

Employee awarded \$75,000 for failed investigation

A recent decision from Manitoba's Human Rights Commission serves as a reminder to employers of the importance of conducting an investigation into an allegation of workplace harassment in a timely manner and ensuring the investigation is conducted properly.

In *T.M. v. Manitoba (Justice)*, the employee alleged that he was consistently and repeatedly subjected to vulgar comments and gestures about his sexual orientation. The employee raised his concerns to his direct supervisor and another member of the management team, but both failed to take his claims seriously and investigate.

Eventually he submitted a formal complaint to management, but management said that unless he was prepared to provide the names of the individuals engaging in the alleged conduct, there was nothing the employer could do. The employee eventually provided names and additional details. The employer elected not to speak with the individuals named. Instead they asked the employee's supervisor general questions about the work environment and checked the management committee minutes to try to substantiate whether or not there was an issue in the workplace. No further steps were taken.

Over the course of the following year, the employee continued to inquire into the status of his allegations, and the results of the employer's investigation. Each time, the employee was forced to review the specific nature of the allegations. Eventually the employer commenced a formal investigation almost two (2) years after the receipt of the formal complaint. Of note, in between the time he initially submitted his formal complaint and the time the employer commenced an investigation, the employee's mental health deteriorated to the point where he was placed on a medical leave of absence and in receipt of long-term disability benefits.

The investigation was conducted by two (2) members of the employer's senior management team. The investigators determined they could not substantiate the allegations as described by the employee, despite the fact that the investigation confirmed the employee was subject to repeated derogatory and discriminatory comments.

The employee eventually resigned from his employment and commenced a human rights complaint alleging discrimination on the basis of sexual orientation and that the employer failed to take reasonable steps to provide a safe working environment.

The Commission found the employee was subjected to harassment in the workplace on the basis of his sexual orientation. The Commission made the following findings of note:

- The fact that the employee may have participated in the social atmosphere of the work environment did not preclude a finding of harassment; and
- A person who is being harassed does not need to object to the conduct at the time it occurs in order for there to be a finding of harassment.

The Commission also found that the employer failed to reasonably respond to the employee's allegations and, therefore, failed to satisfy its obligation under human rights legislation. Even when the employer initially felt it could not conduct an investigation because the employee failed to provide names, the employer had an obligation to consider other ways to address the complaint, such as posting signs about harassment, sending out information on harassment, conducting respect in the workplace training, or reminding employees of appropriate conduct in the workplace. The employer ought to have also monitored the workplace to observe the types of interactions that were taking place. Furthermore, once the employer had details sufficient to conduct an investigation, the conclusions of the report were unreasonable. The employer's investigators clearly didn't have an understanding of what constituted harassment on the basis of sexual orientation.

The Commission did not award any lost wages as the employee was not able to work for medical reasons over the period claimed. However, the Commission did award \$75,000.00 due to injury to the employee's dignity, feelings, and self-respect. The Commission noted that it wanted to send a message to employers to confirm the importance of their obligation to take reasonable steps to address an allegation of harassment once it comes to their attention. The award in this case certainly sends that message.

Employers must take reasonable steps when in receipt of allegations of harassment in the workplace under human rights legislation and/or occupational health and safety legislation and a failure to do so can be quite costly!

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