PRESIDENT'S MESSAGE

Louise Ann S. Riddell, B.E.S, M.A., President, OMHRA

President's Holiday Greetings …

As the moments and accomplishments of 2016 become a scene in our rear view mirror, I am reminded that this was a remarkable year for OMHRA. I appreciate the support from our volunteers whose contributions are reflected in OMHRA’s success.

Our Spring Workshop, Fall Conference and One Day Workshops were very well attended and on personal note I would like to thank our Education Committee members and our volunteers who worked tireless to develop and execute these events. This committee works year round to bring us first rate sessions. I am thrilled to share with you that, for the first time that any of us can remember, our Fall Conference was completely sold out! A special thank you to our co-chairs Jason MacLean and Susan Farrelly!

I would also like to take this opportunity to acknowledge the great work done by Jennifer Di Martino as the ECHO Editor. Jennifer has taken the ECHO to the gold standard! Thank you Jennifer! Finally, I would also like to thank Christine Ball, Chrissy Shannon & Susan Shannon for their dedication.

On behalf of your OMHRA Board of Directors, we would like to wish you and your family a prosperous and bright 2017. It is our hope that 2017 is filled with much laughter, happiness, good health and peace.

Please mark your calendars for the Spring Workshop which will be held in Niagara Falls at the Hilton Fallsview from April 5 to 7, 2017.

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MESSAGE FROM THE EXECUTIVE DIRECTOR

Chrissy Shannon, Executive Director, OMHRA

The holidays are just around the corner now! This special time allows us an opportunity to reflect on the past year, enjoy the company of friends and family, and to appreciate all we have in life.

As we look forward to 2017, OMHRA is excited to develop our educational offerings for the next year. Thanks to all members who have responded to our Education Committee’s survey on topics of interest for 2017. We rely upon this information to ensure we develop a theme and sessions that are of interest to our members.

Our Spring Workshop will be held April 5-7, 2017, at the Hilton Fallsview in Niagara Falls. OMHRA's registration for this event will open in late January. Our room rate at the Hilton is $149 plus taxes, and guest rooms can be booked now by following this link – OMHRA-Hilton Reservation Site.

OMHRA continues to provide its members with quality programs and educational offerings that reflect our members' preferences. In order for OMHRA to continue to provide members with quality service, the Board of Directors has determined it is necessary to increase the membership fees by 2% rounded up for 2017. This is the first dues increase since 2013.

Please see the 2017 fees listed below:

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<th>Membership Level</th>
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The 2017 membership renewal invoices will be emailed out to members in the first or second week of January. Members can pay their membership invoices online by credit card by logging in as a member on our website, and selecting View and Pay Membership Statements.

Thanks to all our members, volunteers, and sponsors, and I wish you all a very happy holiday season.

Chrissy Shannon
OMHRA ECHO CONTRIBUTORS

Vincent Tran
Stephanie Jeronimo
Julia Nanos
Asha Rampersad
Ian Johnstone
Alyson Frankie
Gavin Prout

Kevin MacNeill
Audie McCarthy
Bill Winegard
Mark Chapeskie
Patrick Simon
Holly Ewing-Murphy

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DUAL MONITORS USE IN THE OFFICE

Vincent Tran, Ergonomic Specialist, PROergonomics

In work environments increasingly focused on improved productivity and efficiency, we are seeing increased demands placed on all staff. In the office environment, this may mean that one computer monitor is no longer sufficient, as we may be able to improve efficiency by having multiple screens open simultaneously. However, is this really the ideal work method? This article will explore the PROs and CONs of moving to a dual-screen set-up.

Does a dual-screen set-up increase efficiency?

The most common purpose for installing dual monitors in an office is to improve one’s efficiency at work. However, there are considerable differences in the way that office workers use their monitors to complete tasks. For example: one employee may open up several documents and webpages and repetitively alternate between multiple windows, whereas a graphics designer may focus on their one design program and occasionally reference a document from which they cut and paste content. Is it really beneficial for both of these workers to have a dual monitor setup?

A study was conducted by Wang et al., in 2014 on the use of dual monitors for developing systematic reviews (SRs) that are used by researchers. The authors of this article found that the use of dual monitors reduced this data extraction time by 37%, saving a total of 49 hours per systematic review. These are substantial numbers; however, they may only be applied to jobs that require significant multitasking.

In 2012, Owens et al., studied a group of participants that were assigned to a task of recreating a Word document out of a PDF document by searching for the information in other provided documents. They were allotted 20 minutes to perform this task at one of each four workstations: a single 17” monitor, a single 22” monitor, dual 17” monitors, and dual 22” monitors. Surprisingly, there were no differences in the efficiency of completing this task. It could be speculated that this task did not require sufficient multitasking to make use of the additional space that the larger screens and dual monitor setups provided.

To conclude, dual screen set-ups do increase efficiency but only in certain applications (i.e. multitasking). Singular tasks that do not require additional screen real estate (i.e. writing a paper without referencing research) would not be more efficient using a dual screen setup versus a single screen setup. It’s important to consider how your staff would use their dual-monitors to engage with their content to determine if the investment is worth the time savings.

Why else should you implement dual-screens?

Other than increasing the ability to multitask (and become more efficient at it), Owens et al. also found that the 22” dual monitor setup was the most favoured out of the 4 setups used in their study. Employees that are provided with two screens have the freedom and flexibility to move and adjust their monitors as they please and in accordance with their work task. They can increase screen resolution so that characters are more easily legible, without having to constantly resize and reposition windows. Overall, the use of dual monitors provides a larger viewing space which allows users to combine or eliminate steps in the process of completing tasks.

Why shouldn't you consider dual-screens in your workplace?

There are however, several drawbacks to using dual screens in the office. For some users, they find that because there is a larger screen, it is easier for them to lose track of their mouse position. This
causes a change of focus from work to finding the mouse, and slows down progress. With the ability to have more windows open, the user may easily be distracted and have trouble concentrating on one task. This is a situation in which multitasking may become counterproductive. This can be particularly relevant to those that use their second screen for their email. Constantly interrupting work to answer emails that you see coming in will decrease productivity.

An important point to consider, is the ergonomics of using dual screens in the office. The use of dual screens may require the user to turn their head to look at either screen whereas, the user may stay in a more neutral neck posture while looking at a single screen. Nimbarte et al., studied the head and neck movement in dual monitor users in 2013. They found that head and neck rotation increases by 9°, with dual screens which is approximately 11% of total range of motion (Ferrario et al., 2002). Additional movement may increase a user’s risk of developing neck musculoskeletal disorders.

**How to set-up dual monitors?**

First, the two monitors should be setup such that one monitor is the primary monitor, and positioned directly in front of the user. The second monitor should be level with the first and directly next to the primary monitor. This allows the user to reference information from the second monitor with minimal neck twisting. Data displayed on the screens should also be organized appropriately to minimize movement. For example: if one document is open for drafting and another is used to reference, ideally these two windows would be directly next to each other on the primary monitor. Additional referenceable data on the secondary monitor should be as close as possible to the primary monitor to minimize neck rotation. These are only a couple strategies that may be used to improve the ergonomics of a dual monitor setup. To optimize a monitor setup and tailor it to the user and their specific work tasks, an Office Ergonomic Assessment should be conducted by a Professional Ergonomist.

**Conclusion**

In summary, deciding between single monitor and dual monitor setups is contingent on the user and their assigned tasks. A dual monitor setup may be recommended if the user’s work requires significant multitasking. Employers may want to provide a secondary monitor to improve worker morale and efficiency. This however, should be done with caution because of the ergonomic hazards that may arise if the workstation is not organized appropriately. Dual monitor workstations are only effective if used and setup appropriately.

**References**


ATTENDANCE MANAGEMENT: 
THE DIVISIONAL COURT SHEDS FURTHER LIGHT ON THE LIMITS OF THE DUTY TO ACCOMMODATE

Stephanie Jeronimo and Julia Nanos, Hicks Morley Hamilton Stewart Storie LLP

Managing employee attendance is a complex and sensitive task, particularly where the absenteeism is caused by factors outside of the employee’s control. In these circumstances, employers are tasked with striking the appropriate balance between the needs of the organization (to have employees regularly and reliably attend work) and the employees’ disability-related needs and circumstances.

How does an employer satisfy its duty to accommodate when the employee cannot attend work on a regular and consistent basis? What if the employee has no disability-related needs that require accommodation in the workplace (other than his/her need to be absent from work)? Is the employer required to accommodate the absenteeism? At what point is the employer justified in terminating the individual’s employment for frustration or innocent absenteeism? A recent Divisional Court decision sheds light on the answers to these questions.

The grievor in Ontario Public Service Employees Union v Ontario (Children and Youth Services)¹ was employed as a Youth Services Officer at a youth facility in Brampton, Ontario. He suffered from a chronic back condition that flared up without notice, leaving him bedridden and incapable of attending work. As a result of this condition, the grievor’s absenteeism had been significantly higher than the institutional norm for a number of years (approximately 35% of all regularly scheduled hours of work).

As a result of this absenteeism, the grievor was placed in the employer’s attendance support program. The employer met with the grievor and his Union representative on a number of occasions to discuss the grievor’s absenteeism and to offer support and assistance to facilitate the grievor’s regular attendance at work. All of the employer’s offers of accommodation were denied by the grievor who maintained that, when he was able to attend work, he experienced no limitations or restrictions that prevented him from performing all of his regular employment duties.

After a number of years of poor attendance, the grievor was asked to provide his prognosis for regular attendance at work. The employer was informed that the grievor’s back condition was permanent and degenerative, meaning that it was unlikely to ever improve. On this basis, the grievor’s employment was eventually terminated for innocent absenteeism and frustration of contract.

The Union grieved the termination and asserted that the employer’s failure to tolerate the grievor’s continued absenteeism amounted to a violation of the Human Rights Code. The Grievance Settlement Board disagreed and dismissed the grievance. It held that the duty to accommodate under the Code did not require the employer to “alter the fundamental essence of the employment contract, that is, payment made for work done.” The employer was not required to amend its attendance standard, which applied to all employees, in order to accommodate the grievor.

In September 2016, the Divisional Court released its decision on judicial review. The Divisional Court dismissed the application and affirmed that the purpose of the duty to accommodate is to “allow employees to fulfill their employment duties, not to allow employees not to fulfill those duties.” Put

¹ 2016 ONSC 5732 (Div. Ct.).
another way, “the goal of accommodation is to ensure that an employee who is able to work can do so”. The employer’s duty to accommodate ends where the employee is no longer able to fulfill the basic obligations associated with the employment relationship (the duty to perform work in exchange for remuneration) for the foreseeable future.

In this case, it was not disputed that there were no accommodations that the employer could offer the grievor that would assist him in attending work more regularly. The only request that the grievor made was that the employer continue to tolerate his absenteeism. The employer did in fact tolerate that absenteeism for a number of years. During this time, it attempted to work with the grievor and the Union to improve the grievor’s attendance. When it was determined that the employer was unlikely to see sufficient and sustained improvement in the grievor’s attendance, the employer’s duty to accommodate ended and it was justified in ending the employment relationship.

This Divisional Court decision reaffirms the principles that were enunciated by the Supreme Court of Canada in its 2008 decision, *Hydro-Quebec*, with respect to the limits of the duty to accommodate. These limits were also affirmed by the Human Right Tribunal of Ontario earlier this year in the decision *Pourasadi v Bentley Leathers*, in which the Tribunal confirmed that the duty to accommodate does not require the employer to permanently exempt an employee from performing the essential duties of the job, or to permanently assign the essential duties to other employees.

Together, these decisions provide helpful guidance to employers on the scope of their duty to accommodate. An employer will be expected to work with an employee (and the Union) for a period of time in an effort to assist the employee in performing the essential duties of the job, which includes attending work on a regular and consistent basis. Once it becomes clear that the employee will be unable to perform the essential duties of his or her position for the foreseeable future, the employer will have satisfied its duty to accommodate. The duty to accommodate will not require the employer to permanently tolerate excessive absenteeism, or to permanently excuse the employee from his or her most fundamental employment obligations.

*Stephanie Jeronimo and Julia Nanos specialize in labour and employment issues facing municipalities. If you have any questions about any workplace issue, including your duty to accommodate under the Human Rights Code, please contact Julia at 416-864-7341 or Stephanie at 416-864-7350.*

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2 2008 SCC 43.
3 2015 HRTO 138.
THE ONTARIO HUMAN RIGHTS TRIBUNAL’S “NEW OLD” TEST FOR FAMILY STATUS DISCRIMINATION

Kevin MacNeill, Partner, Emond Harnden LLP

This Fall, in Misetich v. Value Village Stores Inc., the Human Rights Tribunal of Ontario (HRTO) explicitly rejected recent jurisprudence that had applied the test for family status discrimination set by the Federal Court of Appeal in its 2014 decision in Canada (Attorney General) v. Johnstone. The HRTO instead applied what it referred to as “well-established human rights principles” in order to establish that the test for discrimination is the same in all cases.

The employer in Misetich v. Value Village Stores Inc. had changed the applicant to evening, weekend, and on call shifts in order to accommodate her physical restrictions. The applicant then claimed that her eldercare obligations to her mother – specifically, her need to prepare her mother’s dinner – were in conflict with the requirement to work evenings. At various times, the employer requested supporting information relating to the applicant’s mother’s health and needs, and whether there were alternative means to provide the necessary care. The applicant refused to provide the requested information on the basis that the employer was not entitled to private information about her mother. Eventually, after the applicant failed to attend for her scheduled evening shifts, she was terminated for job abandonment.

In considering whether the employer had discriminated against the applicant on the basis of family status, the HRTO canvassed the existing case law relating to family status discrimination, including the decision of the Federal Court of Appeal in Johnstone. The Johnstone test, which was developed in the context of an employee’s childcare obligations, requires a claimant to prove the following elements in order to establish discrimination on the basis of family status:

- the child is under the claimant’s care and supervision,
- the childcare obligation at issue engages the claimant’s legal responsibility for that child, as opposed to a personal choice,
- the claimant has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions, but no such alternative solution is reasonably accessible, and
- the impugned workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of the childcare obligation.

The HRTO rejected the Johnstone test, as well as other tests emanating from different courts and arbitrators across the country, on the basis that the test for family status discrimination should be the same as for other kinds of discrimination. The HRTO set out the following reasons for this conclusion:

1. There is no principled basis for developing a different test for discrimination depending on the prohibited ground of discrimination alleged.
2. The different tests for family status discrimination have resulted in inconsistency and uncertainty in the law.
3. The different tests for family status discrimination are higher than for other kinds of discrimination. (The HRTO noted that, according to Johnstone, the childcare obligation at issue
must engage a legal responsibility, notwithstanding that many obligations that caregivers have are essential to the parent/child relationship but do not engage a legal obligation.)

4. The test of legal responsibility is difficult to apply in the context of eldercare where an adult child’s legal responsibility to care for a parent is not as clear as a parent’s legal responsibility to care for a minor child.

5. The test for discrimination has been conflated with the test for accommodation, resulting in applicants having to establish that self-accommodation is not possible in order to prove discrimination. (Courts and arbitrators have put the cart before the horse, so to speak.)

In light of the issues arising from the current state of the law, the HRTO set out the following approach for family status discrimination:

In order to establish family status discrimination in the context of employment, the employee will have to do more than simply establish a negative impact on a family need. The negative impact must result in real disadvantage to the parent/child relationship and the responsibilities that flow from that relationship, and/or to the employee’s work.

In determining whether there is a “negative impact on a family need”, the HRTO provided the following guidance:

Assessing the impact of the impugned rule is done contextually and may include consideration of the other supports available to the applicant. These supports are relevant to assessing both the family-related need and the impact of the impugned rule on that need. For instance, if the applicant is a single parent, both the family-related need and the impact of the impugned rule on the family-related need may be greater.

This consideration of what other supports are available to an applicant was distinguished from the requirement that arose under the various other tests for family status discrimination for an applicant to self-accommodate as part of the test for discrimination: the previous approach had meant that the applicant bore the onus of finding a solution to the family-work conflict, and only where they could not was discrimination established.

As has always been the case, once discrimination is established, the onus shifts to the employer to show that the employee has been accommodated to the point of undue hardship. This stage of the analysis involves a consideration of whether the employee has cooperated in the accommodation process, including by way of providing the employer with sufficient information relating to their family-related needs, and working with the employer to identify possible solutions.

In applying the above approach to the case at hand, the HRTO found that the applicant’s ability to provide evening meals for her mother was not adversely affected by the change in her schedule. The HRTO stated that the applicant could have worked days, evenings and weekends and still provided evening meals for her mother in the same way she was able to provide a meal in the middle of the day. As a result, the HRTO held that the applicant had failed to establish discrimination, and dismissed her application.

It should be noted that the HRTO’s decision was made in the context of the information that was available to the employer at the time, which was limited because the applicant had refused to disclose
information relating to her eldercare obligations. In this regard, the HRTO made the following comments:

*The applicant took an intransigent position regarding her human rights. When the respondent attempted to move the applicant to less physically demanding work in retail and schedule her on a variety of shifts, the applicant took the position that it could not do so because of her family status. The applicant believed that all she needed to do was to assert her family status and that would be the end of it. The applicant was wrong. The applicant was required to provide sufficient information to substantiate her eldercare responsibilities. She failed to do so.*

**What Does this Mean for Municipalities?**

For Ontario municipalities and many other employers in the province, the HRTO’s decision in *Misetich* has created some uncertainty regarding the proper test for family status discrimination, which uncertainty is likely to persist unless and until the Supreme Court of Canada provides clarification.

In the meantime, what is clear is that employers must be flexible in considering ways to accommodate the family-related needs of employees. At the same time, this latest decision from the HRTO confirms that employees have a role to play as well: they are required to cooperate fully in the accommodation process, and must provide pertinent information to the employer in order to canvass potential solutions.

*The information contained in this article is provided for general information purposes only and does not constitute legal advice.*

*For further information on family status accommodation, or any other human rights or employment issue, contact Kevin MacNeill at Emond Harnden LLP at 613-940-2767 or visit ehlaw.ca.*
MAKE IT A JOYOUS TIME FOR ALL MEMBERS OF YOUR TEAM: WORKPLACE DIVERSITY DURING THE HOLIDAY SEASON

Audie McCarthy, President and CEO of Mohawk College Enterprise

It may be the most wonderful time of the year. But for some of your employees, it might not be Christmas that has them celebrating. During this time of year, different cultures and religions observe many holidays other than Christmas.

While a party or luncheon is a great way to build team spirit, to reward your team for their dedication and to unwind after a year of hard work, it is important to be sensitive to diversity in the workplace. As workplace diversity consultant Sondra Thiederman, PhD, told Monster.com, the key is to focus "more on what we share and less on where we differ."

Thiederman warns against trying to plan a holiday party that recognizes every culture and religion. "The more you try to please members of every single group, the greater danger you are of deeply offending someone left out," she says. "Go for neutrality, not specificity."

She says the goal should be to have everyone together to celebrate and let loose without any religious symbols. That way, a celebration becomes a unifying activity, not one that highlights differences.

Here are some tips for making sure the holiday season is happy for all of your employees:

- Invite all staff to be involved in the planning. If your team is too large, set up a holiday committee. This committee can tackle not only the party but how you want to recognize customers or others at this time of year.
- Provide foods that accommodate vegetarians, vegans and other dietary requirements. This of course is important all year long!
- Select a date for the celebration that does not conflict with a religious observance or other key events. It's a busy time of year so set your date far in advance to allow people to plan their other activities.
- Have fun! Plan activities or games that will be inclusive. Remember diversity is not just about culture. Plan activities that will engage your introverts as well as your extroverts, your millennials and generation Xers, as well as your baby boomers.
- If you decorate the office, consider choosing neutral themes (snowflakes and snowmen) or represent symbols from different cultures and religions.

You can also take steps to help all team members learn and appreciate traditions from all religions and culture. For example, display a multicultural calendar in your workplace that features all important religious and cultural events throughout the year. Hold a potluck where employees bring in food from
their religion or culture and allow them to tell the significance of the dish or a favourite memory associated with it.

You can also consider alternatives to the holiday party, as many companies are starting to do. In addition to diversity concerns, due to the busyness of the season and difficulty booking a venue this time of year, many organizations are opting instead for an afternoon of family skating or a family picnic in the summer. Another idea might be to involve your staff in a community event. Non-profit organizations are always looking for volunteers this time of year.

Mohawk College Enterprise is a business-to-business corporation established by Mohawk College to prepare people and companies with the skills and expertise required to succeed in today's fast-paced world. Through our expert trainers, we provide training and customized solutions with the latest techniques and technology. Teaching performance management principles is part of our Future Ready Leadership Program, a series of customized leadership training sessions held one day each month, over eight months. This highly sought after program will help develop emerging leaders and provides; critical thinking skills and valuable insight that will prepare and address organizational change management. Audie McCarthy is president and CEO of MCE. For information, please contact Audie at 905-575-2525 or amccarthy@mcecor.com.

MCE Spring Workshop

April 5 – 7, 2017
Hilton Fallsview
6361 Fallsview Blvd
Niagara Falls
Bill Winegard, Executive Director, MROO

Thanks to OMHRA members, the success of MROO's retirement planning seminar program continues unabated. Again in 2016, through our convenor and primary presenter Phil Hollins, 450 soon-to-retire employees attended 18 seminars.

Feedback from participants remains enthusiastic. OMERS and ENCON staff present critical pieces of the retirement picture. Phil stimulates discussion about other key questions: When and why to retire? Am I ready? What will I do with my time? A panel of actual retirees reflect briefly on their own decisions to retire: What has worked out? What hasn't? What do I do in this new stage of my life?

Uniformly, seminar participants report their appreciation for the valuable opportunity their employer has provided to prepare for their "next career". In 2015, over 8000 OMERS members retired. In 2016, it will be at least that many. The question "Are They Ready?" doesn't end with dollars and cents and it's more important than ever.

In addition to OMERS and ENCON, we would like to offer our 2016 thanks to:

York Region
County of Lambton
County of Wellington
County of Lanark
Counties of Leeds and Grenville
District of Muskoka
City of Waterloo/Waterloo Library
City of Oshawa
City of Timmins
Porcupine Health Unit
Town of Orangeville
Municipality of Central Elgin
Township of Centre Wellington
MOUNTING PRESSURE ON GOVERNMENT TO REFORM WSIB LAWS DENYING ENTITLEMENT FOR CHRONIC MENTAL STRESS CLAIMS

Asha Rampersad, Lawyer & HR Advisor, Bernardi Human Resource Law LLP

In Ontario, claims for psychological or mental stress are limited under the Workplace Safety Insurance Act and its Traumatic Mental Stress Policy to situations in which the mental stress or psychological condition is:

- an “acute reaction to a traumatic event”
- that is “sudden and unexpected” and
- that is “clearly and precisely identifiable”.

This meant that chronic mental stress was historically denied.

Three decisions from the workplace appeals tribunals signalled that Ontario’s restrictive approach in granting entitlement for mental stress benefits is unconstitutional and discriminatory but the WSIB’s policy remained unchanged.

On November 14, 2016, three Toronto-based legal clinics filed a claim with the Ontario Ombudsman arguing that mentally ill workers are being systematically denied benefits because of discriminatory and unconstitutional practices at the WSIB. This complaint calls for an investigation into the WSIB for its treatment of workers with chronic mental stress injuries. Collectively, the pressure “is on” for the Ontario government to address this issue.

On April 2014, the Ontario workplace appeals tribunal issued Decision 2157/09. This case involved a nurse who was bullied by a doctor over the course of more than 10 years. The doctor excluded the nurse from conversations in which others were included, embarrassed her in front of others, required her to communicate only through written notes and told her repeatedly to “shoo” or “get out” in the presence of patients.

In this decision, the panel compared claims of mental stress over time to those of physical injuries that occurred over time. It found that workers with mental stress issues that arose out of and the course of employment were treated differently from workers with physical disabilities, in that the current definition to qualify for mental stress benefits was more restrictive. Accordingly, the panel found the prohibition against claims by workers for mental stress to be unconstitutional. Two subsequent decisions in 2015 and 2016 applied Decision 2157/09 in 2015 and 2016 and reached the same conclusion. It is notable that in one of these decisions, the appeals tribunal found that even an excessive workload and failure of management to support an employee may ground entitlement to mental stress benefits.

What does this mean for you?

- Until this is clarified, there will likely be inconsistency between decisions of the WSIB, which has continued to deny chronic mental stress claims and the appeals tribunal which is overturning those decisions. As a result, there may be more appeals to the appeals tribunal, as well as requests for reconsideration.
• A change in approach opens the door for mental stress claims related to bullying, lack of managerial support, excessive workload issues, interpersonal conflict and humiliating events. This will place much greater pressure on organizations to address these issues effectively and at any earlier stage.

As a result of these decisions, it is only a matter of time before Ontario considers reforming its current legislation. It may consider adopting the more flexible approaches taken to benefit entitlement for mental stress taken in Alberta, Saskatchewan, Quebec and recently in British Columbia.

To prepare yourself for this likely change and to avoid costly claims before the WSIB we encourage you to take the following steps:

• Ensure that mental stress complaints are addressed promptly and well documented.

• Take strong measures to eliminate and respond to discrimination, harassment, bullying and sexual harassment.

• Ensure that managers and supervisors are aware that actions that cause emotional distress can result in liability and provide ongoing training in effective managerial skills.

• Do not accept at face value vague notes from walk-in doctors or family physicians indicating that the employee is on a “stress leave”. Instead, explore what that means and engage in ongoing dialogue with employees and offer support to work through the stress.

• Take steps to create a positive, healthy work environment that promotes psychological well-being including implementing the National Standard for Psychological Health and Safety in the Workplace.

We will continue to closely monitor issue and update you regarding any new developments.
HR AND SOCIAL MEDIA: FROM MAYBE TO MUST HAVE

Mark Chapeskie, Product Manager, Recruit Right by eSolutionsGroup

If you want top talent for your municipality, it’s no longer a question of “if”, but “how and when” you implement a social media plan as part of your integrated online communications and recruitment strategy.

According to a national HR consulting firm, “We have found that with the rise of social media, talent—particularly top performers—are continuously searching for new positions.”

Who’s where?

Let’s begin with a better understanding of where prospective employees learn about your organization.

*Millennials*, born between 1981 and 2000, represent 30% of the Canadian population and will soon make up 75% of the workforce. They are the heaviest users of social media at 75%, according to research firm Environics.

*Gen Z*, born between 1996 and 2010, has grown up with smartphones almost surgically attached. Their favourite communications are apps and they are less inclined to share details of their private lives, reports Forbes magazine.

And again according to Environics, 24% of Boomers, those born between 1946 and 1964, use social media sites; a number that is growing substantially as parents and grandparents move online to stay connected with their children.

The good news is that your traditional advertising strategy — local newspaper advertisement, and websites postings — continues to play a vital role. According to a Financial Post report, 70% of Canadians are still reading newspapers, and 70% of those aged 18-34 are reading newspapers, too — but doing so online. Facebook and LinkedIn have already begun commercializing this trend, working with media outlets to syndicate content to their social networks.

What can I do to make the most of it?

The following steps can help get you started as you build a social media plan within your integrated communications and recruitment strategy.

1. **Consider a multi-channel recruiting strategy.** Social media channels and online recruiting sites provide the opportunity for very targeted promotion at reasonable rates. You can pick the geography, age group, experience and interests of your best potential candidates and only communicate with them. And digital channels mean you can see real time results and quickly adjust your postings to make the most of your advertising dollars.

2. **Engage your supporters.** Referrals are the number one source for success in recruiting and according to LinkedIn research, cuts the average hiring cycle to 29 days from 55 days. Posting on your website, with pertinent points and an image posted to social media, helps employees share the information with their personal or professional circles. It also delivers your message to any followers instantly.

3. **Always give prospects a home.** Your website must deliver current and relevant content, easy to find, and telling your unique story. And a very clear call to action for potential recruits. Every
social media post (or shareable message for communication apps like Snapchat or Facebook’s WhatsApp or Messenger) should link to your website for more information. It helps provide that next level of information, better rounds out your story, and makes it easier for you to report on the interest and impact your social media efforts generate. Current and unique content also gives your Google Search results a boost as well.

4. **The Boy Scout/Girl Guide approach.** Simply put, be prepared. Proactively developing your own social media policies and guidelines, helps equip your employees to tell your story in an appropriate manner. Monitoring your social media sites and promptly responding to queries, complaints, or comments helps you better connect with your community and protect your organization’s brand.

Social media, as part of your online communications and recruitment strategy, is about connecting your organization and positions posted with those that are best suited – and interested – in making the move to work with you. We know top performers are looking at you online and through social media. Isn’t it time to look back?
ARBITRATOR ADMITS EVIDENCE FROM INVESTIGATIVE INTERVIEW DESPITE NON-ATTENDANCE OF UNION REPRESENTATIVE

Ian Johnstone and Patrick Simon, Johnstone & Cowling LLP

In Toronto (City) v Toronto Civic Employees’ Union (Pugliatti Grievance), an arbitrator permitted an employer to call evidence from an investigative interview carried out by its third party benefits provider. He held that that the interview was not a disciplinary discussion, and therefore that the evidence was not obtained in breach of a collective agreement provision entitling employees to union representation during such discussions.

Joe Pugliatti worked in the City of Toronto’s solid waste management department. The City provided benefits to its employees through a third party provider, Manulife. In spring 2012, Manulife became aware of a potential benefit fraud scheme being operated through an organization known as the Canadian Institute of Orthopaedics. Manulife began to monitor claims associated with that entity. Mr. Pugliatti made a claim for two knee braces from the Institute, and was reimbursed by Manulife for $4,314. He paid about half the amount of the claim to the Institute, which never actually provided the knee braces to him.

The City dismissed Mr. Pugliatti on December 2, 2014, after it found that his claim for the knee braces was part of a fraudulent cash-splitting scheme, under which Mr. Pugliatti processed the claims with no intention of receiving the claimed goods, and split the proceeds of the claim with the Institute. The City’s disciplinary proceedings were preceded by an investigation by Manulife, in the course of which Mr. Pugliatti was interviewed over the telephone by a Manulife investigator. Mr. Pugliatti was not afforded an opportunity to have a trade union representative attend the Manulife interview with him.

Mr. Pugliatti’s employment was covered by a collective agreement between the City and the Canadian Union of Public Employees, Local 416, also known as the Toronto Civic Employees’ Union. Article 20.01 of that agreement provided as follows:

Article 20 – DISCIPLINE, SUSPENSION AND DISCHARGE

20.01 Whenever an employee is requested to report for a disciplinary discussion with supervisory personnel, prior to any disciplinary action being taken or a grievance being lodged, such employee shall have a Union Representative at such a meeting. For the purposes of this provision, “Union Representative” shall mean the Steward for the particular work area or, if not available, any steward from the section or, if not available the Unit Chair. If no Union Representative is available, the employee shall not be disciplined but may be removed from the workplace with pay until a disciplinary discussion can be held. Such removal from the workplace shall not be considered to be disciplinary action.

The Union brought a grievance challenging Mr. Pugliatti’s discharge on the basis that he was an innocent victim of the Institute’s fraudulent scheme, that his intention was to purchase the braces, and that he had not committed fraud. As a preliminary matter, the Union sought to exclude any evidence
relating to the interview with Manulife on the basis that it was a breach of Article 20.01 to conduct that interview in the absence of a representative from the Union.

The City argued that the evidence relating to the Manulife interview should be admitted on the basis that the interview was not a disciplinary discussion, but rather a preliminary investigation that preceded any disciplinary action by the City. The City also contended that the scope of Article 20.01 was limited to City personnel, as that provision referred only to discussions with “supervisory personnel”.

Arbitrator Lorne Slotnik commenced his analysis by recalling that clauses providing for union representation during the disciplinary process serve a number of important purposes. The union representative is a witness to the exchange between the employer’s representatives and the employee. The representative also gains insight into the background to the disciplinary scenario, which is useful in any subsequent disciplinary proceedings. As well, the union representative may be able to influence the employer’s decision in the employee’s favour. Arbitrator Slotnik also noted that there is no statutory or inherent right to union representation in the disciplinary process. Any such right is conferred by the terms of the collective agreement.

Turning to the wording of Article 20.01, Arbitrator Slotnik rejected the City’s argument that the interview with Manulife could not have been covered by that provision because it was not conducted by “supervisory personnel” employed by the City. Even though, at first blush, Manulife’s investigators were not supervisors of City employees, the City had delegated some of its supervisory authority to Manulife. It was not open to the City to evade Article 20.01 simply by delegating its responsibilities to third parties.

However, he accepted the City’s argument that the discussion with Manulife did not fall within the scope of Article 20.01. In this regard, Arbitrator Slotnik referred to earlier cases about the same provision, in which the phrase “disciplinary discussion” was interpreted to include situations in which the employer already intended to impose some form of discipline, but not preliminary or initial investigative meetings during which the employer’s purpose was to inform itself about potential disciplinary matters.

Accordingly, the Union’s request to exclude the evidence relating to the Manulife interview was denied.

This case is important because it confirms that an arbitrator is unlikely to permit an employer to rely on the fact that a particular task has been delegated to a third party provider in order to avoid liability for breaching its procedural obligations under the collective agreement. Even though the clause in this case was limited on its face to supervisory employees, Arbitrator Slotnik was willing to require union representation where a meeting conducted by a third party could have been held with a supervisor employed by the City. On the facts of this case, the meeting in question was ultimately held to fall outside the scope of the clause. However, as a general comment, an employer should take care to ensure that any third party that carries out disciplinary-related functions on its behalf honours any applicable procedural obligations.
PREPARING FOR THE REDUCED EI WAITING PERIOD EFFECTIVE JANUARY 1, 2017

Alyson Frankie, Stephanie Jeronimo & Julia Nanos, Hicks Morley Hamilton Stewart Storie LLP

On January 1, 2017, the waiting period for Employment Insurance (EI) benefits will be reduced from two weeks to one week following amendments to the Employment Insurance Act (EI Act).

Significantly, a reduced EI waiting period will immediately impact the administration of most supplemental unemployment benefit plans (SUB) and maternity/parental leave top-up plans. This change could also affect sick leave or short-term disability (STD) plans that qualify for the EI premium reduction program.

Under the current EI regime, claimants are required to wait two weeks before EI benefit payments commence. This practice will continue to apply to individuals with benefit periods that begin prior to January 1, 2017. However, if an employee begins a benefit period after January 1, 2017, they will only be required to wait one week before their EI benefits may begin. EI benefits will still be paid for the same number of weeks, regardless of whether an employee was subject to a one- or two-week waiting period.

In October, draft amendments to the Employment Insurance Regulations (EI Regulations) were released. These amendments clarify how the reduced one week waiting period will apply to SUB plans, top-up plans, sick leave and STD plans. In particular, the amendments provide employers with a four-year transition period to address certain issues that may arise once the one-week waiting period takes effect, some of which may need to be addressed at the bargaining table.

SUB Plans and Top-Up Plans

SUB plans provide benefits during periods of absence related to layoff, illness or injury. Top-up plans apply to leaves of absence such as pregnancy leave, parental leave, or compassionate care leave.

Under the EI regime, qualifying SUB plans and top-up plans are excepted from the general rule that payments received by an employee from an employer during a benefit period reduce the amount of EI benefits payable. Instead, these types of plans are subject to an upper limit on the combined total of EI benefits and supplemental payments from the plan. For SUB plans, EI benefits combined with the supplemental benefits cannot be more than 95% of normal weekly earnings. For top-up plans, the limit is 100% of normal weekly earnings.

Existing language in qualifying SUB plans and top-up plans may reflect the current two-week waiting period, (i.e. employers may be required to make payments during the two-week waiting period). As a result, it is possible that under some SUB plans and top-up plans, an employee could receive a combined payment during the second week of a leave that exceeds the applicable normal weekly earnings limit. Because EI special benefits will commence one week sooner and end one week sooner, there could also be ambiguity under an existing SUB plan or top-up plan regarding the amount of benefits payable in the week following the end of the EI benefit period.

The proposed transitional provisions under the amendments to the EI Regulations allow time for employers to amend their existing SUB plans and top-up plans. One provision allows benefits paid from qualifying SUB plans and top-up plans to exceed the normal weekly earnings limit during the week
immediately following the one-week waiting period. During the four-year transition period, receiving combined benefits above the applicable limit during the second week of a leave will not result in a reduction of the employee’s EI special benefits.

Employers will need to review their SUB plans and top-up plans to determine whether these types of administration issues could arise in January, when the one week EI waiting period becomes effective.

**EI Premium Reduction Program**

Employers participating in the EI Premium Reduction Program (PRP) will also need to review their sick leave or STD plans in anticipation of the reduced EI waiting period. The PRP permits employers to pay reduced EI premiums if Service Canada approves their STD or sick leave plan based on specific requirements in the EI Regulations. This arrangement is provided to recognize the savings to the EI Operating Account by employer sick leave and STD plans, which may provide benefits for all or part of an employee’s extended absence due to illness. As a result, fewer claims are made for EI sickness benefits and claims are for a shorter duration.

Under the current EI regime, one of the requirements for STD and sick leave plans to qualify for the PRP is that the elimination period before benefits become payable must be 14 days or less. The amendments to the EI Regulations provide that this requirement will be changed to parallel the reduction in the EI waiting period, by reducing the maximum elimination period from 14 days to 7 days. Employers will be given a four-year transition period to amend their sick leave and STD plans in order to continue to qualify for the PRP, if the current elimination period under an existing plan exceeds 7 days. Changes to a sick leave or STD plan may also have implications for an employer’s long-term disability plan design if it was intended to pay benefits after STD benefits end.

**Four-Year Transition Period**

The four-year transition periods provided under the amendments to the EI Regulations are only available to employers with existing SUB plans and top-up plans or sick leave and STD plans prior to January 1, 2017. For employers with existing plans incorporated into collective agreements or third party insurance contracts, the transition period will assist with the time needed to identify appropriate changes and take the necessary steps to implement them. All plans will have to comply with the amended rules as of January 3, 2021 in order to continue to qualify for the relevant exceptions and premium reductions.

**Next Steps**

In the coming weeks, municipalities will want to review their STD and sick leave plans, their top-up plans and their SUB plans in order to assess the impact of the reduced EI waiting period. Employers will need to determine how best to administer the plans during the transition period and identify whether changes to the plans are necessary or appropriate.

Municipalities will also need to determine whether collectively bargained plans may be unilaterally amended. If not, employers will need to develop a strategy to respond to the reduced waiting period, both in the short term and at the bargaining table.

Alyson Frankie specializes in pension and benefits issues facing employers and plan administrators. Stephanie Jeronimo and Julia Nanos specialize in labour and employment issues facing municipalities, including collective bargaining strategy. If you have questions about changes to the EI regime or any workplace issues, please contact Alyson at 416-864-7019, Julia at 416-864-7341 or Stephanie at 416-864-7350.
How you can help your retiring employees prepare for “take-off”

Retirement and travel seem to go hand-in-hand. When the structure of work life is left behind, retirees begin to carve out their travel plans and take full advantage of their earned time off.

“It is about freedom, for once in your life you have the opportunity to travel; suddenly you don’t have to be back to work on Monday morning. It’s like being let out of school,” said Paul Marshman of the Travelling Boomer, a popular travel blog aimed at older travellers—in an interview with the Globe and Mail.¹

Consider the following: the Canadian Tourism Research Institute predicts that baby boomers will be the main pleasure-travel market over the next 10 years, spending more than $35-billion annually. It anticipates those 55 and older will be going on 2.3 million trips between now and 2021.²

The numbers speak for themselves—once retired, your employees will likely travel and they will do so frequently and for long periods of time. As you help your employees transition into retirement, you can arm them with information on the steps they need to take before embarking on their next adventure.

Obtaining insurance coverage for unexpected medical emergencies is a must and, if your organization does not extend benefits beyond employment, encourage your employees to research options for private coverage.

The concept of travel insurance is not new; but the process of preparing for a trip or managing a medical emergency while abroad is not clear to everyone.

There are things retirees need to do before embarking on a trip, particularly a long one, such as:

- Visit their doctor and dentist for a check-up to rule out any potential health issues that may flare up while on vacation.
- Obtain copies of their original prescriptions and a letter of explanation from their doctor so that the medication can be easily replaced in case of loss or theft.
- Research their trip destination including travel advisories, visa requirements, what vaccinations are required and more.

Knowing what to do in the case of a medical emergency while abroad is also key, as it can have a direct impact on coverage. Your employees must contact their travel insurance provider prior to seeking treatment so they can open a case and make billing arrangements where possible. In cases where emergency medical assistance is required, your employees must call for an ambulance directly and then contact the travel insurance provider to open a case. Most insurance companies are available 24 hours a day, seven days a week, including holidays.

Share this important information with your employees:

To help you communicate these and other important considerations for your retiring employees, you can download the full checklist at [http://encon.ca/English/Retiree/Documents/RetireeTravelChecklist.pdf](http://encon.ca/English/Retiree/Documents/RetireeTravelChecklist.pdf) and share it with your team.
MROO’s Annual Travel Plan is designed for your adventurous retirees:

If your company does not offer benefits at retirement or after the age 65, you can advise them that they have access to the MROO Annual Travel Insurance Plan (available only to those who are insured under the MROO Retiree Health Care Plan). It’s a perfect fit for those retirees who travel extensively throughout the year. The plan can often be less expensive than purchasing insurance each time a trip is taken. An annual plan offers consistent coverage and a convenient way to ensure coverage is there when needed.

Retirees can choose from trip durations of 30, 45, 60, 90, 120, 150 or 180 days and they will have the opportunity to reselect the trip duration period each year to best meet their travel needs.

For information about MROO’s Retiree Benefits Program or to order insurance brochures for your retiring employees, please visit [www.encon.ca/mroo](http://www.encon.ca/mroo), call ENCON Group Inc. (MROO’s insurance program manager) at 1-800-363-7861 or email us at mroo@encon.ca. You are invited to schedule a complimentary pre-retirement meeting for your employees. Our educational seminars can help them to prepare for health care costs in retirement.
**HAVE YOU HEARD?**

**Future Ready Leadership Program**

Mohawk College Enterprise (MCE) will be hosting its flagship program, Future Ready Leadership, one day a month for eight months starting in January. The training will take place at MCE’s facilities in Stoney Creek. This highly interactive and engaging program is open to high potential employees, emerging and existing leaders who want to improve upon their leadership skills.

More than 500 participants have graduated from this program since its inception in 2011. Twenty-nine municipalities across Ontario have taken part.

For more information, contact Kris Michailow at kmichailow@mcecor.com or 905 517 1676.

**County of Wellington Honoured with Psychological Safety Award**

The award was presented at the 2016 Canada’s Safest Employers Awards on October 24.

Wellington County - The County of Wellington is proud to have received the Silver Award for Psychological Safety at an Award Ceremony presented at the Canada’s Safest Employer Awards ceremony, hosted at the Arcadian Court in Toronto, ON. Canada’s Safest Employer’s Awards recognizes companies from all across Canada for their outstanding accomplishments in promoting the health and safety of their workers.

"This is a great honour," says Warden George Bridge. "I know County Council is truly appreciative of the Human Resources department and the hard work completed every day in supporting the County and its employees, but also in supporting each other. This honour is very deserving!"

The Human Resources department provides numerous services including Recruitment and Selection, Employee Relations, Learning and Development, Benefits, Pension, Compensation and Job Evaluation, Health, Safety and Wellness, Labour Relations, Human Resources Management (performance management and coaching), and Strategic Management (policy development and workforce planning).

"The success of the County has been achieved with building blocks over many years, creating the organization it is today," says Andrea Lawson, Director of Human Resources for the County of Wellington. "Being a Public Sector organization, we need to be creative in terms of how to recognize our staff members and their achievements. Receiving Awards like this helps to recognize the achievements of the County as well as our staff members, and the hard work they do day after day."
MESSAGE FROM SPECIAL BENEFITS INSURANCE SERVICES

Gavin Prout, Vice President, Special Benefits Insurance Services

Hello everyone, with the holidays around the corner we here at Special Benefits want to wish everyone a happy and safe holiday season. We look forward to working besides each and every one of you in the upcoming year by providing quality individual Health, Dental and Travel benefits to your employees who are retiring… at no cost to you.

Keep in mind these aren’t the only employees we can cover. We also cover any individual who is losing their group plan such as over-age dependents, someone who is going from full time to part-time or contract workers. Those who are surviving spouses or divorcees. Let’s just say anyone who is coming off a group plan or who doesn’t qualify for a group plan… We Can Cover. Your employees will appreciate being provided with a brochure regarding this information by you. Employees always appreciate having options and choices.

An important note…by enrolling in one of these plans, it will directly benefit OMHRA by allowing us to provide more money in sponsorships to put towards the semi-annual conferences and/or grants for deserving students.

We have an announcement to make….in the past we have only provided Green Shield Canada “Prism” programs to you and your employees. We are pleased to announce that Special Benefits Insurance Services have increased our portfolio to now include Manulife Financial as a carrier we represent for OMHRA members. This means there are up to 40 different plans to choose from now, guaranteeing that we can find a plan that will work within employee budgets and the needs of each and every individual.

Customer Service is Key…working with a broker like Special Benefits Insurance Services will allow you and your employee’s access to all of these plans, along with a customer service representative that will answer each call personally and take as much or as little time as you need to explain each plan that fits your or your employee’s needs.

Looking forward to seeing everyone at the next conference and if you have any questions regarding what we can offer you or your employees, please give me a call.
MARK YOUR CALENDARS

Ontario Municipal Compensation Survey

Participation in this year’s survey begins early May!

About the survey:
Brought to you by Mercer and the Ontario Municipal Human Resources Association (OMHRA). The Survey represents around 60,000 full-time municipal employees from about 60 Ontario municipalities and provides comprehensive job rates for 236 municipal positions.

For additional information about the survey, please contact us.

800-333-3070
surveys@mercer.com

Fall Conference 2017

September 13 – 15, 2017

Blue Mountain Conference Centre
WELCOME TO OUR NEWEST OMHRA MEMBERS

Kari Petherick, Co-ordinator of Human Resources & Health & Safety, Trent Hills
Stephanie Lubke, Human Resources Assistant, Township of King
Richard Anderson, Health & Safety & Employee Services Officer, City of Quinte West
Monica Nowak, Human Resources Advisor, Town of Milton
Kirsten D’Oliveira, Human Resources Co-ordinator, Town of Halton Hills
Trinh Chu, Human Resources Strategic Business Partner, Peel Region
Debbie Lau, Human Resources/Compensation Analyst, City of Markham
Carissa Kapitor, Staff Development Co-ordinator, Norfolk County

OMHRA ECHO

The OMHRA ECHO is currently published four times a year in the spring, summer, fall and winter, by the Ontario Municipal Human Resources Association. Mail to the ECHO should be addressed to the co-ordinator at the e-mail address below. Members receive this publication as part of their membership dues.

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