



# Attendance Management Programs (AMPs)

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# Agenda

Part 1 – Attendance Management 101

Part 2 – Limits to AMPs

Part 3 – AMPs and Medical Information

Part 4 – AMPs and Human Rights

Part 5 – Tough Issues

Part 1

# Attendance Management 101

# Attendance Management 101

- Employer's introduce AMPs to:
  - Promote consistent attendance at work
  - Provide a framework for responding to excessive absenteeism
  - Prevent absenteeism problems from escalating

# What is an attendance management program?

- Sets a threshold number of absences that will lead to entry into the program
- An employee moves through the steps in a program if there is no improvement over a prescribed period of time

# AMPs: Tracking Non-Culpable Absences

- There are two types of absenteeism: culpable and non-culpable.
- An AMP usually focuses on non-culpable absenteeism
- **Important**: AMPs cannot be punitive or disciplinary

# Correction vs. Punishment

- Enforcing reasonable attendance standards is corrective, not punitive
- **But** the line between corrective and punitive needs to be carefully scrutinized
- Corrective or punitive?
  - Member called into meeting/interview with the employer
  - Denied the opportunity to work overtime until attendance improves
  - Putting member into an attendance assistance plan
  - Reduction in hours

Part 2

# Limits to AMPs

# An AMP must be...

- Employers don't have absolute discretion when making a policy.
- An AMP is subject to reasonableness standard like any employer policy (*KVP* Test)
- It also must:
  - Not be inconsistent with the collective agreement
  - Be clear and unequivocal
  - Brought to the attention of the employee before the employer can act on it
  - Be consistently enforced

# AMPs & Reasonableness

- All aspects of the program must be reasonable.
- There must be:
  - A rational basis for threshold to enter into the program
  - Reasonable rules for progression through the steps
  - Program should have a reasonable dispute resolution mechanism
  - Program should include flexibility and discretion

# Attendance Thresholds

- What is considered a “rational basis” for a threshold to enter into an AMP?
  - Average absence *may* be useful but it is not determinative of a reasonable threshold
  - May apply across different occupational classes
- Challenging an Attendance Threshold as unreasonable:
  - Need cogent evidence to demonstrate that threshold is not reasonable
  - Useful to show that the threshold is arbitrary/not a reasonable indicator of excessive absence

# Discretion and Flexibility

- Flexibility is essential
  - Isn't enough to just say that the policy will be exercised with flexibility and discretion – must be put into practice
  - Flexibility & Discretion should exist at every level of the AMP
  - Pros and cons to discretion and flexibility?
    - Allows for fairness, compassion, recognition of prior good attendance, etc.
    - Potential to be inconsistently applied, used as a way to target specific employees, etc.

Part 3

# AMPs & Medical Information

# AMP: medical information

- Employers can only ask for personal medical information pursuant to an AMP if it is:
  - Consistent with the collective agreement; and
  - Reasonably necessary
    - Similar considerations as medical information needed for sick leave

Part 4

# AMPs & Human Rights

# AMPs & Human Rights

- As a general rule, AMPs need to be flexible
- In particular, attendance thresholds must account for the fact that employees with disabilities tend to have more absences
- Best Practice: AMPs should exclude any absences due to a disability

# Human Rights: Employer Accommodation

- How can an employer discharge its duty to accommodate?
  - Exclude absences due to disability (*Middlesex-London Health Unit* (2013), 240 L.A.C. (4th) 133)
  - Accommodate the employee up to the point of undue hardship: change of work schedule, telework, alternative positions, or modified work, etc.

Part 5

# Tough Issues

# Tough issues in attendance management

- Mental health (including addictions)
  - Stigma: Employees with mental health struggles may be less likely to want to divulge to the employer (or union)
  - Knowledge: An employee struggling with mental illness may not be aware of their disability.
  - Legitimacy: Tendency to see mental illnesses as less legitimate than physical illnesses

# Tough issues in attendance management

- Perception that program is disciplinary
  - Employees who perceive the program as disciplinary may avoid taking sick days
  - Employees are entitled to the sick leave they have earned and should not be discouraged from using it when they are ill
  - What can the union do?

# Union Involvement

- Lack of information
  - To the Union (first meeting)
  - To the Member (absences counting to the threshold)

# Questions?