



## DUTY OF EMPLOYEES TO COOPERATE WHEN SEEKING ACCOMMODATION

A recent BC Human Rights Tribunal decision provides guidance to employers dealing with difficult disability accommodation cases and a reminder about the duty of employees to cooperate when seeking accommodation.

Mr. Sluzar complained that the City of Burnaby discriminated against him with respect to his employment and failed to accommodate his physical disability, which was chronic back problems. He was on and off work and was provided with light duties in part time and full time capacities.

Mr. Sluzar was cited for absences without explanations. The City sought an improvement in his attendance and required physician's reports for any absences. There were a number of verbal altercations and Mr. Sluzar was suspended for insubordination.

Both the City and the LTD provider tried to obtain further information through a functional capacity evaluation (FCE). Mr. Sluzar's doctor said that it was not in the patient's best interests to attend an eight hour FCE and advised that Mr. Sluzar was to avoid lifting and bending, but could perform heavy equipment operation. The City saw this as a contradiction that required resolution through an FCE.

Mr. Sluzar eventually attended the first part of the FCE. After some activities, he took a break and asked to discontinue the FCE due to back pain. Mr. Sluzar did not return. Mr. Sluzar also refused to attend a psychological IME, asking for "detailed reasons for this ultimatum." Mr. Sluzar thought he should be able to return to work without completing the FCE. The City

would not permit him to return to work without an IME.

The Tribunal dismissed Mr. Sluzar's complaint and made some determinations of note to employers.

When an employee can attend appointments out of the office but cannot attend a work meeting, an employer has valid reason to require medical reasons for the absence.

Attendance management letters requiring an improvement in attendance and a doctor's note for each absence with

information regarding the nature of the illness and the treatment and time off work are not necessarily adverse treatment relating to a disability. Employers are entitled to notify employees of attendance requirements and the consequences for absenteeism.

Discipline for insubordinate behaviour towards a superior at an attendance management meeting was not discriminatory or indicative of a failure to accommodate. The discipline was related to Mr. Sluzar's behaviour, not his disability.

*“  
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accommodation.”*

When an employee's restrictions are described as temporary, or for a fixed period, the employer may modify an employee's job on an informal basis and move the employee to various positions. Once restrictions are described as permanent, a more formal process should be entered into, with a great deal more communication with the employee and appropriate professional advice.

An FCE was reasonable in the face of contradictory medical information. An IME with a psychologist was reasonable considering the indications that some of Mr. Sluzar's absences were related to stress. In resisting the tests, Mr. Sluzar failed to meaningfully participate in the search for accommodation.

The Tribunal generally viewed the employer's actions favourably and noted that, like other employees, Mr. Sluzar was entitled to reasonable, not perfect, accommodation.



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advice. For additional details or advice concerning specific situations please contact any member of our Labour & Employment Group.

If you have any questions, please contact any member of our Labour & Employment Group.

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