Discrimination And Retaliation

Discrimination And Retaliation: Employee Terminated After Complaining About Inappropriate Comments On Her Appearance

In *The Sales Associate v. Aurora Biomed Inc. and others, 2021 BCHRT 5* the British Columbia Human Rights Tribunal ruled in favour of a Complainant who had been discriminated against on the basis of sex. This case provides important lessons for employers with regard to the importance of how subtle comments can constitute discrimination in the workplace.

Facts

A sales associate brought a complaint of discrimination and retaliation against her former employer of 13 months.

The sales associate's complaint set out that the company's founder made comments about her appearance, calling her a 'beautiful lady' or 'beautiful girl', and further that she was told to 'smile more'.

The sales associate brought her issues to the attention of her Supervisor, who was the Respondent's daughter. In a meeting with the Respondent and her Supervisor, the sales associate's complaints were discussed, and she was asked to sign a document stating she had not been sexually harassed. The next

day, the sales associate received a call from her Supervisor who told her she was fired.

Decision of the B.C Human Rights Tribunal

Discrimination during Employment

The Tribunal found that the Respondent had discriminated against the sales associate in her employment when he occasionally called her ‘beautiful girl’ or ‘beautiful lady’ and told her to ‘smile more’. The Tribunal concluded that these comments adversely impacted the sales associate in her employment because of her sex. It concluded that the comments were made to make the sales associate feel degraded in connection with her work. The Tribunal said the following:

116‘ ‘Society continues to impose expectations on women to be pleasing to the people around them, particularly men. Their appearance and outward manner are important components of that. While telling a woman to smile may feel like harmless banter, it imposes a burden on her to please people in a way that is disconnected from the tasks of the job, and the skills she brings to it. Calling her ‘beautiful’ or commenting on her appearance reinforces the message that her value is in how she is seen by others and not in the strength of her ideas, her skills, and her contributions to the work. And finally, calling a grown woman a ‘girl’ in the context of her employment infantilizes and patronizes her. It signals that she is not an adult worthy of being taken seriously in their profession. Most often, these are not burdens or messages shared with men. The impact of this type of behaviour is to subtly reinforce gendered power hierarchies in a workplace and, in doing so, to deny women equal access to that space.’

Discrimination in Termination

While the Respondents argued that the sales associate was terminated purely because of her poor sales performance, the

Tribunal concluded that sex was a factor in her termination based on the timing and circumstances which led to it. Remember that when a termination of employment is alleged to be discriminatory, the discrimination need not be the only or even primary factor in the termination. If a Tribunal finds that the termination was in any way influenced by discriminatory practice, the employer will be found to have violated the governing Human Rights legislation.

In the *Aurora Biomed* case, not only was there insufficient evidence to show that they intended to terminate her employment prior to the meeting with the Respondent and Supervisor, but terminating the employee immediately after she brought forth her complaints of sexual harassment was viewed as evidence of the company's intention to protect the Respondent from such complaints.

Retaliation

The Complainant alleged that the company terminated her in retaliation to her complaints, which is a further violation of the BC *Human Rights Code*.

The Tribunal concluded that this was in fact retaliation because:

1. The Respondents were aware that the sales associate might make a complaint of sexual harassment;
2. The Respondents terminated her employment; and
3. There was a sufficient connection between the complaint and the termination.

The Tribunal had already found that the Respondents were motivated to terminate the sales associate's employment because she complained about sexual harassment. They sought to protect their own interest by removing her from the workplace.

Aurora was ordered to pay the sales associate $20,000 and make an appropriate anti-discrimination and harassment policy.

Lessons for Employers

This case provides a couple of important lessons for employers. First, subtle comments can constitute discrimination on the basis of sex. There is no defined line when it comes to the appropriateness of comments about someone's appearance. It may be best to avoid making any comments that can make someone uncomfortable.

Second, employers must ensure that their company has a comprehensive discrimination and harassment policy. Employers and employees must also be aware of the contents of those policies. In this case, the Tribunal criticized the employer for not having specific knowledge of the Human Rights Tribunal, and the employer's ignorance of the *Human Rights Code* was no defence to their actions. Employers must be aware of their obligations under the *Code* and must ensure employees are not discriminated against on the basis of any protected ground.

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