

## Responding to Human Rights Harassment Complaints: Guidelines from the HRTO

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You are an employer that has just received a harassment complaint from an employee. The complaint is against a valued employee who you do not want to lose. But you are also worried that you will be faced with an expensive human rights complaint or lawsuit. What do you do?

### ***Szyluk v. United Food Commercial Workers, Local 1000A (June 23, 2009)***

Mr. Gure, a union steward made derogatory remarks about native employees at a union meeting. Ms. Szyluk, another union steward immediately left the room and complained to the union. The union discussed the matter with Mr. Gure, who later apologized for his remarks and refrained from making similar remarks thereafter.

Ms. Szyluk was not satisfied. She escalated her complaint to the union vice president, and advised that she had taped the remarks. The union conducted an investigation, and concluded that no further remedial action was necessary because the remarks were made in a light-hearted manner, were not intended to cause offence, and Mr. Gure had already apologized and refrained from making further remarks.

The union had a harassment policy which prohibited discrimination or harassment on the basis of grounds protected under the *Human Rights Code*. The policy also provided that complaints would be investigated, those involved would be interviewed, and a resolution sought. However, the union did not require all stewards to undergo training on the Code or the policy.

Ms. Szyluk filed a human rights application at the Human Rights Tribunal of Ontario. The Tribunal awarded damages to Ms. Szyluk on the basis that the union's failure to sufficiently investigate and resolve the complaint, and failure to train staff and union stewards on the Code and the policy, constituted unlawful discrimination under the Code. The Tribunal also ordered the union to train staff and stewards on the Code and the policy.

### **Why the Investigation and Resolution were Insufficient**

The Tribunal said it would consider the following when deciding if a response to harassment allegations was sufficient:

- (i) The response must be prompt;
- (ii) There must be corporate awareness that the conduct complained of is prohibited;
- (iii) The matter must be dealt with seriously;
- (iv) There must be a complaint mechanism in place;
- (v) The respondent must act so as to provide a healthy environment; and
- (vi) The respondent must communicate its actions to the complainant.

The Tribunal found that the union failed to meet condition (i) when it waited until Ms. Szyluk produced a tape recording before initiating an investigation.

The union failed to meet conditions (ii) and (iii) because it concluded that the comments were light-hearted and acceptable, and because the union had not required its staff and stewards to receive training on the Code and the policy.

Finally, the union failed to meet condition (v) because it dismissed the complaint as resolved without implementing further training or other measures to provide a healthy environment.

## Lessons for Employers

To minimize liability, and to promote and ensure compliance with the Code generally, employers should:

- Investigate complaints promptly after they are made;
- ensure that all employees are aware of relevant human rights and harassment policies;
- treat all complaints seriously and investigate them pursuant to the relevant policies; and
- have a procedure in place that:
  - advises employees to whom they can make complaints;
  - includes an investigation mechanism;
  - includes a process for deciding how complaints will be resolved; and
  - advises the complainant what action has been taken to resolve the complaint.

Harassment complaints can happen in the best of workplaces. You should not delay your response in hopes that the situation will resolve itself. This will usually only heighten the risk of legal liability. A prompt and decisive response to a complaint will often help defuse the situation and reduce whatever legal risks may be present.

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