

HILL ADVISORY NEWS

“Working with the human side of business”



Construction Worker Claims she was Laid off by her Employer Because she was 'female'



Employee files a 'human rights' complaint with the Manitoba Human Rights Commission and alleges that she was discriminated against on the basis of 'gender' in the course of employment. Specifically she alleges that the terms and conditions of her employment, her work assignment, dress requirements and the decision to lay her off was 'unreasonably' biased on 'gender' constituting differential treatment in employment. An adjudicator recently considered the following

- * Sandra worked as a sheet metal labourer for a construction company. Shortly after being hired, Sandra began experiencing problems with her employer. One day when she was scheduled to go on an out-of-town job, she received a telephone call from Ben, the manager (and owner's husband.) He said things had changed and informed her she could no longer go on the trip *'because she was a girl.'* He also indicated the wife of the man she would be going with objected to Sandra working with her husband. Sandra became very angry and had her boyfriend call the co-worker regarding his wife's concerns. The co-worker and his wife indicated they knew nothing about it.
- * Sandra then called Ben and left him a message. Another man returned her call pretending to be Ben and she heard laughing in the background. Ben eventually took the phone and said he was sorry about the out-of-town job changes and he would make it up to her. Shortly thereafter, Sandra noticed her working hours had been reduced.
- * On another occasion, she was working on a job and it got very hot outside. She decided to remove her sweater and T-shirt, and was left wearing a sports bra and construction overalls with a bib. Bonnie, the owner, immediately yelled for her to put her shirt on - which Sandra did. However, Sandra became upset as she felt Bonnie was rude and could have discussed this with her privately. *She also felt it was unfair as to her knowledge, the male employees were never told what to wear on the job.*
- * After only having worked at the construction company for a few weeks, Ben informed Sandra that she was *'to be laid off because of the cold weather.'*
- * This surprised Sandra since she was aware the company was advertising for more workers and there was currently lots of work available. Sandra immediately called Norm, a co-worker, who knew nothing about the lay-offs. 3 days later Ben again told her she was being laid off and began laughing. Sandra became very angry. She then contacted her previous employer and was rehired immediately. *Sandra subsequently filed a complaint with the Human Rights Commission claiming she had been discriminated against on the basis of 'gender' in the course of employment*
- * Following an investigation by the Manitoba Human Rights Commission, an adjudicator was appointed to hear and decide the complaint. *The employer (Bonnie) did not appear at the hearing nor was she represented.*
- * A Human Rights investigator testified the complaint and investigation report was previously served but there was no response from the employer. During the course of the investigation, the investigator also left 5 phone messages for the employer with no response.
- * Sandra testified she believed she had been singled out by the employer because *'she was the only woman in a male-dominated workforce and consequently was denied chances to work out of town with a male crew.'* Sandra stated it was also obvious to her *'the lay-off was because she was female'* and that she felt powerless to do anything about it. Sandra also claimed she never received her last pay cheque and her phone calls to the owner, Bonnie, had been ignored.

Continued (2)

- * Norm, Sandra's co-worker, testified that when he asked Bonnie about the lay-offs, she indicated he had nothing to worry about and Sandra was being laid off because it was inappropriate for her to be working with Bonnie's husband, Ben. Norm later asked Ben why Sandra was being laid off since there was lots of work. Ben became agitated and told Norm if he didn't like it and wanted to leave, he could do so. Norm decided to quit.
- * The adjudicator noted that under the Human Rights Code, Sandra need only show that "The allegation of 'gender' (sex) discrimination was one factor in the employer's conduct; it did not need to be the sole or overriding factor." She indicated she was satisfied the Commission had established such a case. She also stated "Sandra had testified in a simple straightforward manner her evidence was not contradicted and she had no reason to disbelieve it."
- * The adjudicator added the Code also 'provides that an employer is vicariously liable where there is a contravention of the code by an officer, employee, director or agent acting in the course of the employment or the scope of actual or apparent authority.' The employer was therefore vicariously liable for the actions of Ben.
- * The adjudicator stated the employer's actions therefore deprived Sandra of 'an economic opportunity based on a prohibited ground of discrimination, her sex and it was demeaning for Sandra to be treated in this fashion.' The adjudicator also indicated she was satisfied the evidence established there was no shortage of work and Sandra's sex was a factor in being laid off. She noted that "In the absence of any evidence or justification from the employer as to why Sandra was denied the opportunity to work with the out-of-town crew and was laid off I am bound to decide in favour of Sandra and find that the complaint is substantiated in this regard."
- * As a result of the employer's contravention of the Human Rights Code, the adjudicator subsequently awarded Sandra compensation for lost wages (\$824); injury to her dignity, feelings and self-respect (\$1,500); and although seldom awarded exemplary damages (\$750).
- * The adjudicator also ordered the employer to cease contravention of the Human Rights Code and refrain from treating female employees differently in the future in terms of work opportunity unless they are able to establish that such treatment is based on bona fide and reasonable requirements or qualifications for the employment or position.

** It is interesting to note that 'exemplary damages' which are seldom awarded were awarded in this case. The adjudicator noted that although 'exemplary damages' are extraordinary and in the nature of punishment for malice or recklessness she believed the evidence regarding the 'manner' in which the employee (Sandra) was denied the opportunity to work with the out-of-town male crew and the 'manner' in which she was laid off reflected malice or at the very least a 'recklessness' on the part of the employer. **

Sandra's evidence that Ben laughed when he told her she was laid off and the fact that he had someone impersonate him on the phone with her illustrates a wanton disregard for her dignity. The adjudicator noted it was challenging enough for a young woman to try and work in a non-traditional occupation and this attitude and deliberate behaviour on the part of the employer suggests an intent to denigrate and thereby merited a modest 'exemplary damage' award.

★ *Thanks* ★



"Keeping Your Employees Happy"



Special thanks to all our participants who helped to make our public Harassment Investigation workshops (Levels 1 and 2) held in Calgary (January) and Winnipeg (February) such a success!

We also wish to extend our appreciation to Brian Murphy and Sharon Herout at the Edmonton Catholic School District for coordinating the Harassment Investigation training sessions (Level 1) in February. We had a great time!

During a recent survey conducted by an international staffing service, 100 Canadian executives were asked 'What has the greatest impact on an employee's level of job satisfaction?' The most popular response 'the relationship with his/her manager.' Do you need to build a stronger relationship with your employees and have them feel their contributions are valued? If so here are some suggestions.

- * *Establish open lines of communication* - schedule one-on-one and team meetings regularly and act on good suggestions.
- * *Stand up for your team* - support your staff when they encounter roadblocks and don't rush to judgment if someone makes an error.
- * *Empower them* - show trust in your team by giving them the authority to make decisions, but be available when needed.
- * *Recognize achievements* - praise employees for their accomplishments and reinforce the behaviours you'd like others to emulate.
- * *Provide advancement opportunities* - if budgets are tight, then look for inexpensive or free ways to promote career development, such as a mentoring program.

* E-mail: chill@hilladvisory.com
 * Website: www.hilladvisory.com