

Duty to Accommodate

Accessible Employment, Ability Management and
Workplace Accommodations



Objectives

What do you hope to learn from this session?



Accessibility Standard for Employment

Canadians with disabilities want jobs.



Almost half the job-ready Canadians with disabilities have post-secondary education.

Statistics Canada, 2016

Most workplace accommodations cost little or nothing.

Employers report the average one-time cost of accommodating an employee with a disability is \$500.



Workplace accommodations: Low cost, high impact. Job Accommodation Network (Updated 9/30/2018).

One in four Manitoba adults has a disability.



More Manitobans are aging into disability while still on the job. Over 120,000 seniors with disabilities, ages 65-69, reported they are still working.

Canadian Survey on Disability, 2017.

SAFETY FIRST

Accessibility Standard for Employment

Safety First!

Workplace Emergency Response Information

- Create emergency response information to help employees with disabilities stay safe during emergencies

Workplace Emergency Assistance

- Ask employees who require assistance during an emergency for permission to share information with individuals who agree to help

Accessibility Standard for Employment

WRHA
/Employees

Recruitment
and Selection

Letter of
Offers

Onboarding &
Insite

Performance
Conversations

OESH

Awareness
Week



**Manitoba
Accessibility
Awards**



International
Day of
Persons with
Disabilities

3 DECEMBER



**Disability Employment
Awareness Month**

AccessibilityMB.ca

Manitoba 






Manitoba
Access
Awareness
Week

Duty to Accommodate

What Experience do you have with DTA?

How comfortable are you with the duty to accommodate and workplace accommodations?

Rate Your Understanding

0	1	2	3	4
				
I am so lost.	I don't really get it.	I'm starting to get it.	I got this.	I could teach it.



Duty to Accommodate

Legal Obligation & Employer Obligation

The legal responsibility of employers to make every reasonable effort to accommodate employees with limitations or disability.

1. Law

2. The right thing to do



Duty to Accommodate

Goals & Objectives



Duty to Accommodate

What is a Job/Workplace accommodation?

- Adjustment/change to equipment
- Hours of work
- Job content
- Environment



Types of Accommodations

Duty to Accommodate

Environmental

- Lighting
- Ventilation
- PPE

Physical

- Changes to workspace
- Changes to work station
- Parking

Acquisition of, or modification to, equipment/procedures

- Zoom text software
- TTY for Deaf telephone users
- Change the presentation of training/tests

Job Restructuring/Task Modification

- Restrictions
- Improve accessibility in the area

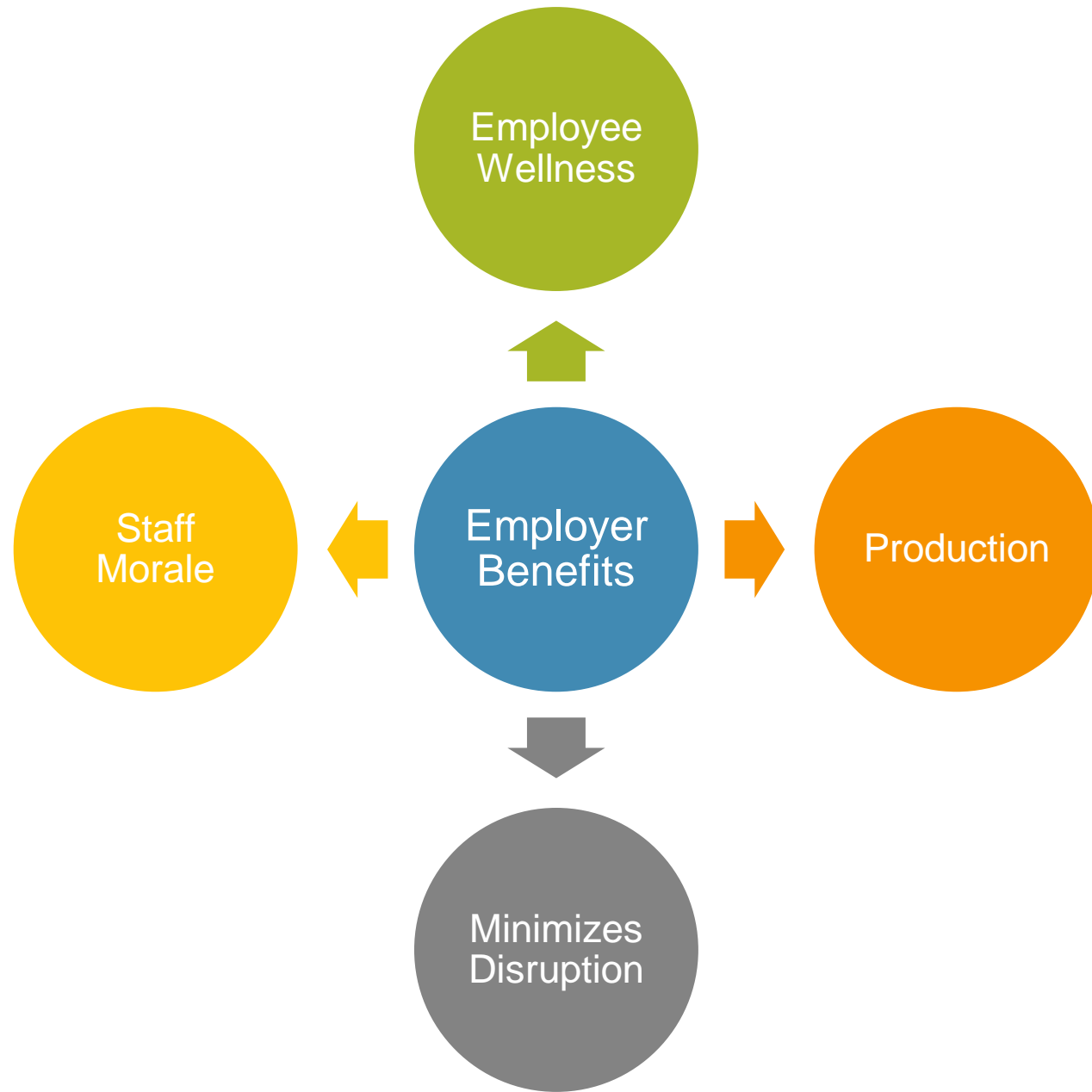
Re-arrangement of hours, work or location

- Work hours
- Department
- Assignment of duties



Benefits for the Employer

Duty to Accommodate



Benefits for the Employee

Duty to Accommodate

Employee Wellness

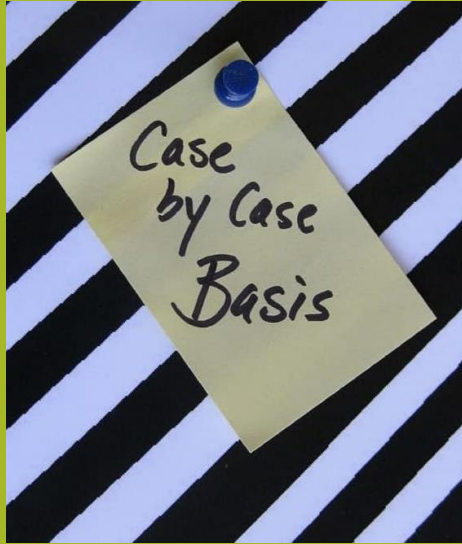
Speedy Recovery

Diminishes Family Impact

Diminishes Financial Impact

Employee Support





Duty to Accommodate

Each situation must be assessed on the basis of its own particular facts and circumstances.

Accommodation is **fact-specific and depends** on the circumstances of the individual employer and the employee at that point in time.



Balancing the
Accommodation

Duty to
Accommodate

BALANCING

ACT

Rights of employee
with special needs to
equal treatment

Rights of employer to
operate a productive
workplace safe for
employees and
patients



Accommodation Basics

Setting the Stage



Human Rights Legislation – prohibits employers from discriminating against employees with certain protected characteristics, including disability.



Employer – required to reasonably accommodate to the point of undue hardship.



“Disability” – physical or mental condition that prevents a person from participating in the workplace in an equal way

- Is permanent or recurring, as opposed to temp
 - Is beyond the employee’s control
 - Prevents the employee meeting a job requirement

Accommodation Basics

Setting the Stage

Employee Obligations	Employer Obligations	Union Obligations
Notify employer of existence of disability and need for accommodation	May be a duty to inquire where the employer has a reason to believe disability exists	Multi-party inquiry
Provide employer with information needed to understand how employee's disability affects the job performance	Obtain sufficient medical to make an informed evaluation of potential accommodations	Union has a duty to accommodate if it is a party to the discrimination
Accept reasonable proposals for accommodation	Determine how employee can be accommodated without undue hardship	e.g. if the collective agreement contract contains a discriminatory rule, the union may need to waive the rule to effect reasonable accommodation.
Participate in reasonable accommodation schemes	Offer reasonable accommodations to the employee (i.e. not perfect)	

Accommodation Basics

Setting the Stage – 2 Components

Procedural

- Requirements to take all reasonable steps to obtain required information to assess the employee's disability and to assess the availability of accommodation in the workplace.

Substantive

- Employer is required to offer appropriate accommodation to the point of undue hardship to allow the employee to fully participate in the workplace.

The employer must satisfy BOTH components

Obligation to accommodate to the point of undue hardship

Accommodation Basics

Setting the Stage –
An Accommodate
does not....

Entitle and employee to
their ideal or preferred
accommodation

Require an employer to
meet a standard of
impossible

Require and employer to
fundamentally alter the
employment contract



Place an employee in a
position for which they
are not qualified

Maintain an employee in
an unproductive position
or create new positions



Top 4 Barriers of an Accommodation



1. Insufficient Medical

When should we ask for medical information?

How much should we ask for?

2. Undue Hardship

Employer is only required to accommodate until the point of undue hardship.

Standard of undue hardship varies from employer to employer

Onus on the employer to show no reasonable alternative, short of causing undue hardship

It is a HIGH standard – but not impossible

Factors - cost, organization, safety, risk, interchangeability, operations & Collective Agreements

Top 4 Barriers of an Accommodation



3. Insufficient Documentation/Record Keeping

Why?

Human Rights legislation

Preserve Evidence

DOCUMENT,
DOCUMENT,
DOCUMENT

4. ARE WE THERE YET?

Employer is only required to accommodate until the point of undue hardship.

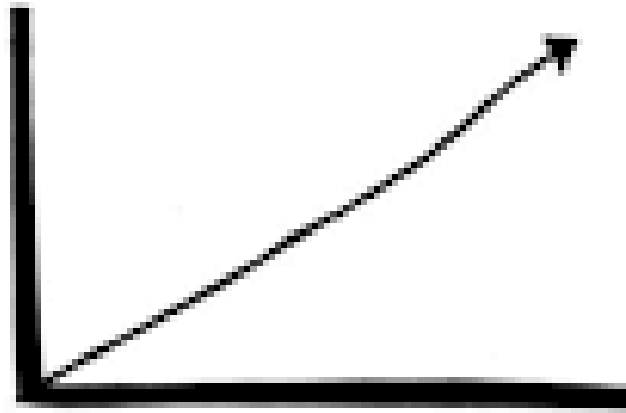
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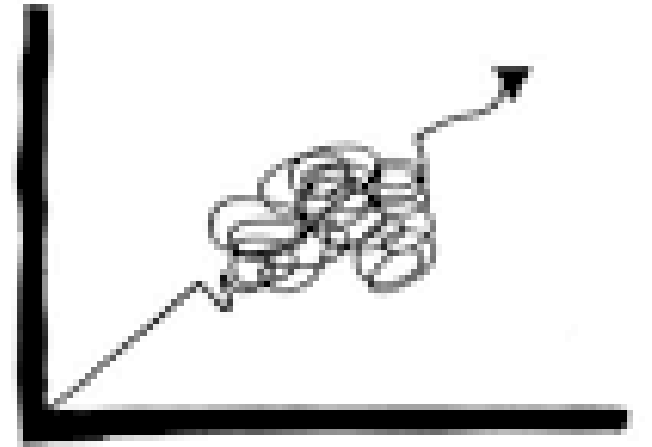
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Undue
Hardship/
Frustration of
Contract



Expectation



Reality

Questions?



The Process of Duty to Accommodate

Medical Accommodation

Inform

- Employee informs manager need for a medical accommodation: MEDICAL DOCUMENTATION
- INJURY NEAR MISS: WORKPLACE INJURY
- Due to a health concern it impacts their ability to perform full hours and duties. Modified duty form: restrictions/limitations. OR off work with duration

Referral to OESH

- OHN to triage medical, determine referral to Disability (can return with restrictions or off longer than 2 weeks)

Return to Work

- Return to work meeting with all parties
- Accommodate restrictions: modified duties/hours
- What insurers involved? WCB, MPI, HEB
- Do they have sick time? – Sick time is our Short Term Disability

Review, Updates, Return to full duties/hours

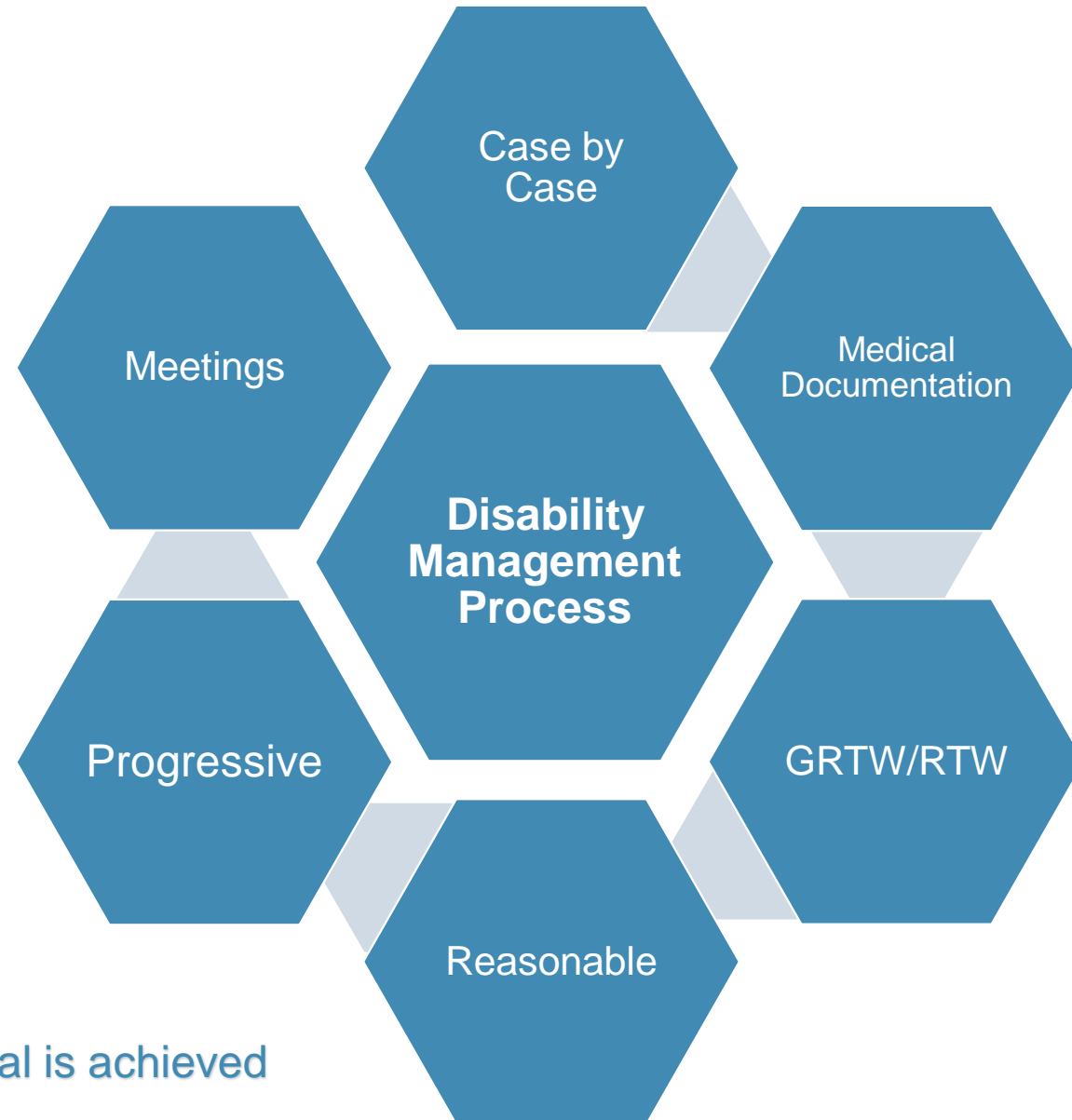
- If unable to return, Disability to follow up on medical updates
- Return to work plans created X amount of weeks, follow up meetings while accommodation continues.
- Medical to clear employee for full hours & duties

**When absence is greater than 2 weeks, provide employee with GRTW package, do a LOA form

The Process of Duty to Accommodate

Disability Management Process

WRHA/ SHARED HEALTH GOAL: For the Employee to return to pre-injury/illness occupational duties & full hours of work..



Accommodation is how the goal is achieved

The Process of Duty to Accommodate WRHA Hierarchy

Workplan

Nature of the injury/Illness

Nature of the restrictions

Duration of the restrictions

Nature of the job duties performed

Existing staff ratio, ability to redistribute job tasks

Availability of alternate positions where the employee could be placed

Requirements of 3rd party insurers

The ability of the employer to pay where no third party insurer exists

Hierarchy

Pre-disability job

Pre-disability job, with modifications

Alternate job, same classification

Alternate job, same class, with modifications

Alternate job, different class, same CA

Alternate job, different CA

Alternate job, different CA/WRHA Employer

Alternate job, different CA/WRHA Employer with modifications

The Process of Duty to Accommodate

Short Term vs. Long Term

Temporary/Short-Term

Able to reach their pre-injury status.

Light/modified duties for a short period of time.

Progressive return to work program.



Permanent/Long Term

Must perform core functions of the job (33%) and the essential duties.

Long-term and reviewed every 1-2 years.

No accommodation is "perm".

Significant medical condition or employee event

The Process of Duty to Accommodate

Employer Accommodation

Discuss

- Discuss with Employee/ HR and/or Management
- Agree on plan
- Clearly set out expectations/requirements

Document

- Document conversation and plan
- Ensure to add documentation to your employee file.

Revisit

- Always accommodate on short-term basis
- Re-visit situation no longer than 3 months
- Check-in to ensure no concerns

Terminate

- End accommodation if no longer required
- Terminate accommodation if concerns with the plan or if expectations not met.
- May need to revisit the need.

The Process of Duty to Accommodate

Employer Accommodations

Religious Beliefs

- Holiday observation
- Prayer or religious space
- Fit Testing & beards
- Reassignment of work
- Not wearing Headgear
- Dress code

Family Status

- Extension of maternity, parental or adoption leave
- Compassion Care/Caregiver
- Child Care

Pregnancy

- Clothing
- Break schedules
- Appointment time
- Nursing or other

The Process of Duty to Accommodate

Manager/Supervisor Responsibilities

Maintain contact with employee

Assist with medical information/documentation

Active participation in planning, supervising and monitoring RTW plan

Maintain confidentiality

Foster a work environment supporting accommodations of employees

Follow site specific reporting structure

Document and maintain records



The Process of Duty to Accommodate

File Closure

Recovers and returns to full regular duties/hours

Employee's restrictions do not preclude full regular duties/hours

Employee is permanently accommodated into an alternate position consistent with medical restrictions

The limit of Undue Hardship is reached





**BREAK
TIME!!!**

Situations - Duty to Accommodate?



An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing."



An employee tells his supervisor that he would like a new chair because his present one is uncomfortable.



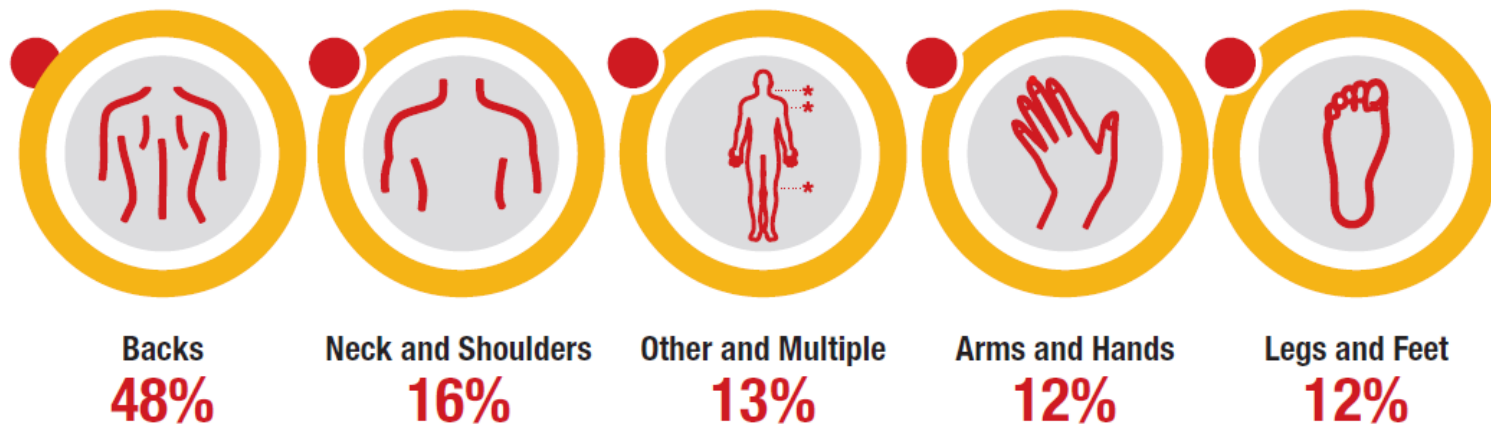
An employee says "I cannot work in the Admitting Department during the day as it is too busy and distracting and I may need to work from home now".

Medical
Accommodations
Injuries/Illnesses &
Physical

**Injury
Prevention
is Key**



BODY AREAS OF TIME LOSS MSIs:



Note: Multiple typically includes back injuries therefore there are more back injuries than other injuries combined.

WCB costs for total MSIs averaged \$35.7 million a year in 2019 (in MB)

Medical Accommodations

Injuries/Illnesses & Mental Health



DID YOU KNOW?



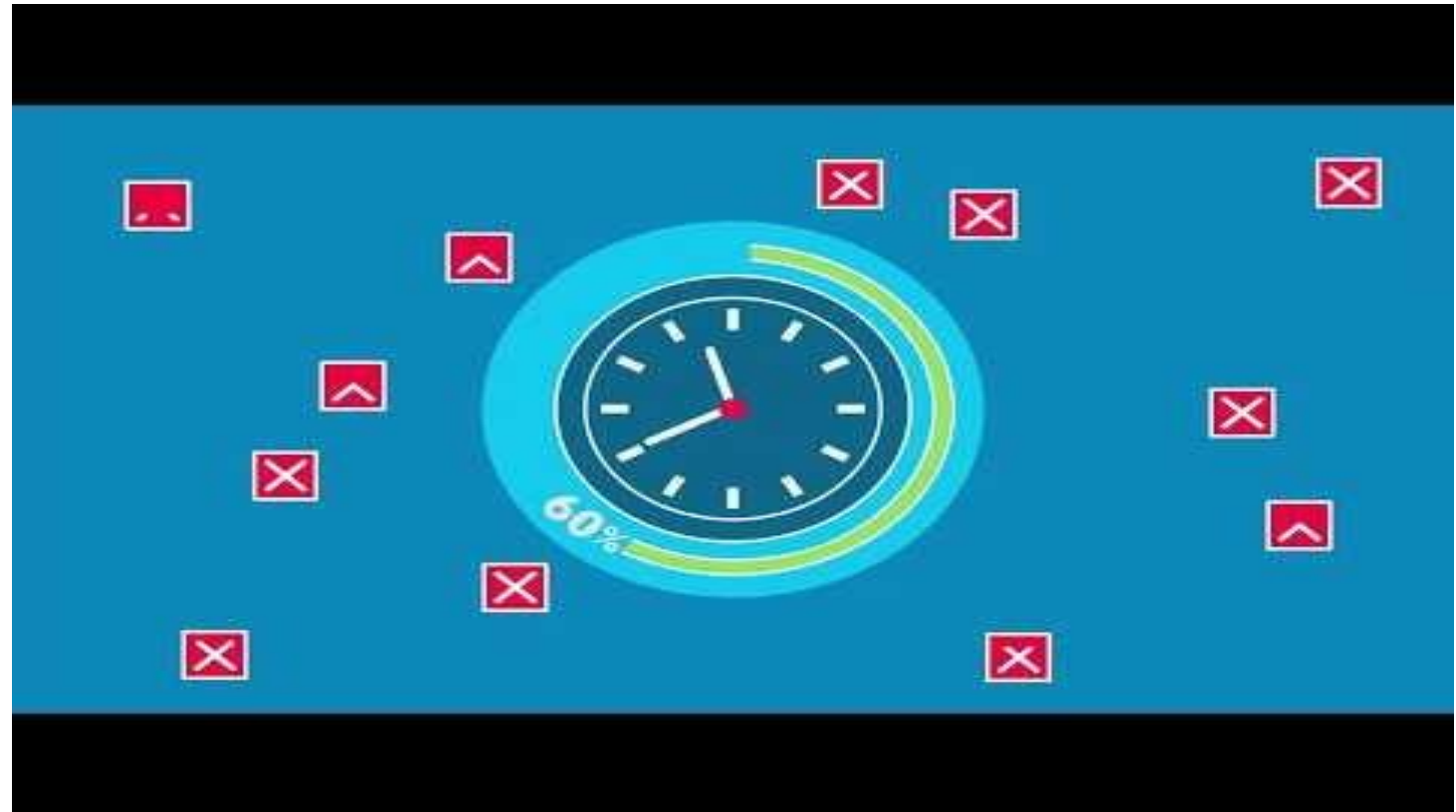
Mental Health
Commission
of Canada

Commission de
la santé mentale
du Canada

National Standard of Canada for Psychological Health and Safety in the Workplace (the Standard)

Medical
Accommodations

Workplace
Injuries/Illnesses &
Mental Health



Medical Accommodations

Costs of work related Injuries/Illnesses Comparison

Case #1

Disc Injury at work – RN with
BN:

- Injured at work in 2005
- No lifting greater than 10 lbs – not permanent
- “Can’t Accommodate” so WCB retrained
- Full Benefits during 4 years University
- New job obtained 6 years after injury
- New salary lower so WCB “top up” provided
- August 2019 = \$353,000 and still accumulating

Case #2

Disc Injury at Work – RN

- Injured at work – April 2015
- Permanent accommodation required, with multiple restrictions initially, including no lifting over 10 lbs.
- Accommodated on different unit with graduated return to work plan and chair - September 2015
- Alternative permanent job meeting restrictions was identified – trial period with modified duties
- Successful trial = return to payroll in October 2015
- As of August 2019 – no recurrence - \$13,400

Real Cost Of Injury / Illness

Compensation

Medical Rehabilitation

**\$1.00
Insured
Costs**

**Up to \$50
of Hidden Costs**

To Employee

To Employer

To Society

Lost Productivity

Increased demand on Social Safety Net

Psychosocial Impact

- Self worth
- Identity
- Social networks

**Family
Disruption
& Breakdown**

Back filling / Replacement

Recruitment / Orientation

Management Time

Workplace Stress

Supervisory Duties & Responsibilities to Occupational Safety & Health within Manitoba Healthcare Regions

Manitoba Workplace Safety and Health Act and Regulations Requirements



As a Manager/ Supervisor, What Am I Responsible For?

Workplace Safety & Health Legislation

Responsibilities/Duties

Worker Rights/ Responsibilities

Right To Refuse Dangerous Work

Workplace Injury/Illness Reporting

Discriminatory / Protected Worker Actions

Inspections/Investigations – Completing INM's

Violence Prevention Program



What is a Supervisor?

Definition:

- Means a person who has charge of a workplace or,
- Authority over a worker
- Directs another worker in **any** way
- Job title doesn't matter



Supervisor Key Responsibilities

- Understand the Legislation
- Plan for Safety
- Participate in inspections & investigations
- Train and inform workers of hazards
- Enforce safe work procedures
- Documentation
- Co-operation with all (OESH, MB Branch Officer, WS&H Committee, etc.)
- Allow staff that are WH&S Committee members time to attend all meetings and conduct inspections (Emergency & Scheduled)

Its not a choice!



Duties of Supervisors

- Ensure that a worker works in the manner and in accordance with the procedures and measures required by the Act and Regulations
 - Monitor workers, document results and corrective action taken
 - Consistent enforcement of procedures
 - Performance feedback

These are but a few of the responsibilities under Manitoba Safety and Health Legislation, that affect you as a manager or supervisor. Contact OESH for more information at oesh@wrha.mb.ca



Accommodation vs. HR Process

Performance Management & Need for Accommodation

Performance Management may Uncover a Need for an Accommodation

- **Coworker feedback and/or concerns**
- **Sudden drop in attendance / increase of sick time**
- **An increase in lateness**
- **Sudden changes to behavior(s)**
- **Usually poor work performance**



Accommodation
vs. HR Process

Performance
Management &
No
Accommodation

Performance Management When No Accommodation Wanted and/or Needed

- Employer has the obligation to offer supports, recommend supports and/ or options if an accommodation or medical may be a cause or factor.
- If Employee does not wish to disclose or confirms no accommodation is required then proceed with performance management.
- If Employee performance concerns unrelated to medical, separate the 2 situations and address separately.
- **Document and proceed



Accommodation Reminders



Equal treatment does not mean identical treatment.

Follow the process and attempt all possibilities – Employer commitment



Positivity creates employee morale and support

Communication – Clear and open=Success

It's the RIGHT THING TO DO



Case Studies Accommodation Situations



Case Studies

use these questions to guide your discussion

1. What are the issues that need to be addressed?
2. What is your course of action as a manager?
(beginning, middle, end)
3. Who all needs to be involved in this scenario? Is there an insurer?
4. When the employee is able to start a return to work:
 - a. What information do we need? How do you get it?
 - b. What other steps need to take place?

Case Study #1



- Danielle is a general duty nurse with satisfactory performance and regular attendance. She has been employed for 11 years.
- However, 7 months ago she injured her right shoulder at work when assisting a patient, and she has been off-work since. She has been receiving therapy, and the injury has been healing slowly. WCB has provided restrictions for her to begin a return to work.
- In recent conversations, she has reported some difficulty sleeping. When discussing a return to work on modified duties, Danielle began to cry and said, “I can’t even comb my hair.”

Case Study #2



- Sally is a 39 year old nurse who works in an Intensive Care Unit. A regular audit of the Narcotic Control Records indicates a discrepancy on each shift which Sally worked for the last 3 months.
- Furthermore, Sally has been attending work with glassy eyes and disheveled appearance. Co-workers are often unable to locate her during her shift. At a meeting with the nurse, union, management & HR, the nurse admits she has been taking narcotics for her personal use for the past several months.

Case Study #3



Maria is a Administrative Assistant who provided a medical note from her psychiatrist that she could not continue to work as an Administrative Assistant and required to work in a different area that was less stressful.

There were also prior performance issues.

Case Study #4



- Tara is a full time Home Care Nurse who enjoys her job especially socializing with her clients while she performs her duties.
- 6 months ago Tara had to take a sick leave from work due to chronic back pain. A modified duty form has now been provided advising she can return with “light duties” at a 0.6EFT capacity.

Case Study #5



- Donna is a Pharmacy Technician.
- Over the past 3 months you have noticed some performance changes; sick time increase, arriving late and not always having lunch with coworkers.
- There have been made aware of 2 complaints regarding work errors and when discussed with Donna, she states everything is fine and that was just a bad day.
- The following week, you observe Donna nodding off on her breaks and an increase of errors with her work.

Case Study #6



- Jake is a Security Guard who was assaulted while at work. He obtained minor injuries and has been placed off work due to the mental stress and trauma of the event.
- His medical note advises he is to remain off work for one month but can return gradually in a different position.



Open for Discussion

Any accommodation questions or situations for discussion?



- Thank you for participating in
 - *Duty to Accommodate & Ability Management*
 - *for Managers*
 - For related resources visit the OESH website:
 - <https://professionals.wrha.mb.ca/old/professionals/safety/>