

60 Minutes with RT Temporary Foreign Workers and the Law April 5, 12 noon EDT Last Chance to Register

As of April 1, 2011 changes to the Temporary Foreign Worker Program require employers to become compliant with a series of obligations and conditions. Failure to do so could affect your ability to retain and recruit foreign workers in the future.

Join employment lawyer Janice Rubin and immigration lawyer Peter Rekai of Rekai LLP for an informative hour-long teleseminar that will keep you up-to-date on the changes to the Temporary Foreign Worker Program and its implications for employers from both an immigration and employment law perspective.

Our interactive discussion will include:

- The difference between persons working in Canada and those on a business visit;
- Background on the Temporary Foreign Worker Program;
- A review of the changes to the Program and why they matter to employers;
- Advice on how to ensure compliance with the changes; and
- Key steps for managing issues relating to foreign workers.

To register please visit our [website](#).

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

You may recall that, in February of last year, we wrote about a case, *Saadi v. Audmax Inc.* (2009 HRTO 1627), which involved a Canadian-born Muslim female who claimed that her employer had discriminated against her based on her ancestry and ethnic origin when they enforced an office dress code and microwave policy. Last year, the Ontario Human Rights Tribunal agreed that Ms. Saadi had been discriminated against, however Audmax recently appealed to the Ontario Divisional Court and the Court overturned the Tribunal's decision.

Human Rights and Workplace Policies: An Update on *Saadi v. Audmax*

With respect to the dress code, you'll recall that Audmax had verbally reprimanded Ms. Saadi concerning her work attire. During a disciplinary meeting, Audmax told her that her clothing was inappropriate, citing the dress code which explicitly required the wearing of "business attire" at all times. Ms. Saadi complained that the company had discriminated against her on the basis of her race and religion when it disciplined her for violating the dress code policy, and the Tribunal agreed.

However, upon review, the Court held that it was not clear that the requirement that an employee wear "business attire" was in conflict with a religious requirement to dress modestly. The Court held that the Tribunal should have considered whether the dress code or its enforcement conflicted with what Ms. Saadi was required to wear as part of her religion.

As an example, although Audmax did not object to Ms. Saadi wearing a hijab to work for the first six weeks of her employment, they took issue with a non-traditional style of hijab that Ms. Saadi wore on one occasion. Audmax felt that the style of hijab, which was described as a 'cap', was unprofessional and raised their concern with Ms. Saadi. The Tribunal found that Ms. Saadi's right to choose the form of hijab she wore was protected and therefore found that she had experienced discrimination. However, the Court held that there was nothing about Ms. Saadi's religion that required her to wear that particular style of hijab. If it was possible for her to wear a hijab that was consistent

with both the dress code and her religion – as she had for the first six weeks of her employment – then Ms. Saadi's sense of style, not her religious rights, were affected.

The microwave policy restricted reheating foods with a strong odour or foods that could affect people with seafood or peanut allergies. The Court pointed out that, on the day that Ms. Saadi was disciplined for heating food which left a strong smell, she was not heating food that was tied to her ethnic origin or ancestry. In fact, she was microwaving food that had been given to her by a co-worker who was originally from Tunisia. Therefore, the Court held that the enforcement of the microwave policy was not connected to Ms. Saadi's ethnic origin or ancestry. Specifically, the Court could not understand how the ethnicity and ancestral rights of a Bengali-Canadian Muslim were adversely affected by being prevented from reheating somebody else's Tunisian food.

In the end, the Tribunal's decision was set aside and the case was remitted back to the Tribunal for a new hearing before a different arbitrator.

What does this mean for employers?

1. **Encourage employees to provide feedback on issues that they may have in complying with a policy.**

Providing employees with this opportunity will allow them to identify early on if they feel that the policy unfairly discriminates

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against them in some way.

2. If an employee is in violation of a workplace policy, ask if there is a reason.

The answer to this question may provide insight into any accommodation that an employee may require.

3. Employers may have an ability to challenge an employee's statement that a particular policy violates their human rights.

Employees are entitled to "reasonable" accommodation. If there is a way to comply with the policy which does not infringe on the employee's rights, then the employer may be able to hold the employee to the policy, and not indulge the employee's "preference". However, in this regard, employers should tread carefully to avoid legal liability, and may wish to seek the guidance of employment counsel before taking a firm position. ●

Bill 160: Amendments to the OHSA

On March 3, 2011, a new Ontario Bill (160) was introduced and is designed to amend the existing Occupational Health and Safety Act ("OHSA"). The purpose of the Bill is to transfer responsibility for health and safety certification and training from the WSIB to the Ministry of Labour. Although the Bill has only just been through its 1st reading and will likely go through significant changes if it does become law, we have outlined some of the changes that it proposes below:

- Ministry of Labour can establish standards for OHSA training programs.
- Ministry of Labour can approve programs that meet the established training standards.
- Ministry of Labour can establish standards that a person must meet in order to become an "approved training provider".
- Ministry of Labour can establish training and certification standards for members of the Joint Health and Safety Committee ("JHSC").
- Ministry of Labour can require that that JHSC representatives have received the requisite training.
- Co-chairs of the JHSC will be able to make recommendations to the employer even if they don't reach consensus on their recommendations.
- Director of the OHSA will be able to establish written policies regarding the implementation, administration and enforcement of the OHSA.

As can be seen, many of these changes will require Ministry of Labour action before we will truly know the implications for Ontario employers. We will continue to watch Bill 160 and keep you updated as it progresses through the legislative process.

UPCOMING EVENTS

The third edition of For Better or For Worse: A Practical Guide to Canadian Employment Law, co-authored by **Justice Randall Scott Echlin** and **Christine Thomlinson** and published by Canada Law Book, is now available. [Click here to order your copy.](#)

Janice Rubin will be a guest on Ontario Today on CBC Radio One on April 6 at 12 noon EDT. She will be discussing privacy and the workplace.

Christine will be co-hosting a Canadian HR Reporter webinar entitled "Hiring and Firing Foreign Workers" on May 3.

Janice will be leading a webinar for the Certified General Accountants entitled "Hiring and Firing Employees: How to avoid the most common pitfalls" on May 17.

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