

BULLETIN

What are my rights if I have a substance addiction?

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In BC, the law is clear on workers who have a substance addiction: the employer must make every reasonable effort to accommodate a worker's disabilities by either allowing her to take time to get treatment for a problem, or by providing some alternate form of employment at the worksite.

For example, an employee with a sleep disorder who can no longer work night shift might be put on permanent days, or someone with an injured back may be moved to a job with lighter duties.

The duty on the employer to accommodate is to the point of "undue hardship." In every case, the employer is obligated to carefully explore all the options.



When can an employer terminate an employee for substance addiction? How far must employers go to accommodate addicted employees?



An addiction is sometimes described as a love affair with the addictive substance or activity. Like a love affair, there are many candidates: alcohol, drugs, gambling, food and sex, to name a few. It's possible to be addicted to almost anything.

In the workplace, however, it is often alcoholism or drugs that create difficulties for workers. Sometimes the problem arises when a worker is absent a lot, having trouble coming in on time, or performing badly on the job. It may turn out that the reason for the difficulties is an addiction to alcohol or drugs. Such addictions are now widely recognized as a form of disability.

Discrimination on the basis of disability is banned in all provinces and under federal human rights laws. The result is that in some circumstances, discriminating on the basis of an individual's alcoholism or drug addiction is against the law.

Let's take a worker who has a drinking problem and is frequently late or absent. Generally, arbitrators have said this should not be grounds for reprimand or suspension because it results from a disability. Like with any other disability, an employer is required to accommodate the worker.

How far does this accommodation go? Arbitrators have made it clear that the employer can fire the worker if he or she is incapable of reasonably regular attendance or performing the tasks of the job. Human rights decisions sometimes draw the line at undue hardship to the employer or the worker's inability to perform the essential duties of the position.

For workers with alcohol or drug addictions, the accommodation requirement is likely to mean the employer must give the worker a reasonable opportunity to complete a rehabilitation program. This does not necessarily include providing such a program or paying for it. It may simply require the employer to grant an unpaid leave for this purpose.

Kicking an addiction is tough, however. If the worker falls off the wagon after such a program and the result is excessive absenteeism, the employer may then be allowed to terminate the worker.

There is no recognition in the law that the workplace might play a role in the problem. For workers already susceptible to addiction, the mind-numbing tedium of de-skilled work, the stress of increased workloads caused by downsizing, or the frustration of being powerless may all contribute to push them over the edge. In the eyes of the law, though, it is just a personal problem.

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