

EMPLOYERS' ALERT

July, 2006

Changes to Ontario's Human Rights System are Proposed

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Bill 107, the *Human Rights Code Amendment Act 2006*, was recently introduced by the Attorney General. If it is passed, it will mark a dramatic departure from how human rights complaints are dealt with in the province.

At the moment, human rights complaints are filed with the Human Rights Commission of Ontario, and are investigated by Commission staff. If the evidence collected during the investigation warrants it, the complaint is referred to the Human Rights Tribunal of Ontario for adjudication. Roughly 5% of complaints filed end up here, with the rest being withdrawn, settled or disposed of along the way.

While Bill 107 lacks detail as to how the new system will work, it is clear that the role of the Commission as administrator and investigator of complaints will be eliminated. Instead, the Commission's mandate will be geared towards public education.

Under the "direct access model" aggrieved individuals will file their complaints with the Tribunal itself. For the moment, it is not clear whether the Tribunal will conduct hearings into all complaints, or whether there will be some filtering method adopted to separate complaints with merit, and those that appear frivolous. We suspect that there will be some method of assessing which types of complaints are deserving of full hearings, and which should be dealt with another way.

Again, while the Bill is sketchy on details, it appears that there will be some form of financial or legal support available to complainants to advance their complaints.

Two of the changes are particularly significant to employers. First, the language of the Bill anticipates that employees **will also** be able to enforce their rights through the courts. Traditionally, human rights litigation has happened exclusively at the Tribunal.

Second, the Bill also removes limitations on damages. This is particularly noteworthy since damages for human rights breaches have tended to be very modest.

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Are you aware that:

- On June 15, 2006, HRSDC announced that regulations governing the eligibility for compassionate care benefits would be expanded immediately.
- Introduced in January, 2004, the original benefit only included those caring for a parent, child or spouse at risk of dying within 26 weeks.
- The revised eligibility criteria now includes those who provide care to a sibling, grandparent, grandchild, in-law, uncle, niece, nephew, foster-parent, guardian, or a gravely ill person who considers the claimant to be "like a family member."

What this means for employers:

- **More time and expense at adjudication**

If the lengthy investigation stage is omitted, employers may find that they are actually at the Tribunal more frequently defending claims, and the legal costs will be higher than those relating to an investigation or a mediation.

- **Complaints go quicker**

One promise of the Bill is that the complaints process, which has at best, gone at a snail's pace, will go more quickly. If that does occur, not only can employers expect to be at the Tribunal more frequently, but also much closer to the time in which the alleged breach took place. Like it or not, the delays in the system have benefited employers because employees often move on to other employment by the time the complaint has reached the Tribunal, or they simply lose interest. In the new system, this may not be the case, and employers may be facing a much more engaged complainant.

- **Damage awards will increase**

This is simply a consequence of existing caps – ie the \$10,000 limit on damages for mental anguish – being removed.

- **More claims decided by the courts**

This is a consequence of the statutory changes, but also a trend in the current employment law case law for judges to consider human rights breaches as part of their awards in wrongful dismissal cases, and tort cases involving employment.

The Bill may be viewed online at:

http://www.ontla.on.ca/documents/Bills/38_Parliament/session2/b107_e.htm

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