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**ILLNESS AND DISABILITY  
IN THE WORKPLACE**

**Bennett Jones LLP**

**Release No. 54, June 2018**

**What's New in This Update:**

This release updates Chapters 2 (Common Law), 3 (The Union Employee), 4 (Human Rights Legislation), 5 (Short and Long-Term Disability Insurance) and 6 (Workers' Compensation and Other Statutory Benefits), the New Developments and Related Articles sections.

**Case Law Highlights**

Of the new case law discussed in this release, the following are of note:

- **Common Law – Termination of the Ill or Disabled Employee at Common Law – Right to Notice or Severance Pay** Where an employee is absent from work due to illness, an employer is not

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permitted to terminate such a person's employment on the basis that employment has been abandoned – In order for employer to justify termination of employee on sick leave, must be able to prove abandonment pursuant to a test – The fact that an employee is on sick leave and incapable of working at one job, does not necessarily mean that such person is incapable of working in other capacities: *Rancourt-Cairns v Saint Croix Printing and Publishing Company Ltd.*, 2018 NBBR 19 (NBQB).

- **The Union Employee – Impact of Legislation – Legislation and the Arbitration Process** – Where the matter in dispute related to the interpretation of an insurance policy that had been provided to employees pursuant to a collective agreement, the matter was properly before a court for resolution of matters of interpretation – Where, however, the issue is whether the contract provides adequate insurance, in accordance with the collective agreement, the matter belongs before an arbitrator: *Central East Local Health Integration Network and ONA (Thompson)*, 2018 CarswellOnt 4235 (Ont. Arb.).
- **The Union Employee - Attendance Programs** – The employer's attendance management program, which considered taken as family responsibility leave in calculating whether an employee's absenteeism rose to the level of triggering the attendance management program, was deemed improper – The inclusion of family responsibility leave in calculating absenteeism was found to be arbitrary, unfair, unreasonable and unsustainable: *Coca Cola Refreshments Canada Co. and TC, Local 213 (Attendance Management Program), Re*, 2018 CarswellOnt 166 (BC Arb.).