

HILL ADVISORY NEWS

“Working with the human side of business”



Doctor who Fired Receptionist After her Pregnancy has Burden of Proving Non-discrimination



- * Aileen began working as a receptionist for Dr. Mazawi in a small medical clinic. She was told this was a *‘fill in position’* for another receptionist currently on maternity leave but that it could possibly lead to a permanent position. Aileen’s duties included booking appointments, telephone answering, opening mail, preparing patients’ charts, ordering supplies and billing of patients. Dr. Mazawi shared his office with an associate, Dr. Cooper, who currently had his own receptionist.
- * A month after Aileen was hired, another associate joined the office. Aileen assisted him for 6 months until his own receptionist was hired. Shortly thereafter, Dr. Mazawi informed Aileen that his former receptionist would not be returning from maternity leave. As a result, Aileen assumed she was now a permanent employee. A few weeks later Dr. Mazawi and his 2 associates decided to enter into a new agreement whereby there would be an equal sharing of office expenses involving receptionist salaries and office rent.
- * A few months later, Aileen who was pregnant herself, suffered complications. Her physician advised her to take sick leave until she gave birth to her baby in 4 months’ time. When she informed Dr. Mazawi, he became angry and told her that it left him *‘in a very bad position.’* He told her while she was away, Dr. Cooper’s receptionist would cover for both doctors. After her baby was born, Aileen called Dr. Mazawi and told him she would be returning to work in 6 months.
- * A few months later, the 3 physicians decided they would return to their previous arrangement where each paid their own expenses including their receptionist salaries. When Aileen called Dr. Mazawi to arrange for her return to work, he advised her that with the new arrangement there would be no need for an office manager and her services were no longer required. Aileen argued that she was unaware of her new position of office manager and that her previous duties had been changed. Dr. Mazawi indicated he had given her a document entitled *‘Office Rules and Regulations’* which had outlined the role of office manager prior to her maternity leave. Aileen became upset and denied ever receiving the document.
- * Shortly thereafter, Aileen received a letter from Dr. Mazawi confirming her dismissal, along with a cheque for 2 weeks pay. *Aileen subsequently filed a complaint with the Saskatchewan Human Rights Commission alleging that Dr. Mazawi refused to continue her employment because of her pregnancy. A hearing followed*
- * Dr. Mazawi argued that Aileen’s position was eliminated because of the office staff reorganization. He stated he had advised Aileen of her new duties before she left for maternity leave but could not remember where or when it had occurred. He added he was not satisfied with Aileen’s performance and had caught her lying on a few occasions. He claimed she was lazy and did not do her job properly. Aileen denied ever having any supervisory duties over the other 2 receptionists and indicated her duties had remained the same since she was hired.
- * The Human Rights Tribunal determined the issue was *‘whether or not Aileen’s absence from work because of her pregnancy resulted in her termination.’* They stated the Human Rights Code shifted the *‘burden of proof’* to Dr. Mazawi to prove that the refusal to continue Aileen’s employment was not discriminatory. The Tribunal added that Dr. Mazawi must provide sufficient evidence that *‘Aileen’s duties changed from that of a receptionist to an office manager.’*
- * The Tribunal accepted Aileen’s testimony that she was never informed of her new title and duties. They stated Dr. Mazawi’s recollection of the events were *‘vague’* and *‘uncertain.’* They questioned why nobody was hired to replace Aileen to carry out the duties of office manager prior to her maternity leave. It was noted that while the new position may have been contemplated, it was never implemented. For these reasons, the Tribunal stated they did not accept Dr. Mazawi’s explanation and *therefore ‘his failure to allow Aileen to return to her job’* contravened the Human Rights Code.
- * *Aileen was subsequently awarded \$6,325 compensation for lost wages and \$2,000 for injury to her feelings, dignity and self-respect.*



The Building Blocks of an Investigation



- * One of the most important factors to a complete and thorough harassment investigation is the 'statement.' We refer to the statement as the foundation of the report because that is the first place (besides your notes) that you have recorded and presented the evidence of the case.
- * A properly written statement can do many things for an investigation. It provides a framework for the case in that a statement is the raw material of the case. Statements form a structure on which to base your questions for witnesses. They also point out questions or gaps of information that the investigator needs to fill before the end of the interview or investigation. A signed statement is what's left at the end of the interview process. The information contained in the statement is what you base your conclusions on for the case.
- * You would have a difficult time indeed bringing in a conclusion to a case of harassment without the evidence presented in the statements and the final report. There have been countless times that we have seen reports that attempt to make a conclusion based on a lack of evidence in the statements and the report. These conclusions are unfortunately the ones that are vulnerable to challenge.
- * In conducting training across the Country, we have learned that statement writing is an area where most harassment investigations need work. People seem to have trouble with taking information they have gathered and presenting it (in the statement and the report) in a clear and complete manner. Let me state it again, 'poor statements lead to poor reports.' If the evidence is presented in a poor way in the final report, that can lead to being unable to reach a conclusion based on evidence even though the investigator asked all the 'right' questions, and maybe even took 'perfect notes.' The evidence is just simply not there unless it is presented in a clear manner.
- * Have you had a witness tell you that s/he is surprised you were able to take their information and make it make sense? Are you able to read the final report and have all your questions answered and your conclusions make sense to your boss? Have you been asked to redo witness interviews and/or entire investigations? Does the witness ask for excessive changes in the statement? These are all signs that can help you assess your statement development process.
- * We do not believe that there is any perfect roadmap for writing a statement but we do have some tips for statement writing:
 1. Use a standard format (the same one every time.)
 2. Write the statement in first person present tense.
 3. Do not change the tense of the statement.
 4. Do not include your own thoughts in the witness statement.
 5. Use paragraphs to separate thoughts and incidents.
 6. Use formal names - *Never* first names.
 7. The statement is one big quote - so additional quotation marks are not needed.
 8. The presentation of evidence and conclusions is for the Report - not the statement.
- * At Hill Advisory we follow the same pattern to format statements. We do this because we believe that it keeps our process safe. We spend the majority of our time writing statements and final reports, and we understand the care and diligence required for the task. We encourage you to try this approach - we are absolutely certain doing so will enhance your investigation work.

*** From the desk of Dylan Hill, Vice President ***



Introducing 'Brand New' Training Programs

Building on our tradition of bringing Investigators updated information and advanced practical experience, we now offer the 'Level Three Investigation Program' and the 'Level Four Investigation Partnership.'

Level Three focuses on more in-depth work with statement and report writing - the foundations to any investigation.

Level Four combines an in-house Investigator with a Hill Advisory Investigator. Our Primary Investigator will work with your internal person to investigate cases that are filed within your company. This combination provides both a solid investigation of an actual internal case and an unprecedented learning experience for your Investigator. A recent client had this to say about Level Four: "Over-all it was very helpful having an experienced investigator working side by side." (J. Mah, Calgary, Alberta)

Be sure to check out attached details!

**** Limited seating still available for Investigation Levels One & Two (Jan 2005) ****
in Halifax NS contact sswain@hilladvisory.com before Nov 30th for info.



From all of us at Hill Advisory Services to you and your loved ones Seasons Greetings. Our wish is for you to have

'joy-filled days, peace-full hearts and abundance within your lives throughout the holidays and 2005'

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