The Conciliator

UNIFOR Local594 | Canada

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UNIFOR theUnion

Medical Information Privacy

Most of you are likely unaware that our union has recently settled several issues relating to personal medical information privacy with the Company. While we were able to get fair resolution on these matters through grievance procedure, and in one case without a grievance being filed, let it be known these changes were not done out of the kindness of the Company's heart.

We had two members who were inappropriately asked to provide medical information that infringed upon their privacy; which led the Law Committee to investigate several questions: What is a Company allowed to ask, and when are they allowed to ask it?

This analysis lead us to grieve the Return to Work form that the Company asks employees to have their attending physician fill out upon their return from a prolonged absence (heart attack, shoulder injury, surgery, etc.). The old version of the form inappropriately asked for diagnosis, and any medications or treatments currently prescribed to the employee. This is a big no-no. Case law is quite clear that employers are only entitled to information regarding the health of their employees as it effects their employment.

While there are some extreme situations where providing a diagnosis may be required, those occurrences are few and far between. Even in an accommodation situation, it's not a certainty that the employer is required to know your diagnosis, rather only the restrictions placed on your ability to perform your regular duties.

Your medical information is some of the most sensitive and private information there is, and while you can usually request information you provided to be returned, you can't get someone to "unread" that information. In other words, you can't un-ring a bell. For those reasons, settling on these points with the company is an important win for all our members, but those wins may come with more questions.

What information is required of you when filling out the notice of Leave of Absence form when returning to work after an illness? While you are not required to, and should not provide a diagnosis, simply writing "sick" is not sufficient. For example, you do not need to write that you were having problems related to Crohn's Disease. In that case, "GI issues", or "stomach problems" should suffice. If you happen to be suffering from a flare up of Gout, you may choose to write that "difficulty walking". If you recently had wisdom teeth removed and missed work for a couple of days after the procedure, "recovering from minor outpatient surgery" should be more than enough information to meet your requirements. These examples give enough information to understand why you were unable to do your job during that period of time without providing information that could lead to disclosing an actual diagnosis.

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- **SHOP STEWARDS**

Section IA:
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Chad Gettle
Section III:
Curtis Baht
Section IV:
Avery Riche
Section V:
Chad Thompson
Building Maintenance:
Gary Gruell
MRP:
James Cheeseman & Ryan Morgan
Pipefitters:
Shaun Jenkins & Karl Dahle
Mechanics:
(vacant)
Stores:
Brenda Curtis
Electrical:
Les Bonkowski & Jason Kelly
Instrumentation:
Jaret McCloy & Dave Mushynsky
Inspection:
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Fire & Safety:
Daryl Watch
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Mike Fink & Ray Strueby
Pumpers:
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Jon Javorik
Welders:
Jim Milton
Scaffolders:
Nelson Wagman
Construction:
Mike Pelzer
Boilerhouse:
(vacant)
Insulators:
Kris Atkinson & Luke McGeough
PDD Office:
Susanne Carpenter
PDD Loading:
David Limacher
Packing & Blending, Warehouse:
Dean Warnke
Administration:
Amy Wisniewski

GRJ Law Conference

On Jan. 26, 594 sent eight members to the 4th annual Labour Law Conference hosted by our Union lawyers, Gerrand Rath Johnson. The day-long conference covered a range of topics that were very informative and most of the topics had potential, if not current, application to situations we are encountering among our membership. For this article, I want to highlight one of the topics that was covered: surveillance in the workplace. The discussion was mainly on GPS surveillance, but it did go over other types of surveillance as well (such as personal searches, access cards, and audio or video recordings) which are more applicable to our job site.

The question of surveillance in the workplace is directly related to the employees' right of privacy. However, I found it interesting to learn that in Saskatchewan there is no privacy legislation that covers private sector employers, including CCRL. There is some federal legislation concerning privacy but it covers only federally regulated business or direct federal government institutions; the provincial legislation covers only public sector organizations. This means that there is no solid law explaining in black-and-white terms what is acceptable surveillance of our members while at work, and what would infringe upon our right to privacy. As such, in the event a grievance were to come up concerning privacy and surveillance, the parties involved would need to balance the privacy rights of the employee with the employer's business interests.

Given the fact that there is no law concerning privacy that applies to our employer, we should be able to refer to a company policy on surveillance, if it were available. Looking into our company policies, we do have a Personal Information – Privacy policy; this contains principles that are taken from the federal privacy act, *PIPEDA*. However, this policy is vague about how information is to be collected. There is neither wording in this policy nor a separate policy that dictates how surveillance gathered by the company, by GPS, video cameras, swipe cards or other means, is going to be used. This means that the company could in theory make a case that there is no agreement that surveillance data will not be used for any purpose, for example discipline. Of course, this argument would be made on a case-by-case basis, and could also be grieved by the Union if we felt that "the ends do not justify the means."

Reading this, you may immediately (understandably!) be upset, thinking that your right to privacy should not be thrown out while on company time/ property. You would be right in that assumption – arbitrators have acknowledged this fact. However, there are cases in which the employer also has a right to use surveillance to ensure that their business is functioning efficiently. The key is determining whether there is a reasonable reason to conduct surveillance, and whether the surveillance is conducted in a reasonable way. For example, it is possible that an arbitrator would determine that it is reasonable for a warehouse containing valuable products to have a video camera recording for security purposes. It is less likely to be reasonable that this footage would be closely scrutinized in order to monitor employee performance. Or, it could be reasonable that a hazardous work environment would have an access card system in place to account for all people on site in the event of a disaster, but it might be unreasonable that this data would be used to monitor employee work times, unless that is the explicit purpose of the system.

Your Union is here to make sure all of your rights are upheld, and this includes the right to privacy. If you have any personal questions about privacy, it would be a good idea to familiarize yourself with the relevant company policies (94-22: *Personal Information Protection – Privacy*; 94-23: *Internet and Email Usage*; others as applicable, all available on the Portal). If you still have questions, feel free to talk to your shop steward or any member of the Law Committee – if we don't know the answer, we will work to find out for you!

Sheena Rivett, Law Committee Member

Actual Actuary Analysis

I wanted to share some of the information that I have learned in going through our pension Plan and two Actuarial Reports, one produced by Eckler in 2010 and the other done by Mercer in 2013 (unfortunately I didn't have a chance to examine the previous reports). I will start out with laying out the numbers that I took out of the Actuarial Reports.

Year.	Assets.	Unfunded Liabilities.	Working.	Pensioners.	Total.
Dec 31/2007.	$119,347,000	$34,851,000	623	0?	623
Dec 31/2010.	$166,997,000	$54,415,000	644	65	709
Dec 31/2013.	$244,628,000	$88,068,000	766	101	867
Dec 31/2016.	$???	$???	853	>150	Approx 1000 (853 According to Pension Committee)

If we start with looking at pre-2007, we had 0 Pensioners in the Pension Plan, the plan members that retired were taken out of the plan by purchase of an annuity, which then left no ongoing liability to the plan on their behalf. In 2007, FCL decided they wanted to pay the retirees out of the Pension Plan. Since 2007 to present, the actual active workers have gone up by 35% but the plan membership has gone up by 60%, and the number will continue to grow to as much as, double the work force, as many retired members could live as long as their working career was.

In the last three years the plans working membership grew by approximately 15%, with many of those jobs moving to management which would also have increased those base wage scales by >25%, so the question becomes does the plan administrator account for this financially beforehand, or wait until an actuarial report is done, and then react?

The 10 yr Canadian bond rate on Dec 28/2013 was 1.770% and on Dec 30/2016 was at 1.585%, so not a great difference, so from a valuation difference I don't believe the economy will have a great effect on the evaluation, I believe the larger membership (including retirees) and higher wages will create the largest effect (Interest Rates from Bloomberg Market News).

I could go on & on, there is so much information in these Actuarial Valuation Reports that we could use to debunk the information and their interpretation, but the bottom line "in my opinion" if the company wants to run a full blown pension plan (from first day on the job to burial) there are going to be growing pains, yes maybe their timing was off and they should have started doing it earlier when they were taking pension contribution holidays, and yes nobody ever dreamt that interest rates would go so low for so long, but nobody thought we would have 18% interest rates either. Interest rates are moving up again and once they do, the plan will be back in good shape, and they won't want to change a thing. Also don't forget the years of pension contribution holidays that were taken not that many years ago. In the long run, not offering annuities will keep more money in the Pension Plan than if it were to keep buying annuities, as Insurance companies build a profit into their calculation of the cost of the annuity. This retained profit would also help our pension plan, and therefore FCL in the long run

I believe that the company is pushing hard this round of bargaining because they know this is the last chance before the interest rates rise and unfunded liabilities start to shrink. I don't believe the Pension Plan Membership should pay the price for the risk FCL decided to take. Don't forget the Union members in the Pension Plan also helped out last year by taking 0%.

We went into bargaining not in a position of greed, but seeking a fair deal. CRC (FCL) have treated our Bargaining Committee with no respect, so I really hope that the Bargaining Committee knows you have the membership behind you 100%, so please keep working hard to get us a good concession free CBA, including not touching the pension.

In Solidarity,
Daryl Schwartz, Finance Committee Member

"Gonna stand my ground and I won't back down. (I won't back down).

Hey baby, there ain't no easy way out. (I won't back down).

Hey, I will stand my ground and I won't back down. Well, I know what's right,

I got just one life. In a world that keeps on pushin' me around.

But I'll stand my ground and I won't back down." - Tom Petty

Medical Information Privacy

It is impossible to cover every possible example in this article. If you feel uncomfortable writing down your explanation there are other avenues you could take to meet your obligations when explaining an absence. You could get a note from your doctor stating that you were under their care and unable to work on the specific dates you missed. Another option is to not write any specifics down and instead go speak to the medical professionals at the CCRL Health Center who are required by laws to keep your information private, specifically the Health Information Protection Act of Saskatchewan (HIPA).

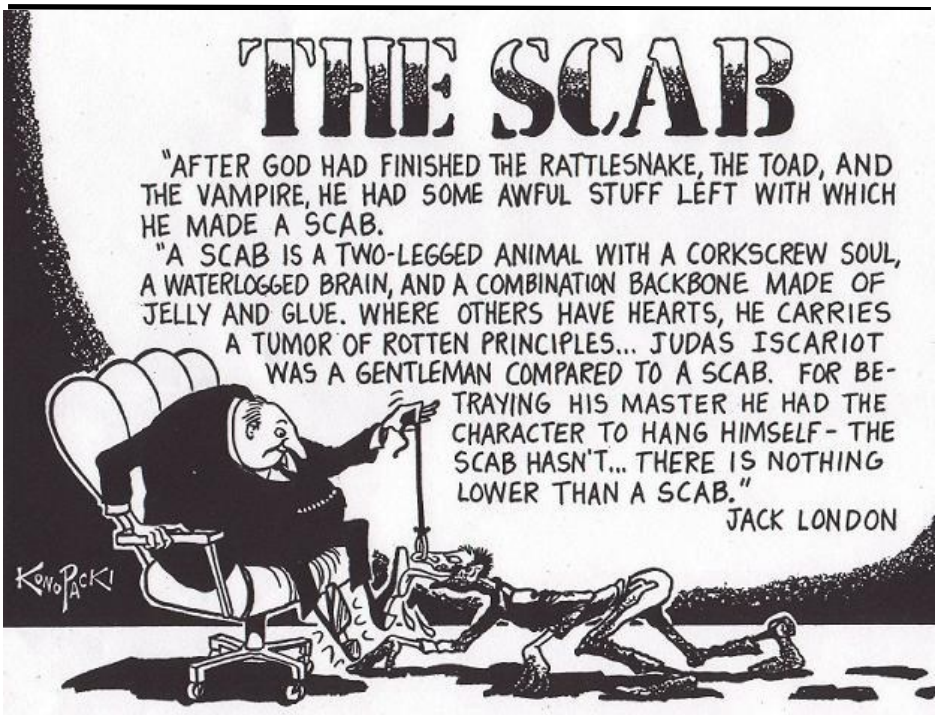
HIPA also protects certain rights of the person providing their medical information such as the right to know how your information will be used, the right to consent to use and disclosure of your medical information, as well as the right to revoke that consent and have any information provided destroyed or returned to you.

I have chosen the examples above after reading through several past grievances and relevant case law, however this topic is still very fluid in Canada and is changing all the time. As well, the various scenarios that might arise are as diverse as our workforce and no example I could write would perfectly fit an individual's particular situation. Though the employer has a right to some general information both to determine if there are safety or accommodation concerns upon your return to work and to ensure sick time is not being abused, protecting your sensitive medical information should always be your primary concern when filling out these forms. Sometimes employers try to overstep their bounds and ask you for answers they may not be entitled to. It is always best to ask for clarification or a second opinion on whether the question is appropriate first, and provide answers second. In general, all the employer really needs to know is that you were sick, and now you're back at work, or that you are sick and when you will be returning to work. Anything you provide beyond that should be done carefully and only when absolutely necessary, through medical professionals and not through direct supervisors or anyone who is not bound by laws to protect that information for you.

It is important the membership is made aware that the union is always working, sometimes behind the scenes, to protect the rights of the people they serve.

In Solidarity,
Nathan Kraemer, Law Committee Member

Last Laugh



Staying Connected

Now more than ever it is important to stay connected to what is happening with your local.
The Bargaining Committee strongly urges you to join Twitter and follow our account (**@Unifor594**) or find us on Facebook (**Unifor Fiveninefour**) to stay current on all the latest developments.
Or sign up for email updates by sending a request to **info@unifor594.com**

www.unifor594.com