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Employers' obligations surrounding storage of information around staff medical condition

It is neither unlawful nor unusual for employers to gather and hold information about their employee's medical condition. However, once obtained, bosses must act responsibly and with caution.

Information about a medical condition may be collected through a number of means, including, sickness absence records, reports from the employee's practitioner, accident at work reports, or through direct disclosure by the employee at the outset of or during employment.

It need hardly be said that disclosure of an employee's medical condition within or outside the organisation, whether deliberate or not, could cause enormous distress and embarrassment and jeopardise an employee's prospects for promotion or employment elsewhere. This can be particularly the case where information concerning mental issues are disclosed, due to the prejudice that remains associated with these conditions.

An employee suffering from mental health issues may well be protected under the Equality Act 2010. If an employer was to refuse to employ or promote a person because it knew he or she suffered from a mental health condition then it could find itself liable to pay substantial compensation for direct disability discrimination.

Aside from protection from discrimination, an employee has a right to privacy in relation to any medical information about themselves and there are statutory obligations upon employers as to how they handle and store what can clearly be very personal and sensitive information about their employees.

Medical information about an employee is "sensitive personal data" under the Data Protection Act 1998 (DPA), and employers have a responsibility to ensure such data is collected and used in accordance the DPA's requirements.

An employer can only disclose information about an employee's illness or medical condition in certain limited circumstances, such as where:

• the employee has given their explicit consent;
• it is necessary to exercise or perform any legal obligation imposed on the employer in connection with the employment; or
• it is necessary in connection with legal proceedings or to obtain legal advice.

Where an employer is considering collecting information about an employee's health or medical condition, it should always consider why it wants that information and whether it is proportionate and justified to collect the information for that purpose.

For example, it may be reasonable to make enquiries to establish whether an employee is able to carry out a particular job, where it is necessary to determine eligibility for cover under an insurance scheme, or to determine if reasonable adjustments need to be made to assist an employee in carrying out their role.

Reports from an employee's doctor can be sought when there is a need to establish an underlying condition or prognosis for an employee on long term sickness absence. However,

an employee must give their consent to such a report and will have a right to review the report before it is provided to their employer.

Once collected, employers should ensure that the information is held securely and is kept for no longer than is necessary. Care should be taken so that an employee's medical information is only disclosed to those people who need to know it for the reasons why it has been collected, and it is not disseminated more widely.

Where possible, records containing sensitive details of an employee's medical condition should be kept separate from other information which is not sensitive personal data. Such information could be kept in password protected electronic files, or in a sealed envelope which is marked as "private and confidential" in a hard copy personnel file, to avoid such information being inadvertently disclosed or read.

An employee has a right under the DPA to demand a copy of any of their personal data held by their employers and confirmation of any recipients to whom the data has been disclosed. Clearly this can be helpful in establishing whether sensitive personal data concerning a medical condition has been inappropriately disclosed. If an employee feels such information has been misused or kept insecurely, they can seek redress from the Information Commissioner's Office which can impose substantial fines on employers for serious breaches of the DPA.

An aggrieved employee can also claim compensation for damage or distress caused by the employer's breach of the DPA. Damages awards in recent privacy cases have been significant. Where the employer's actions undermine trust and confidence the employee can also resign and claim that they have been constructively dismissed.

The obligations attached to personal information are increasingly demanding for employers, and employees are becoming more informed and adept at exercising their rights. With the introduction of the General Data Protection Regulations next year, extending privacy rights and increasing the consequences of any breach, it is an issue that no employer can ignore.

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