

“Give Me Back My Job!” - Reinstatement as a Possible Remedy in Human Rights Cases

The Divisional Court of Ontario recently upheld a decision of the Human Rights Tribunal of Ontario which reinstated a non-unionized employee who was wrongfully dismissed 10 years previously. The Divisional Court noted that the Tribunal has broad remedial authority to do what is necessary to ensure compliance with the *Code*, and that while it is fair to say that reinstatement is unusual, there is no barrier or obstacle to this remedy at law.

This decision opens the door to the Tribunal reinstating employees whom the Tribunal finds were wrongfully dismissed from employment on a more frequent basis. While traditionally reinstatement is not a remedy requested by applicants, the decision of the Divisional Court indicates that employers may be seeing more requests of this nature in the future.

The Bottom Line: Terminating employees with known human rights concerns is a risky business. In all cases, employers should ensure they have documentation relating to the real reasons for termination that can be produced as evidence at the hearing to prove that the termination was unrelated to any protected grounds of discrimination. If employers cannot provide this documentation, the Tribunal may find against the Company and order reinstatement together with back wages!

If you have any questions about terminating an employee whom you are concerned might make a human rights claim, please contact e2r® to discuss any potential liability.