Employee Mental Health on Return to Work: A Component to Consider

On April 28, 2020, the Quebec government announced a gradual recovery in economic activity. Some reopenings will take place in manufacturing, construction and retail.

As an employer, you are required by the Act respecting occupational health and safety to take the necessary steps to protect your workers’ health and safety. Therefore, not only will you have to follow the health guidelines provided by the government when you resume your activities, but you will also have to ensure that your employees comply with them.

In addition to following health guidelines, your obligation extends to protecting the mental health of your workers. Risks caused by the pandemic may include stress, anxiety, and depression. One can anticipate a difficult return in terms of motivation, and an increased need on the part of workers for autonomy and flexibility of working hours.

Stress, anxiety and depression can have physical, emotional and behavioural impacts. At stake in the return to work is how an employer should respond to employees with such symptoms. To this end, the CNESST has produced a check-list-type reminder of the precautions that an employer should take to prepare for the day where employees come back to the workplace.

For example, an employee on a construction site who has difficulty concentrating or is irritable or aggressive can pose a health and safety hazard to himself and his colleagues. It is therefore important to perform certain checks to take the necessary measures to remedy the situation, whether by ordering the worker to return home or by providing assistance.

Note that a mental health problem may, in some cases, be considered a disability within the meaning of section 10 of the Charter of Human Rights and Freedoms [Charter]. More specifically, section 16 of the Charter lists a few situations in...
which an employer cannot discriminate on the basis of a disability:

16. No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

Thus, when relaunching your activities, you should keep in mind the possibility of having to implement reasonable accommodations for some of your employees. Otherwise, you may be subject to complaints before the CNESST or the Commission des droits de la personne et des droits de la jeunesse.

We also recommend that you develop your plan to relaunch your business as quickly as possible. RSS’s Labour and Employment team can assist you with this, ensuring that you meet your legal obligations in terms of occupational health and safety, to prevent potential complaints.