

Disability Disclosure During a Workplace Investigation – Ask The Expert



When an employee discloses a disability during a workplace investigation, employers must balance their duty to accommodate with their obligation to maintain a respectful, harassment-free workplace.

Question

We recently completed a workplace investigation where multiple allegations of harassment were substantiated. During the investigation, the respondent disclosed a previously unknown Autism Spectrum Disorder (ASD) diagnosis and provided supporting documentation.

The employee accepted responsibility for most of the conduct and expressed remorse. We have addressed accommodation needs going forward, but we are unsure how the diagnosis should affect our disciplinary decision. Would termination still be appropriate, or should the disability be considered a significant mitigating factor?

Answer

An ASD diagnosis is an important mitigating factor, but it does not automatically prevent termination. Once an employer becomes aware of a disability, it has a duty to consider reasonable accommodation. However, that duty does not excuse harassment or remove the employer's responsibility to provide a safe workplace.

The key question is whether the disability affected the employee's ability to understand or control their behaviour and whether accommodation is likely to prevent future incidents. Remorse, cooperation, disciplinary history, and the seriousness and impact of the misconduct should all be considered.

Explanation

An employer cannot be expected to accommodate a disability it did not know about. Once disclosed, however, the disability should be considered alongside all other relevant factors when determining discipline.

Where accommodation, training, or coaching is likely to address the behaviour, alternatives such as a final written warning, suspension, or last-chance agreement

may be appropriate. If the misconduct is severe, poses an ongoing risk, or accommodation is unlikely to prevent recurrence, termination may still be justified.

A documented, individualized assessment is the strongest approach from both an employment law and human rights perspective.