



CASE COMMENT

Proactive workplace policies and human rights: an ounce of prevention is worth a pound of cure

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In a recent British Columbia Human Rights Tribunal decision, *Sleigh v. Stream Global Services*, 2010 BCHRT 24, the Tribunal dismissed a complaint that a reduction in an employee's work hours to reflect actual attendance constituted discrimination on the basis of physical disability.

Stream Global Services ("Stream") provided call centre services. The complainant was hired by Stream in 2007 after disclosing that she had a permanent partial disability. The complainant suffered from a condition which led to intermittent pain in her right foot, leg and hand.

Stream had a policy to accommodate employees who, due to health issues, could not work a 40-hour work week, namely the "Intermittent Leave of Absence" ("ILOA") policy. This policy allowed employees a certain number of absences from work which would not count against Stream's attendance policy. ILOA-status employees were also subject to Stream's Reduction of Scheduled Hours ("RSH") policy. The RSH policy reduced an employee's hours based on actual attendance if that employee worked less than 85% of their scheduled hours in the previous 4-week period.

Soon after the complainant was hired, she applied for and received ILOA status. The complainant then had her scheduled hours reduced numerous times to reflect her actual attendance—first to 30 hours per week, then 28 hours and, ultimately, 24 hours. Dropping to less than 30 hours per week meant the complainant was no longer considered a full-time employee. Consequently, she was no longer eligible to participate in Stream's group benefits program. This, in turn, meant the complainant was no longer reimbursed for the cost of drugs needed to manage her medical condition. The complainant alleged that the effect of the RSH policy was discriminatory.

The Tribunal found the complainant had made out a *prima facie* case of discrimination, as her disability was a factor in her adverse treatment. However, the Tribunal found Stream's conduct was justified as it was based on a *bona fide* occupational requirement. The Tribunal accepted Stream's argument that appropriate staffing levels were critical to the proper provision of call centre services. Understaffing led to client complaints, while overstaffing led to lost profit. Accordingly, it was reasonable for Stream to proactively schedule the complainant for the hours her health permitted, rather than schedule the complainant for full-time hours and then replace her on short notice when she was absent. Moreover, as the RSH policy was subject to periodic review, there was no bar to the complainant taking on more hours if and when her condition permitted. The Tribunal found that any further accommodation of the complainant would have imposed an undue hardship on Stream.

Local governments often provide services which require precise staffing levels. The lesson to be learned from this case is that well-considered, proactive scheduling policies will allow local governments to appropriately adjust staffing levels (particularly reductions in working hours) while avoiding human rights complaints and other allegations of unlawful conduct.