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Workplace Law
& Advocacy

Management Rights: Stuff You Can Do

BCPSEA Symposium

Presented by Michael Hancock

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Management Rights

Running the district
Managing the workforce
Making workplace rules
and policies

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Legislation

- Employment Standards
- WorkSafeBC
- Human Rights

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**Express Provisions of
Collective Agreement**

Legislation

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Management Rights

**Express Provisions of
Collective Agreement**

Implied Restrictions

- Reasonable and fair ('KVP')

Legislation

- Employment Standards
- WorkSafeBC
- Human Rights

Examples

- Organizing schools
- Discipline and evaluation
- Assigning teachers to classes
- Approving overtime, leaves of absence and vacation schedules
- Maintaining order and efficiency in operations





Examples

- Setting standards of performance and work-related behaviours
- Coaching, orienting and training employees
- Giving directions, instructions and orders to employees
- Hiring and promotions





Examples

- Ensuring compliance to policies, standards and directions given
- Warning of consequences if employee fails to follow standards or directions
- Issuing dismissal or other discipline where just cause exists



Union Context: Management Obligations

COLLECTIVE AGREEMENT

Management rights cannot be exercised in a way that conflicts with express provisions of the collective agreement

IMPLIED RESTRICTIONS

Management rights must be exercised reasonably and cannot be exercised in a manner that is:

- Arbitrary
- Discriminatory, or
- In bad faith



Employer Rules/Policies (union employees)

KVP Test:

Unilaterally imposed rules/policies must:

1. not be inconsistent with collective agreement
2. not be unreasonable
3. clear and unequivocal
4. brought to the attention of employees
5. notified of the consequences of breach; and
6. consistently enforced.



The Reasonableness Test

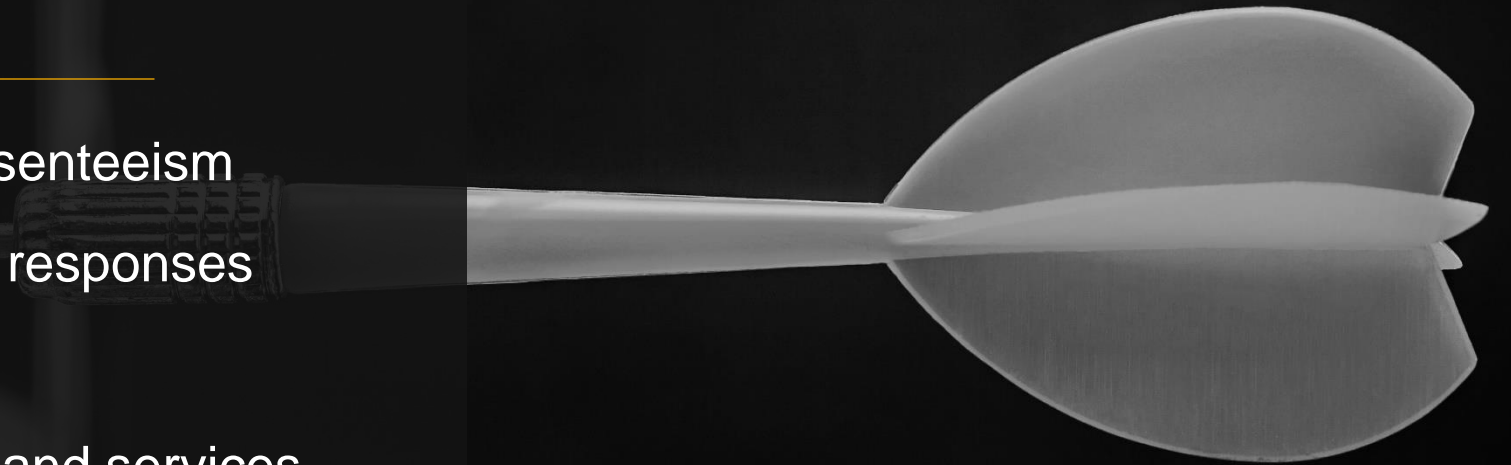
- Rules subject to standard of a reasonableness – balancing of interests
 - Benefit gained by employer
- VS
- Negative effect of policy on employees
- Proportionality
- Are there other ways to get there?



Case Study KVP and Attendance Management

Employer Interests

- Identifying root cause(s) of absenteeism
- Developing and implementing responses
- Reduction of costs
- Improved morale, productivity and services
- Supporting injured or ill employees

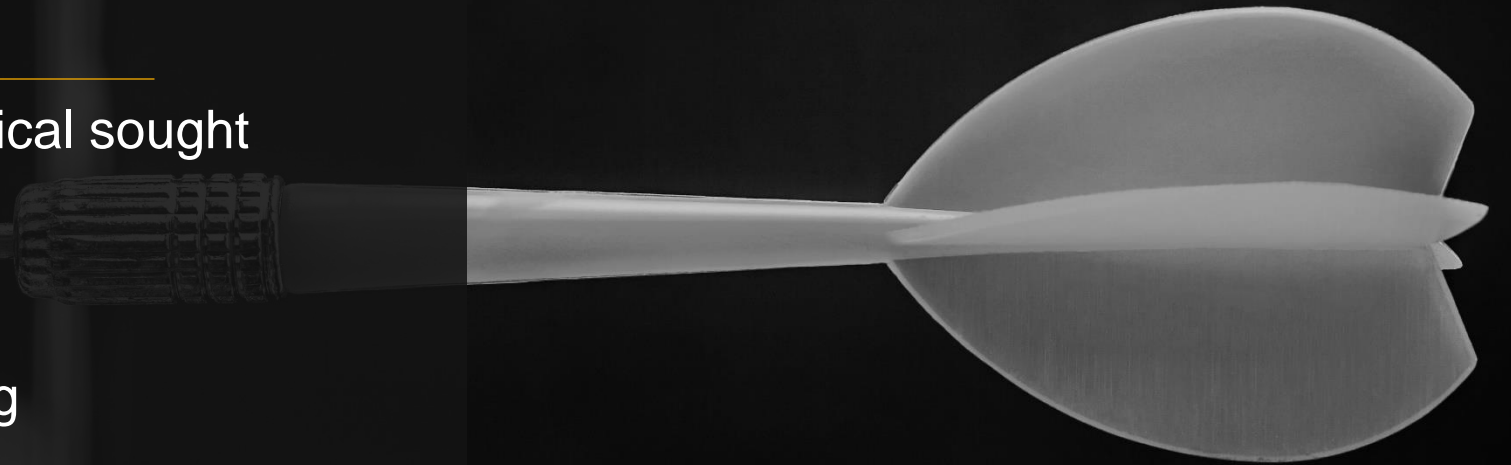




Case Study KVP and Attendance Management

Employee Interests

- Privacy impact – when is medical sought and how much?
- Consistency of approach
- Individualized Decision Making
- Consequences identified



Characteristics of an Effective Program

HEABC on behalf of the GVHS (Royal Jubilee Hospital) v. Hospital Employees Union BCLRB No. B112/2002:

- 1 Distinguishes between single disabling illness and recurring, intermittent and unpredictable absences
 - 2 Distinguishes between culpable and non-culpable absences
 - 3 Must not treat non-culpable absences as disciplinary
 - 4 Constructive in tone and designed to assist employees
 - 5 Consistent in application but flexible for individual circumstances
 - 6 Allows for reasonable accommodations
 - 7 Allows for access to grievance procedure (in unionized workplaces)
-



Reasonableness and COVID Policies

- Employer Interest – Health and Safety
 - Scientific support
 - Public health guidance and orders
 - Risks of transmission in your workplace
- Employee Interest – Privacy and Intrusiveness
 - Individualized approach
 - Time to comply
 - Accommodations
 - Consistency

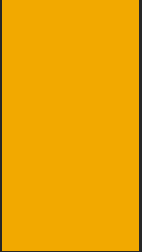


Exercising Management Rights ‘Reasonably’

Ask yourself...

- Was there a legitimate business reason for taking the action?
- Was the decision made in good faith?
- *Do you have objective evidence to support the action?*
- What is the action’s impact on the employee’s personal life or rights as an employee?
- Does the business decision outweigh any potential detrimental impact on employee?
- Are there other less intrusive ways to achieve operational goals?





Management has the right to manage as long as it does so in a reasonable and non-discriminatory manner...

...the shop floor is not a debating society...

...employees have the obligation to obey the directions of managers...



Questions?



THANK
YOU

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