

Did PPE Policy Discriminate Against Electrician with Foot Disability?



SITUATION

An electrician employed by a city in BC has a disability affecting his feet that requires him to wear custom-made orthopaedic footwear. The city implements a new PPE policy that complies with OHS law and requires workers who are at risk of electrical shock, such as electricians, to wear CSA-certified footwear with dielectric soles and other protective features. But the electrician's custom footwear isn't CSA-certified. While seeking a variance from the CSA certification requirement and investigating alternative solutions, the city temporarily changes the electrician's work duties to minimize his exposure to electrical shock risks. It also assigns a co-worker to assist him so he isn't at risk of crush injuries due to heavy lifting. Eventually, the city *does* get the variance for his custom-made footwear. But he still claims the new PPE policy discriminates against him based on disability.

QUESTION

Does the electrician have a valid claim for discrimination'

- A. Yes, because the city should've provided custom footwear free of charge that met CSA certification requirements.
- B. Yes, because changing his duties and having a co-worker assist him violated his privacy by highlighting his disability to others.
- C. No, because the employer reasonably accommodated his disability.
- D. No, because an employer can't restrict a worker's right to select his personal footwear.

ANSWER

C. The electrician's discrimination claim isn't valid because the city's PPE policy was necessary to fulfill its OHS obligations, and temporarily changing his duties and assigning a co-worker to assist were reasonable accommodations for his disability.

EXPLANATION

This scenario is based on a BC human rights tribunal decision that an electrician with a foot disability had no likelihood of succeeding with a discrimination claim against the city employing him. The workplace involved the risk of electrical shock and crush injuries, so safety footwear was necessary to protect workers. A new OHS-compliant PPE policy required workers exposed to electrical hazards, such as the electrician, to wear footwear that had certain protective features and was CSA certified. The tribunal explained that wearing footwear that complied with this policy was a bona fide occupational requirement. But the electrician's custom footwear required for his disability wasn't CSA certified. However, the city's changing the electrician's duties, assigning a co-worker to assist him and ultimately getting a variance from the certification requirements were reasonable accommodations for his disability and still addressed the safety hazards. So the tribunal dismissed the discrimination claim.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because OHS laws don't always require employers to pay for or provide PPE to workers. In several jurisdictions such as BC, MB and QC, OHS law specifies who must pay for PPE and it usually depends on whether the employer is required to provide workers with PPE or simply must make sure workers *use* PPE. Most other jurisdictions, however, don't specify who must pay for PPE and it's left to negotiation in collective agreements between the union and employer. This scenario is set in BC. And under BC's OHS law, workers must pay for appropriate footwear including safety footwear. So in this case, the city wasn't obligated to pay for the electrician's safety footwear.

B is wrong because although the modification of duties and assignment of a co-worker to assist the electrician might indicate that he has a disability to co-workers, those actions were necessary to accommodate his disability and comply with OHS laws. When accommodating a disabled worker, an employer must still respect that worker's privacy and not disclose unnecessary medical information to individuals who don't need it. For example, an employer may tell a supervisor that a worker needs extra bathroom breaks due to a medical condition but may not identify the condition. Here, the steps the city took to accommodate the electrician's foot disability were reasonable and necessary to protect his feet from injury. But there's no indication in the facts that the city gave the co-worker helping the electrician any specific medical information regarding his disability or even revealed that he was disabled at all.

D is wrong because an employer *can* impose restrictions on what workers wear if the restrictions are necessary to protect the workers from a safety hazard. Employers have a general duty under the OHS laws to protect workers from safety hazards and ensure they use PPE when necessary. To fulfill those duties, employers may both ban workers from wearing certain items and require them to wear others. For instance, courts and arbitrators have upheld employment policies that restricted workers' rights to wear jewellery if it could get entangled in machinery. Here, the electrician faced exposure to electrical shock if the soles of his footwear weren't dielectric and a risk of crush injury if his feet weren't adequately protected when he engaged in heavy lifting. Therefore, the employer's PPE policy mandating specific footwear characteristics was reasonably necessary to protect him from these hazards and comply with the

OHS law.

Insider Says: For more information about safety footwear, see '[PPE: Safety Footwear Requirements Under OHS Laws.](#)'

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[*Ekins v. City of Vancouver*](#), [2016] BCHRT 157 (CanLII), Oct. 13, 2016