



Managing Disabled Employees

Can you fire a staffer who comes to work drunk?

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Employers must tread carefully when dealing with disabled employees. The *Ontario Human Rights Code* expressly protects disabled employees' right to equal treatment, without discrimination because of disability.

"Disability" is a loaded word. It covers far more than physical illness. According to the Ontario Human Rights Commission, a disability "covers a broad range and degree of conditions, some visible and others not. A disability may have been present from birth, caused by an accident or developed over time. It includes physical, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions."

The result of this extremely broad definition is that many actions or conduct that employers would not consider to be disabilities are in fact disabilities according to the law.

As noted earlier, drug or alcohol addiction is a disability. This means that you are not necessarily free to fire an employee who is routinely drunk on his or her return from lunch as that individual

may be an alcoholic, rather than irresponsible. Practically, an employer may be unable to make this determination. But once the employee presents a medical note stating he or she is an alcoholic, the employee cannot simply be fired. Similarly, an employer cannot have a policy of firing any employee found drunk on the job.

Employers are required

to "accommodate" disabled employees. In accommodating the employee, the employer must do so in a manner which respects the dignity of the disabled employee. Accommodation will often include the

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removal of barriers and modifying performance standards so that the disabled person can continue to perform his or her job. Accommodation does not necessarily include adjustments or modifications to the employee's job. If modification is simply not possible, the employer is required to provide an alternative position or work for the disabled employee as

part of the duty to accommodate. For example, a bus driver who loses his sight must be given a non-driving job where such positions exist.

The duty to accommodate extends to the point at which it causes the employer "undue hardship." For most employers, this is a function of cost. Employers may not want to spend what they consider to be too much money accommodating the disabled employee.

The legal test for undue hardship is a cost so substantial that it would alter the nature of the business or substantially affect its viability.

Undue hardship does not include any of the following: business inconvenience, employee morale or customer preference.

A disabled employee who claims to have been the subject of discrimination may complain to the Ontario Human Rights Commission. The Commission will investigate and choose whether to prosecute the complaint. **OHRC**