

# Fit For Work - Implications



What, Exactly is “Fit For Work?”

100% physically and mentally?

Impaired?

    physical?

    psychological?

How do you know?

## Industry Practice

- Focus on impairment – physical and caused by substance use
- Compensable focus: G/MRTW, Stay at Work
- “Accommodate everything” *if its work related*
- Variable sick leave / absence policies
- Little to no non-comp payment or DSB management for non-comp injury and illness

## Legal Context – HR Code

- Disability is not defined
- No discrimination = no adverse T+C
- HR Code prohibited grounds include physical and mental injury and illness
- Also, “perception” of disability
- Prima facie case, reverse onus
- Duty to Accommodate is a principle, not articulated
- Applies to ALL elements of the employment relationship
- So – if you accommodate *ANYTHING* if its compensable, you will accommodate *ANYTHING* during the hiring process, non-comp illness and injury, and termination process

## Legal Context – WC Act

- Part 3, Div 6, prohibits taking action adverse to T+C if the worker “exercises a right / carries out a duty.”
- OHSR 4.19 + 4.20, in part, require a worker, to declare **any** physical or mental impairment
- *So....let's do the math!*
- Does this mean we have a mandatory 100% funded leave program?
  - Must affect ability work safely
  - Subject to performance management
- How do you manage disability?

## Legal Context – Employment Standards Act

- BC Law Institute report in
- Several hundred pages, 80 recommendations
- Expect expansion of leave provisions for a variety of settings (narrow scope)
- Expect mandatory sick leave for a given number of days per year
- Unsure if paid / unpaid leave

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So...  
Put it  
Together

- Compensable, non-compensable, illness, physical or psychological, the law applies
- What's the lens – working safely, or able to work?
- “Zero Tolerance,” “Never” and “Always” should be eliminated from your disability management vocabulary
- Given our demographic shift, you'll be doing this anyway
  - Employer of choice
  - Lack of full time, decades of commitment

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Put it all together and I challenge you:

***Stop asking if your employees are fit for work, and instead ask yourself how you can make work fit for them.***