



ACCOMMODATING DISABILITY ...

The traditional model for human rights in Ontario was developed during the 1960's. At that time, discrimination was viewed mostly as an isolated problem that had to do with racial and religious bias. Obviously, we've moved way past that but the basic mechanisms for addressing complaints hasn't changed much. Add to that an almost universal feeling among employers that the Ontario Human Rights Commission (OHRC) is a mean-spirited bully and we have a situation that isn't very productive.

One of the areas affecting employers most these days is the accommodation of workplaces to suit various levels of disability among their employees and their customers. Witness the two movie theatres soon to be closing in Toronto because, they say, the cost of renovations to accommodate wheel chairs cannot be supported by the revenue the theatres generate. The owners argued there were adequate facilities at other theatres very close to theirs but when the OHRC ordered the renovations anyway, the owners decided to hang up their projectors and call it a day.

In This Issue ...

- 1 - Accommodating Disability
- 2 - Minding the store
- 3 - NewsBits
- 4 - Attendance Enhancement 101
- 4 - Shameless Sales Pitch

Workplace accommodation for employees is another matter altogether because the *Ontario Human Rights Code* isn't the only legislation most businesses have to satisfy. There is also the *Workplace Safety and Insurance Act*. The approach of these two pieces of legislation is pretty much identical ... except that each has coverage over areas that the other doesn't, they are not administered by the same institutions, they have different focus and different goals. It isn't any wonder that a business owner feels compliance is as much a matter of good luck as good planning.

Much of the OHRC policy comes from case law. The Courts have ruled repeatedly that all parties in an employment disability situation have responsibilities for accommodation of disabled employees. Employers are required to accommodate up to the point of undue hardship, unions have a duty to be proactive, and employees have (at least we believe they do) some duty to mitigate their own situations by accepting reasonable efforts to accommodate them.

The notion of 'undue hardship' can be a bitter pill to swallow. According to the OHRC, the only things that can be taken into account when

SO WHAT'S A DISABILITY?

Now there's a loaded question. Essentially, it's whatever a person is able to convince someone else it is. The Ontario Human Rights Code has a pretty open ended definition that essentially says a disability is anything that disables you. The Workplace Safety and Insurance Act doesn't define it at all. Yet one prosecutes employers for not accommodating it and the other issues insurance benefits to individuals who apparently have it.

If you live in the United States, your Supreme Court has recently ruled that just because you aren't physically able to do your job, it doesn't mean you're disabled.

For a fuller discussion, see our website.

(Continued on page 2)



42 is a publication of The Working Solutions Company. All rights are reserved.

All information contained in 42 is accurate at the time of publication, to the best of our ability to verify. This newsletter is published every six weeks and is distributed free of charge. Readers are encouraged to pass it along to colleagues and friends. The use of material or articles appearing in 42 is permitted on the condition that you advise us you have done so and that you acknowledge us as the source.

(Continued from page 1)

determining undue hardship are: cost, health and safety matters, and outside funding. And when they talk about cost, they really mean costs that are just short of forcing the business to close. The price tag for the accommodation of some disabilities can be staggering.

Now before anyone misconstrues, we are *not* saying that any of this is a bad thing. It seems to us that one of the hallmarks of a progressive and civilized society is the steps we take to address the needs of our weaker members. And it's a damn shame that our society feels the need to compel that sort of public caring — but that's the way it is folks, we aren't nearly half as civilized as we tell ourselves.

So governments have given us enforcement bodies to make sure we all treat one another as though we *really* cared about one another.

But any employer who has ever had to face the OHRC (or some of the darker elements of the Workplace Safety and Insurance Board) can tell you there is no comfort to be found. Rulings often appear to be arbitrary, contrary to other decisions that all common sense would say were identical circumstances. And the effects of two bodies administering two sets of rules designed to achieve essentially the same thing enhances the inconsistencies. It is also uneven for the reason that not everyone gets to have the benefits of both pieces of legislation.

There is no question we are still far too uncivilized to address the needs of disabled people without being forced to do so. But maybe it's high time we had a real hard look at how seriously we want to care for the needs of people who might otherwise be shortchanged by life. It's pretty hard to believe that we're doing an effective job of it right now — either from their perspective or those who are the potential violators.

MINDING THE STORE ...

Employers have traditionally given more attention to reducing workers' compensation costs than other kinds of absenteeism because it has such a visibly high price tag. On average, however, work-related injury claims only account for about 30% of lost time. There are *huge* costs related to non-occupational disabilities (STD and LTD). There is no question that these can be quite difficult to accommodate since you don't have the clout of the *Workplace Safety and Insurance Act* to use as a hammer.

Consider this: *

- ◆ about \$12-\$15 billion is the annual ticket for non-workers' compensation disability claims in Canada
- ◆ employers report an average of 9.2 lost time days per employee (not including any scheduled time off)
- ◆ a major shift to psychological conditions is in full swing (carpal tunnel syndrome is yesterday's news)
- ◆ STD costs doubled between 1997 and 2000
- ◆ LTD premiums increased 17% from 1999 to 2000
- ◆ between 1997 and 2000, absenteeism and overall disability costs for Canadian companies has increased by 27% and has gone from about 2% to 4.2% of payroll
- ◆ independent studies have shown that STD costs are 50% higher when there is no early intervention

So what's the cause? According to the sources of the numbers above, it appears to be largely that people hate their jobs. The surveys showed that people complain about poor communication in the workplace, little or no control over how and when the job gets done, major resentment at being too overworked to actually have a life outside of work (see cartoon on front page). And there is a steady and rapid increase in subjective conditions such as burn-out, fibromyalgia, chronic fatigue syndrome, sleep disorders, etc. with some experts saying the workplace is the main culprit.

And the cure? Well, you could fire them all. But you'd only end up replacing them with more of the same. So perhaps the easiest thing is to just try to address some of the concerns.

There are many factors that delay a return to work, varying from lack of specialized expertise within companies to handle complex disabilities, not considering accommodation for non-occupational disabilities a priority, no performance standards set with insurance carriers, down-sizing and layoffs, and so on.

Experience over many years has shown that the success of any return to work program diminishes with the length of time off. Even more, common sense shows that return to work will be delayed if no one is *making* it happen.

*Source: Sun Life Financial Report 2001, Benefits Canada, Watson Wyatt Staying @ Work 2000.

NEWSBITS ...

WSIB Premiums — Although preliminary rates for 2002 were published early in the fall, we all know the economy melted and September 11 happened. All of this caused the WSIB to retract their preliminary rates and reconsider.

When the rates were finally confirmed, guess what — they went up. (Anybody who didn't see that coming can stay after class and clean the chalk brushes.) But it could be a lot worse. They didn't go up very much. In Alberta, the WCB's rates have gone up an average of 27.3%. Now *that's* a prairie clipper.

Hangover Coverage — You aren't going to believe this one. What do you do for a hangover? Orange juice? Aspirin? How about applying for workers' compensation?

In South Korea, rules that will become effective in March 2002 will expand the scope of work-related conditions covered by their industrial accident insurance program. Apparently, late-night carousing with the boss is common in South Korea's corporate culture as a tactic for getting ahead. And illness caused by work-related drinking is to be treated as an industrial accident. Really.

The coverage will even extend to liver disease caused by drinking with the boss.

It's all part of a 'new and improved' workers' compensation system that will see coverage extended as well to stress, depression, and death caused by overwork.

Workers' Compensation Harder to Get — In the United States, where workers' compensation is mostly managed through private insurance, coverage is becoming tough to find. Yet another fallout being blamed on September 11.

It seems that insurers suddenly had it hit home to them that even in offices where there are not a lot of serious accidents likely to occur, there are large concentrations of covered workers who could sustain sudden catastrophic injury or death. American workers' compensation insurance carriers are estimating that September 11 is going to cost them at least \$40 billion.

Some insurers have already decided they will stop offering coverage to large employers while others are declining applications where there is any single location with more than 100 employees.

How well could any of the Canadian workers' compensation boards weather the level of injury, death and destruction in New York, Washington, and Pennsylvania?

B.C. Study Implies Young Workers are Fools — And who are we to say they are wrong.

They released a study in January 2002 that shows there is a high level of damn fool acts behind many injuries sustained by young people in that province.

The study couldn't find any single cause (such as exact age, social background, income levels) except one — gender. Young males (bet that didn't surprise you) clearly take deliberate risks at work. There appears to be some element of machismo, with deliberate risks being taken in order to show off their competence, enhance their image, or just for the 'rush' they get from living on the edge.

B.C. WCB Sued by Workers — The Supreme Court of British Columbia has been given a suit filed by a group called the Public Advocacy Society (PAS). They claim to represent about 300 injured workers who allege they have suffered hardship because of the workers' compensation appeals process. PAS believes they will eventually get about 4,000 workers to sign on.

Their claim is that the appeals staff at the WCB are, essentially, inept and that these plaintiffs have suffered physical and emotional distress as a result.

We won't comment on the ineptitude (or not) of the WCB's staff but their legal people don't seem to be too worried about the writ. They claim it is too vague to support a lawsuit. Note that isn't the same thing as saying it has no merit.

If successful, this suit could send tsunamis throughout the workers' compensation administrations of this country. **Working Solutions** deals with all of them and while we have some (mostly minor) complaints, what we notice overwhelmingly is the similarity in competency levels among the various boards and commissions. So if one them is found to be guilty, we presume they're probably all going to find themselves in the same pickle.

WSIB Moves to Expand Assessment Base — The Workplace Safety and Insurance Board issued this week a discussion document entitled '*Coverage Under the Ontario Workplace Safety and Insurance Act*'. This has been expected for some time.

The paper discusses the nature of coverage in Ontario — who is, who isn't, who can be and who can't — and the problem of establishing what sort of business a company might be. There are a lot of vague areas owing to the variances between Schedules 1 and 2 (and the ability for some employers to slip back and forth between them), new types of business that have arisen in recent years, new ways of doing business (such as the prevalence of telecommuting).

The paper takes a look at how coverage could be extended to many industries not presently afforded benefits. There is only about 62% of Ontario's workforce currently covered under the Act, a much lower ratio than in any other province. That provides for unequal protection for workers (and employers) but it also seriously limits the dollars the WSIB could collect in premiums. Remember, they are presently required to ensure health and safety in businesses they don't actually cover.

It is their intent that there will be changes — the status quo does not appear to be an option — and they are aiming for 2003 as a start date. They are inviting submissions from interested groups but you only have until March 28, 2002.

ATTENDANCE ENHANCEMENT 101 ...

With the increasing attendance to the bottom line of businesses everywhere, it isn't surprising that there have been so many articles over the past few years addressing the issue of absenteeism. It's a \$12-15 billion problem for Canadian business.

And it isn't just that people cost money when they aren't at work. They also don't *do* any work so there's a drop in overall productivity. It doesn't really matter whether they make widgets, build skyscrapers, or collect parking fees — if they aren't there, they aren't doing it.

A positive Attendance Enhancement program, well planned and well implemented, has a significant number of benefits to recommend it. Among the positive effects of a well orchestrated attendance enhancement program might be the following:

- ◆ Improved productivity
- ◆ Improved customer service
- ◆ Would ensure that absences beyond the norm are addressed
- ◆ Problem areas can be quickly identified
- ◆ Early detection of absenteeism problems enhances the ability of intervention programs to get on-line sooner
- ◆ Places responsibility for managing the process with the frontline manager or supervisor where it belongs
- ◆ Readily identifies patterns of absenteeism
- ◆ Provides accurate cost tracking
- ◆ Could help in identifying potential problems with the job itself

The real issue is that, like most things, if it isn't measured it doesn't get counted. Now, we're not talking about micromanaging here. We're talking about the expectation that a pay cheque is a good incentive for coming to work. We're talking about making positive changes to the workplace that encourage rather than

discourage attendance. Not special rewards for doing what you're being paid to do, just regular evidence that the employer actually cares that you show up every day, that they care when you don't, and that they'll try to help you through sickness and injury because you're valuable to them.

But most of all, we're talking about employers taking charge of their workplaces. Those employers who are mandated in their province to have coverage under the local workers' compensation legislation generally pay at least a modicum of attention to work injury absences. In most provinces, they aren't cheap (and in some they are darn expensive). So they tend to get the attention of the people who sign the cheques.

Time loss from other sources cost money as well. It costs productivity, it costs morale, it costs customer service (and, probably, customers as well), it costs insurance dollars, and so on. It *must* be managed.

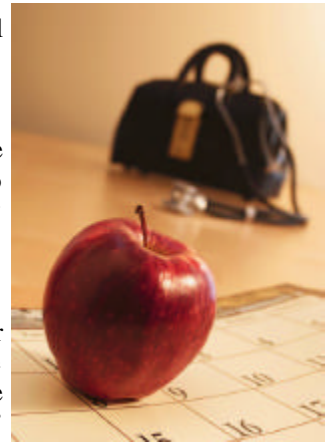
It's curious how many companies with sophisticated Human Resources departments do an excellent job of managing that resource — so long as the resource shows up for work. The track record with managing when they don't come to work is not so good. In large measure, this is a result of employers not knowing what they can and cannot do, lack of comfort in tackling the issue because it often means questioning the authority of a doctor, lack of comfort in tackling their employees for fear of human rights violations.

And to be sure, a bull in the proverbial china shop approach is going to be fraught with perils.

But in all cases, the control, the management, and the elimination or reduction of absenteeism from the workplace begins with accurate recording of the data.

It isn't hard to do, it just requires a process that's well thought out and consistently utilized, with results that are carefully analyzed to see what they show. They may show some bad actors (or 'frequent flyers', as we like to call them) but sometimes those numbers might also show problems with the folks to whom these frequent flyers report. They might show problems inherent in the work itself. If accurate records can be amassed, then accurate assessment of how the workplace is functioning can be undertaken.

The goal of attendance enhancement is not to punish people, or to catch the bad guys — it is to do exactly what the name implies, to enhance attendance. To get people to come to work, plenty and often.



“It's a \$12-15 billion problem for Canadian business.”

Shameless Sales Pitch

FREE analysis of your NEER statements.

Fax us your most recent NEER statement(s) along with the cover page of last September's statement(s) and we'll be happy to provide you with a written analysis of your present situation. We'll show you your future projected results and suggest ways to reduce the amount of your cash that the WSIB gets to keep.

We'll let you know our recommendations and you can decide if you'd like to give us an opportunity to meet you and explain how we can help. We promise not to pester you.