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**◀ Cochrane Moore LLP ▶**

———— Legal Service Providers ————

**WSIB**  
For Employers



## Disclaimer

This presentation contains legal information which is intended for educational purposes only and is not to be construed as legal advice

Please contact a lawyer or paralegal if you need legal advice for a particular situation



## Before a claim

- Be proactive in ensuring your workplace is free of hazards
- Develop policies to help employees return to work quickly
- Evaluate positions within your business
- Educate management staff on danger signs
- Keep management staff up to date on changes to your policies



## Scenario

- Employed 15 days of 90 day probation period
- Injured at work by a co-worker's 'horseplay' on a machine
  - Pulled knee
- Advised Employer it was not serious and would lie to hospital
- Employer offered one month continued pay instead of WSIB
- Worker attended hospital same night
  - Told Dr. she fell at home
- After one month Dr. decided a second month was needed
- Employer ceased payments after one month per agreement
- Worker filed WSIB claim two weeks after payments stopped
- Worker terminated two weeks later "with cause"
  - Frustration of employment contract



## What did they do wrong?

- Agreed not to file WSIB claim
- Failed to investigate immediately
- Failed to report workplace accident to WSIB
- Failed to have FAF completed to assist in finding modified duties
- Failed to have employee return to work immediately
- Terminated injured worker

## Consequences

- WSIB fine for failure to report
- HRTO claim for wrongful termination

## January 2017

- January 4: Drain-All Ltd. fined \$5,000
- January 12: Minh Le fined \$3,000
- January 17: Anura Jayasundara sentenced to a 7 day period of incarceration, a 2 year probation order and payment of restitution in the amount of \$5,000.
- January 30: William Lemire fined \$1,250

## February 2017

- February 7: Manjit Sahota fined \$5,000
- February 7: Jordan Jewell fined \$7,500

▶ S.158 (1)

- ▶ individual, fine <\$25,000 or 6mo imprisonment
- ▶ not an individual, fine <\$500,000.

## March 2017

- March 13: Park Lane Limousine Services Inc. fined \$6,000
- March 24: 1358669 Ontario Limited operating as Piccadilly Motors fined \$1,500

## April 2017

- April 11: Lutheran Homes Kitchener-Waterloo fined \$3,000
- April 20: Michel Lavergne operating as Lavergne Roofing fined \$3,500



## What could they have done?

- Immediately investigate
  - Witness Statements – have them write a description of events
  - Video Surveillance – pull the tapes before they disappear
  - Who, What, When, Where, How?
- Don't fear the WSIB
  - Report your story first – you have three days if worker needed healthcare
  - This is your opportunity to fight a fake claim right out of the gate
  - Stay in touch and always correct errors discovered later
- Return the worker to meaningful work immediately
  - Training videos
  - Light Duties
  - Modified Hours
- Do not terminate an employee on a disability related leave
- If you must terminate – pay!
  - Statutory minimums are not enough
  - Have a future indemnification release signed



## Side Note

- Accepted claim by WSIB = automatic disability at HRTO
  - s.10(1)(e) *Ontario Human Rights Code*
- Intent is NOT necessary to prove discrimination
  - *Andrews v. Law Society of British Columbia*, 1989
  - *O'Malley v. Simpson Sears*, 1985





## What Employer Can Do

- Functional Abilities Forms given to employees at time of injury
- Place a single individual in charge
- Conduct a confidential investigation
- Cobble together modified duties
- Return to work Immediately for debriefing
- Follow up to ensure employee is comfortable
- Notify WSIB within three days
- Maintain open communication with WSIB