



# LABOUR LAW BASICS

## A PRIMER FOR SUPERVISORS

Evans, Philp  
Barristers and Solicitors  
One King Street West  
16th Floor, Commerce Place  
Hamilton, Ontario  
L8P 1A4

BRENT J. FOREMAN

EVANS, PHILP

# TOPICS

- I. ABSENTEEISM AND ATTENDANCE MANAGEMENT
- II. CULPABLE ABSENTEEISM
- III. NON-CULPABLE ABSENTEEISM
- IV. DUTY TO ACCOMMODATE
- V. PERFORMANCE MANAGEMENT AND DISCIPLINE
- VI. PROGRESSIVE DISCIPLINE
- VII. BEST PRACTICES IN REGARD TO DISCIPLINE
- VIII. THE COLLECTIVE AGREEMENT
- IX. LEGISLATION

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## I. ABSENTEEISM, ACCOMMODATION AND ATTENDANCE MANAGEMENT

- fundamental distinction between “*innocent*” absenteeism and “*culpable*” absenteeism
- discipline appropriate only for “*culpable*” absenteeism
- only non-disciplinary responses are appropriate for “*innocent*” absenteeism

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## II. CULPABLE ABSENTEEISM

- a “*culpable*” absence is an unjustified or unjustifiable absence from work
- examples: failure to call in, absence without permission or for improper reasons, arriving late or leaving early without permission or proper justification, etc.
- typically dealt with by way of progressive discipline

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### III. NON-CULPABLE ABSENTEEISM

- includes absences due to legitimate illness
- employer has *right* to take reasonable measures to “*manage*” the absence and to make employee “*accountable*”
- measures may include reasonable requests for medical notes, requiring regular reporting if absence lengthy, counselling or coaching to assist employee to improve attendance level, etc.

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### III. NON-CULPABLE ABSENTEEISM

- documentation is important at all stages
- accommodation may be necessary
- in extreme cases, non-disciplinary termination may ensue on basis of “*frustration of contract*”

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## IV. DUTY TO ACCOMMODATE

- employer has *duty* to accommodate disability
- employee and union have *duty* to *cooperate* in the search for an appropriate accommodation
- employer has right to know limitations and restrictions but not necessarily the diagnosis

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## IV. DUTY TO ACCOMMODATE

- Disputes regarding adequacy of medical documentation are increasingly common: strategy, patience, perseverance required
- the employee's/union's *preferred* accommodation is not necessarily the accommodation that the employer must implement
- documentation is important at all stages



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## IV. DUTY TO ACCOMMODATE

- absences due to “*stress*” are particularly challenging and require careful strategy
- alcoholism and drug addiction are disabilities – i.e. accommodation may be required
- however, alcoholism/drug addiction does not necessarily excuse employee from discipline or termination for misconduct such as drinking/drug use on the job, safety infractions, violence, etc.

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## V. PERFORMANCE MANAGEMENT AND DISCIPLINE

- actions by supervisor to assist employee to meet standards for performance and/or conduct
- such actions may be non-disciplinary (i.e. coaching or counselling) or disciplinary (generally a warning, unpaid suspension or termination)
- documentation is a key component of both (including “*verbal warnings*”)

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## VI. PROGRESSIVE DISCIPLINE

- progressive discipline should be applied unless misconduct is especially serious or collective agreement and/or posted company policy clearly set out specific penalty that has been communicated to employee in advance
- the theory:
  - ➔ 1. by progressively increasing severity of disciplinary sanctions for misconduct, employee will be encouraged to reform
  - ➔ 2. employee is warned of consequences of repeated misconduct (i.e. failure to reform)

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## VI. PROGRESSIVE DISCIPLINE

- the key underlying principles:  
deterrence, correction and  
rehabilitation
- documentation is important at all  
stages

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## VII. BEST PRACTICES IN REGARD TO DISCIPLINE

- thoroughly investigate before imposing discipline
- obtain signed witness statements where appropriate
- give the employee an opportunity to explain his/her side of the story

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## VII. BEST PRACTICES IN REGARD TO DISCIPLINE

- allow union representation for employee
- ensure that *all* grounds are covered when imposing discipline
- document, document, document!

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## VII. BEST PRACTICES IN REGARD TO DISCIPLINE

- avoid “parallel streams” of discipline resulting in lengthy disciplinary record comprised of multiple low level disciplines
- “*culminating incident*” can justify termination for relatively minor incident in cases where employee has multitude of minor infractions
- use probationary period wisely -problems during probation typically do not go away

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## VIII. THE COLLECTIVE AGREEMENT

- managers have the right to manage in all workplaces, whether union or non-union
- the collective agreement does not remove the right to manage – it only spells out the limits or restrictions upon that right



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## VIII. THE COLLECTIVE AGREEMENT

- if the collective agreement does not say you “can’t”, then you “can”, subject to the duty to act reasonably and lawfully
- it is important to read and understand the collective agreement – do not assume that the union steward understands it (even if he/she claims otherwise)

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## IX. EMPLOYMENT LEGISLATION

- if a collective agreement clause does meet the requirements of any relevant employment legislation, the legislation takes precedence and the collective agreement clause is unenforceable
- if a clause in the collective agreement exceeds the legislative requirements, then the collective agreement takes precedence

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## IX. EMPLOYMENT LEGISLATION

- key employment legislation includes the *Employment Standards Act* (“*ESA*”), the *Ontario Human Rights Code* (“*OHRC*”), the *Ontario Labour Relations Act* (“*OLRA*”) and the *Occupational Health and Safety Act* (“*OHSA*”)
- the *ESA* covers hours of work, overtime, pregnancy and parental leave, emergency leave, etc. – emergency leave in particular can give rise to issues on a daily basis

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## IX. EMPLOYMENT LEGISLATION

- the *OHRC* is relevant to issues involving disability and accommodation as well as discrimination on grounds identified in the *OHRC* such as gender, age, religion, ethnic origin, etc.
- the *OLRA* covers issues related to rights related to representation by unions
- the *OHSA* addresses safety in the workplace