



Employment problems – requests for medical information or examinations

Read this factsheet to find out your rights if you have been asked to have a medical examination or give medical information to your employer.

What is an Independent Medical Examination (IME)?

An IME is a medical examination or health check done by an independent medical specialist with qualifications relevant to your medical condition or injury. The medical specialist does not replace your treating doctor but gives a specialist opinion to your employer.

Your employer might use an IME to work out whether your injury or medical condition including any mental illness, will impact on you being able to do your job safely.

After the IME, the specialist will usually write a report which can be used by your employer (or insurer) when making decisions about your rehabilitation, return to work, or your compensation claim.

When can my employer tell me to attend an IME?

There are several ways that your employer can tell you to attend an IME. For example,

- your employer gives you a 'lawful and reasonable' direction to attend an IME
- there's a term in your employment contract or enterprise agreement that allows your employer to tell you to attend an IME in certain circumstances

- you work in an industry or sector where the law says your employer can send you to an IME, or
- your employer asks you to attend an IME and you agree.

My employer has told me to attend an IME. Do I need to go?

Your employer can tell you to attend an IME. This is called a direction. If the direction to attend an IME is a lawful and reasonable direction, you should go. If you don't go, it can be serious misconduct and you risk losing your job.

A direction to attend an IME is likely to be lawful and reasonable if there is a **genuine need** for it and it is **reasonable** for your employer to ask you to go.

When will a request to attend an IME be reasonable?

A request to attend an IME is likely to be reasonable if your employer needs to assess whether your injury or medical condition, including any mental illness, may impact your ability to safely do the "inherent requirements" of your job. This is because your employer has a duty to ensure your safety at work and the safety of others in the workplace.

The inherent requirements of your job are the essential duties or tasks to do your job productively.

Here's a checklist to help you work out if the request to attend an IME is reasonable:

- ❑ there is a genuine need for the medical examination. This could include:
 - you have been absent from work a lot due to illness or injury

- you have been absent from work without explanation
- you have an illness or injury which could affect how you perform your job
- there was an incident in your workplace that has caused your employer to have concern about your ability to do your job safely
- you did not or could not provide adequate medical information to your employer to explain absences or show that you were able to perform your job safely

- ❑ your industry or workplace is very dangerous or risky
- ❑ your employer has legitimate concerns that your injury or illness will impact on others in the workplace
- ❑ your employer told you the details about why they think that your injury or medical condition may impact on you doing your job safely
- ❑ your employer gave the medical specialist information about your actual job requirements
- ❑ you were told about the things that the specialist was supposed to assess

When will a request to attend an IME not be reasonable?

A request to attend an IME might not be reasonable if:

- there was no genuine need for the assessment
- the proposed IME is looking at things that are not related to your ability to safely perform the inherent requirements of the job
- the medical specialist is not given your actual job requirements, so that they can work out whether you are able to do your job safely, or
- the medical assessment is not aimed at working out in an independent way, whether you are able to do your job safely.

What questions should I ask my employer about attending an IME?

If you have been directed by your employer to attend an IME, it is usually a good idea to try to get as much information as possible from your employer in writing. For example, you can ask your employer to write:

- the reasons why they are directing you to attend an IME

- the questions they'll ask the medical specialist
- a list of documents they'll give to the medical specialist, and
- the type of IME, for example, whether it will be a physical or psychological assessment.

If your employer gives you this information, it should help you work out whether the request to attend the IME is reasonable.

If your employer does not give you this information, then this could be a factor that might make the direction unreasonable.

What if my employer has asked me to provide medical information from my own doctor?

An employer can ask you to provide medical information from your own doctor.

It will generally be a lawful and reasonable direction to request information from your doctor if your employer needs the information to work out whether you can safely perform the inherent requirements of your job.

Can I refuse my employer's direction to attend an IME or provide medical information?

You can refuse a direction to attend an IME or provide medical information. But if the direction was lawful and reasonable, your refusal or failure to comply could be considered serious misconduct and may result in disciplinary action, including your employer dismissing you from your job.

If you are unsure if your employer's direction to attend an IME or provide medical information is reasonable, you should get legal advice before making any decision. You can tell your employer that you are seeking legal advice and request some time to do this before responding to the direction.

If you have been dismissed for refusing to attend an IME or provide medical information, you should get urgent legal advice. You only have 21 days from the date of dismissal to apply to the Fair Work Commission for unfair dismissal.

If you are an employee of the NSW government or a local council in NSW, you have 21 days from the date of your dismissal to apply to the Industrial Relations Commission for unfair dismissal.

Can my employer tell me not to come to work until I attend the IME or provide the medical information?

If your employer thinks you cannot do your job safely, they can tell you not to come to work until you do an IME or provide medical information.

If you are a permanent full time or permanent part time employee and you are ready, willing and able to work, but your employer tells you not to come to work until you attend the IME or provide the medical information, then your employer should pay you for the time you are away from work.

If you are a casual employee your employer usually does not have to pay you.

What if I am already away from work and my employer asks me to do an IME or provide medical information before they let me come back to work?

If you are already off work due to illness or injury and your employer has a good reason to think that you might not be able to return to your job or do your job safely, they can request that you attend an IME or provide medical information.

If you are already off work when this happens, you are generally not entitled to be paid for the time it takes you to do the IME or provide the medical information. This is because the main reason you are away from work is because of your illness or injury, not the employer's request.

If you have provided good medical evidence that shows that you are able to return to work after an illness or injury, and it is the employer's decision to keep you away from work until you do an IME or provide more medical information, you should normally be paid for the time that the employer has told you not to go to work.

If you are not able to work because of an illness or injury you can take any paid personal (sick) leave you have available.

Casual employees are generally not entitled to paid personal leave or pay when they have been told by their employer not to come to work.

Can my employer dismiss me from work or refuse to allow me back to work after an illness or injury?

If you are dismissed from work after an illness or injury, you should get urgent legal advice. You only have 21 days from the date of dismissal to apply to the Fair Work Commission for unfair dismissal or general protections dismissals.

If you are an employee of the NSW government or a local council in NSW, you have 21 days from the date of your dismissal to apply to Industrial Relations Commission for unfair dismissal.

If your employer refuses to allow you back to work after an illness or injury you should get legal advice. It might be unlawful discrimination for your employer to keep you out of your job after an illness or injury if you can safely do your job or perform the inherent requirements of your job with reasonable adjustments.

Where can I get more help?

LawAccess NSW is a free government service that provides legal information and referrals for people with a legal problem in NSW. LawAccess NSW is a part of Legal Aid NSW and a great starting point if you need help with a legal issue.

Chat online by clicking the chat button on the right-hand side of the LawAccess NSW website at www.lawaccess.nsw.gov.au, or call **1300 888 529** between 9am to 5pm, Monday to Friday (excluding public holidays).

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation. The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on 1300 888 529.



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