

ATTENDANCE MANAGEMENT- COMING TO A SCHOOL DIVISION NEAR YOU ONE REP'S PERSPECTIVE

For many years, it has appeared that the School Sector has avoided the umbrella of official Attendance Management Programs (AMPs). This is no longer the case. While AMPs have been commonplace in Municipal and Health Care Sectors for almost two decades, they are relatively new to the school sector.

What are the real purposes of these AMPs? These programs are put in place to alleviate the financial pressures of absenteeism. Yes, warm and fuzzy statements about caring about employee wellness may be genuine in some workplaces, but for the most part, it is about shaving costs.

Think about it for a moment. If an employee calls in sick, in many cases they have to be replaced. So now the sick employee is paid, and so is the replacement. This in effect can almost double cost for the employer. But that is not so much my concern. Sick time is important for employment recruitment and retention, and as long as sick leave is not abused, it is a well earned benefit.

What does bother most employers is when they have pay employees for services NOT rendered – sick time, statutory holidays, and vacations all fall under these criteria. There is no avoiding stat days and vacation days, as these are legislated. Of course we negotiate for beyond the minimal standards, since employers cannot eliminate these days - but they can attempt to discourage sick leave use.

This is why many AMPs have a provision that someone in the program must bring Doctor's Note for every absence. The employer will argue that they need confirmation of illness; but this is actually just a tool to discourage people from calling in sick. The hassle of getting a note and in many cases, having to pay for the note, will act as a deterrent to calling in sick. Employees just "tough it out" and come to work.

Those CUPE Locals that have language that states the employer is responsible for paying for Doctor's Notes is a very effective means of getting Employers to not request notes in a frivolous manner. Local such as 3473 and 4642 have such language.

So what kind of AMPs can employers institute that can withstand the test before an arbitrator? Here are some common characteristics of a program:

- Definitions of absence
- Triggering Incident
- Communication between the employer and employee
- Recognition of improvement
- Multiple steps

There must also be a clear distinction between culpable (Blameworthy) absences and non-culpable (Unblameworthy) absences. Culpable absences should be dealt with as

discipline, and non-culpable absences are non-disciplinary and should be what the AMP covers.

There also have been arbitration decisions in the past few years that recognize that a disability must be treated somewhat differently than regular absences. For example, the employer must make every reasonable effort to accommodate the employee's disability prior to declaring an Undue Hardship and voiding the employer/employee relationship.

But it is also important to note – if an employee has poor attendance due to a legitimate illness/disability, this does not mean that they cannot lose their employment. The law recognizes the legitimate business interests of running an efficient workplace do have a place in labour relations. So if there no prognosis for improvement in attendance and the employer cannot accommodate because it can establish an Undue Hardship, the employment relationship will be considered severed.

Good AMPs have flexibility within the program, and triggering incidents (the number of occurrences before a discussion with an employee is triggered) should be based on real tangible numbers, and not an employer conceived wish list of what they see as optimum attendance.

In many AMPs, employers will place employees into the program with a small window of bad attendance, and then demand that the employee demonstrate improved attendance for a much longer period. The tempered response for getting out of an AMP would be as simple as stated; if your attendance gauge had a six month window to get you in, then a six month improvement should be enough to get you out – at least in the initial step of the program.

It should also be stated that AMPs fall under the auspices of Management Rights. Having said this, AMPs have to conform to the KVP Test. This test is:

- Consistent with the collective agreement
- Not unreasonable
- Clear and unequivocal
- Brought to the employee's attention before the company acts on them
- If discharge is a consequence of breaching the program, employees must be forewarned of that fact
- Consistently enforced by the company from the time of their introduction

As stated earlier, AMPs must be flexible. They should recognize individual circumstances. And discretion must be exercised in dealing with individual circumstances. In other words, the program is a blanket program until one is in the program, and then it becomes individualized.

In closing, here are some other key points to know:

- The employer is only entitled to a prognosis, and not a diagnosis

- The employer is entitled to know when you can return to work, what restrictions you may have, and whether they can expect you to be available for work in the future
- Doctor's Notes do not make the employee "bulletproof"
 - An employee stating "I have 15 sick days per year and I am going to use them is not a valid defense
 - Sick time is the employer's insurance on the employee should they get sick. It is not an earned entitlement like vacation

And remember this...even the best Attendance Management Program will be ineffective and frustrating to the Union if it is administered by someone who acts unreasonably and punitively. The intent should be to assist people to reduce their absenteeism – not to punish them.

If your employer is implementing a new AMP, make sure that it meets the requirements of what has been stated above. It would also be advisable to contact your Local Union and/or your National Rep to see if the program conforms to industry standards.

This is one Rep's perspective...