Here’s Where Employers Can Draw The Line When It Comes To Drug And Alcohol Addiction



Drug and alcohol addictions have laid waste to many a promising career and have even resulted in dire ramifications in the form of violent and sexually inappropriate conduct. But as a protected disability, the pitfalls of dealing with workplace addictions are many and employers must exercise caution.

Generally, employers cannot wash their hands of the addicted employee but must accommodate his or her disability. But there are limits to their obligations.

Many employers have developed policies that allow addicted employees to voluntarily disclose and seek treatment for addictions, without risk of being fired. More often, of course, the spectre of employee addiction is raised (legitimately or otherwise) only after the employee has been involved in a serious workplace incident.

Ian Stewart, a truck operator for Elk Valley Coal in Alberta, was involved in a serious workplace truck collision and was terminated after he tested positive for cocaine. Stewart later admitted to using the drug on his days off.

Elk Valley had a policy whereby employees who voluntarily disclosed an addiction to drugs or alcohol would not be fired, but instead would receive assistance in attending rehabilitation. Employees who did not disclose their problem were not given the same protection. Stewart never raised his addiction as a disability before the collision.

The Alberta Court of Queens Bench concluded that he was not terminated because of his disability, instead it was his disregard of the employer’s policy that got him fired. Indeed, Stewart had attended a training session on the policy workplace incident and signed a form indicating he understood it.

In another encouraging recent human rights case in Ontario, Trevor Huffman was terminated from Mitchell Plastics after over-indulging in alcohol at the company holiday party. In his intoxicated state, Huffman had made physical threats and sexually inappropriate comments to colleagues, management and their spouses.

He brought a human rights claim on the basis he suffered from alcoholism, which was allegedly responsible for his egregious behaviour. He also said the company knew of

his addiction as he had approached the human resources generalist to inquire about obtaining Champix, a medication used to treat addictions including alcoholism, smoking and gambling. The human resources generalist testified she understood the medication was for smoking cessation and she did not receive any information, such as a doctor's note, to indicate the employee was an alcoholic. The Ontario Human Rights Tribunal found that the employee had not properly disclosed his addiction, therefore the employer's duty to accommodate was not triggered.

Where employees do properly disclose their addictions in advance of such disasters, employers should heed the following advice:

" Take all possible measures to accommodate an addicted employee before terminating his or her employment. This may include the provision of rehabilitation treatment depending on the employer's size and financial means.

" Employers need go no further in accommodating addicted employees where to do so would cause undue hardship financially or on other workers.

" Be mindful of your human rights obligations where a valid drug and alcohol testing policy is in place. You are required to also have a policy dealing with your duty to accommodate employees suffering from drug or alcohol addiction.

" Have a policy on the disclosure of drug and alcohol addiction similar to that of Elk Valley's to avoid misinterpretation or discrimination claims.

Last Updated: July 14 2014

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