Ontario Issues Guidelines on Resolving “Competing Human Rights” Situations



WHEN RIGHTS COLLIDE

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In terms of human rights, one person’s freedom may be another’s oppression. Consider the case of the visually impaired employee who, thanks to the “reasonable accommodations” provisions of human rights laws, is allowed to bring a guide dog to his no-pets workplace. But that co-worker in the neighbouring cubicle who’s severely allergic to dogs also has the right to be able to do her job. This is just one of the ways employers can end up caught in the middle between conflicting human rights. On April 18, 2012, the Ontario Human Rights Commission issued detailed guidelines to help employers resolve such conflicts. Although an Ontario product, the Guidelines are the first of their kind in Canada and bound to have influence in all parts of the country.

CONFLICT RESOLUTION PROCESS

The Guidelines set out a process for handling human rights conflicts—not only in workplaces but housing, education and other public settings. The first thing to do, the Guidelines say, is figure out what the claims are all about and determine if they raise a real human rights issue, i.e., a substantial violation of a recognized right. If there’s not 1 but 2 competing claims with merit, you need to switch to conflict resolution mode:

- Step 1: Look for a solution that allows *each* party to exercise their rights, e.g., assign the visually impaired employee and his allergic-to-dogs co-worker to separate floors;
- Step 2: If satisfying both rights isn’t do-able, look for solutions that may involve compromising rights keeping in mind that:
  - Nobody’s rights are absolute; and
  - There’s no hierarchy of rights, e.g., racial protections are no less or more important than sexual orientation protections.

Although employers might have the final word in the dispute, they need to keep in mind that their decisions may be challenged in court, arbitration or a Human Rights Tribunal proceeding. So the Guidelines recommend engaging the employees involved to ensure they understand your decision and how you made it.

WHAT TO DO

The final and, for HR directors, most important part of the Guidelines is the recommendation that organizations implement a written competing rights policy that includes:

- A vision statement of the organization’s commitment to maintaining a fair and equitable work environment where everybody’s human rights are respected;
- A definition of “competing human rights”;
- A list of the roles and responsibilities of different groups under the policies, e.g., managers, supervisors, employees, etc.;
- The organization’s internal process for handling competing rights situations;
- The organization’s commitment to act in accordance with the human rights principles set out in the Guidelines; and
- The organization’s commitment to use the Commission’s process to address competing human rights situations.