MANAGING MENTAL HEALTH IN THE WORKPLACE

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TOPICS

1. Mental Health
2. Medical Documents
3. Duty to Accommodate
4. Frustration
5. Case Law
SECTION 1
MENTAL HEALTH
MENTAL HEALTH

Statistics

- 1 in 5 of Canadians will experience mental illness in their lifetime
- Mental illness affects people of all ages, educational and income levels, and cultures
- 8% of adults will experience major depression
- About 1% of Canadians will experience bipolar disorder

Canadian Mental Health Association, www.cmha.ca
MENTAL HEALTH

Economic Cost

- Economic burden of mental illness in Canada estimated at $51 billion per year
- This includes health care costs, lost productivity, and reductions in health-related quality of life
- Cost of mental illness disability leave is double the cost of a leave due to a physical illness

*Canadian Centre for Addictions,* canadiancentreforaddictions.org
MENTAL HEALTH

Group Discussion - Symptoms and Signs

- Depression
- Bi-polar Disorder
- Alcohol Addiction
- Drug Addiction
DEPRESSION

- Preoccupation with past failures or inadequacies
- Loss of self-esteem
- Feelings of uselessness, hopelessness, guilt
- Forgetfulness, difficulty concentrating or making decisions
- Loss of interest in work, hobbies, people
- Lethargy and fatigue

*Mood Disorders Association of Ontario, www.mooddisorders.ca*
DEPRESSION CON’T

- Agitation or restlessness
- Changes in weight and appetite — eating too little or too much
- Oversleeping or insomnia
- Decreased sexual drive
- Thoughts of death, dying or suicide
BIPOLAR DISORDER

- Episodes of depression and mania
- Periods of wellness in between
- Mania
  - thoughts are racing or hyperactive
  - unrealistically confident, happy, or very powerful
  - lack of sleep
  - engaging in risky behaviour

*Canadian Mental Health Association, www.cmha.ca*
ALCOHOL ADDICTION

Top 5 Signs of Alcoholism

- Lying about drinking
- Neglecting responsibilities
- Drinking to de-stress
- Blacking out regularly
- Showing signs of dependence

Canadian Centre for Addictions, canadiancentreforaddictions.org
DRUG ADDICTION

Appearance
- Bloodshot or glazed eyes
- Dilated or constricted pupils
- Abrupt weight changes
- Nausea or vomiting
- Change in sleep pattern

DRUG ADDICTION CON’T

Behaviour

- Increased aggression or irritability
- Changes in attitude / personality
- Changes in a social network
- Changes in habits and/or priorities
- Financial problems
ADDICTION SIGNS

7 Signs of Substance Abuse in the Workplace

- Frequent tardiness or unexplained absences
- Decline in personal hygiene or appearance
- Low productivity especially in the morning
- Physical indications
- Secrecy over personal life
- Defensiveness or overreaction to criticism
- Frequent small accidents

Canadian Centre for Addictions, canadiancentreforaddictions.org
ADDICTION STATISTICS

- Every year 47,000 Canadian deaths are linked to substance abuse (Health Officers Council of BC, 2007)
- 70% of drug or alcohol abusers are employed (Statistics Canada, 2007)
- Cost to health care system = $8 billion for funding of treatment centres and outpatient clinics
- Most abused drug = prescription opioid medications (eg. City of Toronto)

Canadian Centre for Addictions, canadiancentreforaddictions.org
PROACTIVE STEPS

- Education
- Workplace training
- Wellness programs
- Resources and support ie. EAP
- Company policies
- Early intervention
RESOURCES

- Canadian Mental Health Association
  www.cmha.ca
- Centre for Addition and Mental Health
  www.camh.ca
- Mood Disorders Association of Canada
  www.mooddisorders.ca
- Mental Health Commission of Canada
  www.mentalhealthfirstaid.ca
SECTION 2
MEDICAL DOCUMENTS
MEDICAL DOCUMENTATION

- Request due to
  - Work absence
  - Return to work
  - Accommodation (if necessary)
- If the medical provided lacks information, can request more detailed medical
- Impact of short term / long term disability
Contents of Medical Documentation

- Date illness or injury started
- Expected return date if available
- Date of next medical assessment
Contents of Medical Documentation con't

- If employee is incapable of attending at work and performing their job
- Permanent or temporary illness or injury
- Restrictions and limitations
Mental Health

- Employee has a disability or medical condition
- Nature of illness, condition or disability but not medical diagnosis
  - if legitimately required for accommodation or complex situation
- Information least intrusive of privacy
- Importance of confidentiality
  - stigma and stereotyping
Crowley v. Liquor Control Board of Ontario, 2011
HRTO 1429

- Need a diagnosis of a recognized mental disability
- Assertion of stress or other symptoms not necessarily sufficient to establish a mental disability
Independent Medical Assessment

May request if:
- Medical information not being provided
- Contradictory information
- Concern that doctor not acting in good faith

Employee refusals = contract term needed
SECTION 3 - DUTY TO ACCOMMODATE

Photo Credit: Canadian Centre for Economic Analysis
DUTY TO ACCOMMODATE

Disability under the OHRC:
- any degree of physical disability or infirmity caused by injury, birth defect or illness
- includes past disabilities or perceived disabilities

Employer must then accommodate the employee to the point of undue hardship.
DUTY TO ACCOMMODATE

Appropriate Accommodation

- Dignity (including confidentiality)
- Individualized needs
- Integration and full participation (multi-party inquiry)

→ Accommodation as a continuum
Key undue hardship factors to consider are:

- Cost
- Outside sources of funding
- Health and safety
DUTY TO ACCOMMODATE

Bona Fide Occupational Requirement ("BFOR") Test

Where an employee can no longer fulfill the physical, essential, or mandatory requirements of the job.
DUTY TO ACCOMMODATE

Examples of Accommodation:

- Modified or flexible work schedule
- Modified job duties
- Bundling of duties (in some circumstances)
- Leaves of absence
- Refer to EAP or counselling
- Training
DUTY TO ACCOMMODATE

*Hydro-Quebec v. Syndicat, 2008 SCC 43*

Test for undue hardship:
- If proper operation of business is hampered excessively due to illness
- OR
- If employee remains unable to work for reasonably foreseeable future and employer has tried to accommodate
DUTY TO ACCOMMODATE

Vanegas v. Liverton Hotels Inter., 2011 HRTO 715

- May need to bundle tasks from existing positions to accommodate
- Undue hardship threshold higher for temporary vs. permanent limitations
- Duty to accommodate does not require an employer to create a permanent job that is not useful or productive
DUTY TO ACCOMMODATE

Mental Health

- Additional “duty to inquire” about accommodation needs
- Attempt to assist an unwell employee
- Additional support / refer to EAP or counselling
- Importance of confidentiality
SECTION 4
FRUSTRATION

Photo Credit: Graeme Cowen, www.graemecowan.com.au
FRUSTRATION

- Onus on company to prove
- High threshold
- Timing an issue
FRUSTRATION

Factors for Frustration

- Temporary vs. permanent illness or injury
- Short-term vs. long-term employee
- Receiving sick pay or disability benefits
- Expected length of employment
- Position held by employee
FRUSTRATION

Test for Frustration

Reasonable likelihood employee cannot return to work in reasonably foreseeable future

- If on LTD, coverage accepted for "any occupation" definition of disability
- Importance of medical documentation
FRUSTRATION

Amounts Owing for Frustration

- ESA termination and severance pay owing to employee
- Continue benefits for ESA minimum notice of termination period
- Check with insurer re: continuation of certain benefits (ie. life insurance)

Note: No amount owing for common law
Gahagan v. James Campbell Inc. 2014 HRTO 14

Gahagan’s employment ended for frustration after an absence of 2.5 years

Gahagan had not worked anywhere else since employment ended due to disability

Gahagan had been approved for a CPP disability pension and approved for LTD benefits

To obtain these benefits, Gahagan was found to have “an inability to perform her job and a severe and prolonged disability”
SECTION 5: CASE LAW

From caring nurse to accused serial killer: Who is the real Elizabeth Wettlaufer?
CASE LAW

**Lane v. ADGA Group Consultants Inc., 2007 HRTO 24**

- Probationary employee terminated after disclosing bipolar disorder
- No investigations or accommodations explored
- No obligation to disclose disability during hiring process
- Disclosure likely to result in stereotypical reaction
**Lane v. ADGA Group Consultants Inc. con’t**

- **Awarded**
  - $35,000 for general damages,
  - $10,000 in damages for mental anguish and
  - almost $35,000 in special damages for the loss of salary that resulted from the violation of his rights

- **Company to implement policies**
- **Retain qualified consultant to train workforce**

- Addiction due to drugs and alcohol
- Termination due to high absenteeism rate
- “An addicted employee has a “diminished responsibility” to identify and disclose the nature of their disability to their employer”
- Employer should have requested a professional assessment
CASE LAW

*Krieger v. Toronto Police Services Board, 2010 HRTO 1361*

- Probationary officer suffered from PTSD
- Termination following misconduct for workplace incident
- Krieger unable to recognize symptoms of PTSD
- Reinstatement ordered
- Damages of $35,000 for injury to dignity, feelings and self respect
QUESTIONS?

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