

The Legal Case for Workplace Well-Being: How Health & Safety Legislation Can Help Achieve the Best Return-on-Investment

November 22, 2019

**Anna Karimian
Borden Ladner Gervais LLP
Telephone: 416.367.6625
E-mail: akarimian@blg.com**



The Proof is in the Statistics...

- ❑ 500,000 Canadians unable to work due to mental health problems
- ❑ Primary reason for employees missing work
 - ◆ 78% of employees miss work due to mental health concerns
 - ◆ 34% of employees miss work for **two months or more!**
- ❑ Mental health claims account for 30-40% of all disability claims
- ❑ Mental illness costs Canadian economy **\$51 billion annually**

What are the Benefits of Dealing with Mental Health in the Workplace?

IMPROVES	REDUCES
Employee engagement	Absenteeism
Employee morale	Union grievances
Workplace satisfaction	Health costs
Rates of retention/recruitment	Medical leaves/disability
Workplace productivity	Workplace injuries (WSIB, Occupational Health and Safety)
Relationship with students	Employee misconduct
	Harassment complaints/litigation

The Legal (and Financial) Case for Mental Health

- ❑ Providing reasonable mental health related accommodations are often low, with most costs well under \$500 per person/year
- ❑ If individuals with mental illness are able to receive treatment early, disability leave may be avoided
 - ◆ Typically costs companies \$18,000 on average per leave
- ❑ Avoid costly litigation & PR nightmare!

Causes of Stress in the Workplace

Categories of Job Stressors	Examples of Sources of Stress
Task Design	<ul style="list-style-type: none"> • Workload • Pace/variety/meaningfulness of work • Lack of training and/or preparation • Lack of appreciation • Isolation at the workplace (working alone)
Career Development	<ul style="list-style-type: none"> • Under/over-promotion • Job security/insecurity • Overall job satisfaction
Relationships at Work (interpersonal)	<ul style="list-style-type: none"> • Supervisors (conflicts or lack of support) • Coworkers (conflicts or lack of support) • Threat of violence, harassment, etc. • Lack of reporting structure • Prejudice or discrimination and stigma
Work-Life Balance	<ul style="list-style-type: none"> • Role/responsibility conflicts • Family exposed to work-related hazards
Workplace Conditions/Concerns	<ul style="list-style-type: none"> • Exposure to unpleasant conditions • Exposure to hazards

Employment-Related Legislations

- ❑ *Ontario Human Rights Code*
- ❑ *Occupational Health and Safety Act (OHSA)*
- ❑ *Workplace Safety and Insurance Act (WSIA)*

Ontario *Human Rights Code*

- ❑ Affords protection to employees by prohibiting discrimination and harassment on the basis of a “prohibited ground” of the Code (ie. Disability).
- ❑ Duty to accommodate employees with a disability to the point of undue hardship.

Ontario *Human Rights Code*

- ❑ Duty to Inquire – burden or benefit?
- ❑ Provide reasonable accommodation early to enable safe return to work.
- ❑ Take action against harassment/discrimination on the basis of a “prohibited ground”.
 - ◆ (ie. disability)

Occupational Health & Safety Act

- ❑ Employer's responsibility to take “every reasonable precaution” to protect the health and safety of all their employees.
- ❑ Specific duties with respect to workplace harassment/violence under OHSA.
- ❑ Will workplace factors other than harassment soon become the basis upon which employees can claim a violation of the OHSA?
 - ◆ Heavy workloads, job stressors, etc.

Occupational Health & Safety Act

- Penalties for failing to comply with OHSA:
 - ◆ Fine of up to \$100,000 for an individual person and/or up to 12 months imprisonment
 - ◆ Fine of up to \$1.5 million for a corporation

Workplace Safety & Insurance Act

- ❑ Provides benefits and services to workers who have been injured at work or who have illnesses related to work
- ❑ New category of entitlement for “chronic mental stress” (“CMS”)
 - ◆ Could be granted where there exists significant work-related stressors (ie. harassment, bullying)

Workplace Safety & Insurance Act

- ❑ Cost of WSIB coverage could be significant
 - ◆ Psychological assessment
 - ◆ Treatment
 - ◆ Prescription medication
 - ◆ Wage replacement
 - ◆ RTW services

- ❑ Potential intersect between CMS and other WSIB entitlements
 - ◆ Entitlement to alcoholism as a secondary condition (?)
 - ◆ Entitlement to ongoing LOE benefits (even after employee resigns (?))
 - ◆ Claim for PTSD (?)

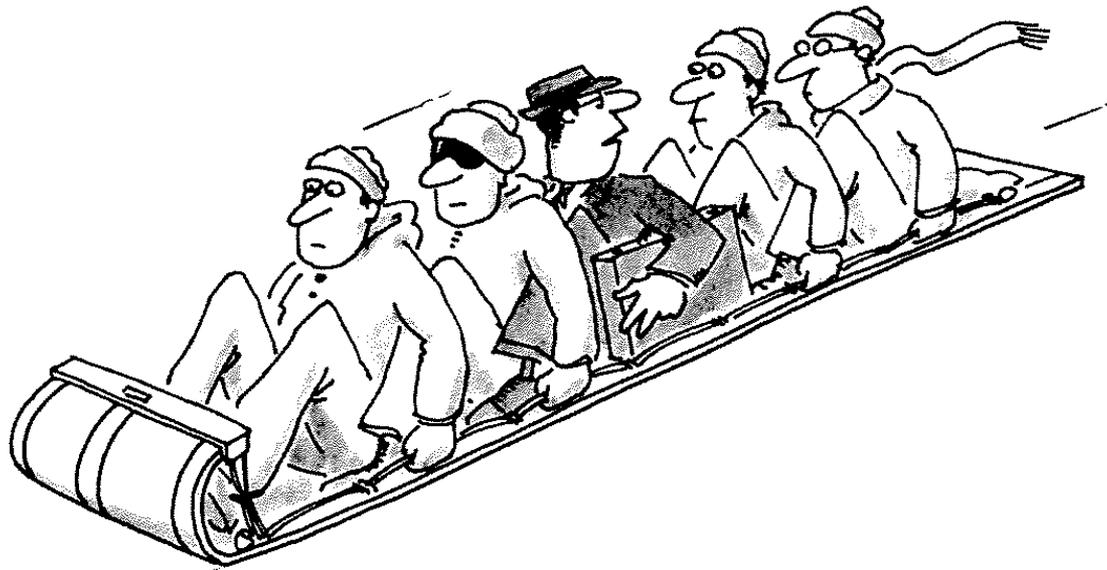
Tips for Developing Best Practices

- ✓ Develop appropriate programs/initiatives
- ✓ Incorporate them into your existing policies
- ✓ Draw attention of all staff (management/employees) to programs
- ✓ Educate and train management on mental health
- ✓ Ensure timely (and proactive) response to situations that may either cause mental health or develop as a result of mental health
- ✓ Ensure consistent application of policies/programs
- ✓ Require joint cooperation from various departments (labour, WSIB, occupational health and safety, HR and supervisors)

The End Result?

- ❑ Increased workplace satisfaction
- ❑ Higher productivity
- ❑ Safer workplace
- ❑ Less claims (human rights, occupational health and safety, WSIB, STD/LTD)

And ultimately - less costly litigation!



“Look, I’m not saying it’s going to be today. But someday - someday - you guys will be happy that you’ve taken along a lawyer.”

BLG

Borden Ladner Gervais

Thank You!