

## Case 6: Disability Accommodations and Promotions at Bunco\*

### Learning Goals

In this case, you will have to decide whether or not to promote an employee who has a disability. You will need to consider whether or not the particular disability presents a legally and morally defensible barrier to promotion to a management role. If you choose to promote the employee, what can you do to help ensure his success? If you do *not* promote him, how can you explain and justify your decision, while helping the person to maintain positive work attitudes?

### Major Topic Areas

- Diversity (disability)
- Work attitudes
- Recruitment and selection

### The Scenario

Nicholas, the director of finance at Bunco Canada, sat wearily at his desk and put his elbows on the table and his head in his hands. He sighed deeply and rubbed his eyes. He found himself second guessing the decision he had made to launch an external search for the company's newly created accounting manager role. Had Nicholas' decision been reasonable and fair?

Paul had worked for Nicholas as a staff accountant for 14 years. Paul was part of a team of eight and was the only one, other than Nicholas, who had a professional designation. Paul was a Certified Management Accountant (CMA) and currently worked as the senior accountant responsible for external financial reporting. The rest of the team consisted of a cost accountant, a financial analyst responsible for margin analysis and budgeting, a packaging plant bookkeeper, a corporate bookkeeper, and three accounts receivable/accounts payable clerks. The entire accounting staff was stationed at the company's Northern Ontario consumer goods packaging facility, along with other backroom services, such as human relations (HR), customer service, and information technology (IT). Bunco Canada also had a head office in Toronto, but due to the cost of renting office space, only the executive team and sales and marketing staff worked from that office.

Paul was a consistent and reliable employee who, due to his long tenure, had acquired an immense amount of knowledge about the organization. He had, at some point in his career, performed most accounting functions at Bunco, including plant costing, budgeting, analysis, and financial planning, and so he understood the details of each role extremely well. Paul got along well with the junior staff (most of whom had been with the company for more than 10 years) and was considered a key member of the accounting team. He frequently acted as an informal advisor to other members of the team, put in overtime, and engaged in special projects, including process improvements and database optimization. In fact, he had become the sole subject matter expert on some critical financial applications needed for monthly reporting. In the last four years, however, Paul had begun experiencing health issues. Starting in 2006, he began requiring special accommodations from Bunco for Crohn's disease.

Crohn's disease is an incurable inflammatory bowel disease that results in sporadic and unpredictable bouts of moderate to severe pain, fever, diarrhea, gas, vomiting, and rectal bleeding.<sup>1</sup> Sufferers of Crohn's may experience brief or extended remissions that last months or even years, and then relapse without obvious triggers, although many patients with Crohn's disease report that stress significantly worsens symptoms and can trigger flare-ups.<sup>2</sup> There is no cure for the disease, but anti-inflammatory and immune-modulator medication, surgery, and careful attention to diet can control symptoms and minimize relapses for some people.<sup>3</sup>

Canadian courts recognize Crohn's disease as a legitimate disability for employment-related purposes. Employers are required to accommodate Crohn's disease as long as that accommodation does not result in excessive hardship. "Duty to reasonably accommodate" means that an employer must take all reasonable measures to enable a disabled employee to keep working. In addition to making physical accommodations such as providing laptops, wheelchair ramps, etc., employers can also be required to amend job responsibilities and performance appraisal criteria.

When he was first diagnosed with Crohn's four years ago, Paul had discussed several concerns with Nicholas. "Nicholas, I don't know how long it will take me to get this under control. It's not like I can't work at all. I'll go for a

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couple hours and be fine, but then . . . I don't think anyone wants me running to the washrooms here. Besides it's humiliating. I need some privacy. When the pain flares up it's all I can focus on. Maybe I could just work from home on a laptop on my bad days, play it by ear a little bit?"

Nicholas replied: "Well I don't see a problem with you working from home sometimes, but are you sure that's what you want? I spoke to an HR representative about this yesterday, and she pointed out that we have a corporate policy that prohibits laptop use for everyone except senior management and sales, but under the circumstances, I'm pretty sure I can get one approved for you. I was wondering if going on long-term disability might be a better solution for you to get yourself well though, assuming that we can get the insurance company to support the claim. Your health has to be your first priority. That said, I don't really know what we'll do if you leave!"

Paul was reluctant to seek long-term disability, because he did not want to give up so much of his life to the disease. It was also unclear whether the claim would be accepted by Bunco's insurer. After another discussion with an HR representative, Nicholas decided that a laptop should be issued to Paul and that he should be permitted to work at home on his bad days. Nicholas trusted him not to abuse the privilege so felt no need to document the decision further. An informal "handshake agreement" was readily accepted by Paul.

## Accommodation Implemented: The First Few Years

Paul and Nicholas explained the situation to co-workers in a regularly scheduled staff meeting, and, initially, everyone was supportive of the new arrangement. As more time passed, however, Nicholas became worried. He had anticipated the occasional absence, but over the first few months of the new arrangement, Paul consistently worked two days in the office and then had to go home for two to three days, meaning he was absent more than 50 percent of the time. Although Paul did respond to email, Nicholas felt that he had underestimated the ongoing impact that Paul's absence might have long term. Nicholas was being inundated with daily questions from staff that would normally have been routed to Paul. Despite the difficulties adjusting, Nicholas felt strongly that accommodating Paul was the right thing to do, so he said nothing. About five months after the initial discussion and the purchase of a laptop for use by Paul, Paul's symptoms decreased, and he was able to work in the office about 85 percent of the time for the next year and a half.

About two years ago, beginning in early 2008, Crohn's-related relapses and problems returned for Paul. At the same

time, due to growth in market-share and a new acquisition, the demands on the accounting department had increased significantly. Budget constraints did not allow for the hiring of additional staff. Everyone had to contribute more and work a little harder. Working overtime, the norm in accounting departments at month's end and year's end, increased even more at Bunco. Especially at month's end, it was not unusual for staff to work in the office preparing external financial reports until 11:00 p.m. or midnight for several days in a row.

As previously mentioned, bouts of Crohn's disease are often triggered by stress. Since month's- and year's ends were particularly stressful times, Paul would often experience attacks then, just when he was needed most in the office. He was frequently absent during these key times, missing more than half of the month's ends. Other accounting employees, who previously had supported Paul's accommodations, began to murmur their resentment among themselves.

"It would really make my life easier if I could work from home," Nicholas overheard across a cubicle wall one day, followed by "can't he control his Crohn's with diet anyway, if he really tried to? I think he just doesn't want to be stuck here all evening for a week like us suckers!" "I don't think he can control it *that* much," another voice chimed. A third person responded, "even so, it does make for a convenient excuse doesn't it; he could fake it on any given day, and nobody would even know the difference. I bet he took off this afternoon because he heard they're bringing in pizza for dinner AGAIN." "It's not even fair," another voice complained, "if he can phone and email his work in why can't we? My ex is furious that I missed my night with the kids; I'll be paying for that one for a while."

Nicholas worried about the worsening morale among what had previously been a very close team. Furthermore, Paul had been significantly late submitting his external financial reports on several occasions, and his lack of availability had hampered other people's ability to complete interdependent tasks. Since early 2008, when his relapse began, the department had been late in submitting its monthly financial reports to head office in the United States seven times! The department still complied with deadlines imposed by the Securities and Exchange Commission (SEC), but it missed many internal deadlines. While not all of the department's late filings could be directly attributed to Paul's condition (and absences), he had certainly contributed to the problem.

That said, Nicholas knew that Paul had limited control over the Crohn's disease, so Nicholas did not mention his concerns to Paul or document performance problems. If anyone else said anything to Paul directly, Nicholas was unaware of it. Nicholas ended up doing little more than hope that Paul would experience a remission and that the situation would improve.

## The Accounting Manager Role

Meanwhile the changes continued apace at Bunco. In early 2008, ongoing growth and further acquisitions-in-process meant that Nicholas acquired significant new responsibilities. Part of that transition included Nicholas taking on a more strategic role in financial management and physically relocating to the company's executive headquarters in Toronto. This meant that he would no longer be around day to day to manage the accounting department at the northern packaging facility. It was also no longer adequate for the department to adopt a flat organizational structure, with staff accountants formally reporting to the director. An accounting manager position would need to be created.

As director, Nicholas became responsible for financial strategy, identifying opportunities for cost reduction and revenue growth, foreign exchange strategy, ameliorating controls, and managing transition teams for new acquisitions. In turn, the new accounting manager would be responsible for much of what Nicholas had previously done. This included advising senior executives, including the CEO, about monthly financial results and projected year-end performance, as well as overall responsibility for costing and management accounting. This position required ongoing communication with various parts of the company, including occasional travel to the US head office. The most important part of the accounting manager role, however, involved managing the team at the northern facility. This included assigning tasks and providing daily guidance, advice, and social support to junior staff.

Under normal circumstances, Paul would have been the natural choice for promotion to this new accounting manager position. He wanted it; indeed, he felt it was owed to him in return for his long years of service. He was the most senior person in the department and, other than Nicholas, Paul had the highest level of formal accounting education. The other members of the department did not qualify for the role, as they were not CMAs. Paul had also created many of the spreadsheets and systems that were an integral component of the company's financial reporting system. The new role, however, would come with a significantly increased stress load, since it involved management responsibilities and a much higher political profile in the organization. Could Paul really handle the stress, given his disability? Also, if he did experience a flare-up, how could he manage a team of people from home, when multiple questions came up each day? Reports to the US head office were already being sent late with alarming frequency, damaging the Canadian branch's reputation within the company. Would this situation become worse under Paul's direction?

Fourteen months earlier, Nicholas had carefully considered his options vis-à-vis filling the future account manager

position. He tried to discuss his concerns with his HR department but discovered that promotions were legal and ethical grey areas when it came to disability accommodation. Under a subset of law regarding duty to reasonably accommodate, employers were not able to deny promotions based on inability to perform a job without first proving undue hardship, but what did that really mean? The concept was largely untested in the courtroom. An HR staff member suggested that Paul be asked to participate in a detailed medical assessment to prove that he could not complete the essential operational requirements of the job. This suggestion did not sit well with Nicholas. A medical assessment could be regarded as invasive, and the procedure would lead to Paul being expected to share a great deal of confidential medical information. Furthermore, as with any management job, it was hard to distinguish the *essential* aspects of the job from the secondary ones. Presenting and defending monthly financial reports, for example, was a key part of the job. It was also very stressful, as the reports were examined and questioned in detail by powerful senior executives. Since stress was a trigger for flare-ups of Crohn's disease, could Paul handle the pressure? What about travel to the US head office? This was also stressful, and travel might well prove impossible for Paul. Was it fair to expect Paul to try, given his medical condition? Nicholas' biggest concern, however, was that Paul would not always be physically available to the staff. Nicholas felt that the physical presence of a manager in the office was central to the orderly flow of information, completion of daily tasks, and maintenance of a supportive and collegial environment. He did not know if he could truly justify calling that physical presence "essential," but his gut told him it was.

Under pressure to decide whether to fill the new position internally or externally, Nicholas was not sure that he was making the right choice, but he decided to launch an external search for an account manager, instead of promoting Paul.

### Discussion Questions

1. Should Nicholas have promoted Paul? Why or why not?
- 2.a. What are Nicholas' legal responsibilities to Paul in this situation?
  - b. What are Nicholas' ethical responsibilities to Paul in this situation? How does that balance with Nicholas' responsibilities to Paul's would-be co-workers?
3. If Paul were to be promoted, what strategies could Nicholas use to help Paul achieve success in his new role?