



Five legal questions around diversity and inclusion at work

‘Don’t let breaches go by unaddressed because you may have a policy in place but it may have no value because you don’t enforce it’

BY JOHN DUJAY
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Many communities are grappling today with diversity issues, and the workplace is no different.

Canadian HR Reporter spoke with Ronald Minken, founder and managing principal at Minken Employment Lawyers in Markham, Ont., about how employers can create a successful diversity and inclusion environment.

Q: What laws or statutes do employers have to understand?

A: “Employers have to be aware of many laws and legislation such as the Ontario Human Rights Code and the Canadian Human Rights Act, the Occupational

Health and Safety Act, the Pay Equity Act and the Employment Standards Act, 2000. They’re really designed to protect the employee and it’s incumbent on employers to be aware of these laws and to comply with these laws.”

Q: What steps should be taken to set up diversity and inclusion policies?

A: “It’s very important that employers educate themselves because all of these laws could impact their workplace. The key thing is having the knowledge and applying it by putting policies in place.

“Companies have to educate themselves on what the laws are, then they have to educate their employees on how they apply. The company should put policies in place to address the legis-

lation and how the legislation could impact their workplace.

“The employer should look at their workplace, look at the legislation, and assess the needs of the worker, then determine the protections and then draft diversity and inclusion policies.

Q: How can employers prevent racist or sexist behaviours?

A: “They should provide periodical meetings, also educational postings on disability, discrimination, cultural competency, and these could be posters you could put on the wall; different news items or different educational items that they post that really brings awareness to the workforce.

“By having diversity and inclusion



Ron Minken

policies, that protects an employer. If an employer doesn't have the policy, right away there is 10 strikes against them because they didn't have a policy. Get the policy in place [and] then they should follow the policy, obviously.

"Certain workplaces have greater vulnerabilities than others so one has to assess and then the lawyer has to educate the client on how the laws apply to that workplace, considering all the vulnerabilities that are there; then they can collaborate on a policy that does protect the employer.

"When you get the policy in place, make sure that you follow the policy: it's there for a reason. Don't let breaches go by unaddressed because you may have a policy in place but it may have no value because you don't enforce it."

Q: What are best practices in investigating potentially racist or sexist behaviour?

A: "It's very important that if that policy is in place, that it does say that there is an investigation process and, importantly, that employer has to follow their own investigation process because otherwise they'd be breaching their own process.

"It's also very important that com-

plaints be put in writing because if they're not, then someone could, at a later date, say: 'I've complained to you many times and you haven't addressed it,' and maybe there was a miscommunication. That way, if the policy complaints have to be in writing, then a complaint would not be considered unless it's in writing because then the employee would not have followed the policy.

"There could be a casual discussion that an employee may have with a supervisor about the weekend and they say: 'By the way, did you hear what happened?' and they mentioned an incident. Later on, the employee may say: 'I made a complaint to you about that,' and the employer may not have presumed otherwise because their discussion was on something else and it was very casually said amidst a different discussion.

Q: How does remote work make a difference with diversity and inclusion?

A: "The remote worker, let's say they're working outside their home, and it could be at a shared office facility and they're there frequently. They should inquire as to what are the policies in that facility with respect to diversity and inclusion.

For the remote worker working from home, the employer should be aware of the protected grounds of family status, physical and psychological disability, and the obligation to accommodate workers on these grounds up to an undue hardship.

"Is it fair to ask that company where they're working to provide their policies on diversity and inclusion? It may be, that all depends. However, it will be very important for that employee to report any incidents that they experience in relation to diversity and inclusion at those other workplaces.

"At home, likely they won't experience any of it but if any of their work is outside the home and outside their own employer's workplace, then they may experience a breach of certain legislation in relation to diversity and inclusion.

"Should [the employee] experience any breach of the legislation regarding diversity and inclusion, they should also be required to report it."

Canadian HR Reporter has also spoken to legal experts in looking at what happens if people refuse to go to work and screening employees for COVID at the workplace