

## **ATTENDANCE MANAGEMENT PROGRAMS WORKSHOP**

### **UNION CHECKLISTS**

#### **REVIEWING YOUR EMPLOYER'S ATTENDANCE MANAGEMENT PROGRAM OR SIMILAR POLICIES**

- Does the program indicate how and when employees will be included in, or removed from, the program?
- Does it use reasonable standards of absenteeism?
- Are these standards measured at regular intervals?
- Have these standards been clearly communicated?
- Are these standards monitored and applied consistently?
- Does it allow for individualized consideration of each employee?
- Is discretion built into every step of the program?
- Is the program consistent with your collective agreement?
- Is the duty to accommodate woven throughout the program?
- Is the program non-disciplinary?
- Does the program include only non-culpable absences?

#### **REVIEWING YOUR EMPLOYER'S APPLICATION OF THE ATTENDANCE MANAGEMENT PROGRAM OR POLICIES TO INDIVIDUAL MEMBERS**

- Was the employee denied union representation when it was required?
- Was the employee disciplined as a result of absenteeism?
- Does the employee's attendance record for the purposes of the program include statutory leaves? (i.e. parental leave, jury duty, etc.)
- Does the employee's attendance record for the purposes of the program include absences related to workplace injuries or a disability?
- Did the employee receive adverse treatment as a result of absences related to workplace injuries or a disability?
- Did the employer fail to accommodate the employee's disability to the point of undue hardship? (See below for guidelines regarding the duty to accommodate)



- Was the employee asked to provide more personal medical information than was reasonably necessary? (See below for guidelines regarding employees' medical privacy)

## **GUIDELINES REGARDING THE DUTY TO ACCOMMODATE AN EMPLOYEE WITH A DISABILITY**

- The Union has the following obligations related to the duty to accommodate:
  - Duty to cooperate throughout the accommodation process;
  - Duty to facilitate accommodation by being flexible, even when work assignments stray outside of the normal routine or the collective agreement.
- The employee has the following obligations related to the duty to accommodate:
  - Duty to cooperate throughout the accommodation process;
  - Duty to provide enough information to allow the employer to make an informed decision regarding how it can accommodate the employee;
  - Must not refuse work without justification.
- The employer has the following obligations related to the duty to accommodate:
  - Duty to inquire about the need for accommodation where there are sufficient facts to indicate a disability requiring accommodation exists (or there is constructive knowledge of a disability);
  - Must not impose discipline for a refusal to provide medical information, although non-disciplinary sanctions may be permitted;
  - Must obtain up-to-date medical information before proceeding with non-culpable termination;
  - Must accommodate the employee to the point of undue hardship, which requires the employer to establish the following:
    - The standards set for the job are *bona fide* occupational requirements;
    - The disability constitutes an actual, functional limitation on the employee's ability to do the job;
    - The employer would bear a disproportionate burden if it could not terminate the employee, based on some or all of the following factors:
      - Financial costs;
      - Disruption of the collective agreement;
      - Problems of morale among other employees;



- Interchangeability of the workforce and facilities;
- The size of the employer's operation;
- Whether anyone's health or safety would be put at risk.

## **GUIDELINES REGARDING AN EMPLOYEE'S MEDICAL PRIVACY**

- An employee has an absolute right to medical privacy but the employer may be justified in denying accommodation, refusing to allow the employee to return to work, or terminating an employee for non-culpable absenteeism where the employee refuses to provide sufficient medical information.
- Generally, employers will be justified in asking for medical information when it has a reason to suspect or dispute the legitimacy of an absence, when the information is needed to facilitate accommodation, or when a lengthier medical absence is requested.
- The purpose behind the request is important as it determines the nature and extent of medical information that will be reasonably sufficient in the circumstances. However, the following general principles apply:
  - It is reasonable for the employer to seek the following medical information:
    - The nature of the illness (this is distinct from the specific diagnosis);
    - The date the physician examined the employee when preparing a medical certificate (i.e. a doctor's note);
    - Whether a treatment plan has been prescribed or recommended;
    - Whether the employee is following the prescribed or recommended treatment;
    - Whether medical follow-ups are occurring;
    - Whether the employee has been referred to a specialist;
    - The expected date of return to work;
    - Any expected restrictions when the employee returns to work.
  - Employers are not routinely entitled to the following medical information: \*
    - The diagnosis of the employee's specific condition;
    - The symptoms experienced by the employee;
    - The nature of the treatment plan prescribed to the employee;
    - The reason that the illness or injury would prevent the person from working their regular duties;



- The date the employee was first seen by a physician;
- Whether there are non-medical barriers to the employee's recovery;
- Direct contact with the employee's physician.

\*Although this information should not be requested on a routine basis, i.e. for most short term absences, there may be circumstances wherein some of it may be warranted, i.e. in the case of excessive absenteeism, or where an accommodation is sought.