

What's New in HR Law

THE ONTARIO HUMAN RIGHTS COMMISSION'S POLICY ON ABLEISM AND DISCRIMINATION BASED ON DISABILITY PROVIDES HELPFUL GUIDELINES FOR EMPLOYERS IN THE EVER-EVOLVING AREA OF HUMAN RIGHTS LAW

Introduction

In Ontario, employees are afforded the right to be free from discrimination and harassment on the basis of “disability” by virtue of section 5 of the Ontario *Human Rights Code* (the “Code”).

The Ontario Human Rights Commission (the “Commission”) recently released its *Policy on ableism and discrimination based on disability*. The new policy replaces the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate*, which was released in 2001. Both policies are available on the [Commission’s website](#).

The new policy recognizes significant developments that have occurred in the case law, legislation, international human rights standards, and social science research, and aims to provide clear guidance on how to assess, handle and resolve human rights matters related to disability.

What is Disability?

The new policy emphasizes the evolving nature of the legal definition of disability and the fact that conditions that were previously disputed as disabilities have come to be accepted as disabilities within the meaning of the *Code*. For example, the Human Rights Tribunal of Ontario has recognized multiple chemical sensitivities and food-related anaphylaxis as disabilities that require accommodation.

The new policy also stresses that the definition of disability should be interpreted in broad terms. For example, the new policy expressly notes that anticipated disabilities are protected by the *Code*. This protection would apply if a person did not currently have a disability, but was treated adversely because of a perception that he or she would develop a disability and/or require accommodation in the future.

What is Ableism?

The new policy also outlines the history of discrimination based on disability in Canada and its continuing effects as a result of societal structures and negative attitudes premised upon ableism. According to the new policy, ableism “refers to attitudes in society that devalue and limit the potential of

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persons with disabilities”. For example, the policy notes that people with disabilities may be stereotyped as “child-like” or perceived to be a “burden” on society. Employers must take steps to ensure that these types of stereotypes, stigma, and negative attitudes do not result in discriminatory treatment of people with disabilities in the workplace.

Further Guidance

In addition to the concepts outlined above, the new policy provides guidance related to a number of issues that are significant to employers, such as what medical information can be requested during the accommodation process and how the needs of others in the workplace may be considered in establishing undue hardship.

The new policy expressly states that employers must be alert to the possibility that a person may require accommodation, even if he or she has not made a request for accommodation. The policy points to the fact that the nature of certain disabilities may leave people unable to identify that they have a disability or need for accommodation. In such circumstances, where an employee has displayed performance or behavioural issues, the new policy suggests that an employer inquire if there are any issues that may be impacting an employee’s conduct before taking corrective action.

Conclusion

The Commission’s new policy provides guidance related to many significant human rights issues, while identifying that there are several areas of human rights law that remain unsettled. While the Commission’s policies are not legally binding, they may be referred to by human rights adjudicators as a helpful reminder of the obligations of employers under the *Code*.

In the ever-evolving area of human rights law, employers must be attuned to important changes, such as changes in the definition of disability and the duty to accommodate. Employers should be mindful of possible human rights issues in the workplace, and contact legal counsel for clarification when in doubt.

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