

Disabled Employees

I have received many requests recently to explain to businesses their obligations and entitlements with respect to an employee's non-work related disability. The *Ontario Human Rights Code* ("HRC") imposes an obligation on businesses to make reasonable efforts to accommodate employee disabilities and those obligations include keeping open an employment position that will accommodate a disabled employee's restricted abilities once he or she returns to work. The Human Rights Commission has the authority to impose financial penalties and other orders on employers who fail to accommodate employee disabilities. Substance addiction is considered a disability. Employees with substance addictions must be encouraged to and be given an opportunity to seek treatment.

The HRC also imposes obligations on disabled employees. Those obligations include keeping their employer informed on their return to work status and any workplace accommodations they are or will require as a result of their disability. We interpret the recent Supreme Court of Canada decision in *Honda v. Keays* as authority for the principle that it is appropriate for an employer to ask a disabled employee to provide a medical opinion as to an anticipated return to work date, if any, and as to possible duty modifications.

An employer can terminate the disabled employee if or when the employer is unable to accommodate the disability without "undue hardship", as that is described in the HRC. We interpret *Honda v. Keays* as giving the employer grounds for terminating if the employee fails to follow his or her HRC cooperation obligations. Any such termination would, nonetheless, be "without cause" as that term is understood at law, and the employer would therefore be required to pay the disabled employee termination or severance pay in accordance with the *Employment Standards Act* or common law standards.

We will be pleased to give advice on any specific employee disability related questions you may have.