



OCCUPATIONAL HEALTH ASSESSMENT

Consent, GDPR & Occupational Health



Certified



Corporation



Safe Effective Quality Occupational Health Service Accredited

Managing consent

Medical consent and GDPR are both relevant for occupational health, as health data holds special category status under GDPR. We're pleased to guide you through the key information you need to know to help protect your business.

We'll manage the medical and reporting consent steps on your behalf. However, you still seek consent to process workers' personal information under GDPR.

Explicit consent is needed to participate in an occupational health assessment. You may have a contractual right (usually in your staff handbook or your terms and conditions) to seek independent medical advice. You also need to tell the worker the legal basis under which you'll process their information, even if you have a contractual right to seek advice.

Although you may ask a worker to give consent to processing their health data, the Office of the Information Commissioner (ICO) suggests it is difficult to rely on employee consent as a legal basis for processing health data.

This is because employers will generally be in a position of power over workers. The worker may be concerned about negative consequences if they do not agree to the processing of their health information. Therefore, their consent may not be considered as freely given.

The ICO suggests you should avoid relying solely on consent as a basis for processing employee health data, unless you are confident you can demonstrate it is freely given. Workers must be able to say 'no' without fear of negative consequences. They must also be able to withdraw their consent at any time.

The ICO advises considering a 'legitimate interest' basis, if you cannot demonstrate consent has been freely given.

We're pleased to provide some suggested text to use when seeking consent to participate in an occupational health assessment (see page 4) .

Consent & next steps

To arrange an occupational health assessment, you need to follow these steps in order:

1. Obtain consent from the worker to participate and to process their personal information (see suggested template overleaf).
2. Once you have consent, complete the occupational health referral form provided by our support team.
3. We process the referral forms on receipt and then contact the worker to arrange an appointment. Occasionally, we may need to ask for your assistance in contacting a worker.
4. Once we have arranged an appointment time, we'll provide a confirmation (to you and the worker). We'll provide access details to the worker if needed (for remote appointments).
5. We'll send a medical consent and data processing consent form to the worker electronically. This includes our purpose and legitimate basis for the assessment, how we process and store data etc. This is in addition to the consent you obtain.
6. We'll confirm consent to release the report; after the assessment or after the worker has seen the report. We're obliged to offer a copy of the report to the worker first, so they can check it for factual accuracy. We do not have to change the report if we're asked to do so.
7. Medical consent is valid for the instance it is given, so if amendments are made to the report after it is produced (e.g. correcting a factual error), we have to seek explicit consent again to release the report.
8. Consent can be withdrawn by the worker at any time, although this very rarely happens, in which case we will not be able to release the report. That means you may then take management decisions without the benefit of medical advice.
9. When the report is released, you also become responsible for storing it and controlling access to it as special category personal information.

Employee consent email

This suggested template can be used to seek consent from a worker before sharing any personal or health information with an occupational health provider.

Dear [name],

We'd like to arrange an occupational health assessment, so we can identify ways that we can support you [in your role/returning to work].

Occupational health assessments are independent and confidential. A specially qualified clinician will have a conversation with you, then write a report answering our questions about your health. The report will only be shared with [me/your HR manager/line manager]. You can withdraw your consent at any time.

We'll need to share some personal information (contact details, date of birth, absence history, job role etc) with Occupational Health Assessment Ltd, in order to arrange the assessment.

The lawful basis we'll rely on to process your information is Article 6 (1) (f) ("Legitimate Interests") and the special category condition Article 9 (2) (h) ("Health – including occupational medicine") of the UK GDPR.

Our purpose for sharing and processing your information is our legitimate interest to [make sure you are fit to do your job/explore adjustments we could consider making/ensure we are compliant with Health and Safety Laws/make an ill-health retirement or pensions decision] and that we are doing everything we can to support you.

Please could you confirm your understanding and consent by return?

Best wishes,

[name]

02032398229

occupationalhealthassessment.com
support@ohassessment.com