Ontario Human Rights Commission: New Religious Discrimination Policy



Times have changed since 1996, when the Ontario Human Rights Commission (OHRC) issued a policy to help employers recognize and avoid religious discrimination. Sadly, discrimination on the basis of religion and creed remain; but the face of discrimination and methods of combatting it have evolved. And with up to 10,000 Syrian refugees heading to Ontario in the next few months, it's fitting that the OHRC completely revised and updated its Policy in light of modern conditions, including but not limited to the recent growth of prejudice against Jews and Muslims.

THE POLICY

The Law: As in other provinces, the Ontario Human Rights Code bans discrimination on the basis of religious belief or creed.

The Impact: Although technically not binding, the Policy has great practical significance because it lays out the OHRC's expectations and the specific things it wants employers to do to comply.

The Key Provisions: The Policy runs over 200 pages and covers not just employment but all public activities where religious discrimination may occur. For employers, there are 5 key things to focus on:

1. **Warnings against "Faithism"**

The Policy distinguishes between simple prejudice directed at religious groups and "faithism" or stereotyping of individuals because of their religious belief and associated characteristics, e.g., labelling Muslims or people who wear Muslim garb as terrorists. Although both mind-sets are poisonous and dehumanizing, faithism is particularly invidious because of its impact on individuals.

2. **Forms of Religious Discrimination**

The Policy goes into great detail on the different ways religious/creed discrimination can occur, including:

- Directly, e.g., categorically refusing to hire Muslims;
- Indirectly, e.g., refusing to hire a Muslim woman because the hijab headdress she wears makes her look "unprofessional";
- Harassment based on religion or creed;

- Creating or tolerating the existence of a toxic work environment, e.g., constant use of religious slurs by employees;
- Imposing creed messages and compelling creed observances, e.g., starting business meetings with prayers or hosting weekly Bible study groups for employees;
- Profiling based on religion/creed, refusing to hire Muslims for security-sensitive positions;
- Constructive discrimination, i.e., policies or practices that are neutral on their face but have the effect of adversely treating people of certain religions, such as requiring all employees to be clean-shaven; and
- Reprisal, e.g., firing employees for complaining of religious discrimination.

3. **Methods of Accommodation**

The Policy sets out strategies employers can use to ensure they make required accommodations for religious differences to the point of undue hardship, including:

- Inclusive or universal design of not only physical structures but workplace policies and procedures;
- Establishing a fair accommodation procedure that assesses individual needs and circumstances, provides for the full exchange of required information and protects privacy and confidentiality.

4. **The Factors NOT to Consider When Making Accommodations**

The Policy sets out factors that employers may not consider in determining whether particular accommodations requested are reasonable, including:

- How the accommodation will affect the morale of other employees, e.g., “if I allow this employee not to work on Sabbath, other employees will demand weekends off”;
- The impact of customer or third party preferences, e.g., a customer’s preference that all service representatives be “pretty young ladies”;
- The fact that the accommodation causes business inconvenience;
- The fact that an otherwise reasonable accommodation is banned by a contract; and
- The perception that the employee’s religious belief or practice is unreasonable.

5. **Specific Situations**

The Policy sets out guidance for dealing with common situations that are particularly tricky, including:

- Leaves or absences for religious observances;
- Accommodations to dress codes and personal appearance policies;
- Time out from work for daily prayers;
- Display of religious symbols;
- Creed/Religion-based dietary restrictions and fasting; and
- Accommodation of “indigenous spirituality” of aboriginal employees.