

Welcome To Our Place Of Business; Please Come Back Later!



Recently, in an interim decision, the Human Rights Tribunal of Ontario (HRTO) held that an employer's duty to accommodate does not require an employer to permit its store manager to tell customers to go away and come back later when another person could assist them with their purchases.

In ***Robabeh Pourasadi v. Bentley Leathers Inc.*** (2015 HRTO 138), the applicant, Robabeh Pourasadi, alleged that the respondent, Bentley Leathers Inc. (Bentley), discriminated against her because of a disability contrary to the ***Human Rights Code*** (the Code) when it terminated her employment. Ms. Pourasadi was a store manager. During her employment she developed a work-related injury and claimed that Bentley failed to provide reasonable accommodations for her disability to the point of undue hardship. Notably, under the Code, the duty to accommodate does not require exempting employees from performing the essential duties of their position.

In Ms. Pourasadi's role as a store manager, she was expected to work alone for approximately twenty (20) hours per week. Ms. Pourasadi conceded that the Code did not require Bentley to schedule a second employee during her time alone in the store. However, at issue was whether the Code required Bentley to (i) permit her to ask customers to come back later and (ii) require Bentley to allow her to defer certain tasks to other employees. Ms. Pourasadi's position was that the frequency with which she would be unable to help a customer would be extremely rare and the hardship to Bentley would be minimal.

Bentley's position was simple: essential duties of its store managers are to assist every customer that comes into the store and make sales. In Bentley's view, "it is antithetical to the *raison d'être* of a retailer to require them to allow its employees to turn away customers and sales.

The HRTO agreed with Bentley. In particular, the tribunal held that it is an

essential duty to assist customers all the time, not most of the time. In other words, if a duty is essential, it is a duty that is required to be performed whenever there is a need to perform it. For Ms. Pourasadi, this means she could not ask customers who wished to see or purchase items that required her to go outside her physical restrictions to come back later when staff was available.

Our Thoughts:

Cases that involve a duty to accommodate are always fact specific. Generally, these cases turn on the particular nature of the work, the nature of the employee's limitations, and the nature of the work environment. This particular case demonstrates that accommodation cases can also turn on the identification of essential duties or requirements of an employee's work or position. In cases where the employee's "essential duties" are at issue, evidence to determine whether a duty is or is not essential will be required. Therefore, it is important that employers draft their job descriptions carefully and to include as much detail as possible as the description can *essentially* make or break the employer in a dispute.

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