Mental health accommodation policies and procedures in the workplace: Practical guidance for employers

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With an estimated one in three Canadians being affected by a mental illness in their lifetime, mental health challenges can have a significant impact on the Canadian workforce, and it is crucial that employers address these challenges effectively.

To help employers deal with these complex issues, BLG's experienced team of labour and employment lawyers from across Canada — Shelley-Mae Mitchell, Kailey Hubele, Laura Mensch, Jessica Wuergler, Dan Palayew, Kate Agyemang and Catherine Pronovost — hosted an online session providing practical guidance to organizations to address their employees' mental health needs.

The importance of an accommodation policy and clear procedures

A solid accommodation policy is essential for every workplace, especially since many provinces lack clear legislation on the accommodation process. Creating a policy sets clear expectations, reducing confusion and ensuring everyone knows their roles. It's also important that the policy aligns with human rights laws, which can vary by province.

In addition to the policy, establishing clear accommodation procedures is crucial. A step-by-step process helps employers respond quickly and consistently to requests. Formal procedures ensure fairness and consistency in evaluating requests and determining whether accommodations can be made without undue hardship. It is vital that managers and HR staff are well-informed and aligned.

What to Include in an accommodation policy

A good accommodation policy should explain its purpose, the legal framework, and the protected grounds for accommodation, such as disability, religion or family status. The policy should clarify the responsibilities of both employees and employers, emphasizing collaboration. It should outline how to submit requests, including the timeline, required documentation (for example a doctor's note) and privacy protection. Examples of

possible accommodations, like flexible hours or remote work, help employees understand their options.

Implementing effective accommodation procedures

Accommodation procedures should clearly outline the process, responsibilities, and steps after a request is submitted. They should include a system for evaluating needs, collecting documentation and communicating outcomes, while ensuring privacy and confidentiality. Real-life examples of accommodations, such as flexible hours or remote work, can help clarify options. The procedures should also address "undue hardship," when accommodations would be too costly or disruptive. A well-crafted policy and clear procedures demonstrate the organization's commitment to fairness and inclusion, making the accommodation process more efficient and transparent for all.

Understanding the employer's duty to accommodate

In Canada, employers are legally required to accommodate employees with disabilities, including mental health conditions. While employees typically initiate accommodation requests, employers must also take the lead if they notice a decline in performance and suspect a disability, especially an invisible one like a mental health issue. This is known as the duty to inquire.

If an employee chooses not to disclose a disability, the employer cannot force them to share personal information but should explain that performance issues will be handled according to regular policies unless an accommodation is requested.

Employers have both substantive and procedural duties when it comes to accommodating employees. They must ensure accommodations are reasonable and tailored to the employee's needs and demonstrate they have taken reasonable steps to accommodate them. Medical documentation can be requested to assess accommodation needs, but it must respect privacy laws.

When considering undue hardship, employers must evaluate factors like safety, cost and disruption. If accommodating an employee would cause significant difficulty, the employer is relieved of their duty, but they must prove they made genuine efforts to accommodate.

By adopting clear and comprehensive accommodation policies and procedures, employers can support employees with mental health challenges while maintaining a productive workplace that effectively manages these challenges. It is crucial for employers to be proactive in identifying accommodation needs, ensuring that employees have access to the support they require and fostering a work environment that promotes mental health awareness and inclusion.

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