Employees’ Religious Needs: Accommodate Them or Face Costly Consequences



As seen on https://www.go2hr.ca/articles/employees-religious-needs-accommodate-them-or-face-costly-consequences.

In many cases, the BC Human Rights Tribunal has awarded individual employees thousands of dollars in lost pay and damages when an employer did not accommodate their religious (not spiritual) needs. Know your legal obligations.

Employers might be surprised to learn that companies must accommodate their employees’ religious needs to the point of undue hardship or face costly consequences. In most cases, accommodation might be as simple as substituting another day off, with pay, to allow the employee to observe his or her religious holiday.

Meanwhile, how does the law view an employee’s need for spiritual practices, not deemed religious, such as daily meditation or wiccan prayers or blessings? The law applies only to those who hold a sincere belief that falls within the broad definition of religion. For example, a person who believes she should meditate every day is not the same as a person who needs every 29th day off to observe the new moon. The latter is a valid religious need, as shown by a case included later in this article. Author Russell Zinn says in The Law of Human Rights in Canada: Practice and Procedure (Aurora, Ont. 2004): “[S]o long as a complainant’s beliefs are sincerely held and fall within the rubric of ‘religion’ broadly defined, the proceedings will move on to the next stage of inquiry. The ‘sincerely held’ component ensures that complaints are not made for ulterior reasons, such as a desire to procure more favourable working conditions.”

GROUNDS FOR JOB DISCRIMINATION FOUND IN CODE

An employer’s obligation to accommodate employees’ religious needs is founded in section 13(1) of the B.C. Human Rights Code (“Code”), which reads as follows:

13. (1) A person must not
(a) refuse to employ or refuse to continue to employ a person, or
(b) discriminate against a person regarding employment or any term or condition of

employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.
Employers should recognize that the Code requires a complainant, such as an employee or former employee, to establish that a prohibited ground, such as religion, was only a single factor in the discrimination; not the sole or even the most significant factor. Further, the tribunal has the power to award significant remedies that include, but are not limited to, the following:

- reinstatement of the complainant;
- lost wages, back pay, and interest;
- damages for injury to dignity (such damages have reached as high as about $10,000); and
- ordering training and monitoring of the workforce/workplace, supervised by the tribunal for a certain period of time.

IMPORTANCE OF RELIGIOUS ACCOMMODATION

In *Derksen v. Myert Corps Inc. (No. 2)*, 2004 BCHRT 60, the BC Human Rights Tribunal ruled that the employer discriminated against Myert for failing to allow him to take a day off work to observe the new moon. As a member of the Christian Churches of God, he observes five holy days each year as well as lunar new moons every 29 days. Shortly after he was hired, Myert took one day off work to observe a religious holiday. His employer then wrote a memo advising him that it would not permit him to take any further days off for religious reasons. The employer dismissed Myert during his probation period after he took another day off work, unauthorized by his employer, for religious observance.

The tribunal held that the employer's memo was prima facie (based on first impression) discriminatory and breached the BC Human Rights Code. As a result, the employer then bore the reverse onus to prove that Myert's dismissal was not tainted by religious discrimination. The company could not prove that religion did not play a role in Myert's dismissal. However, it did tender evidence to prove that it would have dismissed Myert by the end of his probationary period due to poor performance, which reduced the damages awarded to Myert. The tribunal awarded Myert lost wages of about $6,000 for the rest of his probationary period, $770 in lost wages for attending the hearing, and $2,000 in damages for injury to dignity.

In another case, Dairyland Foods and its union discriminated against Daniel Drager by dismissing him from employment for failing to work on his sabbath (*Drager v. I.A.M. and A.W.*, [1993] B.C.C.H.R.D. No. 42). As a Seventh Day Adventist, he could not work from sundown Friday to sundown Saturday. The council found that the union had discriminated against him by agreeing to shift schedules and rules in the collective agreement that were discriminatory to Drager. It ordered Dairyland to pay Drager one year's worth of lost wages ($48,000) and $2,000 for distress

RELIGIOUS BELIEFS AFFECT ASSIGNMENT OF DUTIES

Although an employer can fairly easily accommodate days off for religious observance, it proves more difficult to consider an employee's religious beliefs when assigning duties. The latter was at issue in the case *Moore v. B.C. (Ministry of Social Services)* (1992), 17 C.H.R.R. D/426 (B.C.C.H.R.). In this case, Moore, a Roman Catholic probationary employee, refused to authorize medical coverage for a Ministry

client who needed an abortion because of Moore's religious beliefs. The Human Rights Council determined that the Ministry failed to prove that accommodation was impossible by either exempting her from dealing with such situations or by assigning other files to her. As a result, the council awarded her $7,700 for lost wages and $1,000 in damages for humiliation.

Readers might recall a Victoria, BC case that drew media attention in early 2001: *Raymond Jones v. CHE Pharmacy*, 2001 BCHRT 1. In this case, the tribunal held that the employer had discriminated against Jones because of his religion. As a Jehovah's witness, Jones does not celebrate Christmas. The previous owner of the pharmacy had always accommodated Jones' religious beliefs by never requiring him to help with Christmas decorations. However, once store ownership changed in 1988, the new store owner gave Jones an ultimatum: either help decorate the store for Christmas by setting out poinsettias or be fired. Jones cleared out his locker and left.

The tribunal found that the new owner, clearly aware of Jones' religious beliefs, failed to attempt to accommodate them. The ultimatum constituted a constructive dismissal. The tribunal ordered the employer to pay Jones about $21,000 for lost wages, $4,700 for lost vacation pay, $1,100 for expenses and $3,500 for injury to dignity and self-respect.

RELIGIOUS ACCOMMODATION AND SAFETY CONCERNS

The tribunal, however, does not decide in favour of the complainant in all religious discrimination complaints, especially when safety is an overriding concern. In *Toor v. Finlay Forest Industries* (1984), 6 C.H.R.R. D/2873 (B.C. Bd. Inquiry), Toor, a Sikh employee, complained that his employer discriminated against him on the basis of religion when it required him to wear a hard hat, in accordance with Workers' Compensation Board (WCB) requirements. (Toor's religion requires him to wear a turban.) The Board of Inquiry found that the requirement to wear a hard hat is a legitimate safety concern and no accommodation was possible, thus the complaint was dismissed.

In a more recent case of *Pannu v. Skeena Cellulose Inc.* 2000 BCHRT 56, an employee claimed that the WCB regulation and company rule requiring that he and certain other pulp mill employees be clean-shaven to wear a breathing apparatus discriminated against his religion. (As a Sikh, Pannu wears a beard as a tenet of his faith.)

The tribunal held that accommodating Pannu would cause undue hardship to the employer. For example, other less experienced employees would otherwise have to carry out emergency procedures, increasing the magnitude of risk to them and the employer. Accordingly, the tribunal dismissed the complaint.

EMPLOYERS BEWARE

- Do not make enquiries about an employee's religious beliefs during a job interview (the Code applies not only during employment, but also during employment interviews, job postings, and advertisements).
- Make all reasonable efforts short of undue hardship to accommodate an employee's religious request/limitation.
- Ensure that all employees dealing with scheduling and assignment of job duties realize the aforementioned obligations of the B.C. Human Rights Code.

Additional information provided by Ryan Anderson, an employment lawyer with Mathews Dinsdale & Clark LLP (December 2014). The information provided in this article is necessarily of a general nature and must not be regarded as legal advice. For more information about Mathews Dinsdale & Clark LLP, please visit mathewsdinsdale.com.

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