Index

ABSENTEEISM

- active employment distinguished, 14
- attendance management policies, 32, 37, 63, 79
- defined, 32
- essential duty criteria, 82
- key elements to managing information, 106
- last chance agreements, 38
- long periods of persisting absence, 34
- persisting continuous absence,
 81
- persisting intermittent absenteeism, 36
- persisting total withdrawals,
 33
- pessimistic future prognosis,
 35
- scope of duty, 93
- substance abuse, 39, 75
- tackling the causes, 197
- • absenteeism rates and costs are on the rise in Canadian workplaces, 198
- • duty to accommodate curtails substantive use of

- historical attendance management programs, 197
- employer success in directing resources to tackle the causes of absenteeism, 204
- how costly is absenteeism for Canadian workplaces?, 206
- • source of rising absenteeism rates, 199
- • tracking the causes of absenteeism, 201
- unsuccessful accommodation initiatives, 34

ACCOMMODATION COMMITEE

- disability process protocol steps, 148
- establishing, 148
- expert input, 149

ACCOMMODEE'S REFUSAL TO FACILITATE ACCOMMODATION

- case law, position of, vii, viii, 3, 5, 19
- legitimate conflict re implementation of accommodation, 113

ACCOMMODEE'S REFUSAL TO FACILITATE ACCOMMODATION (cont'd)

- managing a refusal to facilitate, 106, 156
- obligation of good faith compliance, 132

CO-WORKERS

- assumption of burdens to facilitate accommodation, 9, 46, 56, 82, 135
- directly impacted employee, 135
- impact of limited understanding of accommodation, 138
- strategies to educate about accommodation obligations, 152, 159, 162
- workplace community generally, 134, 192

CREED

- bona fide religion, 87
- contractual terms not a barrier, 7, 88
- defining beliefs as religion or creed — beliefs sincerely held, 87
- prospective employees, 14
- scheduling, 60, 86
- strategies for effective accommodation, 51, 90, 100

DIGNITY, 8, 15, 18, 118, 299

DISABILITY

- absenteeism, see ABSENTEEISM
- accommodee's own job, 21, 25, 306
- availability of alternative work, 25
- beyond work areas or employer's facility, 78
- cross-bargaining unit accommodation
- defining "functional abilities" approach, 213, 224, 230, 272
- functional limitations conflicting with job requirements, 108
- "impact" approach, 3, 29
- management challenges and solutions, 175
- • disability management and the duty to accommodate, 176
- • impact of the duty to accommodate, 177
- • inaccurate or inadequate understanding of scope and sources of absenteeism, 177
- • inadequate strategies and ineffective tools, 178
- • medical component, 209
- • medical documentation challenge, 179
- • successful disability management, 176

INDEX

DISABILITY (cont'd)

- modified/light duties, xiii, 14, 18, 24, 28, 76
- no functional limitations, 74
- non-physical conditions, 70
- Ontario Human Rights Code, 69, 122, 259
- perceived disability, 33, 70
- physical conditions, 69, 70
- pregnant employee, see PREGNANT EMPLOYEE
- process protocol steps, 148, 153, 166
- psychological/psychiatric disabilities, 70, 72, 97
- statutory approach cause, 69
- worker's compensation, 411

DUTY TO ACCOMMODATE

- defined, 13
- • active employment versus absenteeism, 14
- • to whom is obligation owed?, 14
- • what is to be adjusted or modified?, 14
- disability-related absenteeism,
 32
- general principles of accommodation analysis, 15
- impact on workplace and employment policies, 4
- implementing the duty, 141

- defining successful accommodation management, 142
- • disability-related absenteeism, 153
- • organizational commitment and knowledge, 157
- • process requirements, 143
- • tools and strategies, 146
- managing the duty, 11
- organizational support and commitment, 10
- scope of jobs to be considered, 24
- unionized setting, 29
- wages and benefits, 28
- what is required, 20
- what is the duty?, 3
- who is affected?, 6
- • accommodee, 8
- • bargaining agent, 7
- • employer, 6
- • workplace community, 9

ESSENTIAL DUTY

- defined, 21, 36, 82, 299
- distinguished from nonessential duty, 21
- impact of Meiorin, 22

HANDICAP, see DISABILITY

IMPACT OF DUTY

- accommodee, 6, 8
- bargaining agent, 7

IMPACT OF DUTY (cont'd)

- employer, 6
- workplace community, 4, 9

INDIVIDUALIZATION

• defined, 8, 11

INFORMATION MANAGEMENT

- accommodee's failure to provide necessary information, 106
- communication in writing futility of telephone calls and messages, 108
- employer's interest, 108, 110
- impediments to accessing information, 107
- job description, 212, 231, 308
- letter to employee, 108, 407
- letter to medical advisor, 408
- management of medical information, 225, 328
- physical demand analysis, 111
- request form/questionnaire, 110

INTEGRATION, 19, 118, 149, 285

LAST CHANCE AGREEMENTS

- disability-related absenteeism, 38
- substance abuse (uncertainty as to scope), 39

MANAGEMENT OF ACCOMMODATION

- defining successful accommodation management, 142
- evaluating employer conduct in terms of Meiorin, 5, 144
- process linking process and substance, 145
- requirements, 143

MEIORIN

- essential duty, 145
- impact accommodation generally, 22, 41
- managing accommodation, 10
- process and substance, 145
- undue hardship, 45

MOST APPROPRIATE ACCOMMODATION

- assessment, 250
- characteristics of, 18
- obligations, 118
- relative benefits options, 19

MULTI-PARTY RESPONSIBILITIES

- accommodee, 101
- • communicate need, 102
- cooperate, 105
- • impediments to information access, 107
- • job description and physical demands analysis, 111
- • letter to employee, 108

INDEX

MULTI-PARTY

RESPONSIBILITIES (cont'd)

- • letter to medical advisor, 109
- • managing information needs, 106
- • medical information request form, 110
- • psychological disabilities, 103
- bargaining agent, see also UNIONIZED SETTING
- • facilitate accommodation assessment activity, 124
- • failure to comply with joint responsibilities, 131
- • implications for employer, 126
- • managing accommodation with a bargaining agent, 127
- • post-implementation issues, 132
- • scope of role and responsibilities, 122
- • source of role and responsibilities, 122
- • support for implementation of initiative, 125
- communication obligation, 105
- employer, 115
- • required assessments, 116
- obligation to facilitate reasonable accommodation initiatives, 112

- process, 99
- substantive outcome, 99
- successful management of, 100
- workplace community, 134
- • contributing to successful accommodation activity, 38
- • implications for the employer, 137
- • roles and responsibilities, 135

PREGNANT EMPLOYEE

- accommodation in another position, 85
- accommodation on the basis of disability or sex, 83
- undue hardship limit, 85

PROPORTIONALITY

• principles of, 16

SCOPE OF POSITIONS

- accommodee's own job, 21, 24
- beyond bargaining unit lines, 31, 78, 371
- bundle of tasks, 26
- modified/light duties, 76
- obligation to create job, 26

SPECIFIC ACCOMMODATION CHALLENGES

- age, 66
- context of accommodation, 74

DUTY TO ACCOMMODATE & DISABILITY MANAGEMENT

SPECIFIC ACCOMMODA-TION CHALLENGES (cont'd)

- • disability-related absenteeism, 79
- • functional limitations, 75
- disability, 68
- family status, 61
- pregnant employee, 82
- • accommodation on the basis of disability or sex, 83
- religious observance accommodation, 86
- • employer's role, 88
- • scheduling conflicts, 89
- • strategies for accommodation, 90
- substance abuse, 91
- • as disability, 92
- management in the context of equality rights obligations, 94

STAKEHOLDERS AND SUCCESSFUL DISABILITY MANAGEMENT

- achieving organizational culture supportive of disability management, 186
- programs and culture, 181
- required cultural elements, 185
- supportive climate, 182

TOOLKIT

- policies, guidelines, protocols, precedents, 241
- • guidelines
- accessing and managing medical input relevant to accommodation and disability management,
 322
- • accommodation and bundling tasks, 339
- • accommodation in the unionized workplace, 292
- communication and identification of accommodation needs,
 286
- compensation attending accommodation activity, 346
- permanent accommodation attending disability issues, 336
- • return to work accommodation activity, 342
- • roles and responsibilities, 270
- • working with the substantive standard for accommodation, 297
- • manager's guide to the duty to accommodate, 349
- • policies
- • accommodation policy, 246

INDEX

TOOLKIT (cont'd)

- • attendance management policy, 253
- • commitment to accommodation and accessibility, 245
- • information brochure, 265
- process protocols
- • accommodating disability issues, 375
- accommodation of nondisability-related issues (religious observance, age, family status, pregnancy)
- • employer and bargaining agent joint accommodation process, 399
- precedents and templates to support accommodation and disability management activity, 405
- • letters to attending physician
- • to cover medical input request in connection with persisting absenteeism, 425
- • to identify and assess potential accommodation issues, 429
- • to manage potential intermingling of accommodation and performance management issues, 433
- • letters to bargaining agent

- • to confirm accommodation initiative, 421
- to confirm termination where permanent, serious restrictions preclude viable accommodation activity, 423
- • letters to employee
- raising accommodation issue to encourage delivery of medical input, 407
- to confirm employee obligations in accommodation initiative,
 419
- • to confirm termination where disability frustrates employment contract, 426
- • to confirm termination where permanent restrictions preclude viable accommodation in the relevant workplace,
- • to manage absenteeism, 428
- • to manage potential intermingling of accommodation and performance management issues, 431, 432
- • to manage return to work process, 412

DUTY TO ACCOMMODATE & DISABILITY MANAGEMENT

TOOLKIT (cont'd)

- • who refuses to participate in return to work initiative, 413
- • with persisting absenteeism due to disability (over two years), 424
- letter to attending medical advisor encouraging completion of medical questionnaire, 408
- • letter to workers compensation board, 411
- • medical information request consent, 428
- • medical input questionnaires, 409, 425, 430
- • summaries
- • accommodation activity/initiative, 420
- • assessment of accommodation options, 416
- • assessment of other available position, 414

UNDUE HARDSHIP

- competing interests, 45
- factors outside limits, 54
- • business inconvenience, 55
- • contractual arrangements, 57
- • current abilities and risks, 55
- • employee morale, 56

- • floodgates argument, 54
- • third party preferences, 56
- key elements of evaluative processes, 49
- practical strategies to support successful approaches, 48
- shaping the limit, 49
- • cost, 50
- • health and safety, 52
- sliding scale of limit, 57
- what are the limits?, 44

UNIONIZED SETTING

- bargaining agent obligations — consent/support implementation, 7, 29, 122, 124
- employer obligation to communicate with bargaining agent, 125, 127
- scope of responsibility discriminatory work rule, 123
- seniority, 30
- uncooperative bargaining agent — documenting obstacles, 128
- union support required, 124