employers should provide information detailing actual diagnoses and detail possible workplace causes of employees' conditions. He has advocated this for two important reasons.

Firstly, in order for an employer to be able to investigate workplace problems (so as to manage them) it needs to know what those problems are. Health practitioners are able to assist employers by providing specific information about the cause, or believed cause, of the employee's stress-related condition by relating the actual diagnosis to the workplace.

Secondly, employers can reasonably expect the attendance of their employees at work. Employees should not be absent without good cause. An employer is not expected to tolerate health-related absences without more information.

You should keep this in mind every time you are presented with a medical certificate, and particularly when an employee presents you with a medical certificate that states that the employee has or is suffering with, occupational overuse syndrome (OOS) or work-related stress.

Disciplinary matters

The failure to abide by the obligations expressed in any contractual provision may give rise to disciplinary action. However, if you are considering disciplinary action in response to an employee's failure to supply a medical certificate as they are obliged by the employment agreement to do, then you should inquire into the reasons for that failure, and consider those reasons and any other relevant matters, before making a decision.

Conclusion

This A-Z guide has covered the common issues that arise in respect of medical certificates. Medical certificates for short one-off absences will not be elaborate and those for prolonged or continual intermittent absences should be sufficiently detailed to provide you with the information you need in relation to the employee's level of wellness, or unwellness, and to verify that the employee was unwell for the period of absence.

There are limitations on the use of medical certificates and they do not do more than advise you that the employee was examined or seen by the issuer and that in the issuer's opinion (or sometimes the employee's) the employee was entitled to be absent for a specified period.

The EMA AdviceLine Team are able to keep you abreast of any changes in the law in respect of medical certificates and can give you advice particularised to your situation.

Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business. .

This guide is not comprehensive and should not be used as a substitute for professional advice.

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