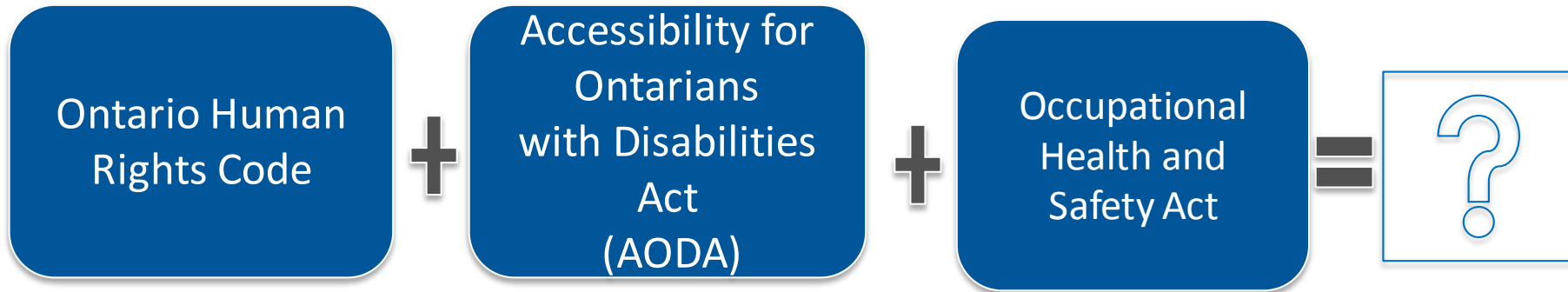


DUTY TO ACCOMMODATE MEDICAL MARIJUANA (AND OTHER TOPICS)

Brant Human Resources Network
March 15, 2018

The Future of Ontario Workplaces 2018.....

- AODA
- Ontario Human Rights Code
- WSIA
- OH&SA



Non-discrimination
Accommodate people to
the point of undue
hardship

Fully accessible
Ontario by 2025

Healthy and
Safe Workplace

The Employment Standard - 2016

- Recruitment, Assessment and Selection
- Accessible Formats and Communication Supports for Employees
- Documented Individual Accommodation Plans
- Return to Work Processes
- Performance Management
- Career Development and Advancement
- Redeployment

OHRC – Duty to Accommodate

■ Employer Duties:

- Duty to accommodate to undue hardship

■ Union Duties:

- Collective agreement wording
- Participation in accommodation

■ Employee's duties:

- Share information regarding accommodation needs
- Actively cooperate in investigating options
- Offer reasonable explanation for refusal to accept offers
- Accept reasonable accommodation

BORJ and Essential Business Needs

- Job Descriptions
- PDA, PDD, PDI
- Who is qualified to complete?
- Physical
- Cognitive
- Environmental
- PPE requirements
- Stressors (production quantity/speed, public demands, etc.)

What is the difference?

Medical Restrictions – risk to employee or recover
ie. No weight bearing on broken leg

Capacity – What employee can do today
ie. Hours of work, lifting, skills

Tolerance – What employee can tolerate
ie. Pain, fatigue, stress, anxiety

Process of Accommodation

- Inquiring about accommodation needs
- Problem Solving
- Objective evidence
- Establish physical/cognitive demands of job
- Expert Assistance
- Education of Manager/Supervisor
- Management of Performance
- Co-work education and involvement

Process of Accommodation

- Alternative Work – different work or work that does not necessarily involve similar skills, responsibilities or compensation
- For a return to work process or temporary impairment
 - Accommodate person in their pre-disability job wherever possible
 - Employers have a duty to consider temporary or permanent alternative work
 - Job restructuring
 - Job bundling
 - Reassignment to open positions

Permanent Alternative Work

- Employee must be given an opportunity to prove his/her ability to perform the pre-disability job
- May include some workplace reorganization – move to vacant position
- Accommodation does not require employer to completely alter essence of employment contract
- Not required to “make work” or to create a job that is not productive
- Employee must be able to perform a useful and productive job for the employer

Common Errors in Accommodations

- Verbal versus written
- Document, document, document!!!!!!!
- Maintain constant contact
- Be persistent – Employers have rights too
- Obtain/insist on complete/accurate medical information
- End dates/review dates on accommodation plans
- Hold worker's on accommodation plans to performance standards

Medical/Legal Marijuana.....



Legalization of Cannabis

- July 1, 2018
- Influences appetite, mood, memory, pain sensation
- Edibles will not be legal on July 1, 2018
- Sales not available until August

Safety Sensitive Positions

- Marijuana causes euphoria and relaxation
- Time distortion
- Difficulty with divided attention - get caught off guard
- Cognitive impairments and memory

Case Law

■ R. v Metron Construction

- 2009 Toronto swing stage collapse
- 6 workers, 2 lifelines
- 3 of the 4 deceased workers, including the site supervisor, “had marijuana in the system at a level consistent with having recently ingested the drug”

Case Law cont.

■ R. Canadian National Railway

- Foreman of railway crew killed at work when he fell off a rail car and was run over by its wheels
- Consumed cannabis within a few hours of shift starting
- Employer was charged, went to trial and was found not guilty of all counts as it had a due diligence defence

Case Law

■ Stewart v. Elk Valley Coal

- Company policy required employees to disclose addiction issues and treatment offered without discipline, but if no disclosure and incident occurred and positive test resulted, employment would be terminated
- Employee had an accident operating loader; tested positive for cocaine and was terminated from employment
- Union filed human rights complaint on behalf of the worker
- Tribunal found no discrimination, terminated for policy violation and disability was not a factor

Drug and Alcohol Policies

- Do not use the words “zero tolerance”
- Must have language around the availability of supports for those struggling with addiction
- No punitive action if the worker comes forward; before there is an incident
- Drug and alcohol testing.....

Fit for Duty Policy

- Safety sensitive positions
- Hazard analysis
- Risk to themselves or co-workers
- Disciplinary action up to and including termination depending on the incident



ONTARIO CANNABIS STORE



Mental Health - Addiction

- Alcohol, drugs, gambling
- Approach employee based on performance and absence
- Do not have to disclose
- 3 strikes rule

Drinking in the Workplace



BEER CAN COVER SLEEVE WRAP STASH HIDE CAMO KOOZIE
DISGUISE COKE COLA

\$2.39

From United States

Was: ~~\$3.99~~

Buy It Now

115 sold

40% off

Rate of Metabolism

Time	Action	BAC
2:00 AM	Goes to Bed	0.250
3:00 AM	Sleeping	0.235
4:00 AM	Sleeping	0.220
5:00 AM	Sleeping	0.205
6:00 AM	Wakes up for Work	0.190
7:00 AM	Puts shirt on inside out	0.175
8:00 AM	Arrives at work	0.160
9:00 AM	Spills coffee on desk	0.145
10:00 AM	Still legally intoxicated	0.130
11:00 AM	Trips and Falls	0.115
Noon	Still Legally Intoxicated	0.100
4:00 PM	Done Work	0.04

Reasonable Suspicion Form

- Use of in Ontario

Drug and Alcohol Testing

- Use of in Ontario
- Safety sensitive positions
- Driving for work
- Post incident

Signs of Impairment at Work

- Workplace Accident
- Near miss
- Going to car at break/lunch
- Going to areas in the workplace that are secluded or not monitored
- Behaviour changes from beginning of shift to end of shift
- Report any suspicion of impairment to HR or Health and Safety

January 1, 2018

- WSIA - Chronic Mental Stress
- Duty to Accommodate
- Individual Accommodation Plans
- FAF, is it adequate?
- FCE

Appropriately Diagnosed Injury

- Must be a diagnosis under the DSM
- Diagnosed by an “appropriate regulated health care professional: Physician, Nurse Practitioner, Psychologist, Psychiatrist
- May include:
 - Acute stress disorder
 - Post-traumatic stress disorder
 - Adjustment disorder
 - Anxiety or depressive disorder

Predominant Cause Test

- Substantial work-related stressor must be the predominant cause of an appropriately diagnosed stress injury
- Must be the primary or main cause of the injury as compared to all other individual stressors

Stress.....

- Stress is not a disability
- DSM-5: PTSD, Acute stress disorder
- Stressors
- Employee Assistance Programs
- You are not mental health professionals
- CSA- Z1003 Psychological Health and Safety in the Workplace
- Guarding Minds at Work

Resources

- Conference Board of Canada – Employer Toolkit
- Ontario Human Rights Commission – Policy on ableism and discrimination based on disability
- Canadian Mental Health Association
- WSIB – Return to Work Plan Package
- CCOHS – white paper on cannabis

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