Investing in the health of your employees - a wise decision! The legal issues to consider

November 2, 2017

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Numerous studies confirm that the poor health of workers, among other things caused by the increasingly sedentary nature of positions and the illnesses associated with this, will ultimately result in significant costs for businesses related to:

- Absenteeism;
- Compensation for work-related injuries and illnesses and occupational health and safety prevention measures; and
- Resulting losses in productivity

Many companies have attempted to remedy the situation by adopting programs that involve the installation of physical fitness rooms in the workplace. However, this solution, while commendable, does raise some legal issues for employers.

Issues related to the use of sports facilities in the workplace

The main issue facing a company when it makes sports facilities available to its employees is its potential liability in the event of an accident.

The company’s liability

The company must be prudent and diligent and take all reasonable precautions to prevent accidents, because if there has been any negligence or fault on its part, it could be held liable for such incidents.

For example, the company could be held civilly liable for injuries suffered by an employee as the result of a defect in or poor maintenance of the exercise facilities made available to employees. The following are examples of some reasonable measures that a company could adopt to reduce its exposure to liability:

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Ensure that the facilities are safe and properly maintained;
Provide employees with relevant information regarding the use of facilities;
Require that employees complete a physical activity readiness questionnaire

The risk of an event occurring while using the facilities may be compensable by the CNESST

A worker injured while using sports facilities in the workplace can file a claim with the CNESST. Generally, the case law recognizes that an activity carried out in the context of a privilege granted by the employer constitutes a personal action for which the worker accepts the risks as well as the liability. However, some activities, while seemingly personal, may be recognized as being an accident occurring in the course of employment where the circumstances demonstrate a "connection" between the activity in question and the employment, or a "usefulness related to the worker's activity and the accomplishment of his work". Obviously, each case is unique and must be assessed on its particular facts.

The following are a few practical recommendations that will allow an well-informed employer to limit its risks:

It must be made clear to employees that the use of the employer's sports facilities is voluntary, personal and not compulsory;
The employer or its representatives should not exert any pressure on employees to use the facilities;
Employees must be forbidden from using the facilities during paid working hours or while they are under the employer's authority;
Subject to very specific cases, the good physical condition of workers need not be assessed by medical examinations.

Detail to consider

It would be wise to inform insurers of the use of sports facilities in the workplace. Insurers can then assess the effects of such an activity on existing insurance coverage and propose any changes which may be required

Conclusion

Employers should not resist or impede the implementation of programs aimed at employee well-being or fitness. However, due to the risks inherent in such activities, employers should conduct an initial analysis of the conditions in which such programs should be implemented and put in place. The members of Lavery's labour and employment law team would be pleased to assist you along the way

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