

## Test Your Knowledge of Disability and Workplace Accommodation

As an employer, issues regarding disability and workplace accommodation can be tricky to navigate. When faced with an employee who suffers, or claims to suffer, from a disability, most employers want to do the right thing. The problem is, it's not always clear what's right.

**See how well you would navigate through five common workplace scenarios.**

- 1. Which of the following conditions constitutes a disability or handicap under human rights legislation?*
  - a) Back injury suffered in a motor vehicle accident
  - b) Colour-blindness
  - c) Carpal tunnel syndrome
  - d) Gambling addiction
  - e) All of the above
- 2. True or false: an employer is legally obligated to provide workplace accommodation only for an employee whose injury or disability is work-related.*
- 3. In circumstances in which an employee is unable to attend work for an extended period of time due to an illness or injury, at what point can the employer legally sever the employment relationship?*
  - a) 6 months
  - b) 12 months
  - c) 18 months
  - d) 24 months
- 4. What should an employer do first when an employee requests "light duties" due to a disability?*
  - a) Comply with the employee's request
  - b) Request and review medical information
  - c) Require the employee to undergo a physical examination by a doctor of the employer's choice
  - d) Send the employee home while the employer explores accommodation options
- 5. True or false: an employer must give a disabled employee time off with pay if there is no work in the workplace that the employee is capable of performing.*

### ANSWERS

1. e) All of the above  
The definition of "disability" or "handicap" under various human rights legislation in Canada encompasses a wide range of conditions. All of the conditions listed in (a) through (d) have been recognized as a "disability" or "handicap".
2. False  
Human rights legislation does not distinguish between disability from work-related and non-work-related injury. An employer's duty to accommodate is the same in both cases. However, in the case of a work-related injury, an employer may have an additional obligation under the applicable workers' compensation regime to facilitate an injured employee's gradual return to work.
3. There is no standard answer to this question.  
An employer is not obligated to continue to employ an employee indefinitely if the employee is not able to work. However, before the employment relationship can be terminated, the employer must demonstrate that the employment contract has been "frustrated". To do this an employer must

demonstrate that: (i) there is no reasonable prospect that the employee will return to work in the foreseeable future; and (ii) the employer has fulfilled its duty to accommodate the employee up to the point of undue hardship.

The first part generally entails medical evidence of the employee's prognosis for the foreseeable future. The second part requires financial and other workplace evidence regarding the employer's efforts to accommodate the employee.

A practical caution: Once an employee is out of the workplace, it may be easy to lose track of that employee, especially if he or she is absent for an extended period of time. If this occurs, the employer is not likely to have up-to-date evidence of the employee's medical prognosis for return to work and will not be in a position to establish "frustration".

To avoid that situation, the employer should establish a regular timetable for follow-up with the employee to see if there has been any significant change to the employee's condition and whether updated medical evidence should be requested.

4. The answer to this question depends on the facts.

An employer is entitled to obtain medical evidence sufficient to enable the employer to understand the employee's specific work restrictions and expected duration.

If the need for accommodation is obvious and the "light duties" requested are connected to the employee's condition, the employer may grant the request without engaging in extensive inquiry. For example if an employee attends work on crutches from a broken leg and asks to be exempt from climbing step-ladders.

If the need for accommodation is not immediately obvious, and the medical information provided is not satisfactory, an employer may ask the employee to provide further and better information from the employee's treating physician. If this request does not result in appropriate information an employer may initiate additional steps to obtain information. This may include asking the employee to consent to the employer communicating directly with the employee's doctor.

5.False

However, an employer must first exhaust its search for suitable work and accommodation in the workplace. This includes looking at modifying the disabled employee's own position (including the use of assistive devices), other existing positions which the employee is capable of performing, and work that is currently performed by a variety of positions and which may be "bundled" together to form a full or partial day's work for the disabled employee.

Furthermore, while a disabled employee is away from the workplace, the employer must continue to search for suitable work and appropriate accommodations. This includes following up with the employee periodically to see if there are changes to the employee's condition and work restrictions which may have an impact on the availability of suitable work.