

When is requesting an independent medical examination reasonable? Insights from Ontario's Human Rights Tribunal...

Managing an employee's medical leave of absence is often a difficult and time-consuming process. Since employers don't typically have a license to practice medicine, implementing vague or inconsistent accommodative measures can be a challenge.

A recent Human Rights Tribunal of Ontario ("HRT") decision has shed some light on when requesting an independent medical examination is considered to be reasonable. In *Bottiglia v. Ottawa Catholic School Board*, the Human Rights Tribunal dismissed an application made by Marcello Bottiglia, the former Superintendent for Schools of the Ottawa Catholic School Board ("Board"). Bottiglia alleged that the Board discriminated against him by failing to accommodate his return-to-work protocol.

In this case, a workplace conflict triggered a medical condition which required Bottiglia to take a 2-year medical leave of absence. In anticipation of his return to work, Bottiglia's physician recommended a very lengthy and onerous graduated return to work protocol that was not consistent with other return to work protocols that the Board had implemented with employees in the past. The Board was also suspect of the graduated return to work protocol since it coincided with the end of the vacation and sick leave credits that he was using to be remunerated during his medical leave of absence. Accordingly, the Board requested that Bottiglia undergo an Independent Medical Examination (IME) in order to obtain a second opinion regarding his prognosis and workplace limitations. This procedure was included in the Board's Management Guide. In addition, IMEs had been conducted by the Board in the past.

For a number of reasons, he refused to participate in the IME and filed a human rights complaint alleging the Board failed to accommodate his return to work.

The HRTO dismissed Bottiglia's discrimination application. In doing so, the HRTO agreed the Board had reasonable cause to question the onerous return to work plan which suspiciously corresponded with the end of his paid leave. Accordingly, it was reasonable to request that an IME be conducted in order to obtain additional information and Bottiglia's medical prognosis.

What can employers learn from this decision? The case sheds some light on how the HRTO will determine whether an IME is justified. In particular, an IME will be warranted where it is found to have been reasonable in the circumstances. In addition, it is important to note that the inclusion of the IME procedure in the Board's policies was a relevant consideration to the HRTO. Employers should ensure that its policies contemplate the possibility of requiring an employee to undergo an IME.

Please contact e2r to discuss the use of IMEs in the medical accommodation process with an Advisor.