

# Alberta, Canada Human Rights Tribunal Reminds Employees They Have Duties In The Workplace Accommodation Process



In *Zupcic v Saputo Foods Limited*, 2022 AHRC 13 (*Saputo*), the Human Rights Tribunal of Alberta (Tribunal) dismissed an employee's complaint that that she was discriminated against in employment on the ground of her physical disability in violation of section 7 of the *Alberta Human Rights Act* (AHRA) when the employer terminated her employment. In doing so, the Tribunal emphasized that the duty to accommodate is not exclusively that of the employer; employees (and their unions, if applicable) seeking accommodation have their own duty to inform the employer of facts relevant to their accommodation need. The Tribunal also stressed that when an employer proposes a reasonable accommodation, the employee has a responsibility to cooperate with its implementation.

## Background

The employee operated a machine that fills containers with liquid product from July 2003 until the termination of her employment in November 2015. Her job required her to regularly reach above her shoulders to pull and lift the filled containers, which weighed between 20 and 50 pounds. In 2015, the employee was diagnosed with a repetitive strain injury to her right shoulder.

The employee alleged a violation of section 7 of the AHRA, which prohibits discrimination "with regard to employment or any term or condition of employment" because of a person's "physical disability." The employee argued that the employer failed to accommodate her injury because when the employer provided modified work commencing in April 2015, it exceeded her restrictions and caused pain, and disability was a factor in the decision to terminate.

In response, the employer argued that it assigned modified duties based on the medical evidence provided and, if the employee felt the modified duties exceeded her restrictions, she did not bring this to its attention. The employer stated that it terminated employment because the employee did not cooperate in the accommodation process when she refused to sign the return to work (RTW) form setting out her accommodations and restrictions.

## **Tribunal's Decision**

The Tribunal dismissed the discrimination complaint. In doing so, it considered the following issues:

*Issue #1: Did the employer reasonably accommodate the employee between April and November 2015'*

Based on the evidence provided, the Tribunal concluded that the employer reasonably accommodated the employee. The medical records did not demonstrate that the employee's modified duties exceeded her medical restrictions, and the employee did not make the employer aware that she needed further accommodation because her modified duties exceeded her restrictions. The Tribunal stated:

*While an employer cannot ignore an employee's suffering or sit idly by until an employee makes a specific accommodation request, the duty to accommodate does not fall solely and entirely on the employer's shoulders either. Employees seeking accommodation (and in some cases their union) play a role in bringing the relevant facts relating to the need for accommodation to the employer's attention.*

*Issue #2: Was the employee's disability a factor in her termination'*

The Tribunal concluded that the employee's disability was a factor in her dismissal because there was a connection between her shoulder injury and the termination, but her employment was terminated because she refused to sign the RTW offer (i.e., she refused because she believed the accommodation set out in the offer was unreasonable because it exceeded her medical restrictions and did not properly accommodate her shoulder injury).

*Issue #3: Was the employer's decision to terminate the employee's employment justified'*

In considering this issue, the Tribunal noted, "Once an employer has proposed a reasonable accommodation, the employee has a responsibility to facilitate its implementation." The Tribunal concluded that the RTW offer was a reasonable accommodation and that, by refusing to accept it, the employee failed to cooperate in its implementation. Accordingly, the employer had no choice but to terminate employment.

## **Bottom Line for Employers**

*Saputo* reminds employers that they are not the only party with duties in the accommodation process. While employers must make an offer of accommodation when circumstances require it, employees also have duties relating to their accommodation. Employees must actively make their employers aware of their accommodation needs based on their restrictions, supported by medical evidence, and cooperate in implementing reasonable accommodation offers. Employees who fail to satisfy these obligations will find it difficult to succeed should they claim unlawful discrimination when their employment is terminated, as their employers will be perceived as having satisfied the duty to accommodate.

Source: Littler

Written By: Rhonda B. Levy , George Vassos and Barry Kuretzky