

Discrimination in the Workplace

JUDITH SHRIAR

The Alberta Individual Rights Protection Act (the "Act") is intended to promote equal opportunities for all persons regardless of race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry or place of origin. The majority of complaints filed with the Human Rights Commission of Alberta involve claims of discrimination in employment. According to the Act, every person has a right to equal treatment without discrimination on the basis of any of the above prohibited grounds, with regards to all aspects of employment including recruitment, hiring, training, benefits, transfer, promotion and dismissal.

Direct discrimination occurs where an employer adopts a practice or rule which on its face discriminates on a prohibited ground. Examples would be a rule or practice barring women, blacks or Chinese from employment. Direct discrimination is prohibited under the Act unless the employer can show that the rule is based on a "bona fide occupational requirement." As an example, the requirement that airline pilots be in good physical condition is a legitimate requirement for that occupation, even though it directly discriminates against persons with physical disabilities.

It is important to realize however that even identical treatment of all actual or potential employees does not necessarily negate an allegation of discrimination where that treatment impacts differently upon a particular individual or group of persons who are identified by one of the prohibited grounds of discrimination. In such circumstances this identical treatment may result in indirect or adverse effect discrimination. The Supreme Court of Canada has defined adverse effect discrimination as follows:

. . . "where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which applies equally to all employees, but which has a discriminatory effect on a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties or restricted conditions not imposed on other members of the work force."

An example of indirect religious discrimination would be evident where the employer's schedule requires employees to work Saturdays which conflicts with the religious beliefs of an employee who is an observant Jew. Another example would be adopting a standard work uniform which includes specified headgear. This may conflict with the rights of an employee of the Sikh faith whose religious practice includes the wearing of a turban. A third example would be enforcing a work rule which requires employees to stand for extended periods of time. This may indirectly discriminate against physically disabled employees.

Employers are required to go a long way to accommodate the individual rights of employees. It is insufficient to claim that the work rule in question is rationally connected to the job and that everyone is treated the same way. In cases such as the examples provided, the employer must either (1) reasonably accommodate the individual or group in question or (2) show that it cannot reasonably accommodate the employees in question without undue hardship.

The concept of reasonable accommodation is being clarified by courts across the country

2000, 10235 - 101 STREET
EDMONTON, AB T5J 3G1
PH: 780.423.3003

400 THE LOUGHEED BUILDING
604 1 STREET SW
CALGARY, AB T2P 1M7
PH: 403.260.8500

201, 5120 - 49TH STREET
YELLOWKNIFE, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

and may include effecting individual modifications to the work schedule or uniform, acquiring or modifying equipment, restructuring job descriptions or making facilities accessible to the physically handicapped. The Supreme Court of Canada has referred to the following factors in assessing undue hardship — the financial cost of the accommodation, disruption or variance from the provisions of any applicable collective agreement, the effect on morale of other employees, the size of the employer's operation and safety considerations.

The accommodation of human rights is becoming an increasingly important issue to employers. Litigation concerning employers' obligations in this regard is growing rapidly and is expensive. Members of the Labour & Employment Group of FIELD & FIELD PERRATON are not only versed in the latest case law in this area, but can give timely, practical and cost effective advice on how to avoid many of the human rights complaints that may be filed. We would be pleased to discuss with you any specific situation arising from these or any other provisions of the Individual Rights Protection Act and invite your further inquiries.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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

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