





Mental Health in Employment and COVID-19: Employers' Guide

The mental health and wellbeing of many people have been affected by the COVID-19 pandemic. This is an issue that affects many in their employment. Employers should be mindful of the mental health implications of COVID-19 and how their employees may be impacted.

Canada has experienced a surge in mental illness since the beginning of the COVID-19 pandemic.

In 2018, 68% of Canadians aged 15 and older reported that their mental health was excellent or very good. According to Statistic's Canada's Canadian Perspectives Survey Series that was released in April 2020, 54% of Canadians aged 15 and older reported excellent or very good mental health during the COVID-19 pandemic.¹

By May 2020, the percentage of Canadians that reported excellent or good mental health dropped to 48%. Additionally, 18% of Canadians reported having symptoms of moderate to severe anxiety in May 2020.²

In Saskatchewan, there has been an increase in mental-health related calls to HealthLine 811 and the Canadian Mental Health Association Wellness Support Response Line since the beginning of the pandemic. Compared to last year, general calls to mental health clinicians increased by

44% from March 1 to April 30. Calls to registered nurses who receive mental health calls when there is an overflow increased by 53% in May 2020.³ Persons with existing mental health challenges are finding it more difficult to cope during the pandemic. Likewise, those who did not previously experience mental health challenge are now experiencing issues due to pandemic related stress and anxiety.

The United Nations has warned that “although the COVID-19 crisis is, in the first instance, a physical health crisis, it has the seeds of a major mental health crisis as well, if action is not taken”.⁴

Employers should expect to deal with employees with mental health challenges and be well equipped to ensure that the human rights of every employee is protected. No employee experiencing mental illness can be stigmatized or discriminated against by their employer or other employees.



Prohibition of Discrimination on the Basis of Mental Illness

The *Saskatchewan Human Rights Code* (the “Code”) protects everyone from discrimination and harassment based on any of the 15 prescribed prohibited grounds. One of the prohibited grounds of discrimination is disability. Under the Code, mental disorder is considered a form of disability. The Code prohibits employers from terminating an employee, refusing to employ anyone or denying anyone a promotion they deserve on the basis of a mental health disability.

Employers have a duty to accommodate employees who are experiencing mental health challenges to the point of undue hardship. In light of the rising cases of mental health challenges due to COVID-19, employers should expect an increase in the number of their employees experiencing mental health challenges.

Some employees may require accommodation from their employer in order to function efficiently at work and benefit equally from their employment as other employees. While some employees may have the capacity to request accommodation, some employees with mental health disability may not be able to make a request for assistance.

Should an employer believe an employee may be experiencing mental health challenges, that employer has a duty to inquire, and to accommodate that employee if necessary.

While it is not the employer’s duty to diagnose a mental health issue, an employer may speak with an employee privately to initiate an accommodation process. Such conversations should be raised in the context of the employee’s work performance.

The conversation must be confidential and the health report of the employee must be kept confidential and only accessible to those involved in the accommodation process. It is the duty of the employer to ensure that the employee is not treated adversely in employment on the basis of the employee’s disability.

Employers should avoid taking unnecessary disciplinary actions against employees that are unable to work or working at reduced capacity based on medical advice regarding their mental health.

As employers are making decisions and changes in light of the COVID-19 pandemic, the needs of employees with mental health disability are to be taken into consideration. Employers are to provide tools and opportunities for employees with mental health challenges to fulfil their duties during and after the pandemic. Employers may also refer employees to mental health services or Employee Assistance Program.

Accommodating Employees with Mental Health Disability During the COVID-19 Pandemic

Employers have a duty to accommodate employees with mental health disability. This duty remains during and after the



pandemic has come to an end. Some considerations for employers are listed below. Though the list is not exhaustive, it will help employers make decisions on how to accommodate employees to the point of undue hardship.

- An employee's request for accommodation on the basis of mental illness should be considered seriously and promptly. Employers should avoid making assumptions and work together with an employee seeking accommodation to find a reasonable solution.
- Conversations regarding employees' mental health must be kept confidential and the employer should assure the employee of the confidentiality of the process.
- It is the duty of the employer to work with an employee with mental health disability to develop an appropriate accommodation process that fits the employee's circumstances. There is no one-size-fits-all in the accommodation processes. The dynamics of each employee's health issues, job responsibilities, and personal factors must be considered in developing an appropriate accommodation. However, employees are not entitled to their preferred or best accommodation option.
- Employers should be mindful of the risk of unnecessary visits to medical offices during the pandemic. Unnecessary requests for medical notes should be avoided.
- Employers should create a process or policy that ensures that employees with mental health disability are accommodated. Furthermore, employees should be advised of the available accommodation options.
- Employers should be responsive to the needs of their employees with mental illness during the COVID-19 pandemic. This may include, when possible, providing flexible work hours, shifts or work location, providing job modifications or reassigning an employee to tasks or job areas with lesser levels of stress or workplace pressures.
- What constitutes undue hardship depends on the facts of each case. Employers should ensure that they make attempt to accommodate an employee with mental illness by making reasonable adjustments and providing necessary assistance. Employers should expect to incur some costs.



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Negative treatment of employees during or after the COVID-19 pandemic due to mental health disability is discriminatory and prohibited under the Code.

Although employers are not required to hire or continue the employment of an employee with mental health disability at all costs, employers have a duty to accommodate employees with mental health disability to the point of undue hardship.

Undue hardship may be assessed based on cost of accommodation, safety and health of the employee and other employees.

FOOTNOTES:

¹ Statistic Canada, “Canadians Report Lower Self-Perceived Mental Health During the COVID-19 Pandemic” (24 April 2020) online: <<https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00003-eng.htm>>.

² Statistics Canada, “Mental Health of Canadians During the COVID-19 Pandemic” (4 June 2020) online: <<https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2020039-eng.htm>>.

³ Regina Leader-Post, “Mental Health Calls on The Rise as Saskatchewan Announces New Suicide Prevention Plan” (08 May 2020) online: <<https://leaderpost.com/news/saskatchewan/mental-health-calls-on-the-rise-as-saskatchewan-announces-new-suicide-prevention-plan>>.

⁴ United Nations, “Policy Brief: COVID-19 and the Need for Action on Mental Health” (13 May 2020) online: <<https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf>> at page 2.

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