



Stewards' Action Bulletin

Canadian Union of Postal Workers

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“Manulife, get out of my life!”

We all know the chant. Unfortunately, it is not that easy to stop Manulife from intruding on our medical affairs.

Depending on the nature of an employee's illness or injury, employers do have legitimate rights in terms of the disclosure of medical information. But employees also have a right to privacy.¹ As an agent of Canada Post, hired to “manage” our injuries and illnesses, Manulife has no more right than Canada Post does to harass us.

Medical status is best determined by a physician rather than someone without any first-hand medical knowledge. But Canada Post follows the recommendations of Manulife rather than the advice of doctors. That is why members should always contact the Union to help them with what is often referred to as the “Manulife nightmare.”

This Stewards' Action Bulletin provides Stewards and Locals with some guidance when members need assistance with Manulife.



Manulife demonstration in Toronto, 2008

“My health is too important to mess around with.”

(2008 Manulife survey respondent)

Commercials for Manulife claim that they care about us. The reality for CUPW members, however, is different. Many are left feeling that their encounter with Manulife has only led to more health issues.

Don't forget that Manulife is the employer's agent. Their priority is to protect Canada Post's interests.

Union Representation

Manulife must inform the member that they are entitled to union representation during every step in the process. If they do not comply with this obligation, a grievance must be filed. Stewards have a right to be involved if the member requests our assistance.²

Telephone Contact

Manulife representatives contact employees at home at all hours of the day, including evenings and weekends. There is no obligation to discuss one's medical condition over the phone with a Manulife agent. If specific medical information is required, Manulife should be advised to put all requests in writing. Anything that needs to be conveyed over the phone can also be put in writing. Members can request that a notice of interview be properly issued and a shop steward be present.

Length of Sick Leave

The length of absence affects Manulife's involvement. The longer the absence, the greater the obligation on the part of an employee to provide

details of the absence.

For example, if you missed a week of work because of the flu, you shouldn't be expected to provide "clarification" after returning to work. But a member who has been off work for six months might be expected to provide more details about their ability to return to work.

Doctor's Notes

When a member goes on certified sick leave, they must provide a doctor's note. The employer can waive this requirement but this rarely happens. A diagnosis is not required. A note should show:

- Whether an absence is due to illness or injury
- The anticipated duration of the absence
- Whether an employee is able to work

Forms: OFA vs. AMI

Canada Post or Manulife may send the member an Occupational Fitness Assessment Form (OFA). An OFA indicates whether an employee is able or unable to work. It outlines the limitations that may give rise to modified duties.

Type Of Sick Leave

Under the Urban Operations Collective Agreement, there are 3 types of sick leave:

Casual sick leave:

Up to a maximum of 10 days in a year and a maximum of 5 consecutive days. As long as a member stays within the limits of 5 consecutive days or 10 days in a year, it is their choice to get the leave certified by a doctor. Manulife should not be involved. The only exception would be if Canada Post argued that the member was fraudulently using sick leave. But then Canada Post must show why they have this concern.

Certified sick leave:

The duration depends on how many sick leave credits a member has banked. A full-time employee may borrow up to 20 days of sick leave and a part-time employee up to 80 hours, provided they are off work for a period of at least 3 consecutive days.

Unpaid sick leave:

Certified by a doctor. This leave can be taken for a period of 5 years and is usually used by employees on Disability Insurance.

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But more and more members are getting an Acquisition of Medical Information form (AMI) after 5 or 10 days of sick leave instead of an OFA.

The AMI requests a lot of information, including specialists' reports, X-rays, and a medical history of the illness or injury. Unfortunately, this "one size fits all" approach has created many disputes with Manulife because the scope of medical information to which Manulife may be entitled varies widely.

In fact, arbitrators have told Canada Post that they cannot use a cookie-cutter approach and they must treat every situation on an individual basis.³

Members are often told to return the AMI by a specific date. If they can't meet the deadline, a member can ward off discipline by informing their supervisor that they will supply information after their medical appointment.

Manulife also sends out blank medical authorization forms, with or without AMI form letters. At a recent arbitration in Ontario, an arbitrator

found that the employer had no right to compel employees to sign such forms.⁴ While employees do have to cooperate with the legitimate medical enquiries of their employer, they can do so while insisting on minimal intrusions on their privacy.

While Canada Post may seek clarification of a member's ability to work, usually through the AMI

**Manulife,
get out of
my life!**

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Manulife stickers and grievance aids are available through your Local.

process, it has no right to determine a member's medical treatment. Canada Post's right is only to be properly and adequately apprised of the situation.⁵

Medical Exams

Article 33.10 (c) of the Urban Ops Collective

Agreement allows the employer to request a medical examination by a physician of its choosing, but not before a member has been examined by a doctor of his or her choosing, in accordance with 33.10 (a).⁶

Arbitrators have ruled that Canada Post must be reasonable in order to invoke 33.10 (c).⁷ Canada Post has to state its concerns with the medical information provided by an employee's doctor and provide the chance to address those concerns.

If the employer is not satisfied with the report it receives under subsection (a), the affected employee is entitled to know why.⁸

Members may also be asked for both a Functional Capacity Examination (FCE) and an IME (Independent Medical Exam). One arbitrator has held that the employer can't force an employee to attend two examinations.⁹ An IME cannot be used as a "lie detector" test¹⁰ or a "fishing expedition."¹¹

A member is not required to attend an IME if Manulife has been unreasonable. Nonetheless, members

have been directed to do so under threat of discharge. Members should properly communicate the reasons for their refusal. Without such communication, discipline might be upheld.¹²

Refusal Of Sick Leave

Manulife representatives may reject the medical information provided by an employee's physician and refuse to "support" an employee's claim for sick leave or need for accommodation. Some Manulife agents have "supported" a period of sick leave only to withdraw support retroactively, after the member has used up their sick leave. If a Manulife agent informs the member that he or she will not approve sick leave, please file a grievance without delay. Manulife claims to have an "appeal process." Do not be misled! The Manulife appeal process consists of a review of the case manager's original decision by one of his or her colleagues.

Do I Have To Comply?

Stewards should never tell members to say that they will not comply with Manulife. Stewards can offer this advice: if the member feels that Manulife's questions

are inappropriate, they should raise their concerns but state they are willing to cooperate and only provide the information they feel is appropriate. Keep records of all such conversations.

Canada Post claims that the majority of employees affected by Manulife do not object. This is not true! Stewards must demand that the employer and Manulife live up to their obligations.

NOTES

1. Monarch Fine Foods Co. Ltd. and Milk and Bread Drivers, Employees, Caterers, and Allied Employees Local 647, 20 L.A.C. (2d) 419 (Picher).
2. Canada Post & Canadian Union of Postal Workers, Lauzon, Noo-03-00016, July 22, 2009.
3. Canadian Union of Postal Workers and Canada Post Corporation (Church Grievance: W460-GG-746) May 16, 1984 (Norman).
4. Hobart Brothers of Canada, an I.T.W. Canada Company, v. Glass, Molders, Pottery, Plastics and Allied Workers Internal Union, Local 446 [2006] O.L.A.A. No. 149 (Levinson); See also Shields (P.S.S.R.B. File 166-2-3291 Des Coteaux).
5. Canada Post Corporation and Canadian Union of Postal Workers (Moore Grievance: No. 846-88-01437) October 7, 1991 (Jolliffe).
6. Church, supra; See also Canada Post Corporation and Canadian Union of Postal Workers (Bakker Grievance: W460-GG-419 and 619) August 24, 1983 (Norman); Canada Post Corporation and Canadian Union of Postal Workers (Brown Grievance: 126-85-210) February 8, 1989 (Thistle).
7. Moore, supra.
8. Bakker, supra; See also Church, supra.
9. Prince, supra.
10. Monarch Fine Foods, supra; See also Canada Post Corporation v. Canadian Union of Postal Workers (S.M. Grievance: 846-00-01208) July 18, 2003 (Gordon); Canada Post Corporation v. Canadian Union of Postal Workers (Wiens Grievance: 846-03-01058) September 5, 2006 (Chertkow).
11. University of British Columbia and Association of University and College Employees, Local 1 et al 15 L.A.C. (3d) 151 (McColl).
12. Bakker, supra.

"I was asked to do jobs which were against my doctor's orders but I was too afraid to say anything."

"Constant harassment from Manulife did not help my medical situation."

"They insisted on calling me on my private time after repeated requests that they contact me during my working hours only."

"They kept pushing for a return to work date, and rather than the stress of phone calls, it seemed easier to return to work."

"My doctor had me booked off, Manulife denied my claim."

These are just some of the voices from our 2008 member survey about Manulife...

The employer needs to get the message.

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