Case In Point

HRTO Renders Significant Remedies Decision

Date: March 26, 2013

In the recent decision of *Fair v. Hamilton-Wentworth District School Board*, a non-union employee was reinstated to employment with back pay, despite having been away from the workplace for nearly a decade. The Human Rights Tribunal of Ontario explicitly rejected the employer's argument that it would be unfair to order reinstatement in light of the length of time that had passed and stated that employers should be aware that "reinstatement is always an option in human rights cases." The adjudicator concluded that had the employer properly accommodated the employee, she would have been returned to full-time employment in June 2003. The remedies were wide-ranging and significant in terms of cost, and included ordering the employer to:

1. reinstate the employee to a position at a level equivalent to that which the employee had previously held in 2003;
2. provide up to six months of training to the employee;
3. provide compensation for lost wages and medical/dental expenses incurred since the employee's benefits were terminated;
4. provide compensation for the negative tax implications associated with receiving the back pay as a lump sum in a single year;
5. take steps to have the employee's years of service with the pension plan reinstated, and to make all employer pension contributions for the period;
6. remit retroactive payments to the Canada Pension Plan; and
7. pay $30,000 for injury to dignity, feelings and self-respect

The decision is a stark reminder for employers of the potential risks associated with failing to comply with obligations under the *Human Rights Code*.