



Q & A Session on Return to Work Issues

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Today's Session

- Brief overview of statutory and legal obligations impacting return to work decisions
- Questions Submitted Pre-Webinar
- Questions Submitted During Webinar
- **Disclaimer – All discussion during the webinar is informational only and is not legal advice. No lawyer-client relationship is created. Participants should retain and consult their own lawyer in specific cases.**

Statutory and Other Legal Obligations in the Return to Work Process

- Workers' Compensation Legislation
- Occupational Health and Safety Legislation
- Human Rights Legislation
 - Duty to accommodate
- Contractual obligations

Workers' Compensation Laws

- Work-related injury or illness
- Generally requires employers and employees to work together to ensure early and safe return to work, whether at accommodated duties or not
- http://awcbc.org/wp-content/uploads/2013/12/rehab_return_to_work.pdf
- Duration of obligation/accident costs considerations

Occupational Health and Safety Laws

- OHS and Workers' Comp. obligations are separate and must be complied with independently
- Employers are required to take all reasonable precautions to protect workers' health and safety
- More broadly: can the worker be safely returned having regard to everyone's safety – worker, co-workers, customers, public?

Human Rights Legislation

- Prohibits discrimination in employment
- “Disability” is a prohibited ground of discrimination
- Disability has been broadly defined
- Applies whether or not disability is work-related
- Employer is required to accommodate employee’s disability to the point of undue hardship

Duty to Accommodate

- Entails:
 - Determining what barriers might affect the person requesting accommodation
 - Exploring options for removing those barriers
 - Accommodating to the point of undue hardship
- Employees must perform useful and productive work
- Duty is to provide reasonable not perfect / preferred accommodation

Duty to Accommodate

- Procedural Duty
 - Employer has obligation to take necessary steps to determine what kinds of modifications or accommodations might be required
- Substantive Duty
 - Make modifications, provide necessary accommodation, to the point of undue hardship, e.g.
 - Duties and tasks
 - Hours of work
 - Location of work
 - Amount of work performed
- Process can be as important as the outcome in some jurisdictions

Duty to Accommodate

- To the point of “undue hardship”
- High threshold
- Case specific, no exhaustive definition
- e.g. financial cost, size of employer’s operation, safety
- Employer must be prepared to make considerable changes to the workplace and work processes but not to provide “make work”



Questions?