

Termination for allergic reaction puts training gaps in spotlight

OHS training critical in industries with high turnover, fast pace

BY LIZ BERNIER

AN EMPLOYEE at a Saskatoon Urban Planet store was recently let go — not because she wanted to quit or because of any performance issues, but because she left during her shift to deal with a life-threatening allergic reaction.

Danielle Duperreault had a number of serious allergies but during one of her shifts, she inadvertently came into contact with pepper powder, to which she was severely allergic.

Duperreault began to suffer an allergic reaction and did not have an EpiPen on her as usual. She promptly informed her manager of the situation.

"I called a manager upstairs and one came up asking me what was wrong — at that point my airway was already closing. She proceeded to show a tremendous amount of attitude. I did not have an EpiPen on me at the time because mine was expired and I needed to get a prescription for a new one," said Duperreault in a Facebook post.

"She told me to go look in my car, then proceeded to wander off. Meanwhile, I'm getting fainty and I'm vomiting, I went out to my car and searched for (an EpiPen) but no luck. So I go back into the store, gurgling and clutching my throat while customers and a few staff around me were freaking out and that same manager stood calmly at the computer, typing away."

A co-worker drove Duperreault to receive emergency medical treatment. While on the way to the hospital, Duperreault said she received a text message from the manager informing her that her employment had been terminated.

Knowledge gaps

There is a good chance this manager, like many in retail environments, did not spend adequate time being trained around health and safety, said Janet Salopek, partner and senior specialist at HR consultants Salopek and Associates in Calgary.

"The manager probably just wasn't aware of their responsibility to accommodate and what they need to be doing when employees do get ill or present with issues."

Employers need to thoroughly understand their obligations when it comes to employees with a medical condition — even a relatively common one such as allergies, said Laura Williams, founder and principal of Williams HR Law in Markham, Ont.

"When it comes to accommodation obligations from the employer's standpoint, essentially if the employee can provide some medical justification as to the fact that they're unable to perform work entirely — or they require accommodations to perform work — due to a medical condition, then it is incumbent on the employer to as-

sess the medical (information) that the employee provides to determine what accommodations, what modifications to the work are possible," she said.

"If an employee — such as in the case of this employee with allergies — is overwhelmed with a condition or symptoms and can't complete his or her shift, the employer has to be careful because if the employee can justify the inability to perform work that is related to a medical condition that would fall within the definition of a disability under human rights legislation, then that triggers the employer's obligations."

Where a lot of employers misstep is they don't educate front-line staff on the extent to which the employer will be held to certain requirements under human rights legislation and health and safety legislation, said Williams.

When a front-line supervisor or manager encounters a circumstance where an employee is unable to complete some work, the manager may sometimes doubt his sincerity.

"Sometimes what happens is the manager is suspicious or doesn't take a request or an assertion about an illness on a good-faith basis," she said.

In some cases, that suspicion could be because she has a bias toward an individual employee, said Williams.

"They don't like the employee or they feel that the employee doesn't

genuinely embrace performing work, so they approach it with bias."

But employers are obligated to accept an accommodation need in good faith, she said.

"Sometimes what we see is this failure to accept an accommodation need in good faith is where an employer may create some obligations for itself"

Environments such as retail, when shifts need to be covered by staff, can put a line manager in a tough position if an employee needs to leave halfway through a shift, said Salopek.

"(But) health and safety should always come first. So they're going to be short-staffed that shift, but that's when the manager needs to step in. The manager needs to, first and foremost, make sure the employee is looked after and, second of all, then chip in and help out that shift — all hands on deck," she said.

"But definitely the health and safety of the employees should come first."

However, it can be challenging in industries with high turnover to keep managers trained up, said Salopek.

"It's so important for our managers, for our supervisors, for our people to be properly trained," she said. "The thing is, training is looking different nowadays than it did years ago. Training is relevant in the moment — it's shorter bursts."

So in retail, where you've got high turnover, basically what you're doing is short bursts of training for your managers."

One quick, easy and inexpensive idea is holding lunch-and-learns, said Salopek.

"Pick a topic, do a lunch-and-learn. And health and safety is a really good one," she said. "Pull your managers together — even in retail — and do a little 20-minute talk about health and safety."

There are key topics that need to be covered with employees, particularly managers.

"It's about looking out for what's really important to your people," she said. "You can do it cost-effectively, it doesn't have to take a lot of time, but you're always teaching your managers."

The challenges are quite similar in the restaurant industry as well, said Salopek.

"How do you train your managers when you've got to cover shifts? You've always got to be watching that you don't bring in too much labour."

But there are still opportunities to carve out a little time for training — before, between or after shifts, she said.

Avoiding risks

Employers need to turn their minds to intentional onboarding of staff, including supervisory staff, she said.

"There are obligations under health and safety legislation to provide basic health and safety training when you're onboarding supervisors but, beyond that, there should

be training and familiarization with all policies — particularly policies that your front-line staff are going to be required to implement and apply and enforce," said Williams.

"So irrespective of whether or not you're dealing with a relatively transient workforce by virtue of high turnover and attrition... it really doesn't matter because even if you have an employee that you may not be inclined to make a huge investment into, you should think twice about it because the fact that that employee is there for any length of time could result in that employee creating (risk) for the company."

There is also the potential for massive reputational risk.

In Duperreault's case, the CEO of Urban Planet's parent company,

Y.M., contacted her to apologize directly and the company said it would be assisting her financially until she secures another job.

Employers need to be vigilant about how they treat employees because there are far-reaching implications for the public perception, said Williams.

"The employer is now becoming ever-mindful of their brand and the fact that if they have any type of issue that sullies their brand or reputation, it's going to lead to attraction issues," she said.

"So if you are an environment such as a retail industry and you are subject to high turnover, I think you have to be ever more vigilant of your brand and implement strategies that (designate) you as an employer of choice."