

IT'S YOUR BUSINESS **08/14**

HUMAN RESOURCES



## Stressing the Small Stuff

Navigating the legal waters of so-called "stress leave"  
by *Kristen Hilderman*

**B**efore discussing stress leave in the workplace, it's important to note that, legally speaking, there's no such thing. Christian Codrington, B.C. Human Resources Management Association senior manager, and Kelly Slade-Kerr, lawyer with Hamilton Howell Bain & Gould Employment Lawyers, both maintain that "sick leave" is the proper—and only—term that should be used to describe the type of leave that employees seek when they are not mentally fit to work. "By calling things 'stress leave,' I think we devalue it or make it really convenient for people to say, 'Well, things are tough, I need some time away,'" says Codrington. Under the law, they say, a person who is stressed out is not entitled to any legal protection.

Claiming sick leave requires a note from a physician with a diagnosis for a mental illness, which can include depression symptoms resulting from the grieving process or a traumatic life event. "A divorce is a perfect



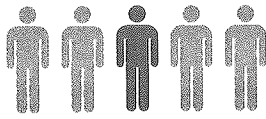
example," says Slade-Kerr. "It would be very rare for someone who is suffering the effects of a divorce—to the extent that they can't work—for them not to be diagnosed with some kind of condition." Although dealing with heightened stress in and out of the workplace is not cause to claim leave, a diagnosable mental illness arising from those stressors is.

Slade-Kerr says employers are at risk of being on the wrong side of the law when they make assumptions about an employee's sick leave. She often deals with wrongful dismissal cases that result from employees being terminated for unrelated causes, such as downsizing, upon their sick-leave

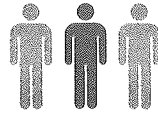
return. In her 15 years of practising law, Slade-Kerr estimates seeing maybe one case where the employee appeared to be abusing the system: "Employers should always come from the perspective that the illness is legitimate, because that's going to keep you out of trouble at the end of the day."

The BCHRMA's Codrington adds that employers should not be concerned with policing for the tiny percentage of employees who take advantage of the system, but rather they should demonstrate trust and encourage open dialogue. "Be careful not to manage by exceptions," he advises.

It is also incumbent upon employees to be open with employers about any →



**1 in 5** Canadians will experience a mental health problem or illness in any given year.



**1 in 3** Canadians who experience a mental health problem or illness report having sought and received services and treatment.



Percentage of short- and long-term disability claims in the workplace that are typically mental health problems and illnesses.

SOURCE: Mental Health Commission of Canada

issues that are affecting their ability to perform the job. Codrington says small businesses have an advantage in this regard because they are less reliant on formal procedures and large departments, which can often make employees feel like they're being kept at arm's length from the decision-makers. Encouraging a trusting culture where communication lines are open, from top to bottom, is the first step to avoiding confusion and misunderstanding around sick leave.

If an employer suspects their employee of a false claim, they should proceed with caution, relying only on objective medical information and facts—and never impressions. “Mental illnesses are called silent disabilities. They're not well understood and there's also a stigma attached to them,” says Slade-Kerr. “If you are very open about respecting people's human rights and your duties to accommodate, that's going to make more of an open culture where

employees feel that they can come forward.”

Codrington recommends asking the employee work-related, functional questions: “When can you come back? What can you do when you come back? We need to plan around you, so give us an idea of your expected departures and how long we can expect that for.” In the end, he says, it comes down to one level of intervention: starting a respectful dialogue with your staff. □