You Make the Call: When Discrimination Rights Collide



SITUATION

Rita is very religious and asks for an exemption from the company no-smoking policy so she can burn incense at his workstation as part of her daily prayers. Debbie, who works one station away, vehemently objects to the request because she's allergic to smoke.

YOU MAKE THE CALL

What should the company do?

1. Side with Rita because religious rights supersede disability rights
2. Side with Debbie because disability rights supersede religious rights
3. Side with whichever employee has more seniority
4. None of the above

ANSWER

4. None of the above

EXPLANATION

Human rights laws require employers to accommodate employees' religion, disabilities, family and other personal needs to the point of undue hardship. But what happens when accommodating one employee would require you to impose on the rights of another? This scenario illustrates how employers are expected to handle these "competing human rights" situations.

The Ideal Solution

The first rule is that there's no hierarchy of rights. In other words, all rights count the same. Accordingly, Rita's religious rights don't supersede Debbie's disability rights, or vice-versa. The employer's duty is to avoid choosing sides and seek ways to accommodate *both* employees. Possible solutions in this case:

- Relocating one or both employees so that Debbie won't be exposed to Rita's incense smoke;
- Use of fans, ventilation or other engineering controls to keep the smoke from

reaching Debbie; or
- Limiting Rita to incense burning during hours when Debbie is away on break.

The Next Best Solution

If there's no reasonable way to accommodate both employees, it becomes a matter of what the Ontario Human Rights Commission (OHRC) calls the "next best solution." More often than not, this will result in one employee's right prevailing over another. Your duty is to minimize the damage. "There may still be a duty to accommodate the other claim to some degree," notes the OHRC.

To find the next best solution, you must consider the extent of the interference and who needs the accommodation more: Are Debbie's allergies a severe disorder or just a minor nuisance? Is incense burning integral to the ritual or can Rita pray without it?

Takeaway: The Need for an Organizational Process

Punch line: Don't improvise and try to come up with solutions on the fly. Instead, implement a process for reconciling competing human rights. Click here for a Model Policy and Process based on OHRC guidelines that can work in any part of the country.