

Tribunal Dismisses Complaint by Employee with Scent Hypersensitivity

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An employee suffering from a scent hypersensitivity claimed that her employer, Inteleservices Canada Inc. (the “employer”), discriminated against her when it allegedly failed to enforce its policy that restricted scents in the workplace. The employee had only just been hired, and the events in question took place during her three-day training period.

During her hiring interview the employee told the recruiter that she suffered from scent hypersensitivity. The employee was assured this would not be a problem in light of the employer’s fragrance-free policy. However over the course of her training period, the employee repeatedly complained about scents she claimed her colleagues were wearing. The employer tried to accommodate her in a variety of ways, including pointing a fan in her direction and allowing her to shadow an employee elsewhere on the premises. By the third day of training, however, the employee walked off the job, concluding that she could not work in the employer’s environment.

Although the employee presented statements from a naturopath and allergist about her scent hypersensitivity, the Tribunal found the evidence lacked detail, was self-reporting, and was inconclusive about the existence of a medical condition. Despite these evidentiary problems the Tribunal proceeded with its analysis, though it declined to confirm on the basis of this case whether “[scent hypersensitivity] is a disability for the purposes of the [*Human Rights*] Code.”

In weighing the evidence, the Tribunal emphasized the difficulties associated with accommodating an employee whose condition was triggered by scents that only the employee could detect. For example, the employee stated her condition was aggravated by participants in the Tribunal hearing, even though none were wearing scented products. Similarly, the employee complained of scents in the Tribunal’s washroom, even though the Tribunal has its own fragrance-free policy.

Notably, however, the Tribunal declined to answer whether accommodating an employee from scents that only he or she could detect would constitute undue hardship, as it found that such a request for accommodation had not actually been made.

Rather, the Tribunal emphasized that the employee only ever asked that the employer enforce its fragrance-free policy. If this was not the accommodation actually required, the Tribunal suggested that the blame must fall on the employee, rather than the employer, for failing to articulate her needs:

“...the applicant did not explain what accommodation she was seeking, apart from enforcement of the fragrance-free policy. In the circumstances of this case, it appears to me that from the outset, the applicant had a positive

obligation to accurately identify to the respondent what her accommodation needs were and to clearly explain to the respondent why the solutions that had been attempted were not adequate.”

As a result, the Tribunal held that no discrimination in employment had occurred.

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