

INHOUSE

Mental illness takes its toll on the workplace

Report from the HRP

By Mari-Len De Guzman | Publication Date: February 8, 2010

If you think mental illness in the workplace is simply a health issue, think again.

According to mental health and legal experts, employers are faced with huge financial costs and the legal implications of mental illness as the problem becomes more prevalent in the workplace.

Health Canada data shows one in five Canadians will experience a mental illness in their lifetime. The remaining four will have a friend, family member, or colleague who will.

Every year, 10.4 per cent of Canadians are diagnosed with a mental illness, said Erin Kuzz, a partner at Toronto-based labour and employment law boutique Sherrard Kuzz LLP. She was one of the speakers at this year's Human Resources Professionals Association conference last month.

Twenty years ago, mental illness was not considered a disability. Today, however, the Ontario Human Rights Code prescribes a legal duty for employers to accommodate mental illness in the workplace, noted Kuzz.

"It's about providing [employees with mental illness] access to meaningful work," she said.

Although the issue of accommodating mental illness is a multiparty obligation — with employers, employees, and workers' unions all having a responsibility — employers are the ones left holding the bag at the end of the day, she added.

"Don't let anybody take over your accommodation process. You have to own it because you're ultimately responsible for it," she said.

While it is the employee's responsibility to inform the employer of a mental illness — including drug and alcohol addiction — the employer has a responsibility to accommodate the mental disability. Such accommodation can include modified work and providing the worker with "unpaid but job-protected leave of absence" to allow the employee to get treatment, Kuzz explained.

Kuzz noted that modified work does not mean the employer needs to create a job that is not necessary for the overall operation of the organization.

“The accommodation process doesn’t have to be perfect,” explained Kuzz. “It doesn’t mean that you have to put the person in a better position than they would otherwise be. It doesn’t have to be ideal, perfect accommodation, but it has to be the best one you can do.”

Kuzz also said the employer’s duty to accommodate is only to the point of “undue hardship.”

Under the Ontario Human Rights Code, the criteria for determining whether the accommodation is causing undue hardship to the employer include: financial cost, where the cost of the accommodation significantly threatens the viability of the organization; if other sources of funding are available; and whether it’s impacting the health and safety of other workers.

To facilitate a successful accommodation process, employers need to get all necessary information about the worker’s mental illness.

Under the law, an employee has an obligation to provide the employer with pertinent information regarding his or her disability, said Kuzz.

Such information would allow the employer to better understand the illness, as well as give an indication of the employee’s limitations and restrictions as far as workload is concerned.

When looking for information regarding an employee’s mental illness, employers need to make sure they are getting more than just a simple prescription pad, said Katherine Ford, another Sherrard Kuzz lawyer.

“We’re not generally going to be asking the employee for the personal information about their diagnosis. What we want to know is what is the impact of that diagnosis or the symptoms of the diagnosis on their ability to attend at work and their ability to perform the duties of their job,” explained Ford.

She said employers must also be proactive in dealing with a mental health issue in the workplace. Although employees have an obligation to provide information to their employer about a mental illness, employees often go through a denial period that discourages them from disclosing their condition.

If employers become aware or suspect that one of their workers has a mental illness, they should not just sit and wait for the employee to initiate the conversation.

“What we see tribunals and arbitrators saying is that as an employer, you do have an obligation in this situation to sometimes take the initiative and have that kind of uncomfortable conversation with an employee,” said Ford.

As if the legal implications are not challenging enough, the impact of mental illness can also have negative repercussions on the company’s bottom line, said Cathy Barrick, director of operations at Renascent, a Toronto-based alcohol and drug treatment centre.

Mental health and addiction problems cost the Canadian economy more than \$30 billion annually in health-care costs and lost productivity.

“The bottom line is that [workers with addictions] are not as productive, they increase your liability by far,” said Barrick.

She added that the workplace is often the last place an addiction will be noticeable, but because the addictive process is progressive, it only tends to get worse over time.