Occupational health nurses (OHNs) deliver a variety of healthcare services to employers and employees in their workplace. Some areas of concern specific to occupational health nursing (OH nursing) are:

**Legislation**

Provincial, territorial and federal legislation affecting OH nursing includes Acts governing occupational health and safety, workers’ compensation, employment and labour relations, protection of personal health information, and privacy. The employer must ensure compliance with the law and often does so through policy and procedure. Where legislation contains specific requirements, adherence to those requirements must be carefully documented to show due diligence. Breaches of legislation will incur penalties.

**Human Rights Legislation and the Duty to Accommodate**

OHNs should work to ensure that health-related practices and policies do not discriminate against a person or culture. Human rights legislation demands fairness. An employer has a duty to make reasonable accommodation for an employee with a physical or mental disability if the employee is otherwise capable of doing the work. However, the duty to accommodate has limitations. The employer is only required to accommodate an employee to the point of undue hardship. Also, there may be legitimate occupational requirements that an employer may have to insist upon. Workplace policies and practices, including decisions about accommodation, must reflect these complexities and that decisions are focused on an employee’s ability to perform the work. The employer has a duty to investigate all possible means of providing accommodation and cannot rely only on reports from other bodies such as WCB decisions. An OHN may be involved in the employer’s investigation of the need for accommodation and how it will be implemented. Care must be taken to be fair and reasonable since, for example, continued telephone calls to an employee to return to work have been deemed to be harassment.

**Criminal Liability**

The Criminal Code of Canada imposes criminal liability on corporations and organizations which fail to protect the health and safety of their employees. It does not replace pre-existing, general occupational health and safety legislation but is a separate legal liability with severe penalties. The OHN can play an important role in implementing, monitoring and advocating for the employer’s reasonable measures for the safety of employees and the public.

**Confidentiality**

An OHN faces unique challenges when an employer asks for disclosure of employee health information. Generally, the employer has no right of access to employee health records but is
entitled to know if the employee is fit for work, unfit, or fit with conditions. An employer is not entitled to a medical diagnosis nor other specific health information. Exceptions or refinements to this general rule may be contained in legislation or regulation, be ordered by a court or authorized by the employee. Where exceptions exist, they must be followed to the letter. For example, provincial legislation may authorize disclosure of information for the purpose of a grievance or litigation without the employee’s consent. Such disclosure is commonly made to the lawyer or law firm representing the employer. While such disclosure can happen during the course of legal proceedings, it can only be made on the basis of legal authority permitting it, not simply by request or demand. This was made clear in an arbitration where a subpoena duces tecum for the employee’s OH records had been served by the employer, who, on the strength of the subpoena, wanted access to the records in advance of the arbitration hearing. The arbitrator ruled that the subpoena meant the OH records are to be brought to the hearing for a decision by the arbitrator as to their use and disclosure, not that they be released prior to the arbitration hearing. If an arbitrator orders the OH services to disclose the personal health information in advance of the hearing, this must be done and consent of the grievor is not required.

An OHN facing a request to disclose employee health records to someone other than the employee can require the request to be made in writing, describing the circumstances prompting the request for disclosure, the specific information requested and the legal authority upon which the request is based. Without legitimate legal authority for disclosure in the circumstances, or the employee’s consent, the OHN should not disclose. It may be necessary to seek advice from the employer’s legal counsel on the appropriate course of action.

1. A recent Supreme Court of Canada decision held that “the employer’s duty to accommodate ends where the employee is no longer able to fulfill the basic obligations associated with the employment relationship for the foreseeable future.” Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d’Hydro-Québec, section locale 2000 (SCFP-FTQ), 2008 SCC 43 at para. 19.

2. An investigation may take various forms. In Honda Canada Inc. v. Keays, 2008 SCC 39 at paras. 71 and 94, the Supreme Court of Canada recognized that employers are justified in monitoring the absence of employees, particularly those who are regularly absent from work.


4. In Prinzo v. Baycrest Centre for Geriatric Care, [2000] O.J. No. 683 (S.C.J.), aff’d (2002), 60 O.R. (3d) 474 (C.A.), the OHN was aware of the detrimental effect her harassing phone calls and false statements were having on the disabled employee, yet persisted in the harassment.

5. Criminal Code, R.S.C., 1985, c. C-46, s. 217.1: “Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”


7. Occupational Health and Safety Act, R.S.O. 1990, c. O.1, s. 63(2): “No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute to a worker health record concerning a worker without the worker’s written consent.”

8. For example, see Alberta’s Health Information Act, R.S.A. 2000, c. H-5, s. 35(1)(h)-(i).


N.B. In this document, the feminine pronoun includes the masculine and vice versa.

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