

Neurodiversity in the Workplace

Employee Rights, Employer Obligations,
Common Myths Debunked

Presented by Cheryl Wiles Pooran



Autism ONTARIO

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About PooranLaw

- Legal supports for people, families, and not-for-profit agencies in the social services sector, including developmental disabilities and autism services
- Lawyers dedicated to:
 - Labour, Employment and Human Rights
 - Corporate Governance
 - Education and Student Rights
 - Consent and Capacity Law
 - Privacy
 - And much more



Cheryl Wiles Pooran



- PooranLaw Partner
- Lead – Labour and Employment Group
- Practice dedicated to supporting employees with disabilities and neurological differences, non-profit and charitable organizations and social enterprises.
- Professor of Health Care Law, and Health and Human Rights at York University
- Mom to three great kids and one fur baby



Agenda

- ASD and Neurodiversity in the Workplace
- ASD and Human Resources Law
- Benefits of Neurodiversity in the Workplace
- Building an inclusive workplace



PART I: UNDERSTANDING ASD AND NEURODIVERSITY



What is Neurodiveristy?

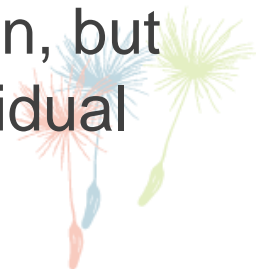
- [Autistic Self Advocacy Network](#) states:
 - It is an umbrella term that encompasses neurocognitive differences such as autism, attention deficit hyperactivity disorder (ADHD), dyslexia, Tourette's syndrome, anxiety, obsessive-compulsive disorder, depression, intellectual disability and schizophrenia, as well as 'normal' neurocognitive functioning, or neurotypicality.
 - Neurodivergent individuals are those whose brain functions differ from those who are neurologically typical, or neurotypical.



What is ASD?

Autism Canada defines ASD as follows:

- Autism Spectrum Disorder, or autism, is a neurodevelopmental disorder that impacts brain development causing most individuals to experience communication problems, difficulty with social interactions and a tendency to repeat specific patterns of behaviour. There is also a markedly restricted repertoire of activities and interests.
- The term “spectrum” refers to a continuum of severity or developmental impairment. Individuals on the spectrum usually have particular characteristics in common, but the conditions cover a wide spectrum, with individual differences in functioning and ability.



Neurodiverse Workplaces



Neurodiverse workplaces promote and support the presence of neurodiverse workers.



Advantages for society, the worker, *and* the employer.



Implementing a neurodiverse workplace is an ongoing process, but isn't overly onerous for employers.



MYTH: People on the spectrum are all the same



FACT

There is no standard “type” or “typical” person with an Autism Spectrum Disorder.

Autism is a spectrum – it refers to a continuum of severity or developmental differences in function and capacity. People on the spectrum usually have particular characteristics in common, but the conditions cover a wide spectrum, with individual differences.

Many people on the spectrum are high performers with unique skills that offer significant benefits to employers



MYTH: Autism is rare so it's not relevant to my workplace



FACT

Autism is increasingly common and people on the spectrum represent a huge untapped labour market.

Ignoring the valuable skills and benefits associated with recruiting and hiring people who are neurodivergent is a risk, both legally and in terms of losing out on business opportunities.



PART II: ASD AND THE WORKPLACE



Untapped Labour Market

Significant labour shortage in Ontario and Canada



People on the spectrum are an untapped labour pool:

Only approximately 25% of all adults with Autism are employed and most of those are “high-functioning”

Of those employed, only 6% are competitively employed

Most hold jobs for which they are OVER-qualified



Valuable Skills

Many individuals on the spectrum display some or all of the following skills or characteristics that are highly valuable in the workplace:

- Mathematical, technological, musical skills
- Intense interest and motivation
- Excellent concentration and focus
- Strong visual acuity and attention to detail
- Perseverance in problem solving
- Strong understanding and retention of concrete concepts, patterns and rules
- Good rote and long-term memory of facts, statistics etc.
- Adherence to rules, honesty and integrity



Benefits to Employers



LOWER TURNOVER
RATES



LOWER ABSENTEEISM



DIVERSE WORKFORCES
HAVE A STRONG
CULTURAL IMPACT



IMPROVED PUBLIC
PERSPECTIVE



**MYTH: It's too costly to employ people on
the spectrum**



FACT

When properly supported, neurodivergent employees often contribute as much or more than other employees and more than make up for any cost of accommodation.



PART III: NEURODIVERSITY AND THE LAW



HR Law 101



Minimum
employment
standards



Health and safety



Accessibility



Labour law (*Labour
Relations Act*)



Human rights
(*Ontario Human
Rights Code*)

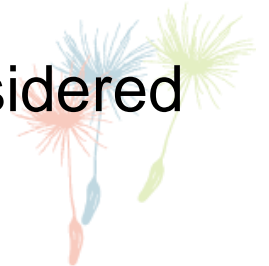


Common law



ASD and HR Law

- HR Law applies to people who are neurodivergent
- Human Rights Code prohibits discrimination based on “disability”
- Includes...
 - a condition of mental impairment or a developmental disability,
 - a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
 - a mental disorder
- Autism and other neurodivergent conditions considered covered by Code



What is Discrimination?

- “Discrimination”
 - Imposing differential burdens, obligations, or disadvantages on a person because they are part of a protected group.
 - Basic 3-part test for prohibited discrimination:
 - (1) complainant had a protected characteristic (ex. Disability or ASD),
 - (2) complainant experienced an adverse impact, and
 - (3) the protected characteristic was a factor in that impact (need not be primary factor).



What Obligations do Employers Have?



**AVOID DIRECT
DISCRIMINATION**



**AVOID INDIRECT
DISCRIMINATION**



**PREVENT AND
ADDRESS
HARASSMENT**



ACCOMMODATE



What is Required for Accommodation?



**PROCEDURAL
OBLIGATIONS**



**SUBSTANTIVE
OBLIGATIONS**



**NO “UNDUE
HARDSHIP”**



MYTH: If an employee doesn't ask for accommodation then an employer is off the hook



FACT

Where an employer should have known that an employee's performance is being affected by a disability, the employer has a duty to inquire.



MYTH: Employers don't have to accommodate people on the spectrum if it will cost more



FACT

Employers may be required to incur financial costs associated with accommodation, so long as those costs don't result in undue hardship. However, the cost of including neurodivergent employees does not need to be onerous!



MYTH: Employers will be required to change the requirements of a job to suite an employee on the spectrum



FACT

Employers are not required to change the fundamental requirements of the job. They may however be required to change how the job is permitted to be performed so long as it allows the employee to perform the fundamental requirements without undue hardship to the employer.



What are an Employees Obligations in the Accommodation Process?



Inform/Request



Provide information, including information from health care providers



Cooperate



Accept reasonable accommodation



Meet performance and job standards once accommodated



Maintain confidentiality



MYTH: Employers can't ask for medical information



FACT

Employers have a right to request information reasonably required to assess an employee's restrictions and limitations.

This doesn't include information about your diagnoses or other unrelated personal information not reasonably required to assess accommodation options or ability to work.



MYTH: Employers must accommodate preference



FACT

Employers only have to provide reasonable accommodation. An employee isn't entitled to perfect or even their preferred form of accommodation.

At the same time employees may be in the best position to evaluate the accommodation options and employers should involve employees in the accommodation process and consider their proposals.



**MYTH: Employers can't fire an employee
who has requested accommodation**



FACT

Accommodation requests cannot act as a shield for an employee who fears losing their job.

Employers can terminate employment for a variety of reason including:

- lack of work,
- performance or misconduct,
- Failure to cooperate in the accommodation process, and
- frustration of contract,

even if an employee has requested accommodation.

However, employers should be wary of terminating for reasons associated with a disability.



PART IV: OVERCOMING WORKPLACE BARRIERS



MYTH: People on the spectrum don't apply for jobs with my company because they don't want to work



FACT

Many neurodivergent people can and want to work, but feel intimidated applying to traditional workplaces or hiring processes.

Developing inclusive approaches to recruitment can help to eliminate barriers and open up valuable labour markets to an employer.



MYTH: People on the spectrum don't make good candidates



FACT

Neurodivergent people make excellent candidates and can thrive with alternative processes that assess their actual skill.



MYTH: Employers must accept lower performance standards



FACT

An employer is entitled to apply the same quality and work standard to neurodivergent employees as others so long as they provide reasonable accommodations and supports.

People on the spectrum can meet and exceed performance standards when given the opportunity.



Building Inclusive Workplaces

Inclusive Hiring Processes

- Consider partnering with organizations that pair employers with people on the spectrum
- Clearly communicate accessibility and opportunities for people with disabilities in your job postings and website (
- Remove barriers related to electronic application processes
- Consider alternative interview structures
- Train interviewers to be aware of biases and to look beyond social differences



Building Inclusive Workplaces

Enhancing Inclusion on the Job

- Consider your culture and introduce sensitivity training
- Provide clear expectations, concise and specific instructions
- Job coaching and monitoring (internal or external)
- Provide sensitive but direct feedback
- Support in stressful situations and when introducing change



Building Inclusive Workplaces

Inclusive Work Environments

- Consider sensory stimuli in your workplace
 - » Fragrances
 - » Climate
 - » Lighting
 - » Sound
 - » Visual distractions



QUESTIONS?



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