

AUDIO CONFERENCE SUMMARIES

SUBJECT	DATE	TOPICS/COMMENTARIES AND WRITTEN MATERIALS
<p>Accommodating Family Responsibilities in the Workplace: The New Tests</p>	<p>May 8, 2007</p>	<p>Discrimination on the basis of family status; pregnancy, maternity, parental and adoption leave; Accommodating pregnancy; Compassionate care, emergency leave, and family responsibility leave.</p>
<p>Accommodating Mental Illness and Workplace Stress: Dealing with “invisible disabilities”</p>	<p>May 28, 2008</p>	<p>When do “invisible” illnesses constitute a disability giving rise to the duty to accommodate? Do temporary conditions count? What constitutes discrimination based on perceived disability?; Employer’s duty to inquire: Does inappropriate anti-social behaviour trigger a duty on the employer’s part to inquire about an employee’s mental health?; How does the employer determine whether an employee’s absenteeism or misconduct is a matter for discipline or the result of a disability that requires accommodation? In what circumstances does mental illness reduce or nullify culpability arising from misconduct? When can the employer obtain an independent medical evaluation or specialists’ opinion? What measures should be put in place to protect an employee’s privacy?; What must the employee disclose in order to establish a need for accommodation? Is the employer required to accommodate an employee with a mental illness where the employee denies disability? Refuses to provide medical information? Experiences a relapse? Can employers insist on psychiatric treatment and/or medication as a condition of employment?</p>

<p>Accommodating Religious Practices in the Workplace</p>	<p>February 22, 2007</p>	<p>The effect of Meiorin; rules relating to personal appearance; discretionary leaves of absence; dress code policies and religion; accommodating religious observance in scheduling; the scope of protection of religious observance under human rights legislation; exceptions for charitable, religious and philanthropic employers.</p>
<p>Alcoholism and Drug Addiction: Testing, Treatment and Screening</p>	<p>December 19, 2006</p>	<p>Assessment of discipline; the duty to accommodate addictions: what are the rules? When does the duty to accommodate arise? The worker's obligations; accommodating relapses: the "hybrid" approach; off-duty conduct; zero tolerance policies; last chance agreements; drug and alcohol testing; safety sensitive workplaces and positions; random testing; privacy.</p>
<p>An update on violence, bullying and harassment in the workplace</p>	<p>September 4, 2008</p>	<p>When will actions, gestures or statements made by an employee constitute a threat to management or a co-worker? How do arbitrators distinguish between harassment and insensitivity or petty conduct?; When can an employer discipline employees for violence, threats and harassment?; When will a violent incident justify terminating the employee? What penalties are likely to be upheld at arbitration?; Can an employer rely on a workplace violence or harassment policy in establishing just cause for termination or to justify disciplinary actions taken? Are "zero tolerance" workplace violence and harassment policies enforceable?; When will mental illness and/or disability mitigate the blameworthiness of an employee's workplace violence, threats, or harassment?; Which remedies are courts, boards and tribunals awarding to harassment victims? When will</p>

		employers be held liable for the actions of its employees? Under what circumstances will an employer be ordered to transfer an accused harasser or to find a new position for a victim of harassment? What other requirements might be imposed on the employer or accused harasser as a condition of continuing employment?
Assessing Appropriate Discipline	November 17, 2004	Type of offence/aggravating factors; mitigating factors; disciplinary regimes; progressive discipline; zero-tolerance regimes.

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Assessing Discipline: Getting It Right	April 6, 2006	Factors affecting penalty; severity of the misconduct; motive and intent; medical conditions; failure to cooperate with the investigation; progressive discipline; forms of discipline; discipline policies; culminating incident; the “work now, grieve later rule”; last chance agreements; the “hybrid” case.
Attendance Management Programs and Last Chance Agreements – Making Them Fair, Effective and Enforceable	November 20, 2006	Attendance management programs; last chance agreements.
**Attendance Management Programs: What will pass muster? What won't	February 3, 2011	Legislation; The problem of absenteeism, How widespread is the problem of absenteeism? What is the average rate of absenteeism in Canadian workplaces? Do studies and decisions distinguish between short- and long-term absenteeism?; Establishing a program, In what circumstances are attendance management programs appropriate and what elements do they typically contain? What factors will arbitrators consider in determining whether an attendance management policy is valid? What aspects of an attendance management program will arbitrators usually find objectionable?, What conditions may be imposed by attendance management programs? Abstinence? Counselling? Treatment?, Which types of attendance management programs are effective, and which are not?; Thresholds; Consequences, What are permissible and impermissible consequences of an employee's participation in an attendance management program – for example, can participation be used as a factor to rank employees for such purposes as

		<p>promotion, layoff, etc.?; Accommodation, What role should the accommodation of disabilities play in an attendance management program?; Undue Hardship, When can an employee be discharged for non-culpable absenteeism? At what point can an employer demonstrate “undue hardship”?; What constraints are there upon an employer in discharging an employee for innocent absenteeism (e.g. notice, benefit loss, etc.)?; Medical certificates</p>
<p>Bullying and Harassment: Employer Responsibilities, Employee Remedies – An Advanced Session</p>	<p>May 24, 2007</p>	<p>What constitutes harassment in the face of rapidly changing workplace norms? What’s the difference between legitimate management, bad management, and harassment? Responding to harassment complaints: What employer duties are triggered immediately upon receipt of a complaint? Can, or should, the employer remove the accused harasser from the workplace? Place the harasser on leave? How should the employer respond to a concern regarding harassment in order to reduce the risk of a grievance, human rights complaint or lawsuit? Investigating harassment complaints: How must the investigation be conducted to ensure that all parties are treated fairly? Are harassment complaints and witness statements privileged? What happens to those investigation reports – are they disclosable? Should they be shredded? How should investigations be conducted if there is a pattern of harassment? What steps should be taken to ensure that victims and witnesses are protected against reprisal? Discipline for harassment in the workplace:</p>

		<p>What must the employer prove? What special rules govern a harassment investigation? What penalties are arbitrators imposing on harassers?</p> <p>Damages for harassment in arbitral, human rights tribunal and court awards: When is harassment actionable? When will decision-makers award damages for harassment, and how much? What other remedies are being ordered?</p>
Bargaining: What's Legal, What's Not?	May 18, 2006	Hard bargaining vs surface bargaining; direct bargaining; procedural issues surrounding bargaining; bargainable issues.
Chronic Physical Disorders	December 16, 2005	<p>Best practices for disability management innocent absenteeism; effect of benefits plans. How can employees prove the existence of an "invisible" chronic disease? Can employers require examination by the employer's own doctor or psychiatrist? What is the extent of an employer's duty to accommodate? Where benefits are denied by a third party insurer, what remedies are available?</p> <p>Employer discipline/discharges an employee for absenteeism related to chronic illness.</p>

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Company Rules, Supervisors' Orders & Insubordination: What Does It Include? What Sanctions are Appropriate?	October 24, 2006	<p>Which rules require employee or union consent? Which can be unilaterally imposed? Do rules and orders have to satisfy a test of reasonableness? What does insubordination encompass? Insolent, disrespectful, insulting comments towards management? Exceptions to the "work now, grieve later rule". What can union representatives or officials say or do that other employees cannot without breaching the rules against insubordination? Types of sanctions arbitrators consider as appropriate.</p>
Criminal Conduct and its impact on Employment: Exploring the consequences	May 7, 2008	<p>When is an employee obliged to disclose criminal charges and/or a conviction arising from off-duty conduct? When can employers do criminal record checks as part of the hiring process? How does the prohibition against discrimination based on criminal record in the Charter and human rights legislation affect an employer's course of action? What about prohibition against discrimination provisions in the collective agreement? When will off-duty criminal conduct merit a disciplinary response? Or non-disciplinary termination? What issues arise when employees are convicted of driving offenses? When is it appropriate to suspend an employee subject to criminal investigation or charged with a criminal offence? What effect do criminal charges have on workplace investigations, disciplinary proceedings and grievance arbitration? Can employees subject to criminal investigation invoke the right to remain silent vis-à-vis their employer? Are they compelled to cooperate with an employer investigation?</p>

Dealing with Pandemic Outbreaks: Legal implications for the workplace	May 29, 2009	Privilege based on personal privacy; Insubordination – “The work now, greve later” Rule; Medical examinations and disclosure of medical information; Definition of disability; What constitutes illness; Illness, Disability and Emergency Leave; Workplace protection measures; Protecting front line workers against H1N1; Sick leave and other leave of absence; Work refusals; Human rights/Accommodation obligations; Workers’ compensation benefits; Potential liability for failure to protect workers.
Dealing with Workplace Harassment, Violence and Threats	June 16, 2005	Evolving definitions and concepts: bullying, harassment and violence and the role of workplace policies; how to react? Employer liability – the obligation to provide a safe work environment and remedies for the failure to protect employees from violence and bullying; significant cases.
Defining the Outside Limits to Accommodation	May 4, 2005	The duty to reconfigure the job and reorganize the workplace; hours of work; promotion, demotion, transfer outside of the bargaining unit; displacement of incumbents/employee morale; seniority and collective agreement provisions; health and safety; employee’s duty to inform, co-operate.

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Discharge for Incompetence and Incapacity	March 1, 2007	Non-compliance with disciplinary procedure; innocent absenteeism; effect of benefits plans; discipline and discharge for performance deficiencies; non-disciplinary responses to performance deficiencies; special rules governing probationary employees; discharge for incapacity;
Discharge for Incompetence and Incapacity: The latest cases, the current rules	June 25, 2009	How does the standard of just cause differ as between disciplinary and non-disciplinary termination?; When will poor performance justify discharge? What steps must employers take prior to dismissing an employee for poor performance?; Do the rules of progressive discipline and culminating incident apply when the employer is enforcing safety standards?; When will a single safety infraction justify termination?; Are employees entitled to union representation during performance reviews; coaching or counselling sessions?; Are probationary employees subject to different standards? What about temporary employees?
Disciplinary Terminations: Getting It Right	November 27, 2003	Off-duty conduct: standards for investigations; union representation; employee participation.
E-mail and Internet Use and Abuse	November 17, 2005	Failure to comply with employer rules; management rights & rules. What limits on email use are permissible under a collective agreement guaranteeing electronic communications rights? Is discipline justified for abusive private email? Is dismissal the appropriate response?

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Employee' Off-duty Conduct	January 26, 2006	<p>Under what circumstances does an employer have a legitimate interest in an employee's off duty conduct? Factors arbitrators apply? Are employer's ever liable for employee's off duty conduct?</p> <p>In cases of addiction, can employers limit or prohibit an employee's use of drugs or alcohol after work hours? Does it make a difference if the employee is a drug addict or a recreational user?</p> <p>Can employees be disciplined for views expressed outside the workplace that reflect adversely on the employer?</p> <p>Do certain employees, such as public sector employees, have a higher responsibility?</p> <p>In what circumstances can an employee be suspended pending a trial on criminal charges?</p> <p>Is the employer required to maintain the employee?</p> <p>Is an employee's conviction cause for discharge?</p> <p>Is surveillance outside the workplace permissible?</p> <p>Should employers develop policies regarding off-duty activities?</p>

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Expedited Arbitration: <i>Pros and Cons for Workers, Unions and Employers</i>		Excerpts from Ontario Power Generation/Power Workers' Union Collective Agreement; Excerpts from the Memorandum of Agreement Establishing Canadian Railway Office of Arbitration & Dispute Resolution; Excerpts from expedited arbitration agreements.
Filling Vacancies- The Do's and Don'ts		What qualifications can and cannot be included in job advertisements; Fair and effective interviews: What questions contravene human rights and privacy legislation?; Legal limits on selection decisions, including hiring and promotion decisions – On what grounds can unsuccessful applicants challenge selection decisions?; Legal tests: Discrimination in the selection process and sufficiency of accommodation; Can an employer reject an applicant who is overqualified? Can an employer state qualifications that go beyond the requirements for the immediate job?; Access to hiring and personal information by prospective employees, employers and unions; Consequences where an applicant provides false information on an application?; Screening employees: References checks, employee credit histories, criminal records, health and fitness tests, and drug and alcohol tests
How Much Detail is Required in Medical Certificates	February 10, 2005	Employer's right to medical information; scope; who may access employee health information? Employee privacy, human rights and the " <i>Charter</i> "; inadequate medical certificates/information; access to medical information during the grievance/arbitration process; costs.

Innovative Contract Language: An Overview	June 1, 2006	Examples of innovative contract language from existing collective agreements; emerging issues in contract negotiations.
Investigating Disability Claims & Sick Leave	May 19, 2005	Arbitrability of benefit disputes; investigating disability claims and possible sick leave abuse; when and how should surveillance/monitoring be conducted; independent medical examinations.
Last Chance Agreements	October 20, 2005	Is reinstatement subject to average attendance reasonable accommodation? Are last chance agreements discriminatory? Can employees be fired for absenteeism due to mental illness and addiction? Can alcoholic employees be discharged?

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<p>**Management Rights: Defining the scope and the limits</p>	<p>April 7, 2011</p>	<p>Explicit vs. implied rights; Does the characterization of a decision as relating to the operation aspects of the business versus the individual rights of employees impact on this question?; Duty of fairness, good faith, and reasonableness; Once it has been established that management has acted in good faith, can the union object on the basis that the actions taken were simply for the company's convenience or were unreasonable?; If a provision of the collective agreement confers discretion on the employer, must this discretion be exercised reasonably? Impact of collective agreement language; How do various provisions of the collective agreement such as recognition clauses, seniority clauses, job classifications, etc., circumscribe the management's exercise of discretion?; Employer rules; What tests must be met where management issues rules?; Existing working conditions; What issues would be caught by a provision that management is to continue "existing working conditions" unless changed by mutual consent?; Can an employer unilaterally reorganize the workforce?; Can an employer unilaterally implement drug testing?; Can an employer unilaterally institute biometric time keeping?; Can an employer require that employees obtain periodic police record checks?; Can an employer unilaterally engage in electronic surveillance?; Can an employer unilaterally introduce an attendance management program?; What limits are there, if any, on management's ability to assign</p>

		overtime hours?; Can an employer unilaterally eliminate a shift?; Can an employer assign bargaining unit work to non-bargaining unit employees?; Can an employer abolish a position when a vacancy occurs?
Measuring Your Collective Agreement Against Human Rights Obligations	October 6, 2005	Prohibitions on discrimination and the duty to accommodate; matters not covered by the collective agreement; human rights remedies; the contest between seniority and human rights. Human code can be invoked in wrongful dismissal lawsuit.
Medical Information: The Scope of Access, the Limits on Disclosures	December 6, 2006	<p>What circumstances can employees be required to provide medical information?</p> <p>How much medical information can employees be required to provide to their employer? to the union? to the Work Safe BC? Can an employer discipline a worker for refusing to provide detailed information? Can a worker be withheld from the job pending the provision of more detailed information? Can employers demand more? Is a worker's manager or direct supervisor entitled to access the employee's medical information? Can an arbitrator order a grievor to disclose medial information during the arbitration proceedings? How does recent federal and provincial privacy legislation affect the disclosure of employee's medical information? What is the role of unions in safeguarding the rights of employees.</p>

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Non-Disciplinary Terminations: Exploring the Changing Rules	October 9, 2003	Discharge of probationary employees; innocent absenteeism; attendance management programs. Can probationary employees grieve discharge? Attendance management programs: when does an employer's policy go too far?
Pensions and Retirement Benefits: 2007 Update	October 25, 2007	Facts, statistics and commentary; legislation; update on pension class actions: recent decisions; defined benefit plans versus defined contribution plans: the latest developments; case law developments and implications at the bargaining table; the abolition of mandatory retirement and implications for pension and benefits plans; impact on pension plans, performance evaluation practices, and the duty to accommodate; unilateral changes and age-based restrictions – are they permitted?; standing of retirees to challenge benefit changes; requests for early retirement; rights on phased, early retirement; voluntary retirement packages.
Post-Retirement Benefits: Addressing emerging issues	February 24, 2010	Do an employee's retirement benefits "freeze" or "vest" upon retirement at the level defined by the collective agreement or pension plan in effect at the time, or can an employer alter the retirement benefits of retirees?; If the entitlements under a later collective agreement or enhanced pension plan are more generous, does the retired employee have a right to the improved benefits?; Can an employee be simultaneously entitled to separation payment-for example, severance pay-as well as retirement benefits?; What is the Definition of 'Retirement'?; Are age-based restrictions associated with pensions or retirement benefit

		plans discriminatory?; Does the termination of workers' compensation benefits at age 65 constitute discrimination?; What is the appropriate venue for resolving disputes about post-retirement-the courts or labour arbitration?; Can unions negotiate and grieve retirement benefit matters on behalf of retired bargaining unit members?; Employer's obligation to communicate pension and retirement benefit information to employees; An update on phased retirement.
Privacy and Access to Medical Information: Do's and Don'ts	September 11, 2009	Obligations of employer to inquire/assess accommodation; Disclosure required by employee and limits to the information that must be disclosed; Interpreting and assessing and the adequacy of the medical information & requesting further information/medical examinations; Medical information at grievance/arbitration and human rights hearings; Access to and disclosure of medical information – privacy legislation and policy.
Psychological Harassment: Modern Solutions to a Pressing Problem	June 15, 2006	Elements of harassment; the employer duties; effective harassment policies; disciplining harassers; employer liability; the union's role; remedies.
Remedies in Discharge Cases at Arbitration	April 15, 2004	The "make-whole" principle; damages – non-monetary loss; compensation in lieu of reinstatement. Can arbitrators award damages for defamation and infliction of mental distress?

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Return To Work: Current Issues & Practical Solutions	December 2, 2004	<p>Returning to work: duties imposed on employers and employees in workers compensation statutes; grievor's return-to-work proposal more demanding than duty of accommodation requires. Who bears burden of lost wages in dispute over delay in return to work?</p> <p>The Union's duty of fair representation in human rights cases.</p> <p>Limits – Accommodating mental illness: how far must employers go?</p>
Returning Employees to Work: Navigating the Maze	October 22, 2008	<p>What prior steps must an employer take before dismissing an employee for misconduct? Are employers required to impose equal disciplinary measures on employees who have committed similar acts of misconduct? Will a discharge be voided where union representation is not provided?; The Hybrid Approach: Are employers entitled to dismiss an employee for misconduct where there are both culpable and non-culpable elements of behaviour due to disability?; When are last chance agreements enforceable? To what extent can the parties, by agreement, limit the jurisdiction of an arbitrator to assess cause and/or substitute penalties? When will arbitrators vary the terms of a last chance agreement?; When will an arbitrator substitute compensation in lieu of reinstatement despite a finding that there was no cause for discharge?; Probationary employees: Is a disabled probationary employee entitled to accommodation where the contract of employment says he may be fired without</p>

		cause or notice? When can a probationary employee challenge a dismissal? Does the employer have an implied duty to act reasonably and in good faith when dismissing a probationary employee?
Security, Surveillance & Employee Privacy	October 7, 2004	Off-site surveillance; workplace surveillance: cameras and searches; impact of privacy legislation; screening/biometrics/fingerprinting – security/background checks; palm screening/polygraph; electronic monitoring/email & internet use.

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Seniority and Duty to Accommodate	September 22, 2005	Are disabled workers entitled to accrual of seniority and benefits? What is the scope of the union’s duty to accommodate?
Sick Leave and LTD Claims: The Hidden Perils, the Fine Print	December 1, 2005	Sick leave; medical certificates; examinations; requirements and obligation provisions of medical information; investigating sick leave and long term disability (LTD)claims; lump sum LTD settlements and income tax; “moonlight” on sick leave.
Social Networking Media At the Workplace	December 4, 2009	Emerging technologies and employee privacy rights; Employer Monitoring and Investigation; Discipline for abuse of electronic resources; Off- duty or off-site misconduct; Employee access to information about co-workers or clients; Employer policies on internet and e-mail use; Online postings in breach of confidentiality clauses
Special Audio Session for the Health Care Sector: Restructuring, Workload, Health and Safety, Discipline and Discharge	April 26, 2007	“On the job” effects of health care sector restructuring – scheduling and work distribution; wages; representation rights, workload, rest periods, overtime, call-in pay. Occupational health and safety for health care workers: vaccinations; needlestick injuries; stress, harassment, violence; medical examinations and information. Discipline: patient abuse; performance; breach of confidence/conflict of interest; effect of disciplinary proceedings before a professional college.
Surveillance, Monitoring and Privacy Rights: What is the Scope? What are the Limits?	September 14, 2006	Admissibility of evidence — surveillance; electronic monitoring; biometrics; searches; charter considerations; the impact of privacy legislation.

Testing/Screening Employees: Medical, Fitness, Psychological, Drug and Alcohol Tests, Credit and Security Tests	November 1, 2005	Drug and alcohol testing; protection against discrimination. Must employer establish a substance abuse problem before imposing drug testing? Drug testing for reasonable cause upheld for employees in safety-sensitive positions.
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<p>The Impact of Criminal Convictions: the Supreme Court Decisions in City of Toronto and Maksteel</p>	<p>February 12, 2004</p>	<p>The Supreme Court of Canada’s Decision – City of Toronto Prior Criminal Convictions: Are they conclusive proof? An arbitrator’s perspective; a management perspective; a union perspective. Dishonest and illegal conduct – off duty conduct.</p>
<p>The Top 10 Questions concerning Discharge and Discipline</p>	<p>November 9, 2006</p>	<p>What constitutes “just cause” for discipline? Exceptions to the “obey now, grieve later” rule; What exactly does “progressive discipline” entail? What constitutes a “culminating incident” warranting discharge? What mitigating factors must be considered in assessing discipline? Rules governing discipline in “hybrid” cases, i.e. where both culpable and non-culpable behaviours must be addressed? Rules governing discharge of non-culpable performance issues, innocent absenteeism? Which particular forms of discipline are acceptable to arbitrators, and which are not? Off-duty conduct? When is union representation required?</p>

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Video Surveillance	September 12, 2005	Videotape surveillance evidence: off-site surveillance; workplace surveillance: cameras and searches; impact of privacy legislation.
Workplace Investigations: What to Do, What Not to Do	January 27, 2005	Non-compliance with disciplinary procedure – When is union representation required?delay in imposing discipline. Off duty conduct – criminal convictions; criminal charges; conducting the investigation; disciplinary interviews –union representation; employee obligation to cooperate during investigation.
Workplace Violence, Threats, Bullying and Harassment: <i>New Rules and Responsibilities</i>	November 15, 2007	What do the latest cases say about discipline for violence, threats and harassment? When will a violent employee incident justify terminating the employee? Employers' obligations under occupational health and safety laws to address violence, threats and harassment in the workplace, When will mental illness and/or disability mitigate the blameworthiness of an employee's workplace violence, threats, or harassment? Can employers require violent employees to receive medical assessments or treatment as a condition of continuing employment? Which remedies are courts, boards, and tribunals awarding to harassment victims?
Zero Tolerance Versus Progressive Discipline	April 7, 2005	Factors affecting penalty; progressive discipline or zero tolerance: are they mutually exclusive? Just cause provisions.

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