Negotiating Severance When Your Employee Has A Mental Illness



Great efforts can and should be made to accommodate an employee who has a mental illness. In fact there are legal requirements across Canada requiring this effort. Sometimes, however, after every effort has been made there may come a time when either the employee decides that he/she no longer wants or cannot continue working or the organization demonstrates that an employee cannot be accommodated without undue hardship. When an organization approaches this time it is important to manage the process well.

Steps for ending the employment relationship when mental illness is in the picture

1. An organization must be able to demonstrate they have made every effort to accommodate an employee. If an employee indicates a desire to quit the organization should note their efforts to both accommodate and retain the employee including providing the employee a 'cooling' off period of a few weeks to re-consider the decision to quit.
2. Ensure the employee is able to understand his/her rights including retained employment and accommodation options as well as severance options. When mental illness is in the picture an organization cannot propose a complicated or one-sided severance. Mental illness may impact the employee's ability to understand options and make informed decisions in the short term. Offering the minimum allowable severance may not be enough to demonstrate a two-way negotiation. It may be in the organizations best interest to consult with or offer to provide the employee with access to legal counsel for the purpose of reviewing the severance package to demonstrate fair consideration.
3. Do not rush the process. The negotiation itself may take several weeks. Once you have negotiated what you believe is a fair severance provide the employee as much time as possible to make a decision. It may not be unreasonable to provide an employee 4 or even 8 weeks, yes weeks, to make a decision. An employee in the grips of a sever mental illness may need to wait until he/she is in a position to agree.

Mental illness is a complicated issue. It is possible that an organization believes they have made every effort to accommodate an employee and the employee still does not 'get better' or even appreciate the organizations efforts. Additionally performance and behaviour issues may have been a part of the employment relationship. It is important for the organization put aside negative feelings and remember that a person with a mental illness must be given due consideration in the severance

negotiation process. Even if the employee agrees to a severance package initially if an organization cannot demonstrate reasonable efforts were made to consider the implications of the mental illness during negotiations the severance agreement may not stand up in court.