

# Medical Leave And Accommodation For Mental Illness And Addictions



Increasing numbers of employees are struggling with mental illness and addictions in today's workplaces. The symptoms related to these types of illnesses, including a decline in capacity to handle deadlines; stress; despondence; erratic behavior; inability to concentrate and focus; and fatigue. These symptoms are often perceived and treated by employers as a performance issue, with disciplinary results that, in turn, may worsen the employee's condition.

Despite the negative repercussions that can arise when an employee who is unwell remains on the job, employees may be reluctant to take medical leave because they fear retaliation in the form of denial of promotions or termination when they return to work. Another concern is a potential loss of pay.

With regard to salary protection, many employers provide sick leave benefits and/or disability benefits through group insurance. Employees who are unable to work due to illness, but who do not have paid sick leave or disability coverage may be eligible to receive 15 weeks of Employment Insurance sick benefits.

From a legal perspective, an employee's rights are not prejudiced by taking a medical leave. As long as the employer is kept reasonably informed about the employee's medical fitness to work, an absence from work, or deficiencies in performance caused by a medical condition will, in most cases, not constitute "just cause" for dismissal.

Employees with disabilities also have important human rights protections. A mental health condition (e.g., depression, bipolar disorder, and anxiety disorder), a diagnosed alcohol or drug addiction, or a combination of these illnesses is considered to be a "disability" under human rights law.

The *Ontario Human Rights Code* prohibits employers from treating disabled employees adversely because of their disability. Any disciplinary measure imposed on an employee who has taken medically supported sick leave will leave the employer vulnerable to the accusation that the measure taken (e.g. a poor performance review, demotion, or dismissal) was discriminatory.

The Code also requires employers to reasonably accommodate the special needs of "disabled" employees, short of "undue hardship". Legal decisions have set a high threshold for establishing undue hardship. Employers who refuse to accommodate

disabled employees because of relatively modest inconvenience or additional cost will not be well placed to defend against a human rights application.

Employers must make informed decisions about whether, and to what extent, accommodation is required based on relevant medical information. Employees requesting accommodation have a corresponding obligation to provide relevant medical information, and to cooperate with efforts to identify appropriate accommodation measures.

Remedies available under the *Human Rights Code* to employees who suffer adverse consequences in their employment during or following a medical leave include reinstatement, compensation for lost wages and other expenses, and general damages.

Employers abiding by their obligations to disabled employees will accommodate legitimate medical leave requests. Employers failing to satisfy those obligations risk liability and financial expense.

***This article originally appeared in the September 2013 edition of the Employment Law Newsletter, published by the Ottawa law firm of Nelligan O'Brien Payne LLP. © 2013 Nelligan O'Brien Payne***

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