

Permanent Disability Termination – Ask the Expert



What steps should you take when an employee has been absent for an extended period of time and cannot return to their previous position?

Frustration is a common-law concept that applies when an unforeseen event, such as a long-term disability, makes the performance of the employment contract impossible or futile.

QUESTION

Under the Saskatchewan Employment Act, can an employer terminate an employee after over 12 months disability, where an employee has been unable to return to pre-disability occupation but also with no ability for any meaningful work as accommodation?

ANSWER

There is no automatic rule in Saskatchewan that says “after 12 months of disability you can terminate.” Termination is sometimes lawful in that situation, but only if:

- You’ve met your duty to accommodate to the point of undue hardship, and
- The medical evidence shows the employee is not reasonably expected to return to any work in the foreseeable future, so the contract is effectively “frustrated.”

In the scenario where an employee has been absent for more than twelve months, cannot return to their pre-disability occupation, and has medical evidence indicating no ability to perform any meaningful or productive work, employers often consider whether the employment contract has been legally frustrated.

To rely safely on frustration or non-culpable termination, employers are generally expected to have reliable and current medical information confirming that the employee has no reasonable prospect of returning to any form of work in the foreseeable future. Employers are also expected to show that they made genuine efforts to accommodate the employee. This usually involves a documented review of whether job duties could be modified, whether alternative work exists, whether hours or schedules could be adapted, and why each option was not feasible or would produce undue hardship.

EXPLANATION

Whether the employer can terminate in the situation described.

So, can you terminate based on the situation described? Termination may be lawful in the circumstances you described if the employer has already fulfilled the duty to accommodate, if the medical evidence shows the employee is not reasonably expected to return to any type of work in the foreseeable future, and if further accommodation would result in undue hardship for the organization. The employer must also provide the required statutory entitlements and follow a proper, non-culpable termination process. If these conditions are not met, the employer faces a heightened risk of a human rights complaint or a wrongful dismissal claim.

To approach a situation like this responsibly, employers typically begin by confirming the medical prognosis with updated and detailed information about the employee's functional abilities and likelihood of returning to work. They document their accommodation process, including all possible modifications or alternative roles that were considered and the reasons those options were not viable. Employers also verify whether any job-protected leaves remain available under the SEA or any applicable policies or agreements.