Human Resources Legislative Update

Ontario Human Rights Commission Issues Policy Position on Caste-Based Discrimination

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The Ontario Human Rights Commission (Commission) recently released a policy position addressing the issue of caste-based discrimination and confirming the Commission's perspectives concerning caste-based discrimination as a form of intersectional discrimination contrary to the Ontario *Human Rights Code* (*Code*).

In its Policy Position on Caste-Based Discrimination (Policy Position), the Commission provides its views on whether claimants alleging discrimination based on caste may seek redress from the Human Rights Tribunal of Ontario.

How Is "Caste" Defined by the Commission?

The Policy Position defines a caste system as "a social stratification or hierarchy that determines a person or group's social class or standing, rooted in their ancestry and underlying notions of 'purity' and 'pollution.' It is a traditional practice based in the political, social, cultural and economic structures of some cultural or religious communities and the societies in which it is practised."

While formal and informal caste systems exist worldwide, common examples of caste-markers include belief systems, family deities, dialect, surnames and skin colour or "colourism," among others.

Which *Code* Grounds of Discrimination May Be Engaged When Discussing Caste-Based Discrimination?

The 17 grounds of discrimination listed in the *Code* circumscribe the personal characteristics that could attract human rights protections in Ontario.

The Policy Position clarifies that while "caste" is not a *Code* ground, it can arise from the intersection of several existing *Code* grounds including ancestry, creed, colour, race, ethnic origin, place of origin and family status. The Commission notes that like many of these personal characteristics, "caste" is immutable and predetermined at the time of a person's birth. As a result, the Commission takes the perspective that distinctions based on caste should be understood as being a form of discrimination that may violate the *Code*.

The Commission's Policy Position identifies many of the obligations of organizations which arise out of the *Code* and addresses how those pre-existing obligations may be extended to caste-based discrimination concerns. Those obligations include the legal duty of organizations to ensure their "environments are free from discrimination and harassment, bullying or a poisoned environment," and the duty to respond to and investigate allegations of discrimination when they arise.

Finally, the Policy Position also notes that school boards have additional specific obligations to protect students as well as other members of the school community.

Note that while the Commission's policies do not have the force of law, they can be instructive when considering compliance issues.

Given the complexity that accompanies allegations of caste-based discrimination in the workplace, employers must be prepared to assess these concerns and ensure they are meeting their obligations under the *Code* when they are engaged.

If you need assistance with concerns of caste-based discrimination in your workplace or if you have any questions regarding the Commission's Policy Position, please reach out to your regular Hicks Morley lawyer