

Compliance Briefing: Is Religion an Excuse Not to Wear PPE?



Under current public health guidelines, all workers will have to wear respiratory masks while they're in the workplace. Period. There are no exceptions. As OHS director, you need to ensure that workers who deliberately refuse to wear masks are dealt with swiftly and effectively including, where necessary, via the imposition of discipline. But this otherwise black-and-white mandate turns gray when the refusal to use PPE is due to the worker's religion. For example, workers of religions requiring beards might refuse to wear tight-fitting masks if it means they have to shave. Human rights law, 101: Employers must accommodate workers' religious beliefs to the point of undue hardship. The question: Is exempting a worker from a mandatory mask rule in the post COVID-19 workplace a reasonable accommodation or undue hardship? Although no court case has ever addressed this specific issue, there have been cases pitting a worker's religious accommodation rights against an employer's obligation to ensure all workers use the PPE required by OHS laws. Here are 2 of the leading cases.

Spoiler Alert: Safety takes precedence over religion.

Case 1: Safety Comes First, Says Canadian Supreme Court

SITUATION

A railway company adopted a safety rule requiring all workers to wear a hardhat when working in a coach yard. An electrician refused to obey the rule on religious grounds. He couldn't wear the hardhat over his turban; and removing the turban was against his Sikh religion. The railway fired the electrician for disobeying the rule and he sued for religious discrimination. The railway should have made an exception to the hardhat policy to accommodate his religion, he contended.

DECISION

The Canadian Supreme Court found the railroad not liable for religious discrimination.

EXPLANATION

The Court acknowledged that the hardhat policy, although it wasn't intended to, had the effect of discriminating against the worker's religion. But, it pointed out, a policy that discriminates against religion can still be legal if it's a "Bona Fide Occupational Requirement" (BFOR), that is, the policy is "reasonably necessary to ensure a legitimate purpose." Protecting safety is a legitimate purpose. Making workers wear a hardhat was necessary to accomplish that purpose and there were no reasonable alternatives that would have been less intrusive to the worker, the Court reasoned. So, the railway wasn't guilty of religious discrimination.

Canadian National Railway Co. v. Bhinder, [1985] 2 S.C.J. No. 75.

Case 2: Safety Comes First, Says BC Human Rights Tribunal

SITUATION

A case of even more direct relevance because it involves a respirator mask was brought by a worker acting as recaust operator responsible for shutting down the main area of a BC pulp mill in case of a poisonous gas leak. The mill wanted him to wear a self-contained breathing apparatus to ensure he wouldn't pass out and remain capable of performing this critical function. The mill ordered him to shave his beard to effectuate an effective seal around the mouth and nose. The operator refused to shave on religious (Sikh) grounds. After getting terminated for his disobedience, he sued the mill for religious discrimination and failure to accommodate.

DECISION

The BC Human Rights Tribunal tossed the operator's case.

EXPLANATION

An employer doesn't have to accommodate a worker's religion if it would put other workers in danger, the Tribunal reasoned. The operator claimed that the mill should have excused him from shaving and assigned the shutdown function to somebody else. But the only other person who could have done it was a less experienced utilityman. This would have compromised the effectiveness of the mill's emergency gas leak response plan and endangered others at the plant. Such an accommodation would have imposed an undue hardship on the mill, said the Tribunal.

Pannu v. Skeena Cellulose Inc., [2000] B.C.H.R.T.D. No. 56.

4 TAKEWAYS

1. Under OHS laws, you must ensure that workers using tight-fitting respirators whose effectiveness depends on an effective seal of the mouth and nose be clean-shaven.
2. Caselaw makes it clear that you don't have to make exemptions to this rule to accommodate workers' religious belief, provided that such an exemption would endanger the safety of others at the workplace.
3. 3. Allowing a worker not to wear any mask would, in fact, violate current public health COVID-19 infection control guidelines.
4. HOWEVER, you also need to consider whether there are other ways you could accommodate the worker. Possibilities:
 - Letting him work from home;
 - Letting him wear a respirator which doesn't require a tight seal but still provides effective protection against COVID-19 exposure for a person performing that job under current public health care guidelines.