

Assumptions Can Get Employers Into Trouble!

A recent decision highlights the risks associated with assuming an employee has resigned when they refuse to return to work. In *Nagpal v IBM Canada Ltd.*, Vinay Nagpal, an employee with over 23 years of service, went on a stress related medical leave in 2013. The Company referred Nagpal to Manulife, the administrator of the Company's short-term disability ("STD") plan. Nagpal provided Manulife with documentation from two doctors substantiating his need for a leave of absence. In response, Manulife's medical consultant determined that Nagpal could return to work while receiving treatment. Nagpal's STD benefits were therefore terminated.

The Company notified Nagpal that he could either appeal Manulife's decision or return to work. Nagpal retained a lawyer who informed the Company that despite Manulife's decision to terminate his STD benefits, Nagpal could not return to work given his medical condition. The Company deemed Nagpal to have abandoned or resigned from his job based on his refusal to return to work.

Nagpal sued the Company for wrongful dismissal. In its decision, the Court concluded that Nagpal had neither resigned nor abandoned his employment. In reaching its decision, the Court relied on the letters provided by Nagpal's lawyer, which clearly indicated he was not resigning, but was simply unable to return to work given his medical condition. The Company made no effort to engage with Nagpal's lawyer (or Nagpal) to ask for additional medical information supporting Nagpal's refusal to return to work. Instead, the Company chose to rely on Manulife's decision to terminate STD benefits as proof that Nagpal was able to return to work. The Court also rejected the argument that Nagpal had abandoned his employment or that his contract had been frustrated. In order to be effective, a resignation must be clear and unequivocal, and Nagpal clearly did not indicate a clear intention to resign. Therefore, Nagpal was entitled to damages for wrongful dismissal.

The decision demonstrates (1) the liability employers face when they assume that an employee's absence from work means the employee no longer wishes to be employed by the company; and (2) why employers should never rely solely on the information provided by a benefits provider to make decisions about an employee's status - the denial of benefits (whether STD, LTD or workers compensation) does not necessarily mean that an employee is able to



return to work or has an obligation to return to work. An employer's obligations and responsibilities to a disabled employee are separate and apart from those owed by an insurance provider. As such, employers should always request their own medical information and make reasoned conclusions based upon that information. Doing so can potentially prevent a costly finding that an employer has wrongfully dismissed an employee, or worse, breached applicable human rights legislation.

If you have any questions regarding this or would like assistance managing your employee medical files, please reach out to speak with an e2r® Advisor.

