

ACCOMMODATING MENTAL HEALTH DISABILITIES IN THE WORKPLACE

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AGENDA

- **Definitions**
- **Identifying Mental Health Issues in the Workplace**
- **The Duty to Accommodate**
- **Legal Updates**
- **The Importance of Workplace Policies**
- **Questions**

Definition of Mental Health Disability

Defined in broad, flexible, expansive manner

Sources: Statute, Case Law and OHRC Policy

- **Section 10(1) of Ontario Human Rights Code:** a condition of mental impairment, a mental disorder
- **Canadian Psychiatric Association:** “mental illness”
- **Federal/Case law:** includes past or present addiction to alcohol or drugs
- **May be permanent, temporary or sporadic**
- **Includes past or perceived disability**

IDENTIFYING MENTAL HEALTH ISSUES IN THE WORKPLACE

- **The Duty to Inquire**
- **Using Objective Performance Criteria—
Avoid Stigma and Stereotyping**
- **What if the Employee is Resistant to
Help? Using Performance Management
Techniques; Ensuring Health and Safety;
Requiring EAP or Medical Clearance**

THE DUTY TO ACCOMMODATE

- **A process not a result; seen as a continuum**
- **Procedural and Substantive aspects of equal importance**
- **Forms of Mental Health Accommodation:** policies and processes, performance goals, conditions and requirements decision-making practices, methods of communication
- **Examples of Mental Health Accommodation:** providing job coaching, referring to an employee assistance program, providing alternative supervision arrangements, providing alternative ways of communicating with employee

LEGAL UPDATES



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OHRC POLICY ON PREVENTING DISCRIMINATION BASED ON MENTAL HEALTH DISABILITIES

- **2014 policy now influencing case law**
- **Duty to accommodate mental disabilities no less rigorous than physical disabilities**
- **Must be guided by the principles of respect for dignity, individualization and integration/full participation**
- **Procedural component of accommodation includes both the “duty to inquire” and the “duty to assess”**

Hamilton-Wentworth District School Board v. Fair, 2016 Ontario Court of Appeal

HIGHLIGHTS

- **Employee suffering from generalized anxiety disorder and post-traumatic stress disorder terminated as employer claimed no ability to accommodate without undue hardship**
- **Court of Appeal affirmed decision of discrimination and ordered reinstatement to employment almost 15 years later**

Passamaquoddy Lodge v CUPE Local
1763 2016 NBQB 056 Court of
Queen's Bench

HIGHLIGHTS

- **Judicial review of arbitration decision which condemned employer for suspending employee with suspected mental health issues pending a clear psychological evaluation**
- **Court upheld arbitral decision, stating employer violated protection against discrimination for mental health disability**

THE IMPORTANCE OF WORKPLACE POLICIES

- Ideally should reflect not only legislative requirements but OHRC Policy
- Should expressly deal with issues of privacy, and how employee medical information will be collected and stored
- Should be updated annually and when there is new legislation or OHRC policy
- Follow your own policy

QUESTIONS?

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