



Employee Disability By Jodi Wyman

One of the most difficult challenges for an employer is managing an employee whose work performance has been inadequate.

Most employers have discipline policies involving warnings, disciplinary action and then final termination. The issue can be much more complicated however if there are disability issues causing the worker's performance problems.

Most employers understand that if their worker is faced with a mental or physical disability which leaves them unable to perform their duties, accommodations must be made as much as possible for the employee. The duty to accommodate people with disabilities in the workplace is enshrined in law. Employers are to aim to include people with disabilities if possible. There are no specific rules for accommodation, rather it is based on the individual's needs. The employer must show a willingness to explore solutions which would allow a disabled individual to remain in the workplace, if possible.

There are expectations to the duty to accommodate, such as if it would cause undue hardship, for example, as a result of cost of health and safety requirements.

A whole different problem can arise when for whatever reason the employee does not acknowledge their disability as the cause for their poor performance at work.

Canadian law does impose a duty on an employer to inquire with regard to do employee's medical condition if it could be what is causing the problems. Specifically, the employer must inquire as to the nature of the condition, whether the worker needs treatment or is likely to recover, and whether they are capable of performing alternate work at the workplace. The duty to inquire is all the more important for mental health or stress-related disabilities which may not be obvious.

An employer must be careful to document details of the performance problems, and make it a policy to always inquire diplomatically as to any medical or stress related issues for the worker when reviewing concerns

as to job performance. Training for managers in this area is a good idea.

Employers must also understand the wide definition of disability in labour law. Courts and tribunals have found everything from speech impediments to obesity to acne to be disabling conditions.

An additional problem that arises in this area involves employees who abuse sick time. A small minority of workers view sick days as days off owed to them, or they may exaggerate minor illnesses. Employers should protect themselves by having well-drafted and carefully followed policies for chronically absent employees. This sort of policy must be used for all staff, not only when there is a concern arising with a particular worker, who maybe suffering from a disability. The policy should be clear and applied fairly.

When dealing with chronically absent employees, it is also imperative to document everything and always use sensitivity.