

Accommodating the Invisible Disability in the Workplace



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Human beings are a diverse group of people. That's what makes us so interesting. Every one of us has her own distinct background that makes us unique. We have varying abilities, strengths and weaknesses. Canadian laws and customs celebrate and protect the differences that we are. Government has put into statute on what we all have, over many years, come to agree on; Canadians should not discriminate against one another because of our differences.

Sometimes we can't at first see the differences among us. Sometimes these invisible differences affect a person's ability to do a job or interact with people. One such "invisible disability" is psychiatric illness. Discrimination on the basis of psychiatric illness has become an increasingly controversial and publicized issue in Manitoba.

The Great West Life Centre for Mental Health revealed that employees believe the workplace is where they are least likely to get support so 64% of employees with mental-health problems keep their condition secret from their employers.

"Taking care of our mental health at work has never been more urgent than it is in today's knowledge-based economy." (Global Business Economic Roundtable on Addiction and Mental Health.)

The CBC in a recent publication outlined that the Government of Canada is spending billions of new dollars on addressing mental illness, stating:

"Approximately one in five Canadians will be affected by a mental health issue which means almost every Canadian will be touched by it either themselves or through someone they know."

The Manitoba Association of Health Care Professionals is a union that is not afraid to take on this controversial issue. As health care professionals we understand that health issues can create barriers in the workplace. The MAHCP has been active in advocating for members suffering invisible disabilities and educating employers and members alike on the issues involved.

We all share the right not to be discriminated against. With this right comes a responsibility. We all share in our legal responsibility to try to mitigate the negative image and impact of psychiatric disability in the workplace. In fact, our right not to be discriminated against is protected by the Human Rights Code which is based on the Canadian Charter of Rights and Freedoms which says:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This right not to be discriminated against is most important in the workplace setting. The workplace is where we earn our livelihood. It is important that the workplace is an equal playing field because if it is not equal for all, the consequences can be drastic. Manitobans don't want a society where a person's invisible disability can deprive them of the same benefits that we all enjoy.

MAHCP has taken a leadership role with a number of employers to provide awareness and representation regarding this invisible disability.

Provincial legislation based on the Charter language has been put in place to deal with specific cases of discrimination. The Human Rights Commission is established to receive, investigate and adjudicate cases of discrimination in Manitoba.

It is important to note that not every act of discrimination is a violation of a person's human rights under the law. The Human Rights Code provides that every person in Manitoba has the right not to be discriminated against, based on listed characteristics. These characteristics are:

- (a) ancestry, including colour and perceived race;
- (b) nationality or national origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;
- (f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender-determined characteristics or circumstances other than those included in clause (f);
- (h) sexual orientation;

- (i) marital or family status;
- (j) source of income;
- (k) political belief, political association or political activity;
- (l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

The MAHCP collective agreements incorporate the anti-discrimination provisions of the Human Rights Code into every contract. Most contracts also provide for an obligation for all parties to work together to accommodate an employee with a disability into the workplace.

The Employer and the Association are committed to reasonable accommodation in a manner that respects the dignity and privacy of the employee. Reasonable accommodation is the shared responsibility of the employees, the Employer and the Association. Where a need has been identified, the parties will meet to investigate and identify the feasibility of accommodation that is substantial, meaningful and reasonable to the point of undue hardship.

Where necessary, relevant provisions of the Collective Agreement may, by mutual agreement between the Association and the Employer be waived.



This provision of the collective agreement clearly articulates that accommodation is a *shared responsibility*. If any of the parties to that responsibility fail to meet their obligations, the person who suffers resulting discrimination can make a complaint to the Human Rights Commission. The complaint can be made against the employer, the union or other employees in the workplace. However, if the complaint to the Human Rights Commission is made against other employees in the workplace the union does not have any role in the process.

It is often very difficult for a person to admit to themselves that he or she has a mental disability and even

more difficult to admit that to others. How the employer and co-workers react to this admission is crucial to being able to accommodate the disabled employee into the workplace.

Employees who suffer invisible disabilities face special hurdles. One of the main ones is that because they don't look like they suffer a disability, the expectation is that they should act that way too. Some employees suffering this disability report excessive physical and mental fatigue as a hurdle. Others feel they must avoid conflict with others, even the most minor disagreement. Some find it difficult to communicate effectively. Many try to hide the disability from coworkers and the employer, which can cause stress that in turn negatively impacts work performance.

There is also a deeply engrained stigma related to mental disabilities. MAHCP, as the union that represents the majority of health care professionals in Manitoba has taken a leadership role with a number of employers to provide awareness and representation regarding this invisible disability.

The employer, the employee, the union and the other employees in the workplace have to work cooperatively with one another.

Awareness and education can dispel the fear and distrust if everyone works together to accommodate the needs of individuals suffering mental disabilities in the workplace.

An effective accommodation may be as simple as taking a break to help an employee cope with stress. Some other examples of accommodations for employees with mental disabilities are: flexibility to modify daily duties and schedules; extra feedback and easy access to supervision; restructuring jobs to alleviate stressful elements; specialized equipment to assist with instruction confirmations like daily email instructions; provide a job coach or mentor; and provide a modified work site or station.

The most effective accommodation will be that which is specially developed for the person suffering from the invisible disability. In order to create such an accommodation, the employer, the employee, the union and the other employees in the workplace have to work cooperatively with one another.

A union such as ours is particularly suited to understand that mental health issues can create barriers in the workplace. MAHCP will continue its advocacy for members suffering invisible disabilities and educate employers and members alike on the issues involved. It is one way that we are working hard to represent our members in an increasingly complex workplace.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Shelley at 772-0425.