

FTR Now

Ontario Human Rights Commission Publishes Inquiry Report on Sexual & Gender-Based Dress Codes

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One year after releasing a new policy on sexualized and gender-specific dress codes, the Ontario Human Rights Commission (Commission) has released findings from its inquiry into related practices at certain large restaurant chains operating in the province. Learn more about it in this *FTR Now*.

The Inquiry Report

On March 8, 2017, the Commission released a new report that outlines commitments made by many of Ontario's largest restaurant chains to address sexual and gender-based dress codes for restaurant staff. *Not on the Menu: Inquiry report on sexual and gender-based dress codes in Ontario's restaurants* ([Inquiry Report](#)) outlines findings from an inquiry conducted by the Commission into dress codes at certain corporate restaurant chains operating in Ontario.

The Inquiry Report indicates that the Commission decided to take action on sexualized and gender-based dress codes because of its view that there is a systemic problem with such dress codes in the restaurant industry which has an "impact on [*Human Rights Code*] grounds such as age, sex, creed, gender identity and gender expression."

One year ago, the Commission issued its *Policy position on sexualized and gender-specific dress codes* ([Policy](#)). It is important to remember that the Commission's policies and reports are not law, however, such policies are sometimes considered and referred to by the Human Rights Tribunal of Ontario and other Ontario adjudicators ruling on human rights-related disputes.

On July 8, 2016, the Commission initiated its human rights inquiry into dress codes in the restaurant sector, focusing on a group of corporate restaurant chains selected based on the following criteria:

- They own or operate one or more restaurant chains, or multiple establishments/brands, in the casual/family dining sector, and
- They are industry leaders, in terms of the number of people employed in Ontario, and/or their potential to influence industry norms and standards.

The Commission wrote to these companies informing them of its concerns about sexualized and gender-based dress codes in the restaurant industry, and its view that such dress codes do not comply with the requirements of the *Human Rights Code* (*Code*). The Commission's letter included a checklist of measures created by the Commission setting out steps companies should take to make sure that their dress codes comply with the *Code*, as interpreted by the Commission in its Policy. The Commission provided timeframes to the companies to provide a written commitment to implement these measures, and submit documentation to the Commission confirming their compliance with the Commission's request.

The Inquiry Report states that generally, the response from the restaurant companies was positive and that all the companies provided documents showing they had developed new policies or had amended dress codes and/or grooming policies in some or all of their brands. The "positive practices" implemented by companies are listed in the Inquiry Report, and included:

- amendment to clothing requirements, such as adding a pants options for all staff rather than requiring women to wear skirts, dresses or kilts;

- removing sex-specific requirements in accessories, such as jewelry requirements;
- amended grooming standards, such as clarifying that make up and nail polish are optional;
- developing or amending accommodation and complaint policies; and
- communicating policies and amendments to staff.

The Inquiry Report goes on to note that some actions requested by the Commission have not yet been complied with by some companies, and identified areas for further improvement. The Inquiry Report states that any company whose policies do not meet the [measures on the checklist](#) may be vulnerable to human rights complaints.

While the Commission inquiry has focused to date on specific restaurant companies, all employers have a legal obligation to make sure that their dress code requirements comply with the *Code*. The Commission has recently been quite active in pursuing initiatives of this nature to promote compliance with its policy positions, and it is foreseeable that other organizations may find themselves on the receiving end of similar initiatives in the future. It is important to emphasize that the Commission's policy position is only one interpretation of what the *Code* requires, and that an organization may not have a positive obligation at law to implement all of the measures requested by the Commission. However, there can be legal risks associated with taking this position, including the risk of a Commission-initiated complaint to the Human Rights Tribunal of Ontario. As a result, organizations contacted by the Commission in connection with an inquiry are well-advised to consult with legal counsel before responding, so that they can ensure they have a full understanding of their legal rights and obligations and an opportunity to develop a response strategy which is appropriate to the potential risks involved.

If you have any questions or concerns about compliance of your dress code policy with the *Code* or the Commission's Policy, please contact [Kathryn Meehan](#) or your [regular Hicks Morley lawyer](#).

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