

DISCRIMINATION

Based on Religion Will Cost You!!



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Court decision from the United States awarding terminated employees \$1.3 Million for discrimination based on religion provides insight on possible similar result for Canadian employers who terminate employees due to religious commitments.

The 2007 United States District Court decision in *Equal Employment Opportunity Commission v. Southwestern Bell Telephone, L.P.* No. 3:06CV00176 JLH. (“*Southwestern*”) provides that an employer is being discriminatory if they terminate an employee as a result of being absent from work to fulfill a bonafide religious obligation. Despite this being a decision from the United States, its application is still relevant in Canada due to the similarities that exist between the two countries’s legislation regarding discrimination in the workplace. What is dissimilar is the damage amounts that are awarded, Canada awarding miniscule amounts compared to the United States.

In *Southwestern*, two employees, Glenn Owen and Jose Gonzalez, worked for the employer as customer service technicians pursuant to a collective bargaining agreement. This agreement allowed vacation time to be taken if the workload permitted it and assigned such time by seniority. After all employees had signed up for their vacation time for 2005, the two employees were informed that their annual religious convention would be held from July 15 to July 17. Both men had sincerely held religious beliefs that required them to attend the Jehovah’s Witness convention each year. The employer refused to accommodate the two employees for July 15, but accommodated them for July 16 allowing both to switch workdays with fellow co-workers.

The two employees tried multiple times to have their employer assign July 15 as a vacation day for both of them, but the employer refused and ultimately issued a work directive ordering both employees to report to work on July 15. The employees responded by informing their employer that they would not be attending work that day based on sincere religious beliefs. After hearing about the matter from the employer, the local union president spoke to the two employees and surprisingly informed them that they would both face serious consequences if they missed work.

Despite the warning, the two employees did not attend work on July 15. As a result, the employer initially suspended and then ultimately terminated both of the employees for “misconduct; job abandonment; insubordination; and failure to follow a work directive.” In response to their terminations, the two employees filed charges of discrimination with the Equal Employment

Opportunity Commission alleging that their employer terminated their employment in violation of **42 U.S.C. 2000e-2(a)** which prohibits an employer from ‘discharg[ing] any individual... because of such individual’s...religion.’ Furthermore, the employees claimed that the employer did not provide either of them with reasonable accommodation for their religious beliefs. The two employees sought reinstatement, back pay, front pay and compensatory damages.

At Trial, the jury hearing the matter found in favour of the two employees and awarded them damages based on lost wages of \$296,000, benefits, and compensatory damages of \$460,000. Furthermore, it was ordered that the employees were to be reinstated with the employer and awarded front pay until the date of their reinstatement, totalling a judgment in favour of the employees in the amount of \$1.3 million.

Though much of the legislation from the United States is substantially different from our own, both federally and provincially, there are still some similarities. One of these similarities is demonstrated in *Southwestern*. Although the amount of damages awarded to the two employees is substantially greater than the amounts awarded in Canada, the legislation referred to is almost parallel. Section 5(1) of the Ontario Human Rights Code provides that “Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.” This section, which places a duty upon the employer to respect and accommodate an employee in regards to the above listed areas, is very similar to the United States’ legislation cited in *Southwestern*. Therefore, both employees and employers in Canada should be aware of this ruling since the legislation referred to in it is comparable to our own and may some day lead to similar decisions for employers in Canada who discriminate based on religious belief. **MB**

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