

# Absenteeism And Substance Abuse: How Is An Employer's Duty To Accommodate Affected When An Employee Does Not Disclose Their Problem?



**In 2022, the employee had been employed by Hydro-Québec for 12 years and was working in one of its facilities as a store clerk.**

Although he had never informed his employer, he had been suffering from a drug and alcohol addiction for many years. His problems varied over time, and he had voluntarily undergone different types of counselling.

In 2022, after experiencing family-related difficulties, the employee relapsed and his consumption increased. He also began to regularly be absent from work.

His employer then began to take note of and record the many times he arrived late for work, was absent or left work early. At the end of its investigation, the employer found that the employee had not only given false excuses, he had claimed time that he had not worked on his time sheets.

The employer therefore summoned the employee to a disciplinary meeting during which the employee remained evasive about the reasons for his behaviour. He simply mentioned that he was having personal problems. Given that the employee failed to provide a sufficient explanation, the employer dismissed him.

## **The Decision**

The union's central argument in the employee's defence was that the employer had voluntarily [translation] "looked the other way," and that it had a duty to know about the employee's situation and to accommodate him before dismissing him.

However, in its decision, the Tribunal found that, given the circumstances, the employer could not reasonably know that the employee had a problem, nor could the circumstances lead the employer to suspect that the employee might be suffering from an addiction. In fact, even though the employee had absenteeism issues, he had never mentioned anything about addiction or health issues to his co-workers or managers.

When asked about the reasons for his repeated absences and exaggerated time sheets,

he simply mentioned personal problems, referring to his separation from his spouse, without, however, identifying it as the reason for this behaviour. As such, according to the Tribunal:

102. [translation] *In my opinion, and with respect, such vague statements [...] were not “very apparent” or “serious” or at least sufficient signs that could lead the employer to connect the misconduct that had occurred at work in recent months to an alcohol or drug addiction problem, which would then have required the employer to assess the situation from the perspective where the duty to accommodate might apply, rather than from a disciplinary perspective.*

104. [translation] *By staying silent, the complainant made a choice [...] that deprived him of the protection that could have been afforded by the Charter [...]*

The Tribunal reminds us that for the employer’s duty to accommodate to apply where an employee has failed to inform their employer of their problems, there must be [translation] “strong and apparent signs” or [translation] “many serious signs” that would lead a reasonable employer to strongly suspect that the real cause of the absences is related to a substance abuse problem.

Accordingly, given that the duty to accommodate did not apply, the Tribunal found that the breaches alleged by the employer were sufficient to warrant dismissal, and so it dismissed the grievance.

## **Takeaways**

This case brings to light a key principle when managing absenteeism due to substance abuse: If an employee who knows they have an addiction does not disclose their addiction, they not only deprive their employer of important information it needs to manage its business, they may also prevent the disability protections afforded by applicable human rights legislation from applying.

While this case is a welcome reminder that reaffirms a principle based on logic and equity, employers must remain vigilant and alert to the signs and circumstances of each case of absenteeism.

If an employee informally reveals that they need medical help, or if the addiction becomes apparent or probable given a series of actions or events, the employer still has an obligation to delve deeper and conduct an investigation. An employee’s silence will never automatically have the effect of allowing an employer to avoid its duty to accommodate.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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