

Did Employer Properly Handle Worker's Scent Sensitivity?



SITUATION

A new worker informs her boss that she has a disability'perfumes, chemicals and other scents make her ill. In fact, she's sensitive to scents even others can't detect and needs a completely fragrance-free environment. But she doesn't tell her boss the extent of her sensitivity. The boss explains that the company has a fragrance-free policy. During training, the worker tells a supervisor she feels ill because of another trainee's perfume. The supervisor adds a fan to the room and directs it toward the worker. The supervisor asks if the fan helps but the worker doesn't reply. The next day, the worker again complains that someone's wearing perfume. The supervisor arranges for her to shadow a senior staffer outside the training room, checking first for any detectable scent near the senior staffer. The worker claims she smells perfume on the senior staffer and, after beginning to feel sick, tells the supervisor she can't continue working there, leaves and never returns.

QUESTION

Did the employer properly handle the new worker's scent sensitivity'

- A. No, because it failed to accommodate her disability.
- B. No, because she properly exercised her right to refuse

unsafe work.

C. Yes, because a worker can't refuse work based on a condition that's dangerous only to her.

D. Yes, because she failed to cooperate with the employer's accommodation efforts.

ANSWER

D. The worker didn't tell the employer its accommodations weren't working and generally failed to cooperate with accommodation efforts.

An employer must make reasonable efforts to accommodate a worker's disability unless doing so would be an undue hardship. And the worker has an obligation to cooperate with such accommodation efforts, such as by providing enough information to allow the employer to create successful accommodations.

This hypothetical is based on an Ontario Human Rights Tribunal decision in which a new worker claimed discrimination based on her hypersensitivity to scents. During the interview process and initial training, she informed the employer of her hypersensitivity to scents but didn't reveal she couldn't tolerate any scent—even those undetectable to others. Although the worker's supervisor tried improving ventilation with a fan and moved her to a new location, she failed to indicate that these efforts weren't working—even when asked—and that she needed an entirely scent-free environment. Thus, the tribunal determined that the employer didn't discriminate against the worker because she failed to cooperate with its attempts to accommodate her disability. (To train workers on scent sensitivities, see '[Safety Talk on No Scents Policy](#).')

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because the employer *did* attempt to accommodate the

worker's disability by adding a fan to improve ventilation and removing the worker from the training room to shadow a senior staffer. The worker never told the supervisor that these efforts weren't sufficient, but simply refused to work. Thus, she wasn't fulfilling her duty to cooperate with the employer in achieving successful accommodations.

B is wrong because the worker didn't properly exercise her right to refuse unsafe work. Employers must investigate a worker's allegations about unsafe conditions and if the claims are justified, take steps to address the conditions and protect the worker. Here, the employer tried to address her claim that the work conditions were unsafe for her due to her scent sensitivity. If the worker believed that the employer hadn't done enough to address the unsafe conditions, she should've followed the work refusal process spelled out in the OHS law, such as notifying the government agency in charge of enforcing the workplace safety laws, which would then have sent an inspector to investigate her continuing work refusal. Instead, she just walked out and never returned.

C is wrong because although most unsafe work refusals are based on conditions that would be unsafe for any worker, such as broken PPE or an unguarded pinchpoint, workers can justifiably refuse to work in conditions that are unsafe just for them. For example, a tall worker was justified in refusing to drive an armoured vehicle that was too small for him to safely manoeuvre in the cab and operate the controls [*Garda du Canada Inc. and Syndicat National des Convoyeurs de Fonds*, [2005] C.L.C.A.O.D. No. 39, Sept. 14, 2005] .

Insider Says: For answers to commonly asked questions about workers' right to refuse unsafe work, see '[Work Refusals: Answers to 10 Frequently Asked Questions](#).' And go to the [Work Refusal Compliance Centre](#) for more information on this topic.

SHOW YOUR LAWYER

Kovios v. Inteleservices Canada, Inc., 2012 HRT0 1570
(CanLII), Aug. 14, 2012