

YOU RAISE THE ISSUE



CHRISTOPHER SPASOFF

Question: *We're working hard to establish a "safety culture" at our workplace, but those two terms are sometimes at odds with one another. In other words, what happens when "culture" seems to interfere with "safety"?*

Given the increasingly diverse demographics of the workforce in Alberta, employers often find themselves with a workforce consisting of workers from different cultures, including those with different religious beliefs. Some religious beliefs require that individuals wear prescribed items of clothing at all times, or that they refrain from shaving. At the same time, certain areas of a jobsite may require that workers wear protective clothing or attend at work clean-shaven, in order to ensure that loose-fitting clothing does not get caught in certain equipment, or that protective masks are properly sealed to the workers' face. These requirements are often mandated in company policy, as reasonable safeguards for ensuring the health and safety of workers, performing occupational tasks in high-risk environments.

In such circumstances, the employer faces a difficult conflict: it must ensure the safety of the worker in accordance with the *Occupational Health and Safety Act*, while at the same time respecting the worker's equality and diversity rights in accordance with the *Alberta Human Rights Act*. From a health and safety standpoint, this raises an interesting issue.

Ultimately, when resolving this conflict, the employer must recognize that the health and safety of the worker is paramount. Section 7(3) of the *Alberta Human Rights Act* confirms that the employer can refuse to employ or continue the employment of a worker, or include seemingly "discriminatory" terms of conditions of employment (i.e., refusals, limitations, specifications or preferences), provided that they are based on a "bona fide occupational requirement". Key to the assessment, however, is a determination that the safety requirement in question is a *bona fide*, or good faith requirement. Consideration must be given to whether there are other alternatives to the safety requirement (a different type of mask, for example), and whether the worker can be accommodated in some other fashion.

Such an assessment is not an easy one, and depends entirely on the specific facts of each individual case. Unfortunately, the legislation doesn't account for this difficulty; it creates a situation where the employer must make a judgment call, yet will assign fault if the wrong call is made. While we recommend retaining counsel to assist employers with making these difficult determinations, in the event that's not possible, we suggest erring on the side of caution. Dealing with a finding of fault is one thing – dealing with a death or injury to your workers is quite another. ▲

EDMONTON
2000, 10235 - 101 STREET
EDMONTON AB T5J 3G1
PH 780 423 3003
FX 780 428 9329

CALGARY
400, 604 - 1 STREET
CALGARY AB T2P 1M7
PH 403 260 8500
FX 403 264 7084

YELLOWKNIFE
201, 5120 - 49 STREET
YELLOWKNIFE NT X1A 1P8
PH 867 920 4542
FX 867 873 4790

WWW.FIELDLAW.COM

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The Labour and Employment Group
Edmonton 780-423-3003
Calgary 403-260-8500

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