

Helping patients with work-related health problems: identifying risks and solutions

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Health Justice Tuesdays – Supported by:

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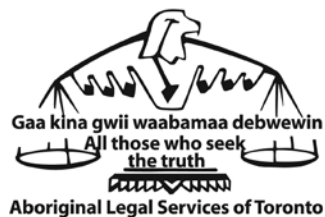
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Health Team

Presenters

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Presenter Disclosure

Faculty: Dr. Andrew Pinto

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I have received honoraria for presentations at Queen's University (2010), University of Saskatchewan (2012), Mount Sinai Hospital (2012), Toronto Reference Library (2016), Law Society of Ontario (2016), Japan Network of Health Promoting Hospitals & Health Services (2018), Joint Centre for Bioethics, University of Toronto (2019)

Consulting fees: None.

Other: The premise of this discussion is working towards **social justice** and hence, a more healthy society. This is my objective as a physician, activist and public scholar. I bring a **privileged world-view and set of experiences** to this work. I do not bring the lived experience of being a member of a marginalized population.



Presenter Disclosure

Faculty: Nabila Qureshi

Relationships with commercial interests:

- **Grants/Research Support:** N/A
- **Speakers Bureau/Honoraria:** N/A
- **Consulting Fees:** N/A
- **Other:**
 - Staff lawyer at Income Security Advocacy Centre
 - Member of steering committee of the Canadian Association of Muslim Women in Law



Disclosing Commercial Support

This program has not received financial support nor in-kind support from any commercial interests

Potential for conflict(s) of interest:

- *None*



Mitigating Potential Bias

- *Not applicable*



Objectives

At the end of the session, participants will be able to:

1. Identify when a health issue is related to a workplace legal concern, and know about resources in the community
2. Support and provide appropriate medical documentation for patients' workplace issues
3. Support a patient who is fired or being excluded from opportunities due to a disability



Agenda

1. *Work as a key social determinant of health*
2. *Key aspects of employment and human rights law*
3. *Legal Referrals*
4. *Case Scenarios*
 - a) *Case 1: workplace accommodation*
 - b) *Case 2: patient fired due to disability*
 - c) *Case 3: patient reports harassment at work*
5. *Q&A*



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1. Work as a Determinant of Health



Employment as a social determinant

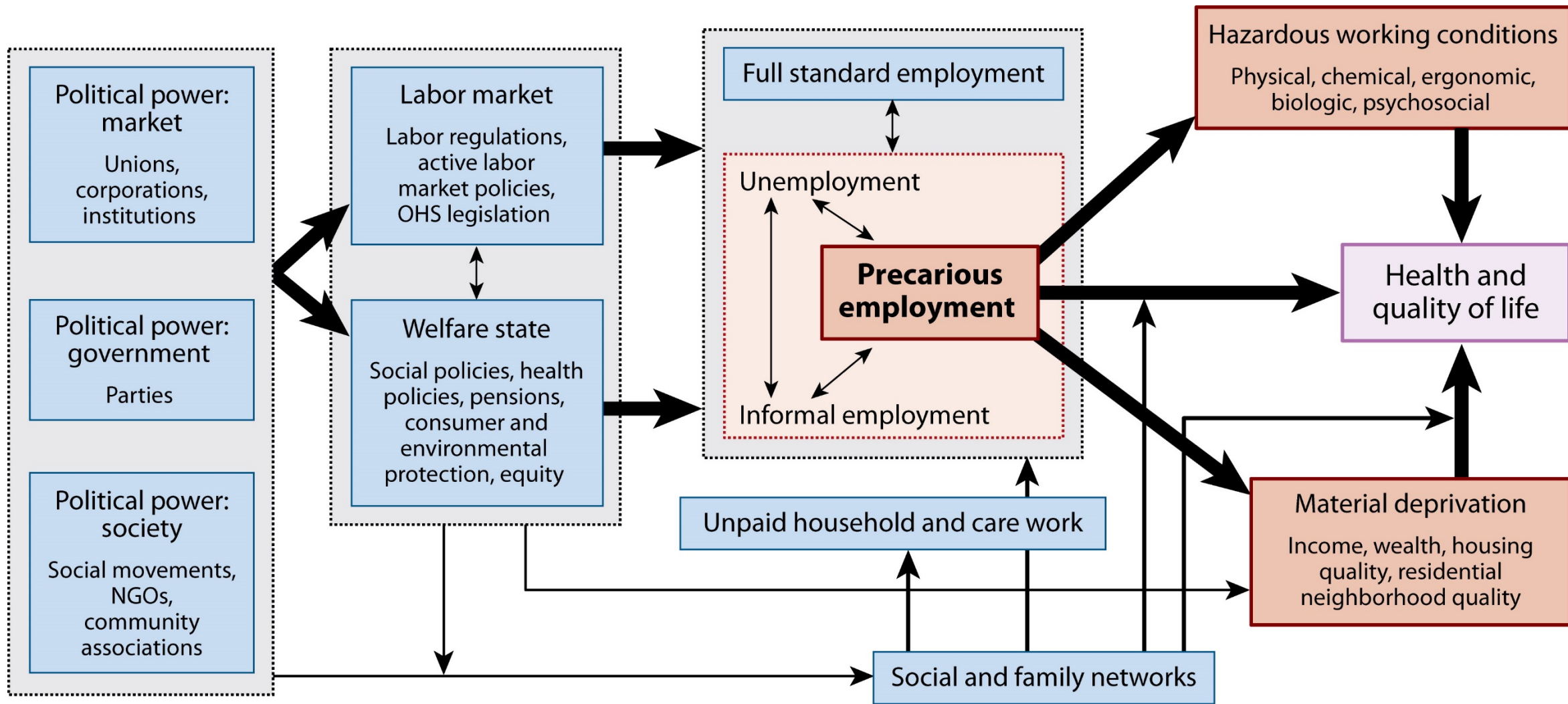
“Employment and working conditions have powerful effects on health and health equity. When these are good they can provide financial security, social status, personal development, social relations and self-esteem, and protection from physical and psychosocial hazards – each important for health.”

World Health Organization. Final Report of the Commission on Social Determinants of Health. 2008. p. 72



Increase in precarious employment

- Characteristics of precarious work:
 - Earn 46% less and have household incomes that are 34% lower
 - Rarely have any benefits beyond their wage
 - Often paid in cash, and more likely to not get paid
 - Often do not know their schedule a week in advance and experience unexpected schedule changes
 - Often work on-call
 - Often hold more than one job at the same time
 - Are less likely to be unionized
 - Are more likely to have their performance monitored
 - Fear raising issues about employment rights





Impact on health

- A study of over 90,000 men and women in Finland who were followed for over a decade found that **mortality** was significantly higher among temporary workers compared to permanent workers. Moving from temporary to permanent employment was associated with a lower risk of death.

Kivimaki M, Vahtera J, Virtanen M, Elovainio M, Pentti J, Ferrie JE. Temporary employment and risk of overall and cause-specific mortality. Am J Epidemiol 2003 Oct 1;158(7):663-8.



Impact on health (cont'd)

- A study of 331 families in Toronto found that for families living in market-rent households, if an adult gained full-time employment, there was a significant decrease in **food insecurity**.

Loopstra R, Tarasuk V. Severity of household food insecurity is sensitive to change in household income and employment status among low-income families. J Nutr 2013 Aug;143(8):1316-23.

- A study of temporary workers showed a rate ratio of 2.94 for **non-fatal occupational injuries** and 2.54 for **fatal occupational injuries**

Benavides FG, Benach J, Muntaner C, Delclos GL, Catot N, Amable M. Associations between temporary employment and occupational injury: what are the mechanisms? Occup Environ Med 2006 Jun;63(6):416-21.

Impact on health (cont'd)

- “Every published study has documented consistent adverse effects on **psychological morbidity**”

Ferrie JE. Is job insecurity harmful to health? J R Soc Med 2001 Feb;94(2):71-6.

- A study of 5,679 temporary and permanent workers in Spain found a strong gradient association between the degree of employment precariousness and **poor mental health**, even after adjusting for age, immigrant status, socioeconomic position and previous unemployment.

Vives A, Amable M, Ferrer M, Moncada S, Llorens C, Muntaner C, et al. Employment precariousness and poor mental health: evidence from Spain on a new social determinant of health. J Environ Public Health 2013;2013:978656.



Impact on health

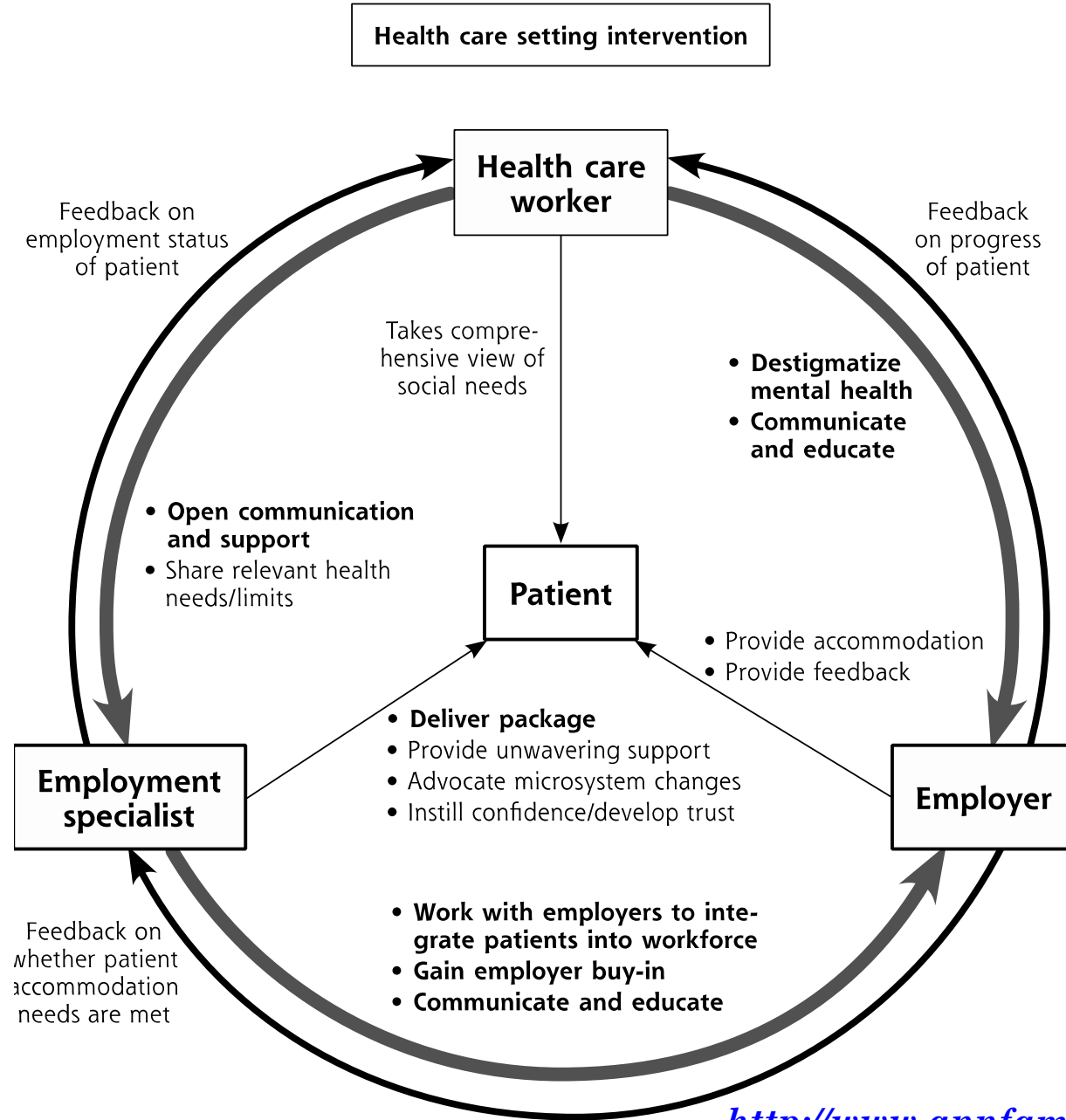
- In a study of 4,174 British civil servants, followed for an average of 8.6 years, job insecurity was associated with a 1.42x greater risk of incident **coronary heart disease**, controlling for socio-demographic variables, physiological and behavioral risk factors

Ferrie JE, Kivimaki M, Shipley MJ, Davey Smith G, Virtanen M. Job insecurity and incident coronary heart disease: the Whitehall II prospective cohort study. Atherosclerosis 2013 Mar;227(1):178-81.



Decent Work

Work that is productive, delivers an income that provides social protection, ensures security in the workplace, leads to personal development and social integration, allows people to express their concerns, organize, participate in decision-making that affects their work, and provides equality of opportunity across gender, race/ethnicity, age and sexual orientation.



<http://www.annfammed.org/content/16/5/447.abstract>

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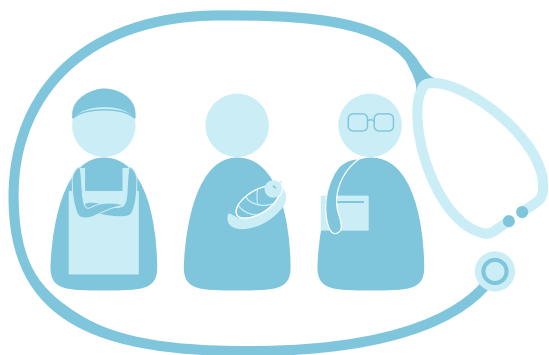
- have **problems with your employer?**
- want to know about your **rights as a worker?**
- need help connecting with **legal resources?**



We can help.

Connect with an Employment Rights Advisor

as part of a research study to evaluate whether supporting those who are precariously employed can improve health



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www.decentworkandhealth.org

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2. Key Aspects of Employment and Human Rights Law



Misclassification of workers

- Some workers are **employees** while others may be **dependent contractors** or **independent contractors**
- **Why this matters:** employees are entitled to the protections of employment standards legislation, such as Ontario's *Employment Standards Act, 2000*, or the federal *Canada Labour Code*
- Some employers **deliberately misclassify** their employees as independent contractors, in order to avoid obligations like minimum wage, vacation pay, EI and CPP contributions, etc.
- Huge issue in the “gig economy”



Termination of employment

- Employees who are terminated from their employment may be entitled to a range of compensation, including:
 - Termination pay and/or severance pay under the *Employment Standards Act, 2000* or the *Canada Labour Code*
 - Additional “reasonable notice” under the common law
 - Other types of monetary damages if they have been subject to discrimination, harassment, or other poor treatment in the workplace



Constructive Dismissal

Constructive dismissal occurs where an employer substantially changes the terms of an employee's job *without the employee's consent*, or demonstrates an intention to no longer be bound by the terms of the employment contract.



Constructive Dismissal (cont'd)

- **Some common unilateral changes that may trigger a constructive dismissal:**
 - significantly reducing the employee's compensation;
 - demoting the employee, reducing the employee's job responsibilities or changing the employee's reporting relationships;
 - requiring the employee to move to a different geographic location;
 - requiring the employee to work in a poisoned work environment (i.e. work in an environment where the employee faces ongoing harassment, discriminatory conduct or improper employer discipline);
 - failing to pay the employee
- **If your patient has experienced any of the above, refer them to a legal resource for help.**



Frustration of contract due to disability

- If an employee develops an injury or disability that makes it impossible for them to continue performing their employment duties for the foreseeable future, then their contract has become “frustrated” – in essence, come to an end.
- Usually occurs where employee has been off work for 2+ years
- Frustration of contract due to disability entitles the employee to termination and severance pay under the *Employment Standards Act, 2000*. For some long term employees, this can be a significant sum.



Frustration of contract due to disability (cont'd)

- Very important factor in determining frustration: **medical evidence regarding the employee's prognosis for a return to work within the reasonably foreseeable future.**
- To assess this, health practitioners should know what the patient's job duties are, and assess whether the patient is likely to be able to perform them (with or without accommodation) within the reasonably foreseeable future.
- **Key:** If you don't know what your patient's job duties are, ask your patient and/or their legal representative!



Frustration of contract due to disability (cont'd)

- **Key takeaway:** if you have a patient who:
 - has a disability;
 - has been off work for a long time (generally, at least a year or more) due to that disability;
 - is unlikely to be able to return to work for the foreseeable future due to that disability;

then that patient should seek legal advice about their options, including a claim for termination and severance pay due to frustration of contract.

- If you are asked to provide medical documentation to support your patient's legal claim, ask for your patient's job duties and responsibilities.



Human Rights in the Workplace

Provincially regulated workers: Ontario's *Human Rights Code*.

- Prohibits discrimination against workers on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or **disability**.

Federally regulated workers: *Canadian Human Rights Act*

- Prohibits discrimination against workers on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, **disability** and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.
- If a protected ground is the reason, or even only one of the reasons why a worker has been subject to adverse treatment in the workplace, then they may have a claim for discrimination.



Health practitioner's role in the accommodation process

- Provide medical documentation and opinion to support patient's request for accommodation
- **Medical information to provide:**
 - That the person has a disability
 - The **functional limitations** or needs associated with the disability
 - Whether the person can perform the essential duties of the job, with or without accommodation
 - The type of accommodation(s) that may be needed to allow the person to fulfill the essential duties of the job
 - Regular updates about when the person expects to return to work, if they are on leave
- Source: Ontario Human Rights Commission, *Policy on ableism and discrimination based on disability*



Health practitioner's role in the accommodation process (cont'd)

- Generally, you do not need to provide the patient's confidential medical information, such as:
 - the cause of the disability
 - the diagnosis
 - symptoms
 - treatment

unless these relate to the accommodation being sought, or the person's needs are complex, challenging or unclear and more information is needed.

- Source: Ontario Human Rights Commission, *Policy on ableism and discrimination based on disability*



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3. Legal Referrals



Legal Referrals

- **Low-income patients:**
 - Legal Aid Ontario's [community legal clinics](#) (for non-unionized workers only. Note: not all clinics do employment law)
 - Pro Bono Law Ontario's [free legal advice hotline](#) for non-unionized workers (Toll free: 1-855-255-7256)
 - [Human Rights Legal Support Centre](#)
 - [Workers' Action Centre](#) (Toronto, Ontario) (does not provide legal advice, but can provide information and referrals)
 - Law Society of Ontario's "[Lawyer Referral Service](#)" – up to 30 minutes of free legal advice regardless of income
- **Other patients**
 - Law Society of Ontario's "[Lawyer Referral Service](#)" – up to 30 minutes of free legal advice regardless of income
 - Some private bar lawyers offer contingency fees, lower rates and deferred fee plans. Legal Aid clinics should be able to provide some referrals.
- **Always refer your patient for legal advice as soon as possible.**



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4. Case Scenarios



Case Scenario 1: Workplace accommodation

Female patient in her mid-40s with depression who is on medications, and has had intermittent therapy. She is otherwise well. Her mental health fluctuates. She sees you because she is in particular crisis around getting a bad performance review, because her mood has been worse over the last 3-4 months. She has been unable to complete certain work duties. Work is her #1 stressor.



How would you address this case?

1. Identify the issue or risk that is causing the health concern
2. Identify what the health team can do



Case Resolution

- What are her rights, as someone with a disability?
- What is the role of the health team in requesting accommodation at work?



Case Scenario 2: Patient fired due to disability

A male patient in his 50s has coronary artery disease/angina, who works in a factory. This involves significant physical exertion. His supervisor has been complaining he has not been keeping up with others. The patient has mentioned in passing that he has gotten chest pain at times at work. He sees you because he received a termination notice yesterday, and his benefits (that cover his medications) will stop in 2 weeks.



How would you address this case?

1. Identify the issue or risk that is causing the health concern
2. Identify what the health team can do



Case Resolution

- What are his rights at work?
- When is a dismissal discriminatory?
- What is the role of the health team?
 - Documenting symptoms and relationship to work, and how they would be expected to impact work abilities
 - Documenting impact of dismissal on health
- What are the options for this patient?
 - Ontario HR Tribunal or Canadian HR Commission
 - Civil claim: wrongful dismissal for termination, and also discrimination



Case Scenario 3: Patient reports harassment at work

A patient in late 20s is in the process of transitioning from male to female, and prefers female pronouns. She has worked in an office job for the last 5 years. Over the last 6 months, as she has notified co-workers and her supervisor of her preferred name and pronouns, she reports to you frequent episodes of what appears to be harassment. Specifically, certain co-workers have insisted on using her previous name or purposefully use incorrect pronouns in emails and in team meetings.



Case Resolution

- What is harassment?
 - Different from criticism of work performance, unpleasant experiences with a boss or colleague
- Role of the health team: documentation, referral to legal advice.
- Health team is likely not in a position to decide, and should refer the patient to legal services to help ascertain whether indeed this is harassment.



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5. Q&A



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Feb. 12, 2019	Health and Housing Law - Dr. Andrew Bond and Benjamin Ries
March 19, 2019	Health and Family Law - Dr. Kathleen Doukas and Ishbel Ogilvie
April 9, 2019	Health and Income Security Law - Dr. Gary Bloch and Anu Bakshi
May 14, 2019	Health and Immigration Law - Dr. Vanessa Redditt and Jennifer Stone
May 28, 2019	Legal Issues affecting people living w HIV/AIDS - Dr. Gordon Arbess and Ryan Peck
June 18, 2019	Health, Law and Indigenous Peoples - Melissa Stevenson , Dr. Fatima Uddin and Emily Hill
Sept. 10, 2019*	Health and Capacity, Decision-Making, and Advanced Care planning - Dr. Bill Sullivan and Mercedes Perez
Sept. 24, 2019	Health and Employment Law - Dr. Andrew Pinto and Nabila Qureshi
Oct. 8, 2019	Health and Criminal Justice System - Flora Matheson and Promise Holmes Skinner
Nov. 19, 2019	Health and Human Rights Law - Dr. Laurie Green and Kerri Joffe



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