

Benefits

CANADA

Sounding Board: Balancing employee, employer rights in return-to-work plans

Tony Culhane | January 15, 2018



When an employee returns to work after a disability, it can be a stressful and overwhelming time for the employer, the employee and the team as a whole, as they navigate the challenges of their new reality.

Employers may be anxious to have the employee back at work making up for lost time or productivity, or they may be fearful of the perceived liability of the disabled worker returning to the job. The employee may also feel anxious about the return, the workload and any changes that may have taken place in their absence, or they may have doubts about their ability to perform their normal duties. In addition to those overwhelming feelings, some employees

return to work while they're still in recovery. And co-workers may also feel affected if they were responsible for taking over tasks in the employee's absence or may feel resentful towards their accommodations.

Read: [Best practices for return-to-work committees](#)

In any case, there's a need to balance the rights of both employer and employee while simultaneously upholding work morale and productivity in the workplace. So, when is the right time for a disabled employee to return to work?

Each situation is unique but it will usually begin by the employee letting the employer know that they're ready to return to work. They may need to provide a letter from their doctor or health-care provider expressing that it's OK to do so. While they aren't required to go into detail about their disability, the employee is responsible for identifying limitations (in writing if possible) about any accommodations that they'll require in order to perform their duties.

Read: [What you don't know about your employee assistance program](#)

Most companies implement disability management solutions that involve human resources processes and protocols, as well as employee assistance programs.

Employers also have a legal obligation to accommodate employees with disabilities. The employer is required to make the necessary modifications to help the employee return to work and to perform his/her duties to the best of their ability. This includes supporting and implementing necessary accommodations (unless there is legitimate reason not to), seeking expert advice where necessary, playing an active role in providing solutions and maintaining confidentiality.

Managing return-to-work cases can often be complex. The duty to accommodate employees' circumstances is balanced with an employer's right to maintain productivity. Absences due to illness and disability are costly for businesses. Statistics from the National Institute of Disability Management indicate that between eight and 12 per cent of workers in Canada are absent due to illness or injury at any given time.

A proactive plan can be driven by either employer or employee and facilitates communication between the two parties. As part of a successful return-to-work plan, employers should help employees by:

- Maintaining open lines of communication;
- Providing support and understanding;
- Working with the employee to identify any barriers of returning to work;
- Working with the employee to identify ways to mitigate these barriers;
- Collaborating with the employee and/or medical professional to develop a return-to-work plan; and
- Monitoring and evaluating return-to-work plans to ensure a successful and easy transition.

Read: [How to bridge the insurer, physician divide in disability management](#)

There are many challenges to managing the intricacies of return-to-work cases. Employers must take into consideration the employee's right to accommodation, equality and privacy, while balancing their own right to maintaining workplace efficiency. It's always a good idea to be apprised of employee and employer's rights, obligations and entitlements in order to facilitate effective return-to-work measures.

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