

Is Discussing Worker's Medical Absence in Front of Co-Workers Harassment?



SITUATION

A worker in an automotive plant requires modified duties due to an arm injury. So the employer assigns her to sort parts that were dropped from the line. First she performs the task in a break room out of sight of other workers but is later assigned to sort the parts at the line, in view of other workers. The worker claims having to sort parts is 'garbage work' and she's embarrassed to be seen doing this work. Her employer explains that the work is necessary and saves the company money by salvaging reusable parts. Additionally, it's more practical to sort the parts at the line rather than collecting the parts and carting them across the busy plant to another location, says the employer. While on modified duty, the worker misses a few days of work for an MRI appointment. She was only supposed to miss two days of work but misses three days to recover from severe pain caused by having her injured arm immobilized during the MRI. When she returns, her supervisor repeatedly approaches her in front of co-workers and asks her for medical documentation to support her absence. The worker files a human rights complaint, claiming the modified work is harassment based on her disability and is intended to humiliate her. She also argues that her supervisor's discussing her disability and requesting medical information about it in front of other co-workers is harassment.

QUESTION

The employer was liable for harassment because:

- A. it assigned her to sort parts, a modified duty the worker disliked.
- B. it made her sort parts in a location visible to other workers to embarrass her.
- C. the supervisor asked her for medical information to which he had no right.
- D. the supervisor discussed and asked for information about her disability in

front of others.

ANSWER

D. The supervisor improperly discussed the worker's disability and requested medical information in front of co-workers, which constitutes harassment.

EXPLANATION

This hypothetical is based on a decision by an Ontario Human Rights Tribunal in which a worker raised various grounds of disability-related harassment after returning to work from an injury. The Tribunal dismissed several of the worker's claims. It also found the supervisor's request for confirmation of an MRI justified because her absence was longer than expected. However, it explained that the supervisor shouldn't have asked for the documentation or discussed her injury in front of other workers. It specifically noted that 'he asked her more than once [for the documentation] and that he was not discreet about asking.' His repeated, public requests for medical documentation and references to her MRI in front of others were harassment under the *Human Rights Code*, the Tribunal concluded. So it ordered the employer to pay her \$1,500 in damages 'for injury to her dignity, feelings and self-respect.'

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because a worker can't reject modified work duties because she doesn't like them. The duty to accommodate doesn't require an employer to provide a worker with a perfect or preferred accommodation. And a worker has a duty to cooperate with an employer's reasonable accommodation efforts. A worker's failure to cooperate ends the employer's duty to accommodate. Here, the employer tried to accommodate the worker's arm injury by providing a reasonable modified assignment. Although sorting parts may not be the worker's preferred job, it fit the accommodations she required and served a beneficial purpose to the company. So assigning her to this task that she disliked doesn't qualify as harassment.

Insider Says: For more information about limitations on the employer's duty to accommodate, see 'Accommodation vs. Undue Hardship.'

B is wrong because there's no evidence the employer had her perform this task in an open location to embarrass her. Although the worker may have perceived the work as 'garbage' and been embarrassed to perform the task in full view of her co-workers, the employer demonstrated that the task was a necessary one. In addition, sorting parts at the line was reasonable because it was impractical to carry the parts through the busy plant to another location. Therefore, the employer didn't intend to humiliate the worker but gave her a necessary task and assigned her to do it in the most practical location in the workplace.

C is wrong because an employer has a right to ask a worker for medical documentation to support an absence from work due to injury, especially if the worker is out longer than expected. Here, the worker missed three days of work instead of two, claiming it was for an MRI and due to pain caused by the test. Therefore, the supervisor's request in this instance, by itself, wasn't harassment but a valid exercise of the employer's right to verify the reason for her absence. (However, as discussed above, he should've made this request in

private and not in front of her co-workers.)

Insider Says: For more information about requesting medical information from workers, see 'Obtaining Medical Information to Verify Safe Return to Work: Workers' Privacy Rights vs. an Employer's Need to Know.'

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McNeil v. Toyota Motor Manufacturing Canada Inc., [2013] HRT0 2111 (CanLII), Dec. 20, 2013