

Review and Assessment of the Attendance Support and Management Program

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In the private as in the public sector, resources are scarce and hence efficiencies are necessary and encouraged. In the public sector there is an expectation that there is value for each dollar spent. Constituents expect their taxes to be spent wisely. This is typically reinforced at election time, and is a non-partisan approach.

With politicians being held accountable for how their tax dollars are spent means public sector staff will be held accountable to perform and be efficient with each dollar being spent. Accountability for expenditures builds trust with constituents and provides key performance indicators to gauge performance and to determine best allocation during the budget process.

The literature suggests accommodating staff to the greatest extent possible thus this creates a unique issue, in that the City of Hamilton has high absenteeism. The first reaction is that people are being encouraged to stay home and recover. Once people learned that it cost is in excess of \$11M for said absenteeism of 56,495 sick days, there becomes an immediate need to figure out how to mitigate the cost and number of missed days.

The reasons of absences vary across the organization, and the interpretation and application of the current attendance support and management plan (“ASMP”) is inconsistently applied. Ms. Helen Hale Tomasik, the Executive Director Human Resources & Organizational Development for the City of Hamilton, was directed by City Council to review the current program for improvements. Thus Ms. Hale Tomasik was interested in better understanding how the ASMP could be improved, to have literature reviewed to consider legislation and caselaw (judicial application), to conduct group focus meetings to gather input and understanding, and to see how other municipalities have implemented their respective programs.

Key Research Questions

The current ASMP raises several issues and concerns about the perceived poor performance of the policy, thus it was reviewed and recommendations provided thereto. The questions considered in this research are as follows:

1. What types of absences are included in the policy?
2. How are the different absences classified and how are they determined?
3. What are other municipalities doing (best practices)?
4. What works and does not work for the plan administrators (senior management)?
5. What are the barriers to the policy success?
6. What are the City’s legal obligations?
7. Is it appropriate to reward or recognize good attendance?
8. How can the policy be improved?

The focus group participants (comprised of senior management staff) of the various departments were asked a series of questions to determine their perception of the policy, what works and does not work, how it could be improved, and any challenges or barriers unique to their department..

Findings

As previously mentioned, over 50 senior staff participated in one of ten focus groups that lasted approximately 90 minutes each in length. The meetings utilized the literature review and conceptual framework as a basic starting block to investigate four general areas: what works well, what does not work, general perception of the policy and whether positive attendance should be rewarded.

It was noted that such processes were uncomfortable, awkward and created unnecessary stress on management and staff. It was cited numerous times, that the process is perceived as punitive and not helpful. It is clear that the process results in meeting with management to discuss absences, but also to place negative correspondence in the employee's file.

Another area of concern was the inconsistency of how the different department management thought the process was to work or the policy's purpose and intent. Some thought the ASMP was a punitive tool, where others thought it was to be used as a tool to help accommodate employees who need it. The latter is the preferred outcome of any attendance support management policy; this approach is wholly consistent with the literature and judicial interpretation.

Another key concern was the need for training and materials not only for new hires but also management who administer the program. It is noted by the writer that the policy was never provided at orientation nor explained on how it worked. The writer does note the policy is available on the corporate intranet with the other corporate policies, although it is surprising that such an important policy is not flagged specifically to all employees. It was also noted that management needs further training.

Recommendations

The following recommendations are presented for the consideration of Ms. Helen Hale Tomasik:

POLICY CHANGES

General

- Separate all absences from culpable and non-culpable;
- Remove WSIB absences from the program;
- Eliminate trending based on non-relevant program criteria that are subsequently utilized for termination purposes;
- Focus the program more on accommodation, and then secondly on the management of absences;

- Reduce the workload in managing AMSP by removing unnecessary triggers and focus further on the supporting function of the program;
- When reviewing threshold levels, look at the specific job function and the unique difference (if any) associated therewith. National average may provide a starting threshold;
- A true loss due to a disability should be excluded from the program. Ensure the duty to accommodate always trumps the ASMP;

Culpable

- Develop a separate policy to deal with culpable absences;

Non-Culpable

- Eliminate program intakes to a defined grouping of non-culpable absences, thus eliminating catastrophic events and merit based general exemptions;

POLICY IMPLEMENTATION

Administration of Program

- Early intervention is always best – when in doubt, reinforce the need to seek HR advice and/or ask for a medical certificate;
- Allow flexibility for supervisors to ask for medical certificates when required;
- Be proactive, do not question an absence after a lengthy period afterwards – if it is not questioned at time of absence, don't raise it later, except if reviewing an absenteeism trend;
- Need proper letters at each trigger level, thus have letters for supervisors to use. Ensure management has a level of discretion. It is important that the correspondence shows the employer is trying to help;
- Need to remove the letter from file once the employee has positive attendance and exits the program;
- Avoid a pure mechanistic program, allow management the discretion to best address the employee's absence in relation to the nature of the absence and the employee's past attendance record;
- With management discretion, each trigger level should take place with a pre-assessment. Although there should be some level of consistency;
- May need to place employees on unpaid leave while they meet with their doctor to determine their health related issue. May need specialists for such things as drug addictions;
- Be flexible in accommodation when the employee is able to work and is also receiving treatments;

Stakeholders

- Engage unions in the program development to ensure buy-in and a better understanding of the municipality's objectives;
- Train and educate supervisors not to calculate absences that are protected by legislation;

Program Development and Roll Out

- The program needs to make clear that disability management is not part of the program;

- Avoid “one last chance” framework. The program should be tailored to allow individual circumstances to be considered and also necessary when trying to accommodate;
- Implement a telework policy that enables staff to work at home and be productive, rather than simply have a sick day;
- Human Resources should provide corporate training to those engaged in managing the ASMP and potentially new culpable attendance policy;
- Provide health and wellness credits to staff in order to encourage healthy lifestyles and to help reduce absenteeism rates (may provide gym discounts and/or healthy living seminars, etc.);

Legal Implications

- Avoid unnecessary calls to staff when they are absent, unless it is from an approved Human Resource script to avoid potential harassment allegations;
- There must be timely progressive discipline under the new culpable policy, and also timely support being delivered to employees under the ASMP;
- Labour relations should be active in culpable absence meetings where necessary; and
- People should not be “performance managed” under the ASMP. This management technique must be discouraged, and redirected to the new progressive disciplinary process.
- Help transition employees back to work and provide care packages which can include resource information and products based on their illness;
- Notice is a required element of fairness, avoid disciplinary sanctions, threats or other forms of discipline outside the ASMP;

EVALUATION OF POLICY CHANGES

Stakeholder Support

- Human Resources need to take a more active role in ASMP and meet frequently with supervisors to aid educate and training on best practices;
- Human Resources to reinforce the program expectation to support and help, rather than trying to be punitive;
- At the political level there needs to be a business case presented for further resources for occupational health nurse FTE increase (and possible physician support) to better support the program;

Benchmarks and Standards

- Provide information to all employees as to how the program functions. Start with seminar during employee orientation. Emphasize it is a helpful mechanism to help employees when they need it;
- Show how the program works. Staff need to respect the process and management needs to follow through. The integrity of the program needs to return;
- Ensure supervisors are receiving their monthly notices directly, and ensure their managers are held accountable for ensuring they are done. This can be a part of the performance review process each year;
- There is a need for a consistent software program to help maintain and track absences, and the nature of the absences. A review of appropriate software should be another priority;

- Be cognizant of employee benefits. When giving notice be sensitive to disability benefits. Keep employees on leave of absence if their benefits may be at risk of termination;
- “Frequent flyers” in the program need to have the loop closed and proactive measures taken and supported by Human Resources;

In summary, this report outlines the current issues with the ASMP. The findings highlight the various staff comments of the current program, and the positive findings of comparable municipalities. The findings also note the literature review and the responsibilities of accommodating an employee under applicable legislation. There are a number of recommendations aforementioned that address these issues. Ideally, the implementation of the recommendations will reduce the absenteeism and related cost while providing an expanded protection and improvement in health and wellness of the workforce at the City of Hamilton.

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1.1. OVERVIEW

It is common for employers to provide a framework to respond to attendance issues through policies and attendance management programs. Lack of attendance is costly to the employer through the need for additional staffing and overtime. It also creates scheduling and performance impacts that can directly affect those who rely on said services.

The City of Hamilton (“City”) is like most other municipalities in that it provides income protection for those workers who have to miss work due to illness or injury or another particular reason. With most programs, there can be a level of abuse that needs to be monitored and addressed. The City needs to be cognizant that measures need to be implemented to ensure income support is being delivered and relied upon those who truly need the benefit and of course are entitled to the benefit.

The main focus of an attendance management program is to monitor and support employees to ensure proper mechanisms and morale support are provided to aid the employees in dealing and coping with their issue causing absence and to find ways that keep them at work, or to a speedy recovery and return to the workplace. It is also important to have an effective disability management program that can shorten or even prevent employee absences and maintain productivity.

Attendance management programs have been in place with the City since the 1990s. With amalgamation in 2001, all plans were amalgamated into one plan for the new City of Hamilton called the Attendance Support and Management Plan (“ASMP”). The ASMP has faced much scrutiny as the cost of lost time is in excess of \$11M per year, and also the program is not well received amongst management for either lacking support to help those employees who need it, and also to help restrain those who abuse the program.

It is important to provide the necessary supports to ensure a healthy and efficient workforce but also to be able to provide value for each tax dollar spent on the program. It is necessary to be accountable to the public and to be transparent and able to show key performance indicators to maintain confidence of the public and also to show staff that the City cares for them and will allocate an appropriate level of funding to such programs.

In this report there is a background of the current status and impact of the ASMP as summarized above, a review of labour law section, methodology section, conceptual framework section, findings section, discussion section and recommendations.

The labour law review section which looks at issues such as accommodation and undue hardship in order to determine how far an employer needs to extend itself to allow an employee to continue to work, and at what point the employee can be terminated. Review of literature was an important deliverable in this research to better understand the limitations and restrictions of attendance programs as considered by jurisprudence, such as frustration of contract, duty to accommodate and the duty to accommodate. It was also important to understand any legal requirements under Ontario statutes specifically, and also a general trend in absenteeism for discussion and context.

The methodology section described the key criteria and purpose for the research and the manner to which the data was used to derive at the results and conclusions. In this report, the use of a mix of data collection and review was utilized to determine the best practices, the restrictions based upon law, and the perception of senior management in order to best address frustration of contract, duty to accommodate and discharge of the duty to accommodate completely.

The conceptual framework section outlines the need for an appropriate policy to direct staff and the organization to effectively deal with absences. Each absence requires an appropriate determination in order to utilize the right policy. The conceptual framework acts as a guide to identify the best methods to employ in order to effectively address the high cost of absenteeism to the organization, and also to most effectively support those staff in need of accommodation

The findings section outlines the data received from focus group meetings, best practice review of comparable municipalities and an analysis thereof. The meetings pointed out several barriers and opportunities for an improved ASMP that better separates culpable and non-culpable illnesses, and further defines which non-culpable illnesses attract the ASMP to trigger. A common position amongst all the groups was the wish for a strong policy that focused on accommodating employees in need, and another to deter and punish those who abuse the system.

The discussion section is centered on the key research questions framed with the literature review, focus groups and best practice comparables. For any policy to be effective and compliant with applicable laws, it must acknowledge an employee's limitations and to accommodate accordingly to the point of undue hardship.

The recommendation section outlines 41 recommendations to create a solid foundation to build and amend the current ASMP against in order to improve the performance of the current attendance support and management plan. Generally all the recommendations are geared towards short and medium term planning due to the financial requirements and the associated co-ordination of training and development .

In this report the review of the current and other programs, and recommended solutions to the problem of the high cost and workforce implications of the City of Hamilton's high absenteeism rates in a fair and consistent manner in order to provide cost-effective and efficient public service and achieve the following minimum objectives within a new attendance support and management plan (ASMP, 2008):

- a) To increase attendance awareness and reduce absences from work and the associated costs;
- b) To help employees achieve and maintain regular attendance at work by making every reasonable effort to provide accommodation, assistance and rehabilitation;
- c) To regularly communicate the responsibilities of employees, supervisors, senior management (and when required Human Resources and Legal Services); and
- d) To maximize service delivery to the public.

2.1 BACKGROUND

The City of Hamilton is a large single tier municipality located in southern Ontario at the western edge of Lake Ontario, with a population of approximately 505,000. The City provides an expansive range of programs (hundreds) that impact and benefits its taxpayers and public generally. The cost of delivery the services is about \$1.3 billion (gross). “Local (municipal) government continues to be the most accessible and accountable level of government to the taxpayer” as cited in the City of Hamilton, 2011 Draft Tax Budget.

In order to deliver the programs and services for the City, it is necessary to employ approximately 5,515 full-time equivalent staff, excluding its boards and agencies. With compensation being one of the highest expense drivers, it can be attributed to the following: Fire Services wage agreement, Ontario Municipal Employees Retirement System (“OMERS”) increases, employee benefits increasing above the rate of inflation, and government benefits (City of Hamilton, 2011 Draft Tax Budget).

The governance of the City is through City Council (Mayor and 15 Ward Councillors) and the City Manager structure (see Figure 1). The positions are authorized and established under the *City of Hamilton Act, 1999*, S.O. 1999, c.14, Sched. C and also the *Municipal Act, 2001*, S.O. 2001, c.25.

City Council sets the fiscal budget each year and outlines the services and programs, where the City Manager provides the necessary leadership and direction to City staff. The City Manager has a structure of senior staff to provide strategic, policy and operational advice for the City. The staff is referred to as the Senior Management Team (“SMT”) (see Figure 1).

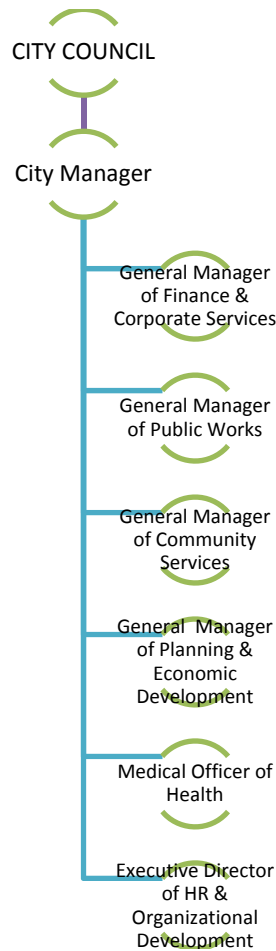


Figure 1. City of Hamilton SMT Organizational Chart

There is increasing pressure to the City’s budget from having a large percentage of employees becoming retirement eligible thus finding the need to being competitive for replacements, and an aging workforce thus finding the need to properly accommodate them. City Council is placed in a difficult struggle to provide a competitive compensation and benefit plan while mitigating increases to its property tax levy.

Attendance management programs have been in place with the City of Hamilton since the 1990s. With amalgamation, all plans were amalgamated into one plan for the new City of Hamilton. Over the subsequent years, the scope of the program has been altered in an attempt to improve the absenteeism levels.

The last major revision to the attendance management program occurred in 2007 after stakeholder consultation. Some of the changes included:

- Removing security from the ASMP web site;
- Removing Absence Without Leave (“AWOL”) as a triggering event;
- Replacing mandatory Level 1 meetings with a letter and optional meeting at employee’s request;
- Departments assuming responsibility for Level 4 meetings (from HR);

- Removed WSIB triggers at level 4; and
- Provided training to department.

The current ASMP has survived arbitration hearings that attempted to show that it was generally unreasonable. The trigger levels and overall program design were seen as being fair by the arbitrators. The ASMP approach is easy to remember by this rule: Absences exceeding four or seven in twelve. It means that if your absences from work exceed more than four occasions or seven days in a twelve month period you will enter the program. Only certain types of absences are subject to the plan. They include: sick absences (sometimes referred to as sick days or a short term disability) and injury absences (due to injuries that occurred on the job or outside of work).

From a management perspective the AMSP is not a disciplinary action. Rather, it initiates a process to ensure that the employee is able to work, is receiving the appropriate medical support, which can include varying levels of accommodation at work, and the employee is made aware of the City's expectations with regards to regular attendance and the operational impact of their absence.

The current ASMP is described as (ASMP, 2008): once an employee triggers level 1 their immediate supervisor will advise them via letter. Meetings at level one will be at the request of the employee. For proceeding levels, the employee is required to meet with his or her supervisor or another representative of management to discuss attendance expectations and to determine if referral for medical or other assistance is necessary. At the employee's request, a union representative (if applicable) may attend Level 1 & 2 meetings. Union representation (where applicable) is required at Level 3 & 4 meetings (see Figure 2).

The current ASMP is further described as (ASMP, 2008): An employee that proceeds to Level 4 through the ASMP process and who has been unable or unwilling to meet acceptable attendance standards will be required to meet with the General Manager or designate and a union representative (where applicable) where a determination as to the employee's ongoing employment relationship with the City will be considered (see Figure 2).

**Attendance Support & Management Plan:
Steps and Meetings**

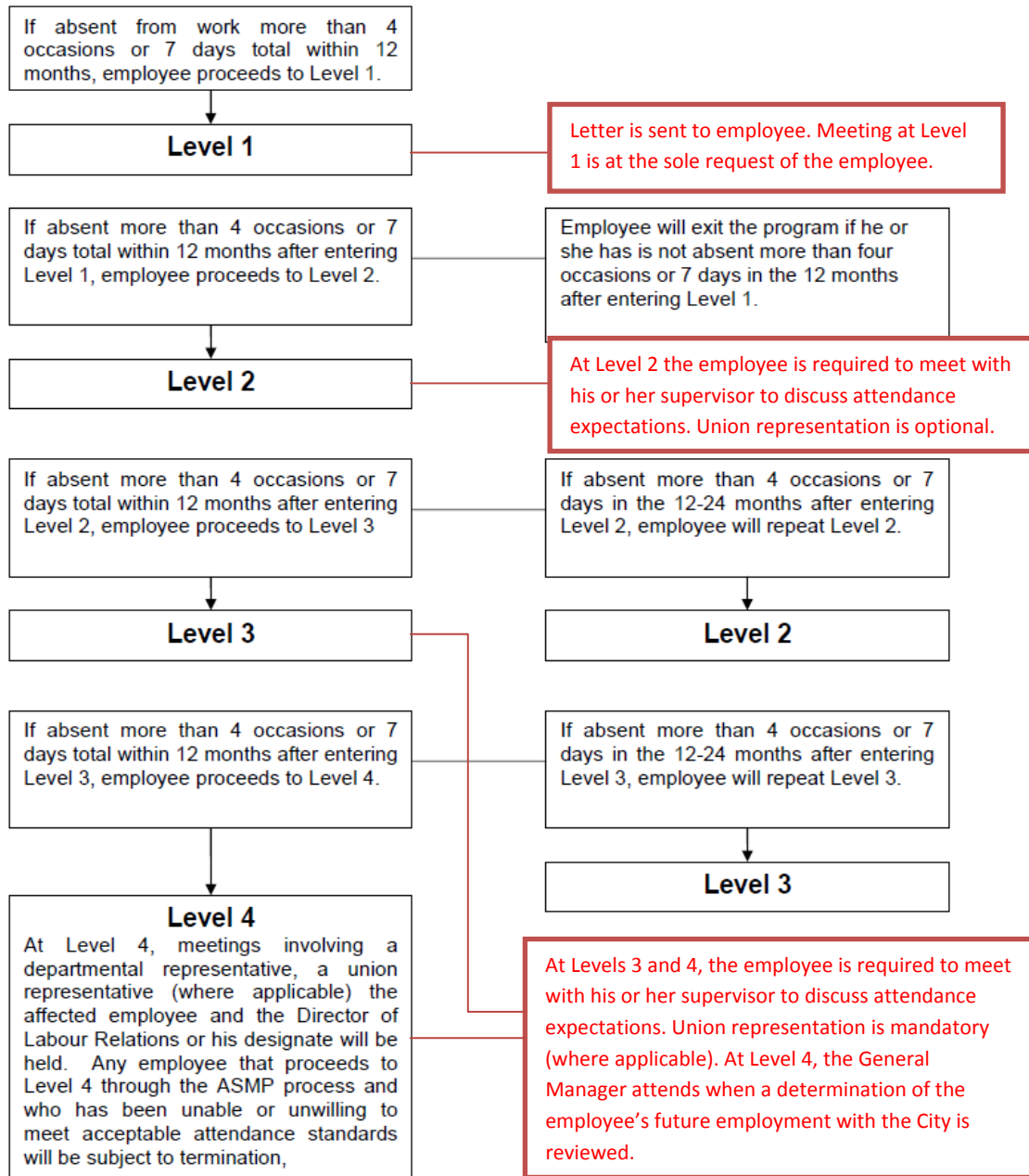


Figure 2. City of Hamilton's Attendance Support and Management Plan

As illustrated and explained above, the current attendance support and management plan (“ASMP”) has 4 levels. Employees may exit the program or proceed to higher levels depending on the frequency and length of absences. ASMP so far has proven to only to be mildly effective and subject to media and political pressure and displeasure at the current results. The cost and impact to the City of Hamilton, in terms of the 2009 data is as follows:

- Workplace Safety & Insurance Board (“WSIB”) claim days: 10,164;
- Sick days: 56,495; and

- Sick Costs: \$11,162,926

At the staff level there has also been concern with ASMP's ineffectiveness. The HR departments' concerns with ASMP can be summarized as:

- They do not believe it achieve its objectives to reduce absenteeism;
- They are unable to terminate "frequent flyers" who continue to reach Level 4;
- There is a need for flexibility to decide which types of illness or injury should be part of the program; and
- The program from an employee/union viewpoint is seen as (primarily/my suggestion) disciplinary.

There is a need to review the current ASMP, and do an assessment of the ASMP with recommendations that can be presented to City Council and used city wide by the HR department. It is important to see what other municipalities are doing and also to determine the judicial interpretation and legal requirements and limitations of an attendance program.

Key Research Questions for this Project

The current ASMP raises several issues and concerns for the City, and this report will address them accordingly. In particular, the perceived poor performance of the policy will be reviewed and recommendations provided thereto. The questions grounded in the literature review and generally in a policy review, considered in this research are as follows:

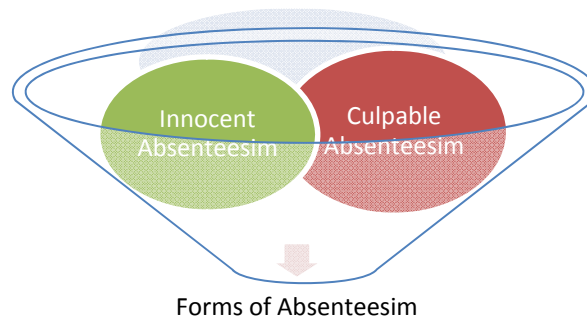
1. What types of absences are included in the policy?
2. How are the different absences classified and how are they determined?
3. What are other municipalities doing (best practices)?
4. What works and does not work for the plan administrators (senior management)?
5. What are the barriers to the policy success?
6. What are the City's legal obligations?
7. Is it appropriate to reward or recognize good attendance?
8. How can the policy be improved?

This project was initiated under the direction of Ms. Helen Hale Tomasik, Executive Director Human Resources & Organizational Development for the City of Hamilton. Ms. Hale Tomasik was interested in better understanding how the attendance support and management plan could be improved. There has also been an increased scrutiny of the policy from both local media and City Council.

The participants (comprised of senior management staff) of the various departments were asked a series of questions to determine their perception of the policy, what works and does not work, how it could be improved, and any challenges or barriers unique to their department (see Appendix B).

There are ample judicial decisions that comment and provide direction on how an attendance program should be structured. Nonetheless there is statute that ultimately provides a basis entitlement at law to employees such as those covered in the *Human Rights Code* (Ontario) and *Employment Standards Act, 2000* (Ontario). Other considerations in developing a policy should consider political will and budgetary constraints that will shape and influence the end policy.

3.1. WHAT IS ABSENTEEISM



Absenteeism is generally classified as either innocent absenteeism or non-culpable, versus culpable absenteeism or at-fault absenteeism. They are generally defined as (Harris, 2006):

Innocent Absenteeism

Innocent absenteeism refers to employees who are absent for reasons beyond their control, like sickness and injury. Innocent absenteeism is not culpable which means it is blameless. In a labour relations context this means that it can't be remedied or treated by disciplinary measures.

Culpable Absenteeism

Culpable absenteeism refers to employees who are absent without authorization for reasons within their control. For instance, an employee who is on sick leave even though he is not sick, and it can be proven the employee was not sick, is guilty of culpable absenteeism. To be culpable is to be blameworthy. In a labour relations context this means progressive discipline can be applied.

Absenteeism remains an issue not only for the public sector but also the private sector. Absenteeism is very costly and most employers attempt to find a mitigating solution to control the escalating costs and impact on the organization's production or services.

It is a fine balance to implement appropriate controls while appropriately maintaining confidentiality and ensuring a proper level of accommodation is applied. Employers typically are trying to do the right thing, but sometimes are caught in expensive litigation and potentially bearing media lashing of having done something wrong, morally, ethically or otherwise (Cote, 1996).

With every absenteeism program, there is an essential need to distinguish between culpable and non-culpable absences. As discussed above, culpable absenteeism is deemed to be within an employee's power to control. With the proper identification of the absences, the employer is able to correctly address whether the employee is in the absenteeism program or is potentially likely to fall under a progress discipline track.

There are challenges in administering an absence program when it deals with such things as substance abuse, mental health issues or undiagnosed medical conditions like a sleeping disorder. The initial challenge is to have the employee admit they have said medical condition. These should eventually be known to the employer so appropriate support and programs can be provided to help deal with the employee's medical needs.

The distinction is imperative because different legal rules will apply to each employee. Adjudicators¹ note that for culpable absenteeism, the employers should utilize a progressive discipline regime to help correct the employee's absenteeism. With an appropriate progressive discipline policy, an employer needs to commence generally with soft discipline such as a warning, and increase proportionally with the level of discipline warranted in light of the problem to be corrected.

A leading decision in Wm. Scott & Company Ltd. BCLRB No. 46/76, [1977] 1 Can LRB 1 outlines the typical test to validate a culpable dismissal and is cited as the "culpable analysis":

- 1) Has the employee given just and reasonable cause for some form of discipline by the employer?
- 2) If so, was the employer's decision to dismiss the employee an excessive response in all of the circumstances of the case?
- 3) If discharge was excessive, what alternative measure should be substituted as just and equitable?

¹ Kenneth P. Swan in Nav Canada found at http://www.catca.ca/arb_gr/arb2000/Algirdas_Girdvainis_Award_-_January_26_2000.html.

Frances R. Watters, Associate-Chair (Adjudication), Catherine McCreary, Vice-Chair, G.J. Mullaly, Vice-Chair in *British Columbia v. B.c. Government and Service Employees' Union*, 2002 CanLII 52883 (BC LRB) found at <http://canlii.org/eliisa/highlight.do?text=progressive+discipline+culpable&language=en&searchTitle=Search+all+CanLII+Databases&path=/en/bc/bclrb/doc/2002/2002canlii52883/2002canlii52883.html>

In contrast with non-culpable absenteeism, adjudicators indicate that it is not proper to discipline employees for absenteeism that is beyond the employee's control, where it is in an accommodating context. Simply put, there is no point disciplining an employee for something he or she can't control and to which the employer has a positive obligation to accommodate the employee. The purpose of an attendance policy is to focus on supporting the employee and to accommodate to the point of frustration of contract.

In Health Employers Association of British Columbia on Behalf of the Greater Victoria Hospital Society v. Hospital Employees' Union, 2002 CanLII 52786 (BC LRB), the adjudicating panel stated that: "*Wm. Scott* was concerned with the imposition of penalties for culpable conduct, and the Board has indicated that that approach cannot automatically be transferred to a dismissal for non-culpable absenteeism" (para. 60).

Further in MacMillan Bloedel Limited, Canadian White Pine Division, BCLRB No. 79/81, [1982] 1 Can LRBR 341 and B.C. Ferry Corporation, BCLRB No. L27/83 ("*BC Ferry Corporation No. 2*"), it was stated that culpable and non-culpable absences are treated the same in relation to the statutory standard being applied "whether the dismissal was due to misconduct or unwillingness to perform on the one hand, inability to meet the employer's reasonable performance requirements due to sickness or injury, or lack of ability of qualifications on the other" (p.345 and p.7 respectively).

3.2 MEASUREMENT

There is a strong desire in public sector organizations like the City of Hamilton to implement systems that track key performance indicators and specifically to be able to focus on absenteeism rates and track positive and regressive trends and the financial and services impacts that they cause. Lindbald (2006) offers the following definition of performance measurement (p.646):

"The use of goals, measures, and data to evaluate services is called performance measurement. Agencies measure performance in several ways: amount of inputs and outputs, degree of efficiency, and type of outcomes. Input measures describe the amount of human or financial resources used to perform a service. Output or workload indicators refer to the amount of work performed. Outcome or effectiveness indicators show the degree to which service goals and objectives are reached. The ratio of inputs or outputs to outcomes provides a measure of efficiency."

According to governmental statistics published from survey entitled Work Absence in 2009 Report, absence from work because of illness and injury (real or alleged) amounted in 1991 to 6.6 days per employee (Statistics Canada, 2011). Personal absences because of child care responsibilities appear to have been rising steadily, also noted was an aging workforce, the growing share of women in the workforce (especially those with young children), high worker stress, and more generous sick- and family-related leave benefits (Statistics Canada, 2011).

According to Lawrence Kelly, absenteeism is emerging as one of the major human resource management issues of the 1990s. The costs to an organization resulting from absenteeism include: 1. loss of output or service, 2. higher costs to maintain output or service, 3. disruption of other employees' work, 4. adverse effects on employee morale if those who are at work have to assume the burden of the absent employee's work, and 5. sick leave and workers compensation payments to absent employees (Kelly, 1992). The 3 essentials of attendance management are: 1. identification, 2. correction, and 3. Prevention; prevention, which is the best cure for absenteeism, means addressing the underlying causes of the problem (Kelly, 1992).

3.3 ATTENDANCE MANAGEMENT PROGRAMS

The establishment of an attendance management program falls within the employer's residual right to manage the enterprise, in the sense that the employer has the right to take steps to maintain and encourage good attendance, as well as to dismiss an employee for innocent absenteeism (Mitchnick & Etherington, 2011).

In CAW-Canada, Local UI v. Coast Mountain Bus Co., 2009 CarswellBC 752 (B.C. S.C.), the Court stated "I accept that there is nothing systemically discriminatory about monitoring employee attendance, or providing warning letters to those whose rate of absenteeism is considered by (Coast Mountain) to be excessive. This does not result in differential treatment based upon disability. It is the obligation of the employer to warn its employees of its attendance concerns and the potential consequences of specific absenteeism" (para. 110).

It is clear that an employer has a right to run its business and to control the attendance generally. It is important to understand how far the employer can control and monitor, but also to understand the limits on the employer and rights of the employee are protected. To sum up we know that monitoring presence is not discriminatory.

In Scarborough (City) and Scarborough Firefighters' Ass'n, Local 626, unreported, June 2, 1995, the arbitrator provided several guiding principles and terms when structuring attendance policies, where they have been upheld and referenced in caselaw, which includes (Mitchnick & Etherington, 2011):

- 1) If the policy purports to rely on purely objective or numerical criteria, that is, the number of days or incidents of absence, it must not mix culpable absences with non-culpable absences;
- 2) Such objective criteria cannot be arbitrary, and must be defensible as a reasonable indicator of a problem with a particular employee's level of absenteeism;
- 3) The various steps of monitoring or counseling programs must not be applied mechanically, that is, without due consideration of the explanation put forward for the employee's unusually high level of absenteeism; and
- 4) Notwithstanding the appropriateness of the program and the employer's compliance with its obligations at every step, the employer's right to invoke the final step of dismissal remains subject to the duty to accommodate a recognized disability to the point of undue hardship (p.12).

Thus we know absenteeism is not easily measured or quantified always as culpable and non-culpable absences, but the above provides some guidelines.

In Health Employers Ass'n of British Columbia and H.E.U., [2002] C.L.L.C. 222, the Labour Relations Board emphasized that when dealing with non-culpable attendance programs, that there must not be reference or structure to discipline or other punitive measures. In the Board's view, it is improper to use suspensions as a means to progressive escalating responses (para. 21).

Within an attendance management policy, there must be a separation between counseling letters and discipline. In Oshawa (City) and C.U.P.E. Local 250 (1996), 56 L.A.C. (4th) 335, the arbitrator indicated that when a counseling letter is provided to an employee it is not disciplinary, nor can be subject to a grievance. The letter is simply advising the employee of the employer's concern about the rate or level of absenteeism, and that failure may result in discharge. The same counseling letter(s), is not to be used as part of a disciplinary record as outlined in Maple Leaf Consumer Foods and U.F.C.W., Local 175 (2006) O.L.A.A. No. 469 (para.18).

When dealing with counseling letters in an attendance program, the employer must ensure that it does not have a disciplinary tone as identified by the arbitrator in River Valley Health and C.U.P.E., Local 908, [2006] N.B.L.A.A. No. 2. Further the plan should afford some flexibility and discretion to the employer to take into account the individual circumstance of the employee in failing to meet the prescribed standard of attendance (para. 18).

When dealing and setting a prescribed standard of attendance, the employer must ensure it is objective and not selected arbitrarily. It should factor the average level

of absenteeism of the organization, or more importantly the grievor's business unit as provided by the arbitrator in St. Joseph's General Hospital and O.N.A. (Schryer), [2006] O.L.A.A. No. 99 (para.57-60).

When an employer sets up an attendance management plan, they must ensure their plan is properly administered and designed. Once the employee triggers into the plan and the employer relies on disability-related absences, to advance the employee along the stages on the plan, the onus shifts on the employer that it has accommodated the employee up to the point of undue hardship (at point of discharge). As provided in Coast Mountain Bus Co. and C.A.W., Local 111, [2004] B.C.C.A.A.A. No. 325, the duty to accommodate may require the employer to review and request further medical information of the employee and to reconsider the possibilities to providing an employee with an alternative accommodated arrangement (para. 26).

The City had its own judicial review of its attendance management plan in Hamilton (City) v. C.U.P.E., Local 5167, [2003] O.J. No. 657, the Court held that record workplace injury absences were appropriate generally to calculate absenteeism statistics, but could not rely upon them to justify discharge in the absence of evidence that the employee had been accommodated to the point of due hardship. This supports the recommendation to not count the absence into the ASMP, but rather count it for pure non disciplinary statistic purposes (p.10).

It is also important to view and employee's background and underlying issues that may increase or exasperate the employee's medical condition, as illustrated by the arbitrator in Coast Mountain Bus Co. and C.A.W., Local 111, [2008] B.C.C.A.A.A. No. 6, where the grievor's excessive absenteeism was due in part to the harassment of a co-worker which aggravated the employee's anxiety disorder. The employer did not fully account for the "residual effects" of the harassment and medication related complication, thus the resulting absences were improperly included when reviewing the employee's attendance record. Employers must be cognizant and careful not to prejudice an absence until it is appropriately investigated (para 68-80).

It is imperative that an attendance management plan exclude any statutory entitlements to absences from the workplace, as any control or limitation set by the lower tier government (municipality) would be ultra vires and contrary to provincial legislation. In Natrel Inc. and Teamsters, Local 647, [2004] O.L.A.A. No. 75, the arbitrator found the employer violated the *Employment Standards Act* when it counted absences under the emergency leave entitlements under the act (p.3). Further in Cadbury-Trebor Allan Inc. and Retail Wholesale Canada, Local 462, [2004] O.L.A.A. No. 269, the arbitrator orders that statutory leave days do not

constitute an occurrence under the policy, and the policy must be amended to make it clear that such leave is not covered under the plan (para.32). This also validates the recommendation to train supervisors to understand legislative exceptions to the policy and to avoid counting these absences into the ASMP. It is paramount that supervisors and administrators of the ASMP truly understand the requirement to accommodate staff and to avoid infringements under the *Code* as further explained in 3.4 hereinbelow.

3.4 HUMAN RIGHTS LEGISLATION

Under the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 (“Code”) it provides under section 5(1) that “Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability”.

It is necessary to further explore the Code to determine how a disability is defined. Under section 10(1) it further provides that a “disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.

Further under the Code, specifically under section 11(1), a right of a person under abovementioned provisions is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

However, section 11(2) of the Code states a tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

When dealing with a disability specifically, section 17 of the Code provides:

- (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.
- (2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

These are clear standards when dealing with a disability, and every attendance management policy/program must comply with the requirement to accommodate an employee to the point of undue hardship. This requirement must be reinforced to all supervisors and senior management. There is no elective right to comply with the *Code*. It is mandatory and requires strict compliance.

3.5 HEALTH RECORDS

Most employers would like a fulsome report and detail about its employees' health records. The entitlement is restricted and an employer cannot compel an employee to disclose their health records, yet an employee may need to consent to its release in order for the employer to be able to accommodate an employee.

Under section 63(2) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, it provides that "no employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute, to a health record concerning a worker without the worker's written consent". Also under section 63(6) states that "this section prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*".

This is important insofar that an employer shall not compel an employee to disclose their prognosis terms and details. An employee may wish to disclose the

information voluntarily, but generally the employer shall only receive a medical certificate with general details and length of absence. Employers should also avoid calling employees during their recovery in an effort to obtain further information, as to avoid harassment allegations. This is another important requirement that's needs to be fully explained to those administering the program/policy. If there are any doubts on what can be asked and how it can be asked, the supervisor needs to contact HR on guidance.

3.6 WORK ABSENCE STATISTICS

According to Statistics Canada, “absenteeism, a term used to refer to absences that are avoidable, habitual and unscheduled, is a source of irritation to employers and co-workers”. In the Statistic Canada’s Work Absence in 2009 report, it states that “Absenteeism is widely acknowledged to be a problem, it is not easy to quantify. Extrapolated over the full year, work time lost for personal reasons increased from the equivalent of 8.1 days per worker in 1999 to 9.8 days in 2009” (See Figure 3).

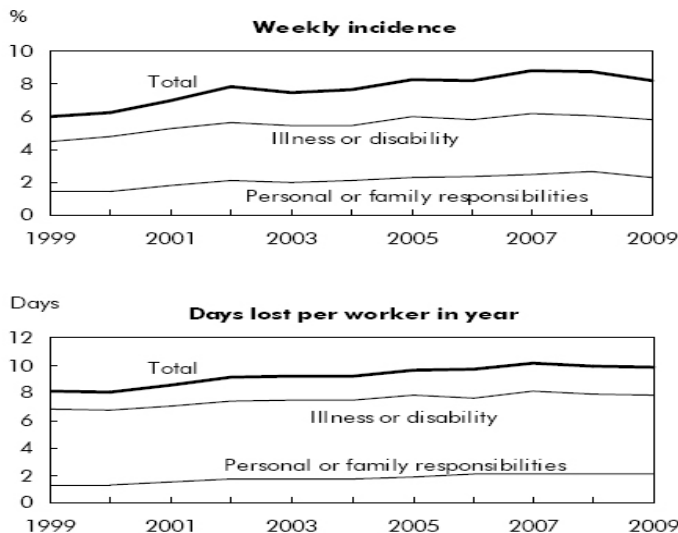


Figure 3. Statistics Canada, Labour Force Survey.

As part of Statistic Canada’s Work Absence in 2009 report, it noted several observations from its Labour Force Survey, which included:

On average, each full-time employee lost 9.8 days in 2009 for personal reasons (7.8 for own illness or disability plus 2.1 for personal or family demands);

Full-time employees in the public sector (more likely unionized or female) lost more work time (12.6 days) in 2009 for personal reasons than their private-sector counterparts (8.9 days); and

Full-time workers who belonged to unions or were covered by collective agreements missed more workdays on average in 2009 for personal reasons than their non-unionized counterparts (13.7 versus 8.0).

It is always helpful to understand the nature of absences, which according to Statistic Canada's Work Absence in 2009 report, there are several reasons for work absences from work, which included: own illness or disability, caring for own children, caring for elder relative (60 years or older), maternity leave (women only), other personal or family responsibilities, vacation, labour dispute (strike or lockout), temporary layoff due to business conditions, holiday (legal or religious), and weather.

It is important to understand the shifting demographics and trends for absences when preparing and implementing a new policy to ensure it is effective and also flexible in accommodating certain absences. It is important to note that the City's level of absenteeism is not out of range with Statistic Canada's public sector statistics, thus the focus of this study is on culpable absences.

3.7 ACCOMMODATION REQUIREMENTS

It is important to determine if there is a test to determine when an employer has met its duty to accommodate in cases of employee illness or disability (non-culpable on the part of the employer); and, if so, at what point has the employer sufficiently discharged its duty to accommodate resulting in justifiable termination of employment on the basis of the doctrine of frustration of contract.

An employer seeking to establish that it has fulfilled its duty to accommodate an employee who cannot, by reason of an illness or disability, perform all or part of the duties of their employment needs to satisfy the following test:

- That the standard or policy which the employee cannot meet is necessary for the employer to accomplish their organizational objectives, or, alternatively, that it is not more stringent than it needs to be. In other words, it must meet the established test of being a *bona fide* occupational requirement;
- That the cost of providing accommodation or the impact of the accommodation is not so great that it creates "undue hardship" on the employer's organization. There is a test for considering "undue hardship";
- That the employer has offered reasonable accommodation to meet the individual's needs in a manner that is not discriminatory (both directly and adversely) under the *Human Rights Code*; and

- That all parties have cooperated in the provision of accommodation. This includes the employee, the union and even professional associations.

The questions are somewhat circular in that, in an employment context, frustration of contract exists when through no fault of either party, the contract becomes impossible to perform and, as such, it is terminated without liability to either party. The inability for the contract to be performed must be actual, not simply more onerous or less profitable than anticipated. There is no duty to accommodate where the contract of employment has been frustrated by the employee's total incapacity.

However, a duty to accommodate an employee may exist where the employer has created, imposed or required a particular standard, practice, ability or policy which, but not for the employee's illness or disability, he or she would be able to substantially perform his or her duties of employment for the employer.

Bona fide occupational requirement

In order to establish that a standard to which an employer requires an employee to meet constitutes a *bona fide* occupation requirement (BFOR), the standard should meet a three part test, set out by the Supreme Court in British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U. at para. 54, as follows:

- the standard was adopted for a purpose or goal that is rationally connected to the function being performed;
- the standard was adopted in good faith in the belief that it is necessary for the fulfilment of the purpose or goal; and
- the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the [employer] cannot accommodate persons with characteristics of the [claimant] without incurring undue hardship.

A standard which *directly* discriminates against an employee but which constitutes a BFOR, does not bring about a duty to accommodate. Conversely, if an employer cannot successfully establish a BFOR, the standard which directly discriminates will be struck down. In the case of a standard which *adversely* discriminates, a duty to accommodate exists on the part of the employer, regardless of whether it constitutes a BFOR, unless it can be established that providing accommodation will create undue hardship for the employer.

Undue hardship

Accommodation requires an employer to take reasonable measures short of undue hardship to provide accommodation to an employee who, as a result of an illness or disability, cannot meet the standard imposed by the employer. If the standard imposed is determined to be a BFOR, accommodation is not required where it will constitute undue hardship.

In Renaud v. Board of School Trustees et al, it has been established that more than mere negligible effort is required to meet the duty of accommodation and the extent to which the employer must go to accommodate is limited by the words “reasonable” and “short of undue hardship” (para. 26). The term “undue” infers that some hardship is acceptable and that only “undue” hardship satisfies this test. What constitutes reasonable is a question of fact which will vary with the circumstances of the case. Wilson J., in Central Alberta Dairy Pool v. Alberta (Human Rights Commission) at p.521, listed factors that could be relevant to an appraisal of what amount of hardship was “undue”:

...financial costs, disruption of a collective agreement, problems of morale of other employees, interchangeability of work force and facilities. The size of the employer's operation may influence the assessment of whether a given financial cost is undue or the ease with which the work force and facilities can be adapted to the circumstances. Where safety is at issue both the magnitude of the risk and the identity of those that bear it are relevant consideration.

She went to explain that “this list is not intended to be exhaustive and the result which will obtain from a balancing of these factors against the right of the employee to be free from discrimination will necessarily vary from case to case” (Central Alberta Dairy Pool, 1992).

The concern for the impact on other employees must be more than just minor inconvenience in order to defeat the complainant's right to accommodation. The employer must establish that the actual interference with the rights of other employees, which is not trivial but substantial, will result from the adoption of the accommodating measures (Renaud, 1990) at para.27.

Non-discriminatory accommodation

It is essential that any accommodation offered does not discriminate either directly or adversely as prohibited by the *Human Rights Code*. The duty to accommodate is not met where the accommodation itself discriminates against the complainant. From an employer's perspective, in such an instance, it may be that a successful test of undue hardship could have been met but accommodation that acts to discriminate on the same or a difference basis as that for which the accommodation is offered, will ultimately lead to the necessity of starting the process again and defending the standards which the employer is imparting on its employees (Altman, 2011) at para 90-95.

Cooperation

The level of cooperation between the employer, the employee and, in applicable cases, a union and professional association, will be considered in determining whether an employer has fully discharged its duty to accommodate.

A union may impede the reasonable efforts of an employer to accommodate and incur liability itself. In *Renaud*, the union refused to allow the employer to depart from the terms of the collective agreement to provide accommodation. In such cases, it shares the responsibility with the employer to facilitate the accommodation of the employee, although it is generally the employer who is expected to initiate the process (Renaud, 1992) at p.2. The duty, then, arises when action on the part of the union is necessary to make accommodation possible.

Moreover, the conduct of the employee in accepting accommodation will be considered. An employee has a duty to accept reasonable accommodation and to facilitate the accommodation process. An employee does not have a duty to originate a solution but an employee who does not facilitate the implementation of reasonable accommodation will see the complaint dismissed and it will be determined that the employee cannot be accommodated. At this point, the employer has discharged its duty to find suitable accommodation (Altman, 2011) at para. 87.

Frustration of contract

Frustration of contract occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed (Davies, 1956). In the case of employment, when an employee is unable to work because of disabling illness (non-culpable on the part of the employer), the question to ask is: is the employee's incapacity of such a nature or will it continue for such a period of time that further performance of his obligations in the future would either be impossible or would be radically different from that undertaken under the agreed upon terms of employment? (Marshall, 1972)

Where, through no fault of either party, there is no alternative to termination such as accommodation through modifying the job or finding alternative employment in the organization, frustration of the employment contract will have occurred (Gielen, 2009) at para. 21-23.

Both temporary and permanent illnesses have been alleged to frustrate employment contracts. The court will consider whether the employee's incapacity is such that future performance would either be impossible or would be a thing radically different from that undertaken by him and agreed to by the employer. Several cases have stated that the important factors in deciding whether an illness is a frustrating event are: the nature and expected length of the illness; the prospect of recovery; the nature and length of employment are also factors to be

considered. The greater the degree of incapacity, the longer the period of illness and the greater the likelihood of persistence, the more likely it is that the illness has frustrated the contract. The period during which an employee received disability benefits may postpone the time of frustration but it cannot be said that frustration is impossible merely because the employer provided long term disability benefits. Aside from this not being the intention of particular parties, policy requirements dictate that employers not be discouraged from providing long term disability benefits. Furthermore, the existence of human rights legislation does not abrogate from the existence of the doctrine of frustration. The duty to accommodate has no application where the contract has been frustrated by an employee's total incapacity (Gielen, 2009) at para. 21.

Whether illness entitles an employer to terminate a contract depends on a number of factors including, the terms of the contract, availability of sick leave and pay, how long the employee is likely to remain sick, the nature of the employment, the nature of the illness, period of past employment and how long the employer should reasonably be expected to await the employee's return. The question is whether the employee has been incapacitated to such a degree that further performance of his or her obligations would be impossible or substantially different than was originally intended. If the characteristics of an illness are such that the proper operation of the business is hampered excessively or if an employee with such an illness remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her, the employer will have satisfied any duty to accommodate and the dismissal will be deemed to be justified based on the doctrine of frustration of contract (Syndicat, 2008) at para 17-19.

Conclusion

The important questions to ask in determining at what point an employer's duty to accommodate an employee ends and dismissal is justified on basis of frustration of contract are:

Does the contract of employment meet the test for frustration of contract? If it can be established that the employee is no longer able to fulfil his or her obligations under the contract through no fault of either party, that his or her inability to perform the requirements of the employment contract are creating hardship, and the expected duration of the employee's ability to perform the obligations of the employment contract are unknown or extend into the foreseeable future, it would appear that the employment contract has effectively been frustrated.

If the employment contract is frustrated, is there a duty to accommodate on the part of the Employer? It would be necessary to evaluate what aspects of the original contract prevent the employee from returning to work and determining whether accommodation is required (i.e. does it meet the BFOR test, does it directly or adversely discriminate). If there is total incapacity on the part of the employee to return to work, then accommodation is not required. If there is

capacity to return to work on a modified basis, can such accommodation be provided without creating undue hardship?

If there is a duty to accommodate, has the employer discharged its duty completely? Has the employer exhausted the reasonable efforts to provide accommodation to the employee and has the employee cooperated reasonably in the attempts to find suitable accommodation.

If the employer has duly discharged its duty to accommodate, then it would seem that termination of the employment contract is justified on the basis of frustration of contract. The employer must satisfy the test for frustration of contract prior to the termination of an employee. The employer must exhaust all reasonable effort to accommodate the employee unless there is a BFOR. It is then that the employer has discharged its duty completely.

4.1. METHODOLOGY

It is important in any research to describe the key criteria and purposes for the research and also the manner or methodology used to derive at the results or conclusions. In this report, the use of a mix of data collection and review was utilized to determine the best practices, the restrictions based upon law, and the perception of senior management in order to best address frustration of contract, duty to accommodate and discharge of the duty to accommodate completely. The methodologies used were literature review, focus groups and critical analysis and policy direction.

Key Research Questions

This methodology addresses the following key research questions:

1. What types of absences are included in the policy?
2. How are the different absences classified and how are they determined?
3. What are other municipalities doing (best practices)?
4. What works and does not work for the plan administrators (senior management)?
5. What are the barriers to the policy success?
6. What are the City's legal obligations?
7. Is it appropriate to reward or recognize good attendance?
8. How can the policy be improved?

Literature Review

Review of literature was an important deliverable in this research to better understand the limitations and restrictions of attendance programs as considered by jurisprudence, such as frustration of contract, duty to accommodate and the duty to accommodate. It was also important to understand any legal requirements under Ontario statutes specifically, and also a general trend in absenteeism for discussion and context.

For reviewing literature, the main search engines utilized were "Yahoo Canada" at <http://www.yahoo.ca> for general searches, and <http://www.CanLii.com> and www.westlawcarswell.com for caselaw searches. The various searches retrieved information from several levels of courts, and secondary information relating to municipality programs and statistical related information. The Ontario Municipal Benchmarking Initiative website was another website reviewed for relevant materials.

The key words used for best results included "attendance", "attendance management", "accommodation" and "termination" provide the best search results. Various cases were reviewed and referenced links therein. The literature was

searched and reviewed until the subject matter was exhausted, thus being all factors and considerations of an attendance management program.

Focus Groups

Several meetings were used across each department of the City to best determine the current effectiveness and opinion from senior management and the feedback from their managers of the current ASMP. The feedback is quite valuable in ascertaining the areas of strength and weakness of the program, and also a reflection of what is needed and how generally things can be improved.

The decision to select senior management of each department was made based on the value in their contribution of information, the ownership of having program success for each of their division, and their ability to effect change when needed. The last consideration was the scope of this report and the large nature of the organization.

The focus groups were arranged by the City of Hamilton's Human Resources Department, and they were conducted individually with each department's senior management team, or in the alternative the leading representatives for each department. Prior to the meeting, each participant was required to review and sign the Informed Consent document (see Appendix A).

A total of ten focus group meetings were held in June and July, 2011. The meetings were held and structured in a similar fashion where the participants were asked the same questions (see Appendix B), and the responses were noted accordingly. Each meeting lasted approximately 90 minutes each.

The meetings created a valuable source of data from senior level of staff across the organization. The participants were all very helpful and eager to add information and ultimately help contribute to the success of the program review and input on amending/changing the program on a go forward basis.

Best Practices Comparables

Due to the importance and significant of an attendance management program, it was important to review what other similar municipalities used as a program. There are very similar processes in the policies reviewed, which is typical in some policies used at the municipal level. Most municipalities share information freely to each other such as Ontario Municipal Benchmarking Initiative ("OMBI") participants.

It was important to look at OMBI covered municipalities as they are most similar to the City of Hamilton in terms of programs, budgets and geography. A further look at other municipalities was used to view similarities and differences. It is still valid as the underlying law is the same in Ontario and Canada generally.

The policies vary in approach and composition. The information has provided valuable information when reviewing best practices and the most common practices. When reviewing the individual policies, key areas are isolated and analyzed for possible inclusion and benchmarking. These areas were highlighted in order to further examine the current policy and to look at trends in other comparable municipalities. The end result will be to assess whether key areas are suitable for inclusion into the City of Hamilton's policy recommendations.

Critical Analysis and Policy Directions

The last element of the research is the review and to process the collected data in order to perform a comprehensive analysis of the information. The importance of this step is to create policy recommendations on how best to address the current ASMP and for considerations for future policy direction for both City Council, but also the Human Resources Department.

4.2. LIMITATIONS

The policy recommendations provided in this report are derived from reviewing caselaw and applicable Ontario laws, while considering approaches taken from other municipalities and the feedback provided in the focus group meetings.

The findings in this report should be considered despite the limitations provided herein as:

- The recommendations have not been specifically tested in a court of law or by an arbitrator;
- The recommendations may vary in application between union and non-union employees, and have not been considered against current collective agreements;
- Those taking part in the focus group meetings are those in senior management, thus Council and staff impacted by the policy may have useful information and insight into the policy formation, thus they are not represented in the report's findings; and
- Due to the restrictiveness of the report's scope and timing, the representative unions were not included in any discussions or report findings despite the need to vet program changes in advance of implementation in order to avoid any unnecessary grievance and arbitration process.

The specific intent and purpose of the research was to gain a better understanding of the challenges and restrictions upon implementing and maintaining an effective attendance program. The findings of this research are being applied directly to the questions imposed by the very nature of this research. It is hopeful that the findings produce effective policy outcomes that fully address all stakeholders.

5.1. CONCEPTUAL FRAMEWORK

There is a strong need for an appropriate policy to direct staff and the organization to effectively deal with absences. There is a need to differentiate between non-culpable and culpable absences. Each absence requires an appropriate determination in order to utilize the right policy. The manager will need to access each case on its own facts and background. When there is any doubt as to the nature of the absence, a medical certificate should be requested.

Every absence puts strain on the work flow process, creates poor morale, has the potential to impact the budget, raises political concern when absences escalate, and there is a need to deter abuses of the process. As mentioned previously, non-culpable absences will be treated with support and resources to help the employee regain consistent attendance and to accommodate accordingly up to the point of frustration.

Whereas culpable absences should be dealt with aggressively to correct the inappropriate behaviours and to act as deterrence to other staff contemplate similar attendance patterns. It is important to have an appropriate conceptual framework to visualize and map out the appropriate actions (Figures 4 and 5).

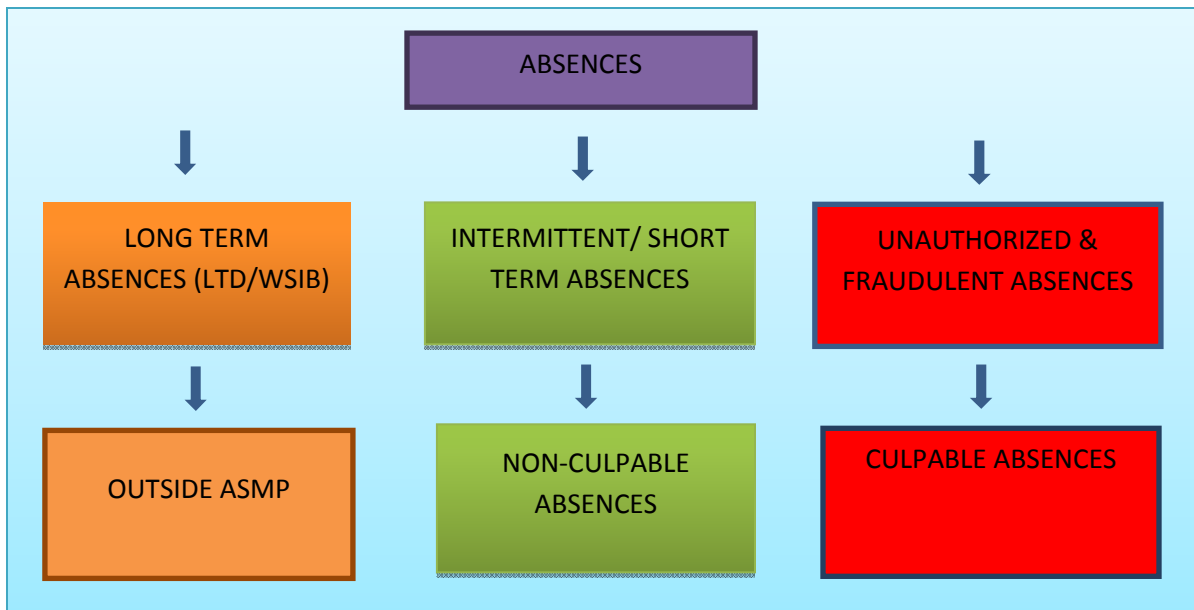


Figure 4. Conceptual Framework

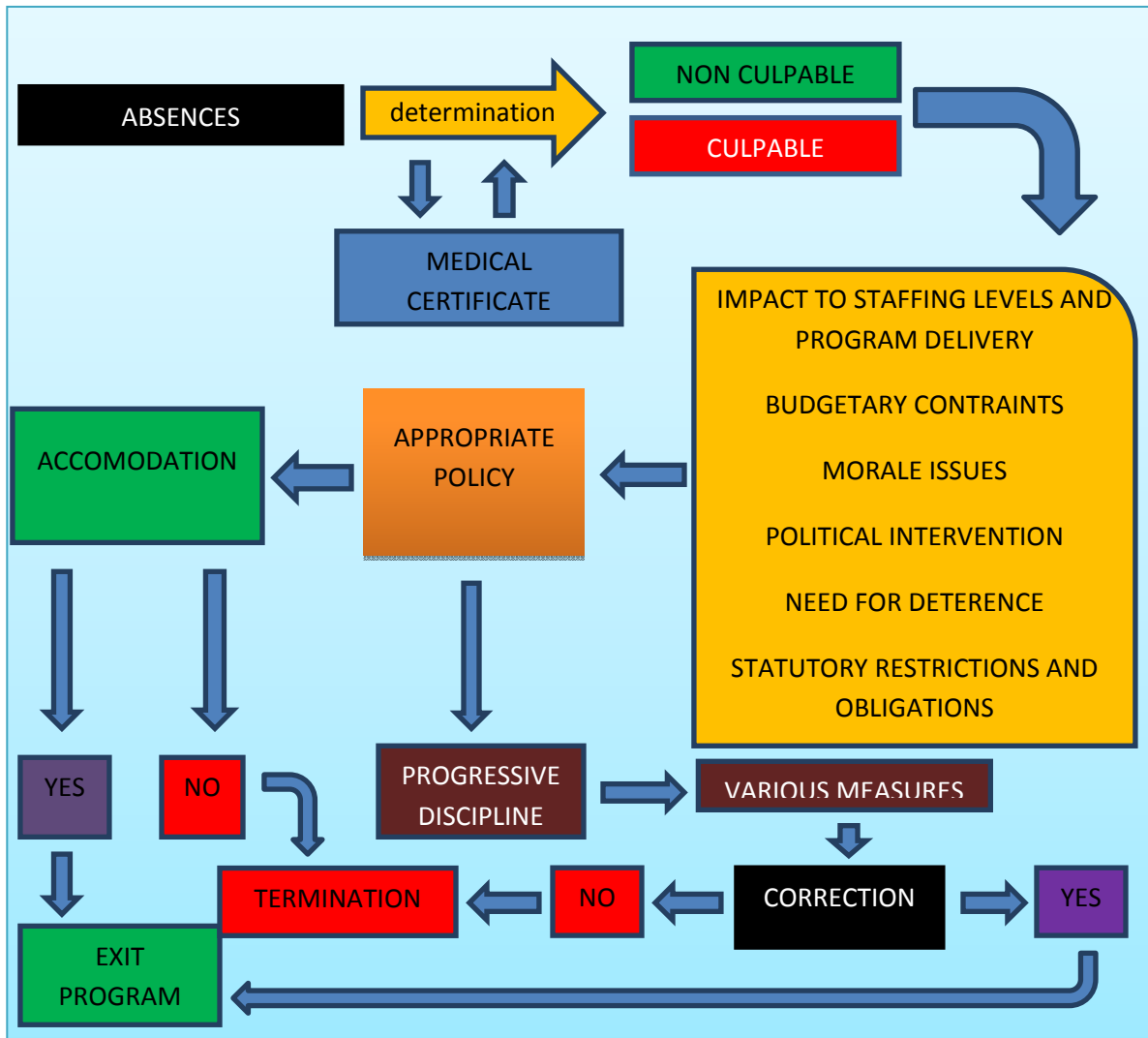


Figure 5. Conceptual Framework

This paper views the ASMP as a policy governing direction to management on how best address absences, and specifically non-culpable absences. As illustrated in Figure 5, there is a strong need for early detection of the nature of the absence in order to mitigate the absence impacts, to place the employee in the right program and to also afford the most resources to the employee requiring support.

Using this Conceptual Frameworks as a guide, the following policy report employs a literature review, focus group meetings and best practices to identify the best methods to employ in order to effectively address the high cost of absenteeism to the organization, and also to most effectively support those staff in need of accommodation.

6.1. FOCUS GROUP MEETINGS

As previously mentioned, over 50 senior staff participated in one of ten focus groups that lasted approximately 90 minutes each in length. The meetings utilized the literature review and conceptual framework as a basic starting block to investigate four general areas: what works well, what does not work, general perception of the policy and whether positive attendance should be rewarded.

The findings of the focus group meetings were generally in-line with the literature review and specifically the case law. While the overall research questions were probed, it was important to understand the administrator's perception and functioning of the current policy against the key research questions:

1. What types of absences are included in the policy?
2. How are the different absences classified and how are they determined?
3. What are other municipalities doing (best practices)?
4. What works and does not work for the plan administrators (senior management)?
5. What are the barriers to the policy success?
6. What are the City's legal obligations?
7. Is it appropriate to reward or recognize good attendance?
8. How can the policy be improved?

There was a lot of consistency in the discussion and answers in every focus group held. There was a glaring issue with a perception of being placed in an uncomfortable situation of having to interview and provide correspondence to staff for bone fide absences. There was a clear sense of not wanting to follow the process for staff coming back from absences resulting from such reasons as maternity leave, cancer treatment, etc.

It was noted that the ASMP meetings were uncomfortable, awkward and created unnecessary stress on management and staff. It was cited numerous times, that the process is perceived as punitive and not helpful. It is clear that the process results on meeting with management to discuss absences, but also to place negative correspondence in the employee's file.

Another area of concern was the inconsistency of how the different department management thought the process was to work or the policy's purpose and intent. Some thought the ASMP was a punitive tool, where others thought it was to be used as a tool to help accommodate employees who need it. The latter is the preferred outcome of any attendance support management policy; this approach is wholly consistent with the literature and judicial interpretation.

Another key concern was the need for training and materials not only for new hires but also management who administer the program. It is noted by the writer that the

policy was never provided at orientation nor explained on how it worked. The writer does note the policy is available on the corporate intranet with the other corporate policies, although it seems surprising that such an important policy is not flagged specially to all employees. It was also noted that management needs further training.

All areas indicated that more training is necessary for those who administer the program to allow a better understanding of what is required from them and the employee who triggered the program. It became clear that staff needs strong guidance and scripts to help deliver the necessary interventions. The writer notes that the organization is large and not all management have human resource backgrounds or human resource training. Thus the need to have a simple and comprehensive training guidance and guidelines and materials is paramount to the policy's success.

There also appears to be a missing senior management component to the program's delivery. Most departments are vastly exceeding their meeting targets to sit down with employees to discuss their absences and to provide necessary support. With such a backlog of outstanding meetings, it is difficult to assess whether management is indifferent about the policy, lack senior management commitment, or the policy is low in the overall corporate agenda. It seems reasonable that all three reasons exist.

Strong corporate support for any policy is important. There is a need to link the policy directors of the policy directly to those administering the policy. That is to say to make it a mandatory evaluation criteria on each administrator's personal annual performance evaluations to ensure the meetings are done in a timely fashion and that accommodation to the employee is provide forthwith. In the alternative, progressive discipline is taken for culpable absences.

There is a variety of opinions on what works well and not so well. The clear criticism is the lack of ability to capture those abusing the system. There was less optimism or support for the current program. Most participants wanted a clear system for those who need accommodation and support and another to remove those abusing the system.

A common concern was the impact on those abusing the system and how it directly impacted departmental morale. It is noted that staff are frustrated with covering for those who frequently call in sick just to add additional vacation time. The impact requires such things as overtime, extra load to other staff, increased wait times, and reduction of services. There is a clear need for a progressive discipline policy and related training and Human Resources/Legal Services support.

It is also noted that supporting positive attendance was less clear. There was a varying concern of having a reward may entice or commit those to come to work

sick to obtain said award. Others felt strongly that there needs to some form of recognition to show attendance matters and the employees contributions are valued. There is a variety of measures such as rewarding employees who exit the ASMP, those with good attendance (does not need to be perfect, as this should minimize the above concern), or a corporate wide event to show that attendance is important. It is appropriate to have a letter in the employee's file for positive attendance. There are considerations to budget impacts. Best practice review shows municipalities are supporting varying levels of support to employees with positive attendance records.

Finally there was a mix of opinions as to the future of the policy. Some wanted the policy to be terminated, others wanted stronger termination mechanisms, and the majority would like to see a non-culpable system that only targets those with short term illness. It is noted that Workplace Safety & Insurance Board ("WSIB") claimants should be removed from the ASMP process as it is redundant and overlaps with current policies and further just further increases frustration and stress to management and to staff in particular.

Summary:

The findings of the focus group meetings were helpful and many times were in-line with best practices of other municipalities and with the literature and judicial interpretations. With such a variety of responses and input, it became clear that no two departments functioned or interpreted the ASMP in a similar fashion. A clear result of lack of consistent formal training and guidance.

The meetings pointed out several barriers and opportunities for an improved ASMP that better separates culpable and non-culpable illnesses, and further defines which non-culpable illnesses attract the ASMP to trigger. A common position amongst all the groups was the wish for a strong policy that focused on accommodating employees in need, and another to deter and punish those who abuse the system.

Management is placed in difficult positions trying to manage a policy that appears ineffective, punitive and resource intensive. There is a need to reduce unnecessary meetings, and to better focus on supporting staff in their difficult times. There needs to be comprehensive training to those who administer the program, and better communication to staff on what is expected and how the policy works.

It is important for the policy administrators to have the flexibility to manage and review each case on its own facts and merits. Empower management to deal with their staff as necessary in order to fully consider how best to accommodate an employee. The end result is a more effective approach that can be proactive in finding and providing support rather than a pure attendance management policy, which is relatively reactive in nature.

6.2. BEST PRACTICES COMPARABLES

The Province of Ontario has three levels of lower tier government. They generally fall as regional governments with upper and lower-tiers sharing various responsibilities (region/upper tier typically handles such services as police and social services, and the lower tiers handle such things as parks and fire), or as a single tier city with full service delivery.

The Ontario Municipal Benchmarking Initiative (“OMBI”) is the standard and often referred to benchmarking collaboration between 15 similar Ontario municipalities. OMBI allows the participating municipalities to measure and compare the performance and costs of delivery key programs and services (OMBI, 2011). With proper comparable figures and measures, there is an ability to produce, share and compare key performance indicators so that all stakeholders (Council, citizens, media, etc.) can understand where their tax dollars go and how the administration is performing against similar municipalities. With knowledge brings the ability to share best practices and operational challenges and opportunities.

There is a need to find suitable comparable municipalities with similar size, scope and services. With proper comparables the stakeholders will be able to rely on the OMBI data as being reliable and valid. Similarly, OMBI affords users the ability to retrieve a list of OMBI members for other research, as the benchmark for similar size, scope, budgets and services has already been established.

The current distribution of upper-tier participating members is: Region of Durham, Halton Region, Niagara Region, District of Muskoka, Region of Peel, Region of Waterloo, and York Region, as depicted below (OMBI, 2011) in figure 6.

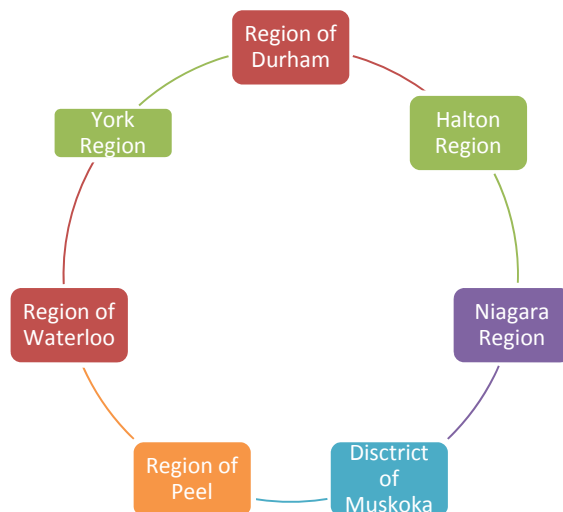


Figure 6. OMBI Upper Tier Municipalities.

The current distribution of single tier participating members is: City of Barrie, City of Greater Sudbury, City of Hamilton, City of London, City of Ottawa, City of

Thunder Bay, City of Toronto, and City of Windsor, as depicted below (OMBI, 2011) in figure 7.

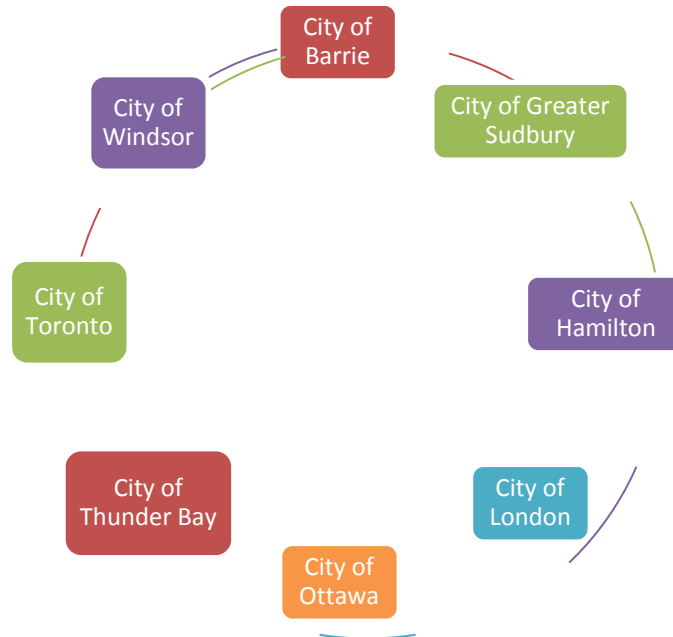


Figure 7. OMBI Single Tier Municipalities.

There was a focus in collecting attendance management program policies to firstly obtain OMBI members' policies, then look at other Province of Ontario municipalities which part of practice includes City of Winnipeg due to its size, location and program delivery, and last other public institutions in the City of Hamilton. There is potential to obtain other large municipalities across Canada, but there were restricted in this research due to time and cost considerations.

The following programs were collected:

Municipality	Program	OMBI	Single Tier	Upper Tier
Barrie	No	X	X	
Brant	No	X		X
Chatham	Yes			X
Cornwall	Yes		X	
Durham	Yes	X		X
Haldimand	Yes			X
Halton	Yes	X		X
Hamilton	Yes	X	X	
Kingston	Yes		X	
London	Yes	X	X	
Mississauga	Yes			
Muskoka	No	X		X
Niagara	No	X		X
North Bay	Yes		X	

Oakville	Yes			
Ottawa	Yes	X	X	
Peel	No	X		X
Peterborough	Yes			X
Sudbury	No	X	X	
Thunder Bay	Yes	X	X	
Toronto	Yes	X	X	
Waterloo	Yes	X		X
Windsor	Yes	X	X	
Winnipeg	Yes		n/a	n/a
York	Yes	X		X

Figure 8. Best Practices Comparable Chart.

Therefore for the policies collected, there were 10 out of the participating 15 municipalities carried an attendance policy. Nine additional municipalities were added to view potential best practices and generally policy structure. In total, 19 policies were examined as part of this review for the City of Hamilton. The full policies can be examined at Appendix C.

The 19 policies are broken down by key areas of their program by the date of inception, the program name, the absence trigger, restriction on intake, purpose of program, medical certificate requirements, program steps, inclusion of punitive language, and whether there is no loss time recognition. The results are recounted in Figures 9A to 9I and can be examined at Appendix D.

6.3. ANALYSIS

The information ascertained from the other municipalities proved to be insightful and provided some clear patterns. The information is broken into several categories which include: date of program, program name, absence triggers, limits on intake, purpose, medical certificates, program steps, punitive language and no loss recognition.

Date of Program

The program dates vary from 1996 to 2011; with the City’s program being 2008 (see Figure 10A). Due to the changes such as workforce demographics, rapidly changing law and judicial interpretation, policies should be updated on a regular basis to reflect potential changes from the above. A three to five year cycle is highly recommended.

Municipality	Date of Program
Chatham	1999

Cornwall	not specified
Durham	2008
Haldimand	2001
Halton	2009
Hamilton	2008
Kingston	2001
London	not specified
Mississauga	1996, rev in 2006
North Bay	2003
Oakville	2008
Ottawa	2006
Peterborough	2002, rev in 2004
Thunder Bay	2011
Toronto	2001, rev in 2008
Waterloo	1996
Windsor	2006
Winnipeg	2008
York	2001, rev in 2008

Figure 10A. Best Practice Analysis.

Name of Program

The name of the program is fairly consistent based on the date of the program. The names vary generally, but after 2008, a common trend was the insertion of “support” into the program names. Prior to 2008, the moniker “management” was consistent used. The City’s program is current named Attendance Support and Management Plan (see Figure 10b), which is a hybrid approach as compared to the other comparables. It is important to recognize the name of the program as it is the first item to be associated with the policy when it is first reviewed and to be recognizant of any negative connotations. The name appears to be proper for the policy.

Municipality	Date of Program	Name of Program
Chatham	1999	Attendance Monitoring Program
Cornwall	not specified	Attendance Management System
Durham	2008	Attendance Support Program
Haldimand	2001	Attendance Management Policy
Halton	2009	Attendance Support Policy
Hamilton	2008	Attendance Support and Management Plan
Kingston	2001	Attendance Management Program
London	not specified	Employee Attendance Support Plan
Mississauga	1996, rev in 2006	Attendance Management Program
North Bay	2003	Attendance Management Program

Oakville	2008	Attendance Support Program
Ottawa	2006	Attendance Management Program
Peterborough	2002, rev in 2004	Attendance Awareness Program
Thunder Bay	2011	Attendance Management
Toronto	2001, rev in 2008	Attendance Management Program
Waterloo	1996	Attendance Management
Windsor	2006	Attendance at Work Policy
Winnipeg	2008	Attendance Management Program
York	2001, rev in 2008	Attendance Awareness Program

Figure 10B. Best Practice Analysis.

Absence Triggers

It is critical to review and compare absence triggers from the other comparables to gather a sense of the risk and support the various municipalities have incorporated into their respective programs/policies. The City currently has a straight forward program where a trigger is set if there are four absence events and/or seven days of absence in a twelve month period (see Figure 10c).

Municipality	Program Absence Triggers
Chatham	4 or more occurrences, totaling 8 or more days per year will result in trigger into AMP
Cornwall	Level at each 4 occasions or 7 days of absence in any 12 month period
Durham	4 or more occurrences, with 4 or more absences in any 6/12 month period will result in trigger into ASP *Tailored to each individual employee (discretion)
Haldimand	Standard which meets Department/Corporation standard within a fair and realistic time frame
Halton	Level at each 4 occasions or 7 days of absence in any 12 month period
Hamilton	Level at each 4 occasions or 7 days of absence in any 12 month period
Kingston	Sick days exceed departmental average within 12 month period, or occurrences exceed departmental average within 12 month period, or an obvious pattern of absences.
London	96 hours within a 12 month period.
Mississauga	Appears discretionary
North Bay	Sick days exceed corporate average within 6 month period, or occurrences exceed corporate average within 6 month period, and on an individual basis recommend actions to manage absenteeism.

	*uses hours or days
Oakville	9 or more occurrences, with 6 or more absences in any 12/24 month period will result in trigger into ASP. *Stages 3-5 have 6 month attendance period review and 24 month monitoring.
Ottawa	In an 18 month period, employees who exceed 12 absences in 12 months AND who have 7 or more absences in the last 6 months of monitoring, will trigger AMP and each level.
Peterborough	5 or more occurrences, with 8 or more absences in any 12 month period will result in trigger into AAP *review over 2 year pattern *standard set by considering previous years' attendance records of the city, publicized national absenteeism averages and sample organizational samples.
Thunder Bay	Triggers are set for particular work areas in consultation with Labour Relation staff. Some triggers may include the number of occurrences; corporate averages; departmental averages; and patterns of absence.
Toronto	Each department calculates its own average of occurrences of absence by (day/shift or part thereof) for each division. These will be the initial standards used for attendance review. A departmental average may be used where differences among divisions are insignificant.
Waterloo	Sick leave credit of 1.5 days per month, all employees are expected to have zero absences per year. Threshold set annually based on previous year. Thresholds can be hours and occurrences. Excessive absenteeism threshold is average x 1.5 *six month periods of review ** management discretion to take no action where employee has historical acceptable attendance.
Windsor	One day over corporate average
Winnipeg	6 or more occurrences, with 8 or more absences in any 12 month period will result in trigger into AMP
York	Unclear as corporate-wide attendance monitoring system is being developed. Disability Claims Co-ordinator to establish statistics and averages which will be used for benchmarking. *no discretion on entry

Figure 10C. Best Practice Analysis.

After reviewing Figure 10C, there are some noticeable patterns that emerge. Firstly there are those municipalities that set standard rates of absences and occurrences. The City's triggers are common to others and are generally in the average. Other municipalities incorporate hourly measures which is useful when parts of the workforce have condensed work schedule (e.g. 12 hour work shifts).

The other municipalities use trends and averages to determine appropriate levels for triggers. This is important since various jobs have compounding circumstances that may impact absenteeism averages (e.g. outside work, varying shifts, hand to hand transfers, and working with individuals with communicable disease or sickness).

Finally there are municipalities that use a combination of the above, yet utilize discretion to determine if an employee enters the program. Various factors such as employee's attendance records, work performance, nature and reasons for absences are all valid and important considerations for a program/policy. Having the flexibility to incorporate averages and minimum, along with discretion are considerations that the City should review.

Limits on Intake

It is a difficult task to properly categorize the different forms of absences due to the legal and cost implications. Any unnecessary attraction of countable absences raises the possibility to negative impacting an employee where they may be entitled to statutory protection. More occurrences could mean employees may trigger more, thus creating additional pressure and workload on administrative, human resource and legal staff. When employees face review and interviews, it can create additional stress and frustration and may negatively impact an employee's recovery.

Most municipalities have scarce resources and tight budget pressures. Unnecessary duplication of process needs to be eliminated. Thus if an employee is current under a return to work program like WSIB or through a disability management program, entering them into an attendance program seems redundant and unnecessary. The City has a fairly open intake that varies in application across departments. In Figure 10D, the City limits in its policy intake to non-culpable absenteeism and absenteeism related to workplace injury or illness.

Municipality	Limits on Intake
Chatham	None
Cornwall	WSIB, STD and LTD only

Durham	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process. Also excludes WSIB. LTD and emergency leaves under ESA.
Haldimand	Focus on non-culpable absences only. Culpable absences are dealt thru the discipline process.
Halton	Focus on non-culpable absences only. Culpable absences are dealt thru the discipline process.
Hamilton	<ul style="list-style-type: none"> • Absences related to “innocent absenteeism” • Absences related to occupational illness or injury
Kingston	None, except Vacation, Lieu Time, Bereavement Leave, Pregnancy Leave, Parental Leave and WSIB Leave.
London	Focus on non-culpable absences only. Culpable absences are dealt thru the discipline process.
Mississauga	None – offers two processes. One for non-culpable absences and one for culpable absences.
North Bay	Focus on non-culpable absences only. Culpable absences are dealt thru the discipline process (under chapter 7 of AMP).
Oakville	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process.
Ottawa	Does not include Leaves of Absence (Maternal, Parental, LTD and other approved leaves).
Peterborough	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process.
Thunder Bay	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process.
Toronto	Focus on non-culpable absences only.
Waterloo	Focus on non-culpable absences only. *excludes WSIB approved absences; periods of LTD, and known absences due to disability that requires accommodation.
Windsor	Focus on non-culpable absences only. Culpable absences are dealt thru separate policy process.
Winnipeg	No, except vacation leave, bereavement leave, maternity leave, paternity leave, adoption leave, family leave, other approved or excused absences and disciplinary leave.
York	Focus on non-culpable absences only.

Figure 10D. Best Practice Analysis.

Nearly every municipality separates out culpable absences within their attendance policy, and there are varying degrees of further limits on intake. The City lacks a formal progressive discipline policy for culpable absences and it should be made a priority. Further the City's inclusion of WSIB absences is a duplication of process and contrary to best practices as evidenced in Figure 10D. A comprehensive list on the limits of intake is strongly recommended for the City. Waterloo and Winnipeg provide a good example of proper restrictions on intake.

Purpose of Policy

It is important to have a proper policy statement that accurately conveys its purpose and goals. It is common to have a policy attacked (e.g. arbitration or court of competent jurisdiction) via the referenced purpose of the policy. Therefore it must accurately outline the intent and purpose of the policy and attention should be made to avoid general wide sweeping statements that are not accurate or are counter to the intended purpose.

There are several municipalities that are valuable components that may be considered for the City's policy. In Figure 10E, Peterborough provides a unique statement "Recognize and reward attendance that meets or exceeds standards; provide support to employees who have occasional long term illness; and coach and assist employees in accessing resources for frequent, chronic and/or sporadic absenteeism", that is forward thinking and proactive in nature.

Municipality	Purpose of Policy
Chatham	Effective and efficient operation of municipality; and to minimize cost related to absenteeism
Cornwall	Help employees achieve optimum attendance with accommodation, assistance and rehabilitation; provide guidance to management; and maximize service delivery to the public.
Durham	To promote regular attendance thru consistent and positive non-disciplinary intervention strategies.
Haldimand	To enable management and employees to correct absenteeism problems in a positive and caring manner without compromising current income protection scheme.
Halton	Help employees achieve optimum attendance with accommodation, assistance and rehabilitation; provide guidance to management; and maximize service delivery to the residents and clients of the service.
Hamilton	To manage absenteeism in a fair and consistent

	manner in order to provide cost-effective and efficient public service and achieve the following objectives: increase attendance awareness and reduce absences from work, help employees achieve and maintain regular attendance, regularly communicate the responsibilities of employees, supervisors, senior management and Human Resources; and maximize service delivery to the public.
Kingston	To promote optimal and consistent attendance, raise awareness of the importance of good attendance, provide a process of improving attendance, and assist employees in overcoming difficulties that may adversely affect regular attendance.
London	To improve employee attendance by bringing absenteeism that exceeds threshold to the attention of the employee and by offering support and assistance.
Mississauga	To identify employees for monitoring attendance, and to following up, and taking disciplinary action if needed.
North Bay	To promote improved attendance and employee wellness, establish city standards, and respond systematically to instances of excessive innocent absenteeism.
Oakville	To promote regular and improved attendance, standard protocol for managing attendance, encouraging proactive health practices and providing employees with timely support and assistance.
Ottawa	To recognize exemplary attendance and improved attendance, foster employee awareness of the importance of good attendance, assist employees to improve attendance, encourage the reduction of sick leave benefits, and accommodate employees with disabilities.
Peterborough	Recognize and reward attendance that meets or exceeds standards; provide support to employees who have occasional long term illness; and coach and assist employees in accessing resources for frequent, chronic and/or sporadic absenteeism.
Thunder Bay	To provide appropriate support, assistance and intervention for those employees experiencing difficulty in maintaining an acceptable level of attendance. Monitor attendance and address problems; Encourage and promote employee wellness and a healthy lifestyle; and promote an early and safe return to work for disabled employees.
Toronto	To maximize service delivery to the public; to assist employees in minimizing absences from work by

	providing accommodation, assistance and rehabilitation. The City is committed to: Promoting a healthy workplace; and providing guidance and training to management.
Waterloo	To foster employee awareness of good attendance; to assist employees in improving attendance; encourage less sick leave; recognize improved attendance; and accommodate where required.
Windsor	To assist managers and supervisors to determine culpable and non-culpable absences and to respond with appropriate measures to improve attendance.
Winnipeg	To provide employees with attendance requirements; to inform employee of supports to allow regular attendance; to ensure employees are treated fairly; and to have consistent procedures for absences.
York	To eliminate excessive absenteeism by effectively monitoring all absences, developing proactive strategies for early problem recognition, develop a fair and consistent procedures to deal with absenteeism, and maximizing regular attendance at work; and to assist employees in improving attendance.

Figure 10E. Best Practice Analysis.

The City’s policy appears accurate, but is centered on the “management” component of the policy thus it devalues the potential supportive nature of the policy (see Figure 10E). Kingston provides a different approach in that it is more “support” orientated and focused on the employee. It provides “To promote optimal and consistent attendance, raise awareness of the importance of good attendance, provide a process of improving attendance, and assist employees in overcoming difficulties that may adversely affect regular attendance” (see Figure 10E). This should be considered for the City’s policy along with Thunder Bay’s approach “To provide appropriate support, assistance and intervention for those employees experiencing difficulty in maintaining an acceptable level of attendance. Monitor attendance and address problems; Encourage and promote employee wellness and a healthy lifestyle; and promote an early and safe return to work for disabled employees” (see Figure 10E).

Medical Certificates

It is important to understand when to ask for medical certificates, and also to ask for them on a reasonable basis. That is to say, most municipalities give the benefit

of the doubt to the employee, but also empower management with the flexibility to ask for them when they desire.

The City's generally requests medical certificates when employees exceed five days of absence (see Figure 10F). This is also a large issue with employees taking an extra week each year and calling it sick days. It is unclear in a lot of comparable municipalities as to when they require medical certificates.

Municipality	Medical Certificates
Chatham	Anytime at employer's expense
Cornwall	Unsure
Durham	When requested by management
Haldimand	Unsure
Halton	Unsure
Hamilton	Provide medical certificates in accordance with this and/or related policies, bylaws, and collective agreements. Generally cited as being required on the 6 th day of absence.
Kingston	May be required after employee demonstrates excessive absenteeism.
London	Unsure
Mississauga	Unsure
North Bay	Required when indicated in writing by City, or when City has concern about health of employee, or as required under a collective agreement.
Oakville	Any sick leave greater than 5 scheduled work days, or as determined by employee's manager or as required under a collective agreement.
Ottawa	Required once employee has exhausted their uncertified sick leave entitlements.
Peterborough	When requested by Human Resources
Thunder Bay	When requested by management
Toronto	Unsure
Waterloo	Yes from Step 1 onwards.
Windsor	Unsure
Winnipeg	When requested by management
York	Required if absence exceeds 5 days, and if frequent absenteeism, it will be asked for each absence.

Figure 10F. Best Practice Analysis.

It is important for the City to consider requesting medical certificates on an earlier basis for early intervention but also as deterrence for policy abuse. A hybrid approach may be best to maintain the status quo, and to require a medical certificate for each subsequent absence once the employee has triggered into the

plan, or to simply leave the discretion to management to request production of the medical certificate when deemed appropriate.

Good examples are evidenced from North Bay, Oakville and York (see Figure 10F). It is also noted that different collective agreements may already stipulate flexibility and/or earlier submittal requirements for medical certificates.

Program Steps

The number and structure of a program steps is the pivotal area that flows the intervention and possible exit from the program/policy. The program steps can vary in numbers, vary in the period of review and vary in purpose and intention. Some programs may include modified discretion or full discretion to limit the intake into the attendance program.

The City’s program occurs once an employee triggers level 1 their immediate supervisor will advise them via letter. Meetings at level one will be at the request of the employee. For proceeding levels, the employee is required to meet with his or her supervisor or another representative of management to discuss attendance expectations and to determine if referral for medical or other assistance is necessary. At the employee’s request, a union representative (if applicable) may attend Level 1 & 2 meetings. Union representation (where applicable) is required at Level 3 & 4 meetings (see Figure 2).

Municipality	Program Steps
Chatham	Meet with supervisor to set attendance goals
Cornwall	Level 1 (initial concern meeting; Level 2 (Further Concern Meeting); Level 3 (Advance Concern Meeting); Level 4 (Major Concern Meeting); Level 5 (Final Warning); Level 6 (Termination Meeting).
Durham	Level 1 (Initial Concern /Counselling Session; Level 2 (Further Concern /Counselling Session); Level 3 (Serious Concern /Counselling Session); Level 4 (Final Non-Disciplinary Counselling); Level 5 (Non-Disciplinary Termination).
Haldimand	Level I Intervention; Level II Intervention; Level III Intervention; Level IV Intervention; Level V Termination.
Halton	Level 1 (Initial Concern Meeting; Level 2 (Further Concern Meeting); Level 3 (Advance Concern Meeting); Level 4 (Final Warning); Level 5 (Termination of Employment).
Hamilton	Level 1 (Meeting; Level 2 (Meeting); Level 3 (Meeting); Level 4 (Final Meeting with potential for Termination of Employment).

Kingston	Counselling; Stage 1 (1 st formal meeting; Stage 2; Stage 3; and Stage 4.
London	Level 1 – 4, Non-Disciplinary Termination may occur at level 4.
Mississauga	Culpable Level 1 to 6, with final level being dismissal. Non-culpable with disability (Steps 1-4, with step 4 being possible termination), Non-culpable without disability (Steps 1-5, with step 5 being possible termination).
North Bay	Stage 1-5, in three month increments. No improvement at stage 5 then termination of employee.
Oakville	Employee Attendance Awareness Stage, Stage 1 (Initial Concern); Stage 2 (Further Concern); Stage 3 (Advanced Concern); Stage 4 (Final Non-Disciplinary Counselling); Stage 5 (Non-Disciplinary Termination Meeting). *Health review at any stage
Ottawa	Step 1 (Employee Meeting); Step 2 (Employee Meeting and Letter); Step 3 (Employee Meeting and Letter); Step 4 (Employee Meeting and Letter & possible non-disciplinary termination)
Peterborough	Step 1 (letter, if improvement in 3 months, then verbal and written recognition); Step 2 (interview, if improvement in 3 months, then verbal and written recognition); Step 3 (Interview of Concern); and Step 4 (Interview with quarterly updates and notation on performance appraisal).
Thunder Bay	Step 1 (Interview); Step 2 (Interview with letter); Step 3 (Interview with letter); Step 4 (Interview with letter); Step 5 (Interview with letter and referral to Employee Health Nurse); Step 6 (Interview to Review Prognosis for Attendance at Work); and Step 7 (Final Interview with letter and referral to Labour Relations). *three month periods of review
Toronto	Formal Meeting 1/Letter 1; Formal Meeting 2/Letter 2; Formal Meeting 3/Letter 3; and Formal Meeting 4/Letter 4. *six month periods of review *absence by a single identifiable cause may be excluded
Waterloo	Step 0 (Routine monitoring); Step 1 (Meeting, Letter and DR note for all future absences); Step 2 (Meeting, Letter and DR note for all future absences); Step 3 (Meeting, Letter, DR note for all future absences; and prognosis); Step 4 (Meeting, Letter, DR note for all future absences; prognosis, and possible termination);

	Step 5 (Review case history and consider termination or accommodation).
Windsor	Step 1 (Initial review of absences); Step 2 (Letter); Step 3 (Letter and warning about any culpable absences); Step 4 (Letter and warning about 3 day suspension); Step 5 (Letter and warning about 10 day suspension and termination); Step 6 (Termination). *six month periods of review
Winnipeg	Step 1 (Attendance Review Meeting); Step 2 (Attendance Management Meeting); Step 3 (Attendance Management Hearing); at end the Chair will decide termination or granting more time or other measure.
York	Step 1 (Informal Interview); Step 2 (Interview); Step 3 (Interview with additional medical intervention); Step 4 (Interview). If no improvement after Step 4 there may be termination. *six month periods of review

Figure 10G. Best Practice Analysis.

A re-occurring issue with the City’s program is the perception of it being punitive in nature (from supervisors and staff). While the overall intent is not to be punitive, such things as letters to files causes concern. There is further issue in that the letter stays in the files for two years without possibility of removal for positive attendance or otherwise. This is an area that needs to be addressed.

There are various approaches taken by several municipalities. Several municipalities like Durham, Windsor, York, start the program with an informal first meeting to review expectations and absences (see Figure 10G). This is a positive approach worth exploring. Some frame the meeting as counseling as opposed to framing it in a management context.

The City utilizes a twelve month rotating absence measure period whereas some other municipalities use three and six month periods of review like Toronto, Thunder Bay and Windsor (see Figure 10G). A shorter period provides faster progression through the program. With a proper intake of employees into the program, the current time period may be sufficient.

Punitive Language

The intent of an attendance program (non-culpable) is to support and provide necessary help to employees in need, up to the point of undue hardship. As such, policies should restrict the amount of punitive language used in the policy. There is

a fine line that employees must be made aware of the potential consequences if there are to be terminated as a consequence of failing to meet the standard attendance rates.

As evidenced in Figure 10H, most municipalities only cite the final consequences in the later stages of the program, and a few have no punitive language in their programs. The City uses a similar approach in the possible termination is raised at stage four of the policy. This is an acceptable approach.

Municipality	Punitive Language
Chatham	Failure to reach target may result in termination
Cornwall	Only at end of level 5 and 6.
Durham	No
Haldimand	Only at end of level 4 and 5.
Halton	Only at end of level 4 and 5.
Hamilton	Only at end of level 4.
Kingston	Stage 1 to 4.
London	Only at level 2, 3 and 4.
Mississauga	Entire Policy (Culpable)
North Bay	Only at end of level 4 and 5.
Oakville	Only at end of level 4 and 5.
Ottawa	Only at end of step 4.
Peterborough	No
Thunder Bay	Only at end of levels 4 to 7, and page 12 (Discharge as a last resort).
Toronto	No (At level 4 the manager will consult with HR and Legal to discuss the case and options.
Waterloo	Yes from Step 2 to end.
Windsor	Extensive co-mingling of culpable and non-culpable steps and possible punitive measures for culpable absences.
Winnipeg	Yes Step 2 onward.
York	Only at end of step 4.

Figure 10H. Best Practice Analysis.

No Loss Time Recognition (Positive Attendance)

With a focus on attendance loss and the associated cost thereof, it is important to review policies to see if positive attendance is being recognized by other municipalities. As evidenced in Figure 10I, very few municipalities formalize positive attendance within their attendance policies. The City is no different as it fails to reward or even acknowledge good attendance (see Figure 10I). This is not a preferred approach.

Municipality	No Loss Time Recognition
Chatham	Unsure
Cornwall	Unsure
Durham	Yes
Haldimand	Unsure
Halton	Unsure
Hamilton	No
Kingston	Yes
London	Unsure
Mississauga	Unsure
North Bay	Yes with improvement at any stage of AMP.
Oakville	Unsure
Ottawa	Yes (3 days or less per year).
Peterborough	Yes – letter (for first 6 months of year); and wellness/personal development credit (up to 8 x\$25), along with letter for file.
Thunder Bay	Unsure
Toronto	Unsure
Waterloo	Unsure
Windsor	Unsure
Winnipeg	Unsure
York	Policy statement but no conclusive measure or information.

Figure 10I. Best Practice Analysis.

Reinforcing good attendance can be a motivator and inherently acknowledges the hard work and effort of staff. A zero loss time recognition (if valuable or significant to the employee) can entice staff to come to work ill, thus is not a preferred approach. Ottawa takes an approach that is preferred where three or less days of absences per employee are formally recognized (see Figure 10I). Peterborough provides another preferred approach where it recognized good attendance and rewards staff with a wellness credit. Wellness credits are a proactive measure that staff can utilize for such things as gym memberships. Good health is clearly the best approach for staff to take. The City should consider these approaches.

7.1. DISCUSSION

The following discussion is centered on the key research questions framed with the literature review, focus groups and best practice comparables. For any policy to be effective and compliant with applicable laws, it must acknowledge an employee's limitations and to accommodate accordingly to the point of undue hardship.

There are several challenges with ascertaining whether an employee has a bone fide illness or if they are merely absence for other reasons. Figures 4 and 5 (see pages 34 and 35 respectively), provide a basic analysis that a supervisor needs to address when confronted with an employee's absence.

Several meetings were used across each department of the City to best determine the current effectiveness and opinion from senior management and the feedback from their managers of the current ASMP. The feedback is quite valuable in ascertaining the areas of strength and weakness of the program, and also a reflection of what is needed and how generally things can be improved.

It is important to note that a policy will not be effective unless it works for the intended department with strong support going forward. The senior staff of the City have a strong motivator to obtain a policy that works effectively as the current statistics (2009) reflect approximately 56,500 sick days which represent a cost impact of over \$11M. While these results are in line with Figure 3 (see page 24), it illustrates employees take over 2 days for personal/family related absences.

Supervising staff must have tools to effectively deal with those employees who abuse the system, and also provide necessary services and support to those who truly need accommodation and related services. While the average absenteeism rates are in line with Statistic Canada, they do not accurately account for those employees who are exceeding the averages and also frequently at stage 4 of the current policy.

With a capture all policy of the current ASMP, it attracts unnecessary attention to those employees who are being accommodated under other regimes like WSIB, or those afforded legislative protection of the *Employment Standards Act* for such things as maternity leave.

The general perception of staff and management is that the ASMP is perceived as punitive in nature and awkward at best to manage. Several participants noted that it was a difficult situation to bring staff in to provide a meeting under the ASMP when they knew the situation/nature of the employee's absence (e.g. cancer treatment). It imposes additional stress on the employee whose health can be

fragile due to on-going treatment. There is no flexibility for discretion in the policy and as a consequence it leads to such regrettable situations.

Another focus point of the punitive lens or perception of the policy is the letters that accompany such aforementioned meetings. There is only one purpose likely for the letters, and that is to add to the file of the employee in case of frustration of contract due to undue hardship of trying to accommodate an employee. These letters stay at a minimum of two years in the employees file.

With a lack of positive attendance recognition, it makes the removal of the letters informal and potentially never occurring. It is encouraged that the letters be removed with positive attendance and also when the employee exits the program. Notations in the file for positive attendance would be recommended and encouraged as supported in the focus groups.

When dealing with culpable absences, several municipalities have incorporated a progressive discipline policy to deal with employee who abuse or neglect to follow proper attendance protocols (see Figures 9A to 9I and 10D). Without a proper discipline policy, employees may abuse the system and cause several challenges for a city's administration to limit or control through an attendance support program.

An attendance support program has been judicially considered for several municipalities and either unenforced or upheld if a municipality can show the policy is supportive in nature and is intended for provide a mechanism to assess and enable a municipality to aid the employee back to recovery or in the alternative, it has exhausted all necessary measures.

The intent and purpose of the policy must be clear and legally defensible. A delineation of an attendance support policy and a culpable attendance management program must be clear and separate. Without a mechanism to deal with culpable absences, like the City currently, employees will test the ASMP as much as practical and as a result the City will be faces with staff shortages and impact to its service and program delivery. Another downside is poor morale as the remaining staff need to work harder to make up for potential shortcomings in staffing but also when they know staff are opening abusing the system.

An immediate reaction is to reduce the program triggers from seven days and/or four occurrences in a twelve month period to something less. While these triggers are in line with other comparable municipalities, it will hurt those staff most deserving of support and accommodation by hitting faster and ultimately putting their employment status into question. There is a need to deal with staff abusing the system more aggressively, while supporting and accommodating the rest further and with more resources. Some consideration should be made as to whether a day to hour conversion is appropriate for those work extended shift beyond the standard eight or less hour shift.

The trigger level may be altered to focus on departmental averages as a benchmark. As cited previous, various positions add extra levels of risk to an employee's health. Some examples can include employees dealing with sick clients (e.g. paramedics), positions involving hand transfers (e.g. bus operators), and other employees face rotating shifts or subjection to outside climatic changes. These all have the potential to increase the department average of absences.

The demographic trend for staff and the public generally are that of an aging workforce. Thus with an aging workforce, municipalities will require more resources that will be relied upon. As such, there may be a potential for more staff entering the policy. A shift to a proactive absenteeism model should help mitigate potential absences of more employees through wellness programs and health grants (e.g. nutrition and gym membership subsidies) and flexible work arrangements.

It is clear that a large number of employees require time off from work for non-medical related absences (or statutory entitled absences). Some may need time off for personal reasons, thus there is a need for flexible work arrangements. Some employees may be able to do work at home as a result of their need to be away from work. Not all absences prevent employees from performing work related duties. A formalized policy is recommended and will allow an employee to take their time off and at the same time be able to perform their job functions and thus removing the impact to the municipality.

Another area of concern is the lack of consistency in applying and managing the ASMP. Some participants viewed the policy purely as a mechanism to accommodate staff with an underlying issue requiring support, while other participants viewed the progression of staff and their averages as a mechanism to be able to punish or terminate the staff.

There is a clear need to senior management to provide clear and consistent direction of how to apply the policy and to recite and enforce the policy goals and directives. It is important to link the policy to performance appraisal of staff in charge with the management of the program to ensure results are obtained and to reinforce the importance of making the program work.

The other issue is clearly a training and development issue. At the majority of the focus group meeting, there were repeated pleas for training for supervisors in order to effectively meet with employees under the proper protocols, and be able to use prepared scripts in order to better manage the trigger meetings between management and staff (sometimes with union representatives).

It is important to recognize the importance to provide awareness and expectation of the program to all staff of the organization. This should take place at orientation, and also in the form of a policy handout or posting for easy reference on the City intranet. All staff should be well versed in the program goals and expectations, and

what resources are made available, and ultimately the goal to see employees recover and be protective in their respective positions, but also the potential to end employment if a viable solution is not possible.

As outlined previously, the important questions to ask in determining at what point an employer's duty to accommodate an employee ends and dismissal is justified on basis of frustration of contract are:

- *Does the contract of employment meet the test for frustration of contract?*
- *If the employment contract is frustrated, is there a duty to accommodate on the part of the Employer?*
- *If there is a duty to accommodate, has the employer discharged its duty completely?*

If the employer has duly discharged its duty to accommodate, then the termination of the employment contract may be justified on the basis of frustration of contract. This is the last resort for the employer and when deciding to end an employment relationship, the manager should engage the City's Human Resources department and appropriate legal services as soon as practical.

In reviewing the form of the policy for attendance, a review of comparable municipalities was undertaken. Generally the policies fall into two categories, those post 2008 and those pre 2008. Most municipalities use the phrase attendance support where the intake is limited to non-culpable absences only. The City takes a hybrid approach and it is acceptable.

The review focused on key areas derived mostly from literature review and also streaming from the focus group meetings. The information was broken into several categories which included: date of program, program name, absence triggers, limits on intake, purpose, medical certificates, program steps, punitive language and no loss recognition (see Figures 10A-10I).

The comparables provided key information that should prove most useful in updating the attendance program going forward. Once established the program should be reviewed on a regular basis to ensure it meets the organization's expectations and also to ensure it complies with all applicable laws and judicial decisions.

The key areas to discuss are the absence triggers (see Figure 10C), limits on intake (see Figure 10D), purpose (see Figure 10E), medical certificates (see Figure 10F), program steps (see Figure 10G), punitive language (see Figure 10H) and no loss recognition (see Figure 10I). These are areas that need the most attention within the ASMP and to provide opportunities to strengthen and clarify the program and its goals.

The starting block of a policy is to outline a policy/program's purpose. It is important to outline what the program hopes to achieve and cite the program parameters (see Figure 10E). Equally important is the outline and clarification of the various roles of the stakeholders. The City's purpose is in need of updating to focus more on supporting nature of the policy and slightly less on the managing of attendance function. Both are acceptable provisions, but more proactive language would be helpful. A review of the various municipalities can provide a wide range of acceptable language to include in an amended ASMP.

The absence triggers and the limit on intake are two areas that can be conjoined for discussion purposes. The ASMP limits non-culpable absences with WSIB absences. From the focus group meetings, it became more clear that many departments are capturing all absences, thus including statutory entitled leaves and culpable absences.

There must be a removal of all WSIB and statutory entitled leaves as this is contrary to an effective program, and absences that cannot form part of a program that leads to a disciplinary process. They may however be used to count overall absences for general administration purposes.

The other absences that need to be removed are the culpable absences. There may be times when supervisors are unable to distinguish the absences as culpable or non-culpable. The use of medical certificate flexibility can be a helpful mechanism to aid in the separation (see Figure 10F). It must be clear that the request for documentation shall be reasonable and not applied inconsistently to target certain employees. It may be appropriate to ask once an employee has reached a particular stage in the process (e.g. stage 2).

A further restriction on the intake of absences is possible in conjunction with affording supervisors the authority to remove or restrict an employee from entering into the program. An approach could be to categorize non-culpable absences that fall outside the program scope such as: 1) catastrophic events that are unplanned tragic events beyond control of the employee and supported by a medical practitioner; and 2) case by case base general exemptions such as heart attacks and strokes, cancer, surgical interventions, etc. that are supported by a medical practitioner.

The second aspect to the comparable review includes the program steps, punitive language and no loss recognition. Generally the current ASMP has a standard four level system. The fourth level is treated as a final determination like most other municipalities. Upon attending various focus meetings, it became clear that this does not happen as expected. There were stories of employees reaching the fourth level four or five times. It is unclear as to why this occurs, but it is hopeful with stronger HR presence, the number of times is reduced.

Upon reviewing the comparables, it became clear that several municipalities use a first meeting as a counselling function whereby an informal review is used to sit down with the employee and discuss how the municipality can help accommodate or to provide a list of helpful services and to reinforce positive attendance. The final meeting level seems appropriate with the HR intervention as mentioned above.

It is important to note that some municipalities use a shorter reporting framework instead of the City's twelve month cycle. It is unclear if a shorter cycle is appropriate or more effective, as the nature of the absences remains the same. The obvious result is that the employee may progress through the steps at a faster rate. This may be important for culpable absences as opposed to non-culpable absences as it is hopeful with proper intervention that the employees are receiving accommodation and supporting measures that meets the employee and municipality's goals and expectations.

Punitive language must be used sparingly as it is counter to a purely supportive program. There should be some language to make expectations known. The current ASMP appears acceptable and should be limited to final program steps. Otherwise the intention is totally to support the employee in their recovery or accommodation.

The benefits of positive attendance are mostly dismissed by the City despite its potential to provide benefits to staff and the organization. While it is expected that staff remain at home when faced with moderate illness and to utilize appropriate medical care when warranted; the intention is not to advocate a zero attendance reward structure. It is more appropriate to acknowledge those who meet approved targets. Ideally attendance that is less than the department average is positive attendance.

8.1. RECOMMENDATIONS

The following recommendations are provided to the City's Human Resources department for consideration when reviewing and updating the current ASMP, and also for consideration when preparing a report to City Council.

The AMSP objectives are good objectives and the intent of the policy is clear as stated (ASMP, 2008):

- a) To increase attendance awareness and reduce absences from work and the associated costs;
- b) To help employees achieve and maintain regular attendance at work by making every reasonable effort to provide accommodation, assistance and rehabilitation;
- c) To regularly communicate the responsibilities of employees, supervisors, senior management (and when required Human Resources and Legal Services); and
- d) To maximize service delivery to the public.

In moving forward the City needs to consider several recommendations when amending its ASMP as follows:

POLICY CHANGES

General

- Separate all absences from culpable and non-culpable;
- Remove WSIB absences from the program;
- Eliminate trending based on non-relevant program criteria that are subsequently utilized for termination purposes;
- Focus the program more on accommodation, and then secondly on the management of absences;
- Reduce the workload in managing AMSP by removing unnecessary triggers and focus further on the supporting function of the program;
- When reviewing threshold levels, look at the specific job function and the unique difference (if any) associated therewith. National average may provide a starting threshold;
- A true loss due to a disability should be excluded from the program. Ensure the duty to accommodate always trumps the ASMP;

Culpable

- Develop a separate policy to deal with culpable absences;

Non-Culpable

- Eliminate program intakes to a defined grouping of non-culpable absences, thus eliminating catastrophic events and merit based general exemptions;

POLICY IMPLEMENTATION

Administration of Program

- Early intervention is always best – when in doubt, reinforce the need to seek HR advice and/or ask for a medical certificate;
- Allow flexibility for supervisors to ask for medical certificates when required;
- Be proactive, do not question an absence after a lengthy period afterwards – if it is not questioned at time of absence, don't raise it later, except if reviewing an absenteeism trend;
- Need proper letters at each trigger level, thus have letters for supervisors to use. Ensure management has a level of discretion. It is important that the correspondence shows the employer is trying to help;
- Need to remove the letter from file once the employee has positive attendance and exits the program;
- Avoid a pure mechanistic program, allow management the discretion to best address the employee's absence in relation to the nature of the absence and the employee's past attendance record;
- With management discretion, each trigger level should take place with a pre-assessment. Although there should be some level of consistency;
- May need to place employees on unpaid leave while they meet with their doctor to determine their health related issue. May need specialists for such things as drug addictions;
- Be flexible in accommodation when the employee is able to work and is also receiving treatments;

Stakeholders

- Engage unions in the program development to ensure buy-in and a better understanding of the municipality's objectives;
- Train and educate supervisors not to calculate absences that are protected by legislation;

Program Development and Roll Out

- The program needs to make clear that disability management is not part of the program;
- Avoid "one last chance" framework. The program should be tailored to allow individual circumstances to be considered and also necessary when trying to accommodate;
- Implement a telework policy that enables staff to work at home and be productive, rather than simply have a sick day;
- Human Resources should provide corporate training to those engaged in managing the ASMP and potentially new culpable attendance policy;
- Provide health and wellness credits to staff in order to encourage healthy lifestyles and to help reduce absenteeism rates (may provide gym discounts and/or healthy living seminars, etc.);

Legal Implications

- Avoid unnecessary calls to staff when they are absent, unless it is from an approved Human Resource script to avoid potential harassment allegations;
- There must be timely progressive discipline under the new culpable policy, and also timely support being delivered to employees under the ASMP;
- Labour relations should be active in culpable absence meetings where necessary; and

- People should not be “performance managed” under the ASMP. This management technique must be discouraged, and redirected to the new progressive disciplinary process.
- Help transition employees back to work and provide care packages which can include resource information and products based on their illness;
- Notice is a required element of fairness, avoid disciplinary sanctions, threats or other forms of discipline outside the ASMP;

EVALUATION OF POLICY CHANGES

Stakeholder Support

- Human Resources need to take a more active role in ASMP and meet frequently with supervisors to aid educate and training on best practices;
- Human Resources to reinforce the program expectation to support and help, rather than trying to be punitive;
- At the political level there needs to be a business case presented for further resources for occupational health nurse FTE increase (and possible physician support) to better support the program;

Benchmarks and Standards

- Provide information to all employees as to how the program functions. Start with seminar during employee orientation. Emphasize it is a helpful mechanism to help employees when they need it;
- Show how the program works. Staff need to respect the process and management needs to follow through. The integrity of the program needs to return;
- Ensure supervisors are receiving their monthly notices directly, and ensure their managers are held accountable for ensuring they are done. This can be a part of the performance review process each year;
- There is a need for a consistent software program to help maintain and track absences, and the nature of the absences. A review of appropriate software should be another priority;
- Be cognizant of employee benefits. When giving notice be sensitive to disability benefits. Keep employees on leave of absence if their benefits may be at risk of termination;
- “Frequent flyers” in the program need to have the loop closed and proactive measures taken and supported by Human Resources;

The purpose of the 41 recommendations is to create a solid foundation to build and amend the current ASMP against in order to improve the performance of the current attendance support and management plan. Generally all the recommendations are geared towards short and medium term planning due to the financial requirements and the associated co-ordination of training and development, and finally the drafting and implementation of any new policy or program scripts.

9.1. CONCLUSION

This policy report has reviewed the current attendance support and management plan of the City of Hamilton, has explored literature review including judicial decisions and related legislation geared towards absenteeism and accommodation. The area of absenteeism is relatively complex and carries a high risk of judicial review and intervention should the policy fall outside the acceptable boundary of caselaw and legislation.

The recommendations developed in this report were designed to both improve the stakeholder understanding of the purpose and intent of the policy, to limit the intake of the policy, and how to best address absenteeism within and outside of the ASMP to better manage absenteeism and to mitigate the impact and costs of high absenteeism. In moving forward on these directions the City can deploy useful measures to help improve the program effectiveness.

In conclusion, this report also provides an overview of the focus group meetings, along with comparing other municipalities' attendance programs and recognizing best practices and to use the comparables as a potential benchmark for future consideration. The end result will hopefully create a policy that meets all stakeholders' expectations and be in compliance with applicable law and withstand challenges through courts or grievance mechanisms.

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APPENDIX “A”

INFORMED CONSENT DOCUMENT

REVIEW AND ASSESSMENT OF THE ATTENDANCE SUPPORT AND MANAGEMENT PROGRAM

You are invited to participate in a study entitled REVIEW AND ASSESSMENT OF THE ATTENDANCE SUPPORT AND MANAGEMENT PROGRAM that is being conducted by Steven J. Dickson.

Steven J. Dickson is a graduate student in the department of Public Administration at the University of Victoria and you may contact him if you have further questions by email at steve.dickson@hamilton.ca.

As a graduate student, I am required to conduct research as part of the requirements for a degree in the Masters of Public Administration. It is being conducted under the supervision of Dr. Emmanuel Brunet-Jailly. You may contact my supervisor at 250-721-6418.

Purpose and Objectives

The purpose of this research project is to review, assess and recommend solutions to the problem of the high cost and workforce implication of the City of Hamilton’s high absenteeism rates in a fair and consistent manner in order to provide cost-effective and efficient public service

Importance of this Research

Research of this type is important because the current program has proven to only be mildly effective and subject to media and political pressure and displeasure at the current results.

Participants Selection

You are being asked to participate in this study because of your knowledge and background of the researched area.

What is involved

If you agree to voluntarily participate in this research, your participation will include participating in a focus group to better understand all the issues, to review the current practice, review best practices among the comparative municipalities, and peer reviewing new procedures and program. The meetings will take place in either the Human Resources Department or Legal Services Department. The time commitments will typically be less than 25 hours.

Inconvenience

Participation in this study may cause some inconvenience to you, including the time to participate in the research.

Risks

There are no known or anticipated risks to you by participating in this research.

Benefits

The potential benefits of your participation in this research include an effective Attendance Support and Management Program to which your department may adopt and carry forward. You will have an impact on its formation and intent.

Voluntary Participation

Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will be removed from the research.

On-going Consent

To make sure that you continue to consent to participate in this research, I will request your consent before each and every meeting.

Anonymity

In terms of protecting your anonymity, the information will not be linked to you.

Confidentiality

Your confidentiality and the confidentiality of the data will be protected by ensuring any sensitive and confidential information is protected and will not be disclosed unless required to do so under applicable laws.

Dissemination of Results

It is anticipated that the results of this study will be shared with others in the following ways by publishing my report and presenting my report as part of my 598 course, sharing the information with the City of Hamilton and its committees and Council.

Disposal of Data

Data from this study will be disposed of under the City of Hamilton's current file retention policy.

Contacts

Individuals that may be contacted regarding this study include myself and my supervising professor.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researchers.

WAIVING CONFIDENTIALITY

I agree to be identified by name / credited in the results of the study.

_____ (Participant to provide initials)

Name of Participant *Signature* *Date*

A copy of this consent will be left with you, and a copy will be taken by the researcher.

APPENDIX “B”

FOCUS MEETING QUESTIONS

The focus areas of the questions will be the following:

What is your experience with the Attendance Support and Management Program (“ASMP”)?

What is your current understanding on how ASMP works?

In your opinion and experience, what are the effective aspects of the ASMP?

What areas of the ASMP could be improved?

How do you envision the ASMP operating?

Does there need to be different considerations between union and non-union employees?

Has there been any audits or third party reviews, and if so, what did they say?

Has there been any legal challenge to the current ASMP (arbitration or otherwise), and if so, on what grounds?

Are there any drivers or reasons for the absenteeism rates?

Are absenteeism rates categorized, and if so, how are they categorized and why?

Does your department have higher absenteeism in certain divisions? If so, are there any known reasons why?

Do you have any other suggestions or comments?

APPENDIX “C”

COMPARABLE MUNICIPALITIES’ ATTENDANCE PROGRAMS

<u>REGION</u>	<u>APPENDIX #</u>	
Chatham.....	C1	(12 pages)
Cornwall.....	C2	(40 pages)
Durham.....	C3	(48 pages)
Haldimand.....	C4	(28 pages)
Halton.....	C5	(27 pages)
Hamilton.....	C6	(10 pages)
Kingston.....	C7	(20 pages)
London.....	C8	(11 pages)
Mississauga.....	C9	(32 pages)
North Bay.....	C10	(40 pages)
Oakville.....	C11	(32 pages)
Ottawa.....	C12	(32 pages)
Peel.....	C13	(36 pages)
Peterborough.....	C14	(42 pages)
Thunder Bay.....	C15	(26 pages)
Toronto.....	C16	(43 pages)
Waterloo.....	C17	(26 pages)
Windsor.....	C18	(56 pages)
Winnipeg.....	C19	(12 pages)
York.....	C20	(23 pages)

*see attached CD

APPENDIX “D”

COMPARABLE MUNICIPALITIES’ ATTENDANCE PROGRAM BREAKDOWN

Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	No Loss Recognition
Municipality of Chatham-Kent	1999	Attendance Monitoring Program (AMP)	4 or more occurrences, totaling 8 or more days per year will result in trigger into AMP	None	Effective and efficient operation of municipality; and to minimize cost related to absenteeism	Anytime at employer’s expense	Meet with supervisor to set attendance goals	Failure to reach target may result in termination	Unsure
City of Cornwall	unsure	Attendance Management System (AMS)	Level at each 4 occasions or 7 days of absence in any 12 month period	WSIB, STD and LTD only	Help employees achieve optimum attendance with accommodation, assistance and rehabilitation; provide guidance to management; and maximize service delivery to the public.	unsure	Level 1 (initial concern meeting); Level 2 (Further Concern Meeting); Level 3 (Advance Concern Meeting); Level 4 (Major Concern Meeting); Level 5 (Final Warning); Level 6 (Termination Meeting).	Only at end of level 5 and 6.	Unsure
Durham Region	2008	Attendance Support Program (ASP)	4 or more occurrences, totalling 4 or more absences in any 6/12 month period will result in trigger into ASP *Tailored to each individual employee (discretion)	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process. Also excludes WSIB, LTD and emergency leaves under ESA.	To promote regular attendance thru consistent and positive non-disciplinary intervention strategies.	When requested by management	Level 1 (Initial Concern /Counselling Session; Level 2 (Further Concern /Counselling Session); Level 3 (Serious Concern /Counselling Session); Level 4 (Final Non-Disciplinary Counselling); Level 5 (Non-Disciplinary Termination).	No	Yes
Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
Haldimand	2001	Attendance	Standard which meets	Focus on non-	To Enable	unsure	Level 1	Only at end	Unsure

Figure 9A. Comparable Breakdown.

County		Management Policy (AMP) *makes use of AMP maintenance committee	Department/Corporation standard within a fair and realistic time frame	culpable absences only. Culpable absences are dealt thru the discipline process.	management and employees to correct absenteeism problems in a positive and caring manner without compromising current income protection scheme.		Intervention; Level II Intervention; Level III Intervention; Level IV Intervention; Level V Termination.	of level 4 and 5.	
Halton Region	2009	Attendance Support Policy (ASP)	Level at each 4 occasions or 7 days of absence in any 12 month period	Focus on non-culpable absences only. Culpable absences are dealt thru the discipline process.	Help employees achieve optimum attendance with accommodation, assistance and rehabilitation; provide guidance to management; and maximize service delivery to the residents and clients of the service.	unsure	Level 1 (Initial Concern Meeting); Level 2 (Further Concern Meeting); Level 3 (Advance Concern Meeting); Level 4 (Final Warning); Level 5 (Termination of Employment).	Only at end of level 4 and 5.	Unsure
Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
City of Kingston	2001	Attendance Management Program (AMP)	Sick days exceed departmental average within 12 month period, or Occurrences exceed departmental average within 12 month period, or an obvious pattern of absences.	None, except Vacation, Lieu Time, Bereavement Leave, Pregnancy Leave, Parental Leave and WSIB Leave.	To promote optimal and consistent attendance, raise awareness of the importance of good attendance, provide a process of improving attendance, and	May be required after employee demonstrates excessive absenteeism.	Counselling; Stage 1 (1 st formal meeting); Stage 2; Stage 3; and Stage 4.	Stage 1 to 4.	Yes

Figure 9B. Comparable Breakdown.

					assist employees in overcoming difficulties that may adversely affect regular attendance.				
City of London	Unsure	Employee Attendance Support Plan (EASP)	96 hours within a 12 month period.	Focus on non-culpable absences only. Culpable absences are dealt thru the discipline process.	To improve employee attendance by brining absenteeism that exceeds threshold to the attention of the employee and by offering support and assistance.	Unsure	Level 1 – 4, Non-Disciplinary Termination may occur at level 4.	Only at level 2, 3 and 4.	Unsure
Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
City of Mississauga	1996, revised 2006	Attendance Management Program (AMP)	Appears discretionary	None – offers two processes. One for non-culpable absences and one for culpable absences.	To identify employees for monitoring attendance, and to following up, and taking disciplinary action if needed.	Unsure	Culpable Level 1 to 6, with final level being dismissal. Non-culpable with disability (Steps 1-4, with step 4 being possible termination), Non-culpable without disability (Steps 1-5, with step 5 being possible termination).	Entire Policy	Unsure
City of North Bay	2003	Attendance Management Program	Sick days exceed corporate average within 6 month period, or	Focus on non-culpable absences only.	To promote improved attendance and	Required when indicated in	Stage 1-5, in three month increments. No	Only at end of level 4 and 5.	Yes with improvement at any stage of

Figure 9C. Comparable Breakdown.

		(AMP)	Occurrences exceed corporate average within 6 month period, and on an individual basis recommend actions to manage absenteeism. *uses hours or days	Culpable absences are dealt thru the discipline process (under chapter 7 of AMP).	employee wellness, establish city standards, and respond systematically to instances of excessive innocent absenteeism.	writing by City, or when City has concern about health of employee, or as required under a collective agreement.	improvement at stage 5 then termination of employee.		AMP.
Town of Oakville	2008	Attendance Support Program (ASP)	9 or more occurrences, totalling 6 or more absences in any 12/24 month period will result in trigger into ASP. *Stages 3-5 have 6 month attendance period review and 24 month monitoring.	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process.	To promote regular and improved attendance, standard protocol for managing attendance, encouraging pro-active health practices and providing employees with timely support and assistance.	Any sick leave greater than 5 scheduled work days, or as determined by employee's manager or as required under a collective agreement.	Employee Attendance Awareness Stage, Stage 1 (Initial Concern); Stage 2 (Further Concern); Stage 3 (Advanced Concern); Stage 4 (Final Non-Disciplinary Counselling); Stage 5 (Non-Disciplinary Termination Meeting). *Health review at any stage	Only at end of level 4 and 5.	Unsure
Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
City of Ottawa	2006	Attendance Management Program (AMP)	In an 18 month period, employees who exceed 12 absences in 12 months AND who have 7 or more absences in the last 6 months of monitoring, will trigger AMP and each level.	Does not include Leaves of Absence (Maternal, Parental, LTD and other approved leaves).	To recognize exemplary attendance and improved attendance, foster employee awareness of the importance of good attendance,	Required once employee has exhausted their uncertified sick leave entitlements.	Step 1 (Employee Meeting); Step 2 (Employee Meeting and Letter); Step 3 (Employee Meeting and Letter); Step 4 (Employee Meeting and	Only at end of step 4.	Yes (3 days or less per year).

Figure 9D. Comparable Breakdown.

Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
					assist employees to improve attendance, encourage the reduction of sick leave benefits, and accommodate employees with disabilities.		Letter & possible non-disciplinary termination)		
City of Peterborough	2002, revised 2004	Attendance Awareness Program (AAP)	5 or more occurrences, totalling 8 or more absences in any 12 month period will result in trigger into AAP *review over 2 year pattern *standard set by considering previous years' attendance records of the city, publicized national absenteeism averages and sample organizational samples.	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline process.	Recognize and reward attendance that meets or exceeds standards; provide support to employees who have occasional long term illness; and coach and assist employees in accessing resources for frequent, chronic and/or sporadic absenteeism.	When requested by Human Resources	Step 1 (letter, if improvement in 3 months, then verbal and written recognition); Step 2 (interview, if improvement in 3 months, then verbal and written recognition); Step 3 (Interview of Concern); and Step 4 (interview with quarterly updates and notation on performance appraisal).	No	Yes – letter (for first 6 months of year); and wellness/personal development credit (up to 8 x\$25), along with letter for file.
City of Thunder Bay	2011	Attendance Management	Triggers are set for particular work areas in consultation with Labour Relation staff. Some triggers may include the number of occurrences; corporate averages; departmental averages;	Focus on non-culpable absences only. Culpable absences are dealt thru the progressive discipline	To provide appropriate support, assistance and intervention for those employees experiencing	When requested.	Step 1 (Interview); Step 2 (Interview with letter); Step 3 (Interview with letter); Step 4 (Interview with letter); Step 5	Only at end of levels 4 to 7, and page 12 (Discharge as a last resort).	Unsure

Figure 9E. Comparable Breakdown.

			and patterns of absence.	process.	difficulty in maintaining an acceptable level of attendance. Monitor attendance and address problems; Encourage and promote employee wellness and a healthy lifestyle; and promote an early and safe return to work for disabled employees.		(Interview with letter and referral to Employee Health Nurse); Step 6 (Interview to Review Prognosis for Attendance at Work); and Step 7 (Final interview with letter and referral to Labour Relations). *three month periods of review		
Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
City of Toronto	2001, revised 2008	Attendance Management Program (AMP)	Each department calculates its own average of occurrences of absence by (day/shift or part thereof) for each division. These will be the initial standards used for attendance review. A departmental average may be used where differences among divisions are insignificant.	Focus on non-culpable absences only.	To maximize service delivery to the public; to assist employees in minimizing absences from work by providing accommodation, assistance and rehabilitation. The City is committed to: Promoting a healthy workplace; and providing guidance and training to management.	Unsure	Formal Meeting 1/Letter 1; Formal Meeting 2/Letter 2; Formal Meeting 3/Letter 3; and Formal Meeting 4/Letter 4. *six month periods of review *absence by a single identifiable cause may be excluded	No (At level 4 the manager will consult with HR and Legal to discuss the case and options.	Unsure

Figure 9F. Comparable Breakdown.

Region of Waterloo	1996	Attendance Management	<p>Sick leave credit of 1.5 days per month, all employees are expected to have zero absences per year.</p> <p>Threshold set annually based on previous year. Thresholds can be hours and occurrences.</p> <p>Excessive absenteeism threshold is average x 1.5</p> <p>*six month periods of review</p> <p>** management discretion to take no action where employee has historical acceptable attendance.</p>	<p>Focus on non-culpable absences only.</p> <p>*excludes WSIB approved absences; periods of LTD, and known absences due to disability that requires accommodation.</p>	<p>To foster employee awareness of good attendance; to assist employees in improving attendance; encourage less sick leave; recognize improved attendance; and accommodate where required.</p>	Yes from Step 1 onwards	<p>Step 0 (Routine monitoring); Step 1 (Meeting, Letter and DR note for all future absences); Step 2 (Meeting, Letter and DR note for all future absences); Step 3 (Meeting, Letter, DR note for all future absences; and prognosis); Step 4 (Meeting, Letter, DR note for all future absences; prognosis, and possible termination); Step 5 (Review case history and consider termination or accommodation).</p>	Yes from Step 2 to end.	Unsure
Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
City of Windsor	2006	Attendance at Work Policy	One day over corporate average	<p>Focus on non-culpable absences only.</p> <p>Culpable absences are dealt thru separate policy process.</p>	<p>To assist managers and supervisors to determine culpable and non-culpable absences and to respond with appropriate measures to improve attendance.</p>	Unsure	<p>Step 1 (Initial review of absences); Step 2 (Letter); Step 3 (Letter and warning about any culpable absences); Step 4 (Letter and warning about 3 day suspension); Step 5 (Letter and warning</p>	<p>Extensive co-mingling of culpable and non-culpable steps and possible punitive measures for culpable absences.</p>	Unsure

Figure 9G. Comparable Breakdown.

Municipality	Date	Program	Absence Trigger	Limits on Intake	Purpose	Medical Certificate	Steps	Punitive Language	Attendance Recognition
							about 10 day suspension and termination); Step 6 (Termination). *six month periods of review		
City of Winnipeg	2008	Attendance Management Program (AMP)	6 or more occurrences, totalling 8 or more absences in any 12 month period will result in trigger into AMP	No, except vacation leave, bereavement leave, maternity leave, paternity leave, adoption leave, family leave, other approved or excused absences and disciplinary leave.	To provide employees with attendance requirements; to inform employee of supports to allow regular attendance; to ensure employees are treated fairly; and to have consistent procedures for absences.	As required.	Step 1 (Attendance Review Meeting); Step 2 (Attendance Management Meeting); Step 3 (Attendance Management Hearing); at end the Chair will decide termination or granting more time or other measure.	Yes Step 2 onward.	Unsure.
York Region	2001, revised 2009	Attendance Awareness Program(AAP)	Unclear as corporate-wide attendance monitoring system is being developed. Disability Claims Co-ordinator to establish statistics and averages which will be used for benchmarking. *no discretion on entry	Focus on non-culpable absences only.	To eliminate excessive absenteeism by effectively monitoring all absences, developing proactive strategies for early problem recognition, develop a fair and consistent procedures to deal with	Required if absence exceeds 5 days, and if frequent absenteeism, it will be asked for each absence.	Step 1 (Informal interview); Step 2 (Interview); Step 3 (Interview with additional medical intervention); Step 4 (Interview). If no improvement after Step 4 there may be termination.	Only at end of step 4.	Policy statement but no conclusive measure or information.

Figure 9H. Comparable Breakdown.

					absenteeism, and maximizing regular attendance at work; and to assist employees in improving attendance.		*six month periods of review		
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Figure 9I. Comparable Breakdown.

