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Perfume – Pleasure or Poison!

Employers have a duty to reasonably accommodate an employee who has a disability such as an environmental sensitivity to fragrances from perfumes, colognes, shampoo, hand lotion, cleaning products, air fresheners, etc.

By Ronald S. Minken

Most products emit dangerous smells, are indoor air pollutants and can be life-threatening to the employee due to sensitivities. Accordingly, employers have been found negligent for failing to provide a safe work environment. Health facilities, schools and places of worship can also be negligent for permitting use of perfumes, colognes, shampoo, hand lotion, cleaning products and air fresheners. Wearers or users of such products can also be negligent.

In June 2007, the Canadian Human Rights Commission (CHRC) created a new policy establishing that environmental sensitivity is a disability which requires reasonable accommodation.

In the 2006 Alberta Court of Queen's Bench case of Brewer v. Fraser Milner Casgrain, Janice Brewer was a legal secretary at the law firm for approximately 20 years. In 1998, Ms. Brewer's family doctor suspected that Ms. Brewer had sensitivities to multiple chemicals. Accommodations were made, including asking staff to stop using perfumes and fragrances, permitting her to use the washroom in the office sick room instead of the main ladies washroom, providing air cleaners in her work area, allowing her to use charcoal filtered masks when necessary, and altering her work hours so that she could avoid large crowds at the office. Despite the law firm's efforts to accommodate Ms. Brewer, her disability continued to be triggered at work.

In 2001, the law firm agreed to have a specialist inspect the office and provide recommendations on how to accommodate Ms. Brewer. Despite these recommendations, none were enacted. Instead, the law firm moved Ms. Brewer to a newly renovated floor in the building and chemicals associated with the renovations triggered her environmental sensitivities. Ms. Brewer left work on November 14, 2001.

On December 14, 2001, the law firm notified Ms. Brewer that her work assignment had been changed at the office as a further attempt to accommodate her. This accommodation, however, was not in accordance with any of the specialist's recommendations.

Ms. Brewer went on short term disability and then unsuccessfully applied for long term disability. She then filed a complaint to the Alberta Human Rights and Citizenship Commission who dismissed her complaint.

The judicial review resulted in Ms. Brewer's application being granted and a finding in her favour. Justice Burrows found that though the law firm's efforts prior to 2001 were significant, they did not solve Ms. Brewer's situation. By agreeing to have a specialist make recommendations as to how they may accommodate Ms. Brewer, the law firm agreed to make these alterations. Since none of the recommendations were enacted and instead, other adjustments were attempted, Justice Burrows ruled that the law firm's efforts to accommodate Ms. Brewer were inadequate.

This decision was appealed by the law firm to the Alberta Court of Appeal and in the decision rendered on December 19, 2008, the Court of Appeal confirmed the law firm's duty to accommodate Ms. Brewer. The Court of Appeal found that the law firm had taken significant steps to accommodate Ms. Brewer and accordingly, had acted appropriately in the circumstances.

As a result of this decision, the employer's duty to reasonably accommodate is to be seen as an ongoing one. The employer must reasonably accommodate, not to perfection, but to the extent that the employee is able to function in the workplace. MB

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