



Honda on the Hook ...

Court orders Honda Canada to pay \$500,000.00 in punitive damages for firing an employee with Chronic Fatigue Syndrome (CFS).

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Kevin Keays became employed with Honda Canada in 1986 and began to suffer from CFS shortly after he started. He started on the production line, but joined the Quality Engineering Department within 20 months of starting. From 1996 – 1998 Keays was off work and in receipt of disability benefits. After being terminated from LTD benefits, which in itself the Court found wrongful, Mr. Keays returned to work. But after inevitable absences from work, Honda advised him to apply for a program that would exempt him from attendance-related progressive discipline, that was not suitable to a person suffering from CFS. The symptoms of CFS periodically rendered Keays incapable of attending work. When his absences became more than projected, he was told to see a company doctor, which he did, but became concerned when the doctor “brainstormed” an idea that he be sent back to the production line. Keays hired a lawyer who wrote a conciliatory letter to Honda that outlined Keays’ legitimate concerns regarding his employment conditions. The letter was largely ignored by Honda and Honda’s in-house counsel even met with Keays, without his lawyer present, to persuade him to ignore his lawyer’s advice (which is a contravention of Law Society rules). Keays was eventually terminated by Honda for “just cause” because he objected to seeing yet another company doctor unless he received “...clarification of the purpose, methodology and the parameters of the assessment.”

The Court found that Honda did not have “just cause” to terminate Keays and that Keays’ concern regarding the clarification of the new doctor’s involvement was reasonable. He was awarded 15 months salary in lieu of notice, an additional nine months for the employer’s bad faith and a stunning \$500,000.00 in punitive damages against Honda Canada. Justice MacIssac stated “The deck was stacked against [Mr. Keays] and he was only a minnow compared to the Leviathan that Honda represented.” He further stated that, “Honda’s misconduct was planned and deliberate, and formed a protracted corporate conspiracy against Keays.” The award was a “large whack” to “wake up a wealthy and powerful defendant to its responsibilities.”

Under the Ontario Human Rights Code, persons with disabilities have the right to full participation in society,

and are entitled to employment that is free of barriers to full participation. Barriers to participation are often not obvious and are imbedded within company’s procedures, culture and system of rewards and discipline – the resultant discrimination is systemic. Employers have a duty to consider and accommodate the needs of persons with disabilities and remove barriers to their participation in the workplace. If existing facilities, business models, organizational cultures, or attitudes create or maintain barriers, they must be removed or modified. If it is impossible to remove barriers without undue hardship, special arrangements should be made so that the person with a disability can fully participate in the workplace.

This case represents a high-water mark for punitive damages awarded for these types of claims. Punitive damages is an award granted by the Courts, not to address the losses of the innocent party, but to punish and rehabilitate the offending party and to serve as a deterrent for others. Whether or not the punitive damages award is reduced on appeal, this case illustrates the Court’s disdain for employers who may submit to the forms of reasonable accommodation, but not to the substance of it. The duty to accommodate persons with disabilities extends to the point of undue hardship. Although it may be tough on employers and other employees, especially where the disability is invisible or defies the traditional methods of identification, employers must know and accept that the duty to accommodate to the point of undue hardship is very real, and the consequences of failure and of ignorance can be extreme. Employers should educate themselves on the nature of their employees’ disabilities, and work with their employees to find ways to fully integrate them into the workforce. In the end, the key to preventing and removing discriminatory practices from the workplace is to respect the dignity of individuals and to gain an appreciation for the challenges faced by persons with disabilities. **MB**

This is the second article in a series of Employment Law Issues contributed by the Employment Law Group of Minken & Associates Professional Corporation. Keep on the watch for future articles on Employment Law.

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