

Reprisal Damages Awarded Despite Finding of no Discrimination

In a decision dated April 2013, the Ontario Human Rights Tribunal (“Tribunal”) highlighted the importance of diligently investigating employee complaints of discrimination. Failing to do so may result in significant damages even where no discrimination has occurred.

In *Morgan v Herman Miller Canada Inc.* an employee with less than three (3) years of service brought a human rights application against his employer, Herman Miller Canada (“Company”), alleging that the Company discriminated against him during his employment and that his termination from employment constituted reprisal under the Ontario *Human Rights Code* (“Code”).

According to the facts of the case, the employee complained to several Company representatives, including a human resources manager, that he, among other things, was being assigned menial tasks and unfairly put on probation due to his colour and race. The Company failed to investigate his complaints and did not take any other steps to address his concerns apart from notifying head office. The Company did not officially follow up with the employee respecting his complaints. Ultimately, the Company terminated the employee.

While the Tribunal concluded that no discrimination occurred during the employee’s employment, his termination still constituted reprisal and a breach of the Code. In particular, the Tribunal concluded that while discrimination had not occurred, the employee genuinely believed he was being discriminated against. Since the Code affords protection to employees who raise complaints based upon genuinely held beliefs, terminating the employee due to the complaints constituted reprisal under the Code. The Tribunal rejected the Company’s argument that the decision to terminate the employee’s employment was made prior to his complaints.

Based upon the finding of reprisal, the Tribunal awarded damages of approximately \$70,000 which included fourteen (14) months lost wages and injury to dignity, feelings and self-respect. In addition, the Company was ordered to retain a human rights expert to review and revise the Company’s policies respecting human rights and provide training to management and human resources staff.

This decision highlights the importance of taking all human rights complaints seriously. Allegations should always be thoroughly investigated and the

investigation and outcome should be well documented. It is also important to keep in mind that a good and thorough investigation starts with a good set of policies and procedures followed by adequate training addressing harassment and human rights protections.

Please contact e2r Solutions® if you have any questions regarding human rights, or, more specifically, investigating human rights complaints.

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