

CHAPTER 3 — RECOGNIZING SIGNS, MAKING APPROPRIATE INQUIRIES

3.1 What workplace behaviours suggest that someone might be mentally ill or have a mental health disability?

Behaviours that may suggest the presence of a mental illness or mental disability are listed below. It is important to note that none of the behaviours by itself conclusively proves the presence of a mental illness. As well, many of the behaviours listed may be transitory or may stem from stresses (personal or work-related) that a person is experiencing. As explained in Chapter 1, Section 1.8, the diagnosis of a mental illness requires the presence of symptoms over a period of time.

Behavioural changes that may signal the presence of a mental illness or mental health disability include:

- Significant changes in behaviour (e.g. from being cheerful to being despondent or preoccupied)
- Noticeable deterioration in work performance (e.g. increased absence, decline in quality of work)
- Increasing emotionality (difficulty with emotional control), e.g. irritability, crying, angry outbursts
- Apparent loss of interest in formerly enjoyable activities
- Difficulty concentrating, carrying on a conversation
- Talking explicitly about hopelessness or suicide
- Unusual, excessive dependence on others for company or support.
- Behaviour that suggests a loss of control of emotions, thoughts, or behaviour. For example:
 - displaying behaviour that seems out of touch with reality (e.g. appearing to talk to others who are not present; yelling at no one in particular)

- showing slurred speech, unsteady movements, glazed eyes
- appearing dazed and unaware of the surroundings
- crying uncontrollably without apparent provocation
- Significant changes in eating, sleeping, personal hygiene and dress, spending, or other daily activities
- Significant changes in performance or involvement in work, sports, or social activities
- Becoming significantly withdrawn

3.2 When do employers or union representatives have a duty to ask employees if they require accommodation because of a mental health disability?

Employees with disabilities generally bear the initial obligation of coming forward and identifying the nature of their disability, and identifying any resulting medical restrictions, in order to engage the employer's duty to accommodate.¹ Meeting this onus may be problematic, however, where employees are unaware at the time that they have a disability that requires accommodation; or where employees' failure to inform is due to the nature of the disability, e.g. an addiction disability, since denial is a symptom of the disability. (See Chapter 1, Section 1.10.4 regarding the meaning of denial in the mental health context, including addiction).

In recognition of these facts, arbitrators and human rights tribunals have held that, if the employer is aware, or reasonably ought to be aware, that an employee is suffering from a possible medical or mental health condition affecting the employee's performance and/or conduct in the workplace, the employer has a duty to inquire about the potential need for accommodation. This is particularly the case where the employer may make an adverse decision based on the employee's performance

1 *Central Okanagan School District No. 23 v. Renaud*, 1992 CanLII 81 (SCC). See Morton Mitchnick & Brian Etherington, *Labour Arbitration in Canada*, 3rd ed. (Toronto: Lancaster House, 2018), The Employee's Duty (Section 15.3.5).