

Reinstatement With Full Pay Ordered After a Decade Away From Work!

The Ontario Human Rights Tribunal (“Tribunal”) has recently confirmed that reinstatement is always an available remedy, regardless of the length of time since an employee’s wrongful termination.

In *Fair v Hamilton-Wentworth District School Board* an employee developed a generalized anxiety disorder due to the stressful nature of her job. Based upon the evidence presented, the Tribunal found that the employer failed to accommodate the employee’s disability-related needs from April 2003 and then terminated her employment on July 9, 2004 contrary to the Human Rights Code.

As the primary remedy, the former employee sought reinstatement, even though she had been away from the workplace for 10 years. While the employer argued strenuously against reinstatement as being the appropriate remedy, the Court disagreed and held that the passage of time was insufficient to justify refusing reinstatement.

In addition to reinstatement, the Tribunal ordered the following significant damages:

- **10 years of lost wages and benefit expenses** from the date the employer should have accommodated the employee (i.e. June 2003) until the date she is eventually reinstated;
- **Up to 6 months of training** upon being reinstated;
- Remittance of **retroactive CPP payments**;
- Reinstatement in the employer’s pension plan and **all pension contributions that would have been made since June 2003**;
- **Payment to offset the negative tax implications** of receiving a large lump sum in a single tax year; and
- **\$30,000 for injury to dignity, feelings and self-respect.**

While the delay in this case is not typical and attributable to the Tribunal’s transitional rules, the case still serves as a grim reminder to employers across all jurisdictions that reinstatement, with full back pay, is generally the default remedy where a termination violates human rights legislation. Given human rights complaints can be brought at no cost to the former employee, it is always best to seek advice about potential exposure prior to proceeding with

a termination. For further information please do not hesitate to contact e2r Solutions®.

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