

MC Legal Lab



**Labour & Employment
Essentials | Workshop
Catalogue**

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1. METHODOICAL MARIJUANA MANAGEMENT

Canadian employers are grappling with the workplace effect of legal recreational cannabis even as they continue efforts to manage increasing medicinal marijuana use – all in an evolving legal landscape. To meet the challenges marijuana use poses, managers and supervisors need to understand the effects of marijuana, the legal context and the unique workplace concerns marijuana use raises – and a methodical approach to managing them.

Learning objectives:

- **Be Prepared.** How both recreational and medical marijuana use by employees can arise in the workplace, including employee disclosure of use; impairment “indicators”; workplace “incidents”; and how to respond in the short-term.
- **Investigate the Circumstances.** How to investigate the circumstances around the use, including the parameters of impairment testing; the criteria for a “safety-sensitive position”, a “dangerous workplace” and a workplace “substance problem”; , and permissible marijuana limits and testing methods; and the medical information the employer needs to determine if marijuana use triggered the duty to accommodate.
- **Take Appropriate Action.** How to take the appropriate action based on the investigation results, including: balancing the duty to accommodate and workplace safety; accommodation terms and conditions and assessing when the point of undue hardship is reached; and when discipline is warranted and assessing the appropriate disciplinary penalty.

2. SOCIAL MEDIA @ WORK

The widespread use of social media juxtaposes employee privacy expectations against employer concerns about the workplace impact of employees’ online presence. The resulting intersection of employees’ right to privacy and employers’ right to manage operations and employee productivity is a rapidly evolving and often contentious area of employee relations. Managers and supervisors must be familiar with the risks that social media use by both the employer and by employees poses, whether within the four corners of the workplace or off-duty, and how to effectively manage those risks.

Learning objectives:

- **Privacy Primer.** The types of employee privacy interests the law recognizes; the boundaries of the privacy an employee can reasonably expect in the workplace; and the management risks that both employer and employee use of social media poses.
- **Social Media On-Duty.** What amounts to improper social media use in the workplace; the employers’ right to monitor employees’ online activity at work; and when employers can discipline employees for improper workplace social media use.



- **Social Media Off-Duty.** What amounts to improper off-duty social media use; the employers' right to monitor public social media; and when employers can discipline employees for off-duty social media use.
- **Social Media Policies.** The benefits of a distinct social media policy; the key elements of an effective social media policy; and the roles of managers and supervisors roles in implementing them.

3. A.M.P. UP EMPLOYEE ATTENDANCE MANAGEMENT

The basic employment bargain is employee attendance in exchange for employer pay, yet employee absenteeism is one of the biggest management challenges – and one of the biggest drains on workplace productivity and morale. The challenge is more complex when the employee's absenteeism relates to a characteristic protected by human rights laws, triggering the duty to accommodate. Despite the challenges, the benefits of successfully managing attendance are numerous. To achieve this, managers and supervisors need a systematic approach to managing absenteeism that balances both employee and employer rights.

Learning objectives:

- **Attendance Management Programs (AMP).** The benefits of a formalized Attendance Management Program (AMP) solution and the five key elements an effective AMP.
- **Culpable vs. Innocent Absenteeism.** Why it's important to classify absences as "culpable" and "innocent" and how to classify and manage each, including when and how a manager should discipline for culpable absenteeism and coach for innocent absenteeism; and when an employer can dismiss an employee for innocent absenteeism.
- **Verification of Absences.** The medical information and non-medical information to which an employer is entitled from an employee to classify and verify absenteeism.
- **The Duty to Accommodate.** How absenteeism can trigger the duty to accommodate and how to fulfill the duty.

4. A SYSTEMATIC APPROACH TO THE DUTY TO ACCOMMODATE

Treating employees equally doesn't mean treating them all the same. Human rights laws (and in a unionized workplace, the governing collective agreement(s)), impose on an employer a "duty to accommodate" their employees so they can fulfill their duties despite any differences caused by a protected personal characteristic, such as a disability, gender or age – provided the employer can do so without "undue hardship". Fulfilling the duty to accommodate can initially seem an overwhelming task to the managers and supervisors charged with doing so. An understanding of the nature of the duty to accommodate, when it arises, and how far it goes provides people leaders with the knowledge necessary to implement a systematic approach.



Learning objectives:

- **Understanding the Duty.** What the duty to accommodate is; its legal sources; and the obligations of employers, employees and unions (where applicable) in the accommodation process.
- **The Start & End Points of the Duty.** What triggers the duty to accommodate and the concept of undue hardship, including the employee's duty to disclose an accommodation need; the employer's duty to inquire into a need; what is meant by a "*bona fide* occupational requirement" (BFOR); and the criteria relevant to assessing "undue hardship".
- **A Systematic Approach to the Accommodation Process.** A systematic approach to fulfilling the duty to accommodate, including: gathering the necessary information; investigating and evaluating the options; implementing the accommodation; the role of employee preferences; and a useful accommodation checklist.

5. APPLYING ACCOMODATION TO EMERGING AREAS OF HUMAN RIGHTS PROTECTION

Employee requests for "accommodation" pursuant to human rights laws are constantly evolving. To satisfy the employer's legal duty to accommodate under human rights laws and, in a unionized workplace, the collective agreement, managers and supervisors must understand both how to fulfill the employer's duty to accommodate generally, as well how to fulfill this duty in specific contexts depending on the relevant protected personal characteristic. Participants will learn the nuances of fulfilling the duty to accommodate in four key emerging areas of human rights protection.

Learning objectives:

- **Family Status.** The scope of "family status" protection; the legal test for family status discrimination; and what information employers are entitled to require from employees.
- **Mental Disability.** The scope of "mental disability" protection, including what does and doesn't amount to a protected mental disability; the role of medical information; the impact on performance management; and circumstances that amount to undue hardship.
- **Marijuana Use.** The scope of the protection of medical and of recreational marijuana use as a physical disability, including: the distinction between these uses; balancing the duty to accommodate with safety issues; and the parameters of permitted drug testing.
- **Gender Diversity.** The scope of the protection of gender diverse employees, including: the terminology; key workplace policies and restroom rules; and employers' role in workplace communications.



6. REAP THE REWARDS OF A RESPECTFUL WORKPLACE

Workplace bullying and harassment are sometimes invisible, but their negative effects are often all too apparent: reduced performance, poor attendance, a toxic or dysfunctional work environment, and increased employee turnover are just some examples. And the ever-increasing use of technology and social media has changed the traditional landscape of bullying and harassment, making it more prevalent and complex for managers and supervisors to address. Effective prevention and intervention requires managers and supervisors to be skilled at identifying workplace bullying and harassment, and at effectively responding to such incidents.

Learning objectives:

- **Recognizing Bullying & Harassment.** What bullying and harassment are and the forms they can take, including: sexual harassment and online “cyberbullying”; how technology has changed the traditional boundaries of the “workplace”; and how to distinguish legitimate workplace conduct from bullying and harassment.
- **Understanding the Impact of Bullying & Harassment.** Why it’s so important to maintain a workplace free from bullying and harassment, including: the individual and broader workplace effects; the employer’s legal obligations to address it; the legal and financial risks of failing to do so; and the legal defence of due diligence.
- **Preventing Bullying & Harassment.** The role of managers and supervisors in preventing workplace bullying and harassment, including: informal tools to prevent and resolve it early; formal tools to address it; how to keep the workplace functioning during and in the wake of a complaint; and when and how to discipline for bullying or harassment.

7. ELEMENTS OF AN EFFECTIVE WORKPLACE INVESTIGATION

Workplace investigations are a vital part of workplace management and they can play a pivotal role in any subsequent dispute between the employer and the employee (and in a unionized workplace, the employee’s union). The prospect of an investigation of any kind, such as human rights, harassment, or employee misconduct or discipline, can instantly increase a manager’s anxiety level. Avoidance isn’t an option: employers are obligated to act on harassment complaints; the principles of procedural fairness often call for an investigation before imposing discipline; and good management requires rigorous attention to employee wrongdoing to promote a healthy workplace culture. At the same time, employers are exposed to liability for disciplining for unsubstantiated complaints or mistakes during an investigation. Managers and supervisors must be comfortable conducting such investigations in an effective and fair manner, and be prepared to address the myriad of situations that typically arise in an investigation.

Learning objectives:

- **The Role of Investigations.** The value of a proper investigation and its role in safeguarding the employee’s right to procedural fairness and the employer’s liability



exposure; what events trigger a workplace investigation; and the main types of investigations.

- **Building the Investigation Framework.** The four overarching investigation principles that all workplace investigations must embrace, employee privacy interests and disclosure rights; and how to build a systemic investigation framework that respects all, including how to select the appropriate investigator and a helpful investigation checklist.
- **Conducting the Investigation.** How to conduct the investigation from beginning to end, including: preparation; typical employee concerns and cooperation issues; how to prepare for and conduct effective witness interviews; and how to conclude the investigation, arrive at an outcome and prepare an investigation report.
- **Acting on the Investigation.** How to use the investigation to decide on an appropriate course of action depending on the investigation outcomes; and implementing the determined course of action.

8. A PROGRESSIVE DISCIPLINARY PROCESS

At some point, most managers and supervisors find themselves facing the imposition of employee discipline – sometimes to the point of terminating an employee’s employment. But it’s rare that a single incident, whether of misconduct or poor performance, will warrant immediate dismissal. Questions like whether discipline is warranted, what penalty is appropriate and how to administer it can seem daunting to managers and supervisors – and if answered incorrectly, could come back to haunt the employer in a legal proceeding. The key: a progressive approach to discipline.

Learning objectives:

- **Disciplinary Basics.** The role of discipline in the workplace; its basic requirements; and the source and parameters of the employer’s power to discipline.
- **The Progressive Discipline Approach.** The role of the progressive discipline framework; and important “Dos and Don’ts” of applying the progressive discipline approach.
- **The Progressive Discipline Process.** The five main steps in the progressive discipline process: identifying culpable conduct; classifying by seriousness and intervention; investigating the circumstances; assessing the appropriate response; and imposing the disciplinary penalty.
- **Discipline Documentation.** Why documenting discipline is critical; and how to properly document and deliver discipline to employees.



- **The Duty to Accommodate.** A cautionary introduction to how the employer's duty to accommodate impacts the disciplinary process.

9. ABC'S OF COLLECTIVE BARGAINING AGREEMENTS

In a unionized workplace, effective day-to-day management of employees is critical to maintaining efficiency. Resolution of problems and issues is a daily task for managers and supervisors, and their ability to handle them effectively can have important consequences for the employer. The collective bargaining agreement is a valuable tool for doing so, and helps keep employees and the union accountable to their bargained commitments. But it's sometimes under-utilized because managers and supervisors lack a practical framework to interpret and apply its terms.

Learning objectives:

- **Interpretation.** An introductory understanding of the core legal concepts governing the interpretation of collective bargaining agreements, including: identifying the terms that comprise a collective bargaining agreement; common sources of disputes over the meaning of its terms; fundamental interpretive principles; and additional interpretive tools and aids.
- **Management Rights.** What management rights are; their typical scope; how to limit union encroachment on management rights; and the parameters of an employer's unilateral rule-making authority.
- **The Grievance Process.** The definition of a "grievance"; the steps of a typical grievance process and how to maximize each to resolve disputes; the role of arbitration and the question of arbitrability; and grievance process technicalities.

10. A GUIDE TO THE GRIEVANCE & ARBITRATION PROCESS

In a unionized workplace, disputes about the interpretation or implementation of a collective bargaining agreement's terms and clauses are natural. But unresolved disputes can fester and create a negative work environment, so it's important to resolve them quickly and fairly. The Grievance and Arbitration Process is a dispute resolution mechanism specifically designed to resolve disputes between the union and the employer in a labour relations setting. It's a fundamental component of the unionized workplace with which managers and supervisors must be familiar and have the skills to manage. Often confusing at first blush, breaking the Process down and examining its individual components makes it comprehensible and manageable.

Learning objectives:

- **Grievance & Arbitration Process.** The two key components of the Grievance and Arbitration Process and how they interact; the key strengths and weaknesses of the Process; and why and how to proactively manage it.



- **Grievance Procedure.** The purposes of the Grievance Procedure component of the Process and the typical steps in it, including: grievance levels; time limits; the parties' roles; the value and parameters of Grievance discussions; how a Grievance starts and how it can end; and how to analyze and respond to a grievance.
- **Arbitration Procedure.** The purposes and typical steps of the Arbitration Procedure component of the Process, including: how to move from the Grievance to the Arbitration Procedure; arbitrator selection; how to prepare for an arbitration hearing, including if you are a witness; and what to expect at an arbitration hearing.