

Accommodating Mental Health Disabilities And Addictions



You are undoubtedly familiar as an employer with the notion of the duty to accommodate. You are probably also aware that this is seldom, if ever, a simple concept. Even in those cases of what we can refer to as physical disabilities, such as employees who have mobility issues, restrictions on their physical abilities, or require visual or hearing assistance, the employer is at least working in what I would call "fixed parameters" – that is, you know generally what you have to do and you can continue to work with the employee on the issues knowing generally what the problem or problems are and that those problems will be fixed in nature, at least for some period of time.

Quite the opposite, however, is true with respect to mental health disabilities and addictions. In the first place, because of the extreme stigma around certain types of mental health disabilities and addictions, many people may be afraid to disclose their disability to others. They may have a fear about being perceived by their co-workers as a problem, they fear that they will experience negative attitudes from others, or may even fear losing their jobs as a result of disclosing a mental health disability or addiction. Worse still, they may be unsure of the exact nature of their disability and are thus fearful of committing to any specific treatment or rehabilitation program. Signs of an employee experiencing a mental health disability or addiction can often be increased or random absences from work for no particular reason, an inability to focus, a perceived lack of preparation or focus in meetings, and in general, unpredictable results in their work efforts.

As an employer, you are not an expert and are not expected to be able to assess why an employee may be acting in an illogical, incoherent, or bizarre manner at any particular time. It is thus very difficult for an employer to assess what to do – do you simply ignore the problem and hope it goes away? Do you confront the employee and ask what is wrong? Do you talk to their co-workers hoping to gain additional information? Or, as some employers have unfortunately done, do you terminate them without further ado because you are simply frustrated with the problem and feel you are unable to deal with it.

Human Rights law has established that there cannot be a double-standard for how mental health disabilities are treated versus how physical disabilities are treated.

The difficulty of course with mental health disabilities is often, at the front end, not understanding what the disability is, often because the employee does not make disclosure or, seeks to prevent disclosure simply by taking time off and calling it "stress".

It's always difficult for an employer to address the issue of accommodating mental health disabilities or addiction without fully understanding the nature of the issues and the restrictions that the employee may have. It is therefore highly recommended that where there appears to be a mental disability or addiction issue, the employee should provide to their employer medical evidence from a specialist which sets out this information. Remember that family physicians are not specialists and receiving a note from a family physician that the employee is on stress leave and cannot come back to work is not at all helpful to an employer. Further information should be requested if the absence or behaviour is prolonged or dramatic.

In our experience, the most common forms of workplace mental health issues and addictions are drug and alcohol abuse, depression and bipolarism. Each of these can require months or years of treatment, and treatments are often indefinite or permanent.

Some of the forms of accommodation that are appropriate, and in many cases necessary, include the following:

- " allowing a leave of absence for the employee to attend a rehabilitation program
- " modifying job duties
- " providing job coaching
- " referring the employee to an employee assistance program
- " changing supervision arrangements
- " providing alternate ways of communicating with the employee
- " additional training, or training that is delivered in a different way
- " modifying break policies
- " allowing a flexible work schedule
- " job bundling
- " considering transfer to another position

It may be that there is no way to accommodate an employee's mental health disabilities or addiction issues without undue hardship. In those circumstances, the employer may not be required to retain that individual as an employee. But making that decision prematurely or without due regard to all the facts would potentially be a serious error and could expose serious financial consequences to the employer if the employee files a human rights complaint.

It is therefore prudent for an employer to get advice when you believe you are dealing with an employee who may have a mental health disability or addiction issue, especially in those situations where you are unclear on the nature of the problem and the employee is not providing you with sufficient information to allow you to assess your options.