

THE INSIDE PERSPECTIVE

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SMITH MOORE LLP
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Is There A Doctor In The House? Communicating With The Employee's Physician

An employee has been out of work for months due to a supposedly minor work injury, and the workers' compensation benefits are continuing. Another employee who suffered a stroke at home wants to return to work, with restrictions recommended by her physician. May the employer communicate directly with the employees' physicians to discuss concerns about each situation? The answer depends on the facts of each case and whether the Workers' Compensation Act, the Family and Medical Leave Act, or the Americans with Disabilities Act applies.

- The **North Carolina Workers' Compensation Act** restricts the employer's access to medical information. An employer may obtain copies of medical records that relate to the on-the-job injury. Only employers that are paying workers' compensation benefits may communicate further; even then, the communication is limited to a written Workers' Compensation Medical Status Questionnaire issued by the Industrial Commission (which must be sent simultaneously to the employee). Any other contact, such as telephone conversations or emails, requires an order from the North Carolina Industrial Commission or a valid written authorization signed by the employee.
- Under the **Family and Medical Leave Act**, an employer who questions medical information—whether provided by the employee to prove the need for leave or to prove the ability to return to work—may not directly contact the employee's health care provider. Instead, and with the employee's permission, a health care provider representing the employer may contact the employee's health care provider (1) "for purposes of clarification" with respect to the medical condition that necessitated the leave or (2) to authenticate the medical certification or return to work slip. Neither the start of the employee's leave nor the employee's return to work may be delayed while the employer's health care provider makes this inquiry.
- Under the **Americans with Disabilities Act**, no direct contact with a treating physician is permitted without an authorization signed by the employee. However, if an employer has a reasonable belief that the employee's condition impairs his ability to perform essential job functions or poses a direct threat of harm to the employee or others, then the employer may require the employee to undergo a medical examination. The purpose of the examination is to determine whether the employee is currently qualified to perform the job or whether restrictions or other accommodations should be considered. The employer may select the doctor, but it must absorb the cost, and the exam must be limited to the job function at issue.

TIP

The Workers' Compensation Act, the FMLA, and the ADA all restrict an employer's ability to communicate directly with an employee's health care provider. A written authorization from the employee that permits direct communication with his or her treating physician is the best tool for overcoming the limitations imposed by these laws.



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