

## WHEN GOING AWOL CAN MEAN JOB ABANDONMENT

By Andrea Marsland

### What's the issue?

Employers often struggle with disability management in the workplace. They frequently walk on egg shells around sick employees, particularly when it comes to asking them for information about their illness and supporting medical documentation.

### What's the Case?

In *Betts v. IBM Canada Ltd.* 2015 ONSC 5298 (CanLII), Mr. Betts had been employed by IBM for approximately fifteen (15) years. Mr. Betts worked out of IBM's New Brunswick office and occasionally travelled to Ontario for work. He met a woman in Ontario and eventually became engaged to her. Mr. Betts suffered from depression and was absent from work because of his illness. He applied for short term disability benefits under IBM's short term disability plan and his claim was denied.

In the meantime, Mr. Betts had moved from New Brunswick to Ontario to live with his fiancé. He did so without informing his employer or Manulife. The move was in contravention of IBM's policy that convalescing away from home was to be approved by Manulife.

Mr. Betts was ultimately absent from work for eight (8) months without providing adequate supporting medical documentation. IBM had written five letters to Mr. Betts, all of which outlined Mr. Betts' options (return to work or provide medical), and advised him that in the absence of pursuing one of these options, IBM would consider him to have voluntarily resigned from his employment. Mr. Betts did not return to work and did not provide medical documentation to support his absence. IBM took the position that Mr. Betts had voluntarily resigned from his employment and Mr. Betts sued IBM for wrongful dismissal.

The Court determined that Mr. Betts had abandoned his employment because his actions, viewed objectively by a reasonable person, clearly and unequivocally indicated an intention to no longer be bound by the employment contract. The Court held that: "[e]ven an employee suffering from medical issues is not immune from being found to have abandoned his/her employment. A failure to follow directives and requirements under the Plan can be akin to disobedience, which would normally justify dismissal." In its decision, the Court also took notice of the fact Mr. Betts had moved from New Brunswick to Ontario as an indicator that Mr. Betts no longer intended to be bound by his employment contract.

### What's the point?

Employers need not walk on egg shells around the issue of disability management. Employers and employees alike have rights and obligations with



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respect to disability management. Employers should have clear policies governing requirements for medical documentation to support medical leaves of absence and they should enforce those consistently. Employees, on the other hand, should participate in the process and provide all necessary information and documentation to support any requests for leave. Disability management is a cooperative process between employers and employees.