Employees With Disabilities Network – Duty to Accommodate presentation

Thursday, December 3, 2015

Action Items

Introduction – Andre Demers, interim Co-chair, Employees with Disabilities Network

Introduction – James Gilbert, Champion, Employees with Disabilities.

Points brought forward by Mr. Gilbert included that even when redesigning the departmental template with the election of our new Government, it was discovered that it was not correct for use for persons with some visual disabilities, as well as that employee frustration is often a feeling that they have more to give, but are not getting the chance to do so.

Introduction – Jeff Willbond, interim Co-chair, Employees with Disabilities Network

Introduction – Lucienne Azzie, Disability Management Consultant

Presentation on Duty to Accommodate:

Key purpose – In accommodating we are trying to level the playing field and help people to reach their full potential.

We must always ask 3 questions:

1. Can an employee perform the job as it currently exists?
2. If no, can an employee perform the job in an accommodated form? This could include modifying duties, sharing tasks, providing aides or equipment, etc.
3. If still no, can an employee perform ANOTHER job in an existing OR modified form?

Important to note with these questions is that although an employer must make all reasonable efforts to accommodate an employee, an employee must also make all reasonable efforts to be accommodated, and an employer is not required to create, or maintain, a non-productive position.

There must be a balance between the rights of the individual and the rights of the workplace and/or employer.

Undue hardship is also not always financial. An example given was a case of an inspector who developed tremors or seizures. If this inspector was required to handle potentially dangerous materials, a seizure could put many other people at risk. In this case, accommodating this employee in his/her existing position might qualify as undue hardship because of the health or security risk to other people, but a modified job where this employee did not handle dangerous materials might be an option.

It was noted that, in determining both the need for, and the implementation of, accommodation, there are three main parties involved:

1. Treasury Board – employer
2. ESDC – employer
3. Employee

It was noted that once a need for accommodation has been identified, management CAN consult with medical practitioners to determine an employee’s functional limitations. Management cannot seek a diagnosis, or any information not directly relevant to the functional limitations of the affected employee.

It was noted that there is a requirement for accommodations to be addressed quickly, but no clear, concrete definition of quickly could be provided as accommodations vary in complexity and requirements.

QUESTIONS/COMMENTS

How can we ensure information is more widely circulated and encourage people to read it?

The implementation of the Mental Health Framework should help to de-stigmatize mental health related disabilities, and allow for discussion.

Many employees with mental health related disabilities feel shame. There is a need to create a safe place. There is a need to educate. Often employers are not aware of basic information regarding mental health conditions (e.g., when will your epilepsy go away).

To what extent does an employee NEED to go when providing information? There appears to be some redundancy, providing the same information multiple times as management or supervisory staff change, and employees need to start at the beginning again.

How can accommodations be made more effective? How can we do better research into proper devices etc., instead of sending out multiple items for an affected employee to “try”? Suggestions: The Accessibility Centre of Excellence in IITB has such a service in place.

SUGGESTION was made to establish a working group to list “pain points” on Duty to Accommodate from an employee point of view.

Frustration was expressed with an extremely slow timeline to accommodate, and what appears to be a lack of ownership, with regard to making certain necessary programs accessible. The affected employee reports getting a response of “that’s Java’s fault, not our fault” internally, but assigning fault doesn’t fix the issue.

The majority of these questions have addressed an employee being able to do a job, period. How does Duty to Accommodate apply when an employee is able to do the job, but at reduced capacity (e.g., 75%, 80%, etc.)? If medically addressed, will DTA allow for this to be considered in things like performance reviews, and have that lowered productivity not create a negative report for the affected employee?

Re the above question, a further question was asked as to whether there is any case law surrounding this, and what constitutes unproductive?

A concern was raised by a couple of term employees who felt that if they asked for any accommodation, they were less likely to have contracts extended.

A request was made to have a review done of cases where a request for DTA was made and employment action of some sort was taken. It was identified that this was a reasonable request, but that it might best be achieved through making the request through the Union.

It was pointed out that, in the new Mandate Letters which were recently released, there is expected to be the development of a Persons with Disabilities Act.

It was pointed out that, although we strive to have a positive relationship with the Union, and although we strive to work hand in hand, many answers in this meeting involved a suggestion to follow up with the Union, and it is important to note that the burden is also on management to research, and to be aware, and to not depend on the Union.

PSAC general inquiries number to call if you do not know the name and contact information for your local union representative: 1-888-604-7722.