

Swapping Christmas Stat Holidays: Human Rights & Cultural Inclusion In The Workplace



December is complex. A third of our statutory holidays are Christian-based, despite our diverse workforce in Canada. The holiday season can be a joyful time for many but also raises questions about cultural inclusion in the workplace. For employers in Ontario, this includes understanding whether employees can swap statutory holidays like Christmas for religious or cultural holidays more meaningful to them.

Understanding Human Rights Obligations

Under the *Ontario Human Rights Code (OHRC)*, employers are required to accommodate employees' requests for religious practices and observances, up to the point of undue hardship. This may include making adjustments to holiday schedules when an employee's faith does not celebrate Christmas or other common statutory holidays.

Key Considerations for Employers:

1. Statutory Holidays in Ontario

- The *Employment Standards Act, 2000* (ESA) prescribes nine public holidays, including Christmas Day and Boxing Day.
- Employers are required to provide these days off or substitute holidays, along with holiday pay.

2. Religious Accommodation

- Employees can request to observe a different holiday in place of Christmas, such as Eid, Hanukkah, Diwali, or other culturally significant days.
- Employers should evaluate such requests in good faith and explore alternatives, such as granting unpaid leave or substituting the statutory holiday.

3. How Substitution Works

- A statutory holiday can be replaced with another day under a written agreement between the employer and the employee.
- The replacement day must be treated as a statutory holiday, with the same entitlement to holiday pay and protections.

4. Creating Inclusive Policies

- Employers can proactively offer a policy allowing substitutions for statutory holidays, making it easier for employees to request accommodations without fear of reprisal.

- Clear communication ensures employees understand their rights and the process for substitution requests.

5. **Undue Hardship: What It Means**

- Employers must accommodate unless it causes undue hardship, which is determined based on cost, health, and safety considerations. For most substitution requests, the standard for undue hardship is unlikely to be met.

Practical Steps for Employers:

- **Review Policies:** Ensure workplace policies are inclusive and align with both the ESA and OHRC.
- **Train Managers:** Provide training on handling accommodation requests with sensitivity and fairness.
- **Foster Dialogue:** Create an environment where employees feel comfortable discussing their needs.
- **Document Agreements:** Keep a written record of any agreed-upon substitutions for clarity and compliance.

Conclusion

Balancing cultural diversity with statutory obligations is a key aspect of fostering an inclusive workplace. By accommodating holiday substitutions, employers not only meet their legal obligations but also demonstrate respect for their employees' cultural and religious practices.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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