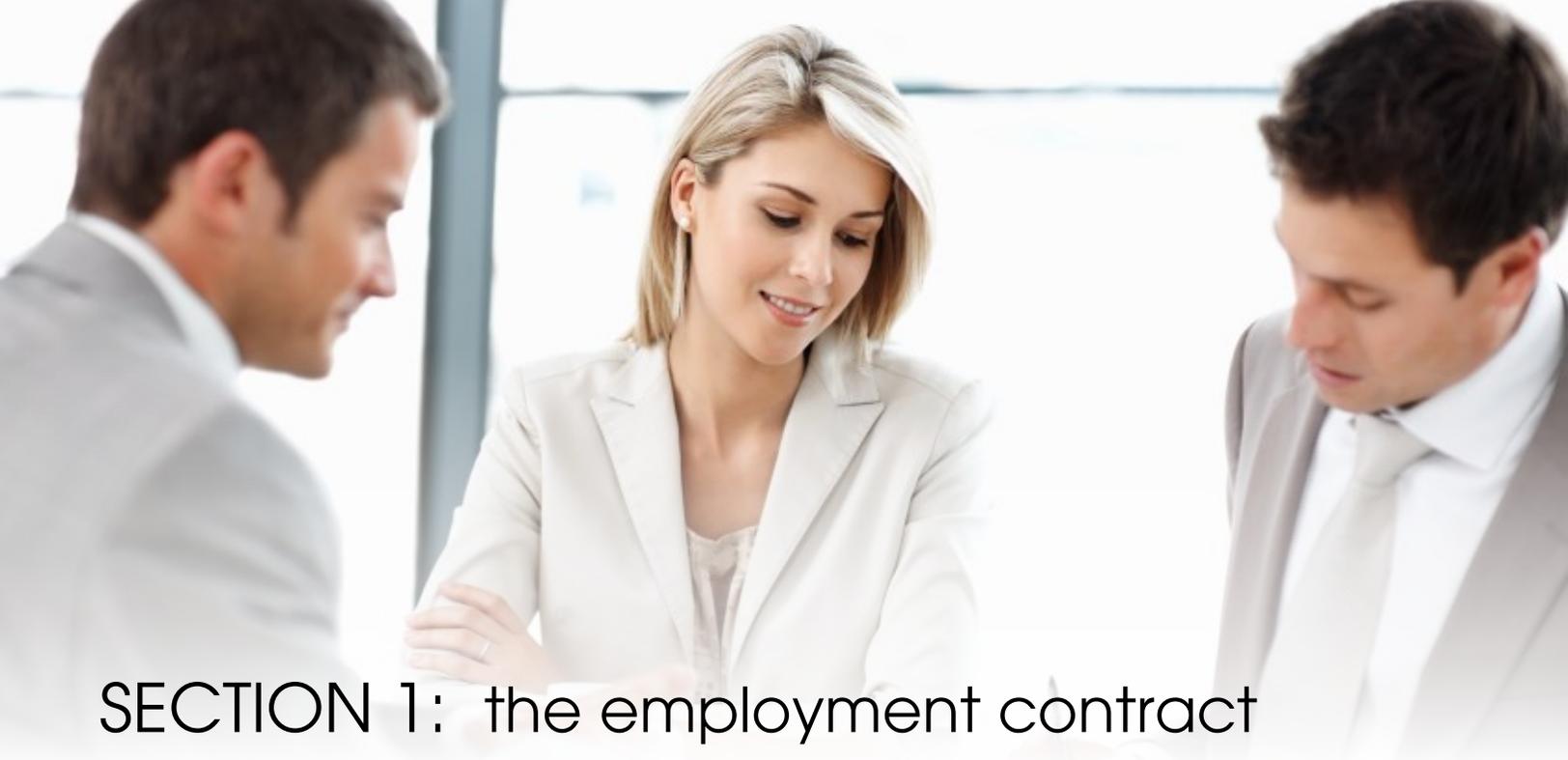




HR STRATEGIES

protecting you AND your employees



SECTION 1: the employment contract

A written contract of employment that sets out clearly the essential terms of the agreement between the parties will go a long way to curtail the possibility of a dispute later on in the relationship.

the CONTRACT itself

What to include in a contract of employment and how to word it are as important to your business as the products you sell.

duty to ACCOMMODATE

Accommodating employees that fall into one of the 11 groups protected by the CHRA.

TERMINATING the contract

Understanding when you're in a position to terminate a contract of employment and what is required of you can make the transition out as smooth as the transition in.

HUMAN RIGHTS

Various guidelines that ensure you're managing key human rights policies effectively and legally.

a contract FRUSTRATED

There will be times when you're not able to apply any strict guidelines to a contract that you'd like to terminate; you may find the contract has been "frustrated."

DISCRIMINATION

The various grounds on which discrimination is legally prohibited and how we know we're about to cross a line.

the employment contract

do INCLUDE:

- ▶ Commencement date and term
- ▶ Job title and description
- ▶ Compensation
 - salary & benefits
 - continuation and termination clauses
- ▶ Place, time & hours of work
- ▶ Vacation Entitlement
- ▶ Conflict of Interest
- ▶ Termination
 - Due to discontinuance of business
 - With & Without notice
 - Terms of notice & severance pay
- ▶ Modifications, changes, & general provisions
- ▶ Governing Law

TERMINATING:

The need to terminate a contract of employment can be sparked by a wide array of circumstances.

Without Cause

- ▶ No restrictions other than statutory notice or pay

With Cause

- ▶ Illegal Activity
- ▶ Incompetence
- ▶ Insubordination
- ▶ Dishonesty
- ▶ Breach of Trust
- ▶ Sexual Harassment
- ▶ Absenteeism

Employers bear a duty to accommodate that may preclude them from terminating an employment relationship. Ensure the grounds would not be considered discriminatory or wrongful/constructive dismissal.

Document your findings.

FRUSTRATED:

Frustration of Contract is a fact-specific determination, made on a case by case basis, to terminate an employee off on disability leave. Case law suggests that the longer an illness persists, the more likely an employment relationship is destroyed.

- ▶ Employers must accommodate disabled employees to the point of undue hardship
- ▶ Employers must not discriminate against disabled employees
- ▶ Termination should only be considered once reasonable attempts to accommodate the employee to return to work have failed

FRUSTRATION - case studies

Naccarato

v.

Costco Wholesale Canada Ltd.

In this case, the employee was absent from work for approximately five (5) years as a result of depression and receiving disability benefits in accordance with the group insurance policy. After the employee's contract was terminated on the basis of frustration, the employee brought an action of wrongful dismissal.

It was found that the employer was unable to rely on frustration as no evidence of hardship was established as well as the fact that no medical indication was given that the employee would not be able to return to work in the foreseeable future.

Duong v. Linamar Corp

In this decision, an employee, who was employed as a machine operator, suffered from a severe back problem and was unable to work for over four years. The long term disability benefits that the employee had received for 24 months were terminated as a result of the employees refusal to participate in a mandatory rehabilitation program. The company terminated the contract of employment due to frustration. The employee commenced an action for wrongful dismissal, breach of fiduciary duty and breach of contract.

The court ruled that the contract of employment was frustrated. The fact that the employer provided the employee with disability coverage did not mean the employer was required to employ the person indefinitely. The termination of the plaintiff's employment was justified by reason of frustration of contract, based on the fact that there was no foreseeable date that he would be able to return to work.

OTHER HR considerations

Duty to Accommodate:

Canadian law prohibits discrimination based on any of the 11 grounds identified below and employers have a duty to accommodate employees, to avoid such discrimination, to a point of undue hardship.

An employer must be able to document the process used to act on an employees request or need for accommodation. This document describes the roles and responsibilities of departments and managers in the accommodation process.

Indicators:

- ▶ Feedback from co-workers indicating that the employee is behaving erratically;
- ▶ A sudden drop in attendance and increase in sick leave use;
- ▶ An increase in lateness;
- ▶ Unusually poor work performance.



Human Rights & Discrimination

11 grounds of discrimination that are prohibited under the Canadian Human Rights Act (CHRA)¹

- | | | |
|--|---|--|
| 1. Race | 8. Marital Status | <i>invisible disabilities, such as cognitive, behavioral or learning disabilities, and mental health issues)</i> |
| 2. National or ethnic group | 9. Family Status | |
| 3. Colour | 10. Disability (<i>a physical or mental condition that is permanent, ongoing, episodic or of some persistence, and is a substantial or significant limit on an individual's ability to carry out some of life's important functions or activities. Disabilities include visible disabilities, such as the need for a wheelchair, and</i> | 11. Conviction (<i>for an offence for which a pardon has been granted</i>) |
| 4. Religion | | |
| 5. Age | | |
| 6. Sex (<i>inc. pregnancy or childbirth</i>) | | |
| 7. Sexual Orientation | | |



SECTION 2: the employee environment

Wellness is defined as a complete picture of a person’s quality of life, encompassing their physical, psychological and social well being.

More than 85%² of Canadian organizations believe they have a responsibility to provide appropriate mental health and wellness programs for employees.

corporate CULTURE
Companies with adaptive corporate cultures aligned with their business goals out-perform their competitors.

MANAGER training
Changing a corporate culture begins with leadership. It must include a vision for the future implemented using positive management tools.

critical INCIDENT
Post-traumatic counselling, coaching, defusing/debriefing, and psychological assistance following tragic or traumatic events.

MENTAL illness
Mental illness is the #1 leading cause of disability, absenteeism and presenteeism in Canada.³

WELLNESS
Employee wellbeing is synonymous with a fully engaged and high-performing workforce but only 22%² of employers have a wellness program in place.

SUPPORTIVE programs
From EAP’s to individualized health risk assessments (HRAs), the growing need for effective programs is becoming more apparent.



CORPORATE CULTURE:

Corporate culture is what every employee feels at the beginning of the day the moment they walk through the door. It's the mood and energy of their environment. It may be positive or negative but it is definitely the employee experience. Culture is influenced by leadership style, corporate expectations, employee support structures and employee resources.

Culture influences a company's effectiveness, it's efficiencies and it's bottom line. Leadership by engagement and authentic character supports a culture that energizes it's employees to higher levels of performance, satisfaction and wellness.

Assessing your corporate culture and determining if a change is needed may be the easy part. The steps an employer may need to take in order for the change to come about are more difficult:

- ▶ Ask employees what they value and what they care about
- ▶ What can they do to contribute?
- ▶ Train management where improvements are required
- ▶ Improve outlooks, perceptions and attitudes starting from the very top
- ▶ collaborate and communicate with employees and management to maintain and improve productivity and wellbeing

manager training

In order for managers to establish and support corporate culture, it is imperative that they are provided training to be effective and confident in recognizing and addressing potential mental health problems, behavioural concerns, and inefficiencies and conflicts in the workplace.

They should be capable of:

- ▶ Championing a healthy work-life balance
- ▶ Identify warning signs of potential mental health problems
- ▶ Understanding appropriate measures and resources available to direct employees to the support they need
- ▶ Respect privacy & confidentiality

MENTAL ILLNESS



CRITICAL INCIDENTS

CRITICAL INCIDENT

An employer may provide post-traumatic counselling programs that offer coaching, defusing/debriefing, and psychological assistance services following tragic or traumatic events.

These events may occur within the workplace (major accident, violent death, armed robbery, hostage taking, assault, fire, act of war or terrorism etc.) or outside the workplace (death of a co-worker, their child or their spouse, announcement of a co-worker's critical illness, etc.).⁴

"presenteeism"

Occurs when individuals with prior health conditions, such as allergies or migraines, come into work when they are not well. The result is lost productivity greater than for absenteeism.

MENTAL ILLNESS in the workplace

The costs associated with mental health problems in the workplace are alarming. Mental Health and illness typically account for more than 30%² of short and long-term disability leaves and cost Canadian employers more than \$6 billion² annually in lost productivity due to absenteeism and presenteeism. Another \$1.6 billion in pharmaceutical costs alone to the private sector.

Employers are now faced with the emerging legal duty to ensure both a physically and psychologically safe workplace.

With at least 1 of every 5 Canadians suffering from some form of mental illness⁵, Canadian organizations no longer view reactive or remedial health and wellness as sufficient, but instead understand the value of offering *proactive* services and support.



WELLNESS

Begins with Organizational Culture

Organizations must look from the top down to support management in addressing and promoting employee wellbeing and engagement. Designing incentives, challenges and experiences that create an atmosphere of balance in the work place add a bit of fun and promote productivity.

Training managers and supervisors to be proactive by setting up wellness round tables with champions from both the employee sector and the management arena will create the basis from which an effective wellness campaign begins.

A wellness program is about attitude. A work place that is just a utility erodes the spirit, the mind and the body. A work place that creates small effective experiences for employees supports productivity, engagement and a healthy outlook.

Instituting a wellness program just to achieve lower health care costs is destined to fail. Real change comes from a deep commitment to employee well being.

Those companies that dedicated time and effort to realize the cultural changes needed to support wellness have seen remarkable results. For every \$1 invested in wellness, a savings of \$3.27 was realized through lower absenteeism, lower drug costs, and higher production and efficiencies.⁶

supportive PROGRAMS

Executive Coaching and Leadership

Many workplace leaders struggle to develop and maintain a positive and productive working environment. Dealing with challenging situations is part of the job, yet finding solution isn't always easy.

Interactive workshops for leaders and individual coaching can help break down barriers and build success in the workplace by creating functional, high performance teams.⁷

Employee Assistance Programs (EAPs)

An EAP program allows members and their families to access a dedicated hotline for a variety of support topics such as workplace related conflicts and stress, home-life issues, financial and legal issues and more.

individualized Health Risk Assessments (HRAs)

An individualized Health Risk Assessment (HRA) gives an employee a full medical workup on their potential for disease, injury and illness. These programs have a proven track record of reducing drug spend.

The employee wellness 'CHAMPION'

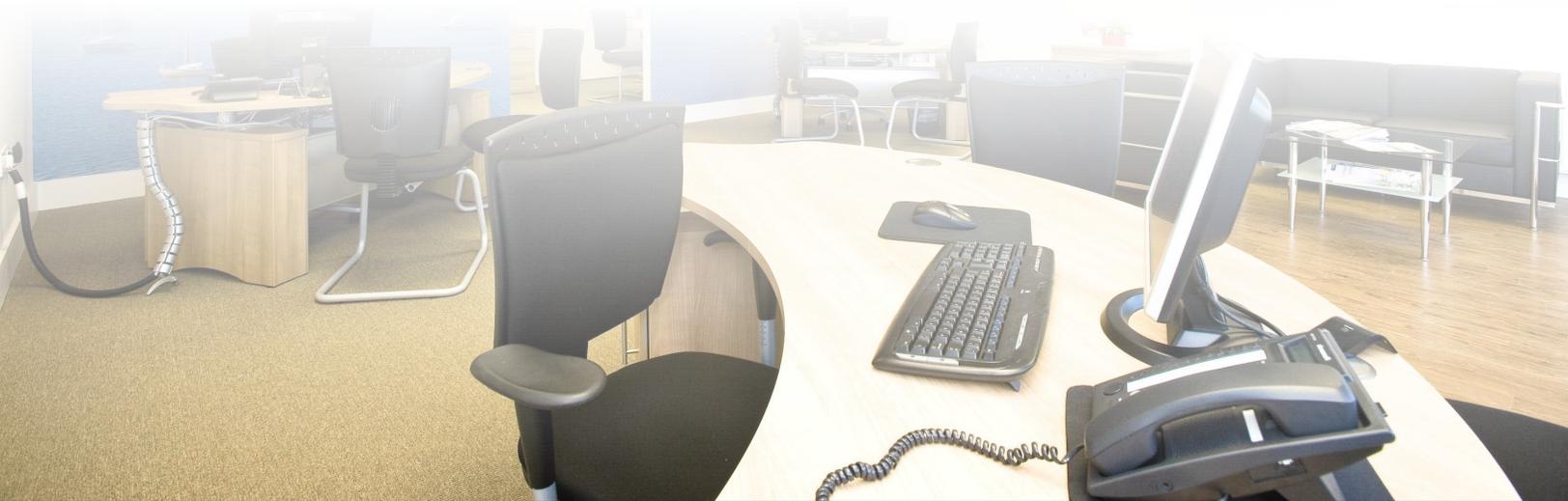
While a program for employees, by employees may be difficult to foster and maintain, the outcomes have been undeniable for many large Canadian and American firms. A 'walk around the world' campaign is a popular topic and has proven beneficial not only to the employees participating, but also to the employers bottom line.

Consider fostering a wellness committee Championed by an elected employee representative, give your employees a sense of community, camaraderie, and belonging.

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1. Ontario Human Rights Commission (OHRC)
 2. Ceridian Workplace Wellness - taking a proactive stance on mental health research report - 2013
www.ceridian.ca
 3. Canadian Mental Health Association (CMHA) - <http://mentalhealthweek.cmha.ca/>
 4. Solareh - www.solareh.ca
 5. Dr. Martin Shain - "Stress at Work"
 6. Graham Lowe - "The Wellness Dividend" - 2014
 7. Kathleen Redmond - Centre for Character Leadership - www.centreforcharacterleadership.com

a word about us

GROUP BENEFITS UNLIMITED is an employee benefits provider and a Third Party Administrator (TPA) specializing in the delivery of sustainable, high-quality, low-cost benefit solutions.



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