

Collective Agreement Audit Checklist for the Ontario Federation of Labour Conferences on Human Rights and the Collective Agreement

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DISCRIMINATION RELATED CLAUSES

ANTI-DISCRIMINATION CLAUSE

Does your collective agreement have a human rights clause?

Is it clear that discrimination is prohibited in the workplace?

Is it clear that this prohibition extends to the actions of management representatives such as supervisors and managers, as well as bargaining unit employees?

Is the clause able to address situations of:

- Discrimination by superiors?
- Discrimination by peers?
- Discrimination by those reporting to bargaining unit members?
- Discrimination by clients, patients, customers or others to whom bargaining unit members provide services or goods, or must interact?

Is the clause enforceable through the grievance and arbitration rights of the members regarding such matters?

Is the discrimination clause limited to situations based on human rights grounds or does it cover other forms of workplace conflict, i.e. Union membership or representation?

Is your human rights clause up to date?

- Have you included all the grounds that are included in the Human Rights Code or the Canadian Human Rights Act?
- Does it include newer grounds such as common law relationships and sexual orientation?
- Do you have new grounds which you would like to see included in this clause?
- Does it contain definitions of terms such as Afamily status@ which are inclusive of all families?
- Does it reference the Human Rights Code?

Have the parties acknowledged and provided for the existence of programs designed to ameliorate discrimination in the workplace?

Are the parties clear that recognizing human rights in the workplace may require both parties to the collective agreement to reach accommodation of the needs of employees who are protected by human rights legislation?

Is it clear that the human rights clause governs how you want your collective agreement

interpreted, as well as how the parties to it will behave?

HARASSMENT

Does your clause also prohibit harassment as well as discrimination?

Does your collective agreement have a policy for dealing with harassment (including sexual harassment and harassment on the basis of sexual orientation) in it, or does it reference such a procedure?

Is there a suitable investigation and decision-making process outlined, with protections for those involved?

Does the collective agreement or policy provide that the harassing party may be disciplined or transferred?

If the harassment procedure is carried out under employer policies, is the union familiar with the policies and do they meet the needs of the membership?

Are such procedures included in or referenced in the collective agreement without prejudice to the grievance and arbitration rights of the members regarding such matters?

Is the harassment language or policy limited to situations based on human rights grounds?

Does it include harassment on the basis of sexual orientation?

Does it cover other forms of workplace conflict?

Is the harassment language or policy able to address situations of:

- Harassment by superiors?
- Harassment by peers?
- Harassment by those reporting to bargaining unit members?
- Harassment by clients, patients, customers or others to whom bargaining unit members provide services or goods?

Is there a definition of harassment? If so, is it broad enough to cover a full range of human behaviour?

ACCOMMODATION AND DISABILITIES

Does your collective agreement prohibit discrimination on the basis of physical and mental disabilities?

Does your collective agreement deal with the question of accommodation for those employees with disabilities and make clear their right to be accommodated?

Does the clause define disability?

Is it a broad or narrow definition (i.e. does it include disabilities of a temporary or transitory nature, does it include workplace created disabilities and other forms of disability?)

Does the collective agreement make it clear that employees with a disability are entitled to perform available work in the bargaining unit?

If the entitlement to available work is broader than bargaining unit work, is it clear what rights

under the collective agreement the employee retains if he or she engages in this work?

Does the collective agreement make clear the extent of the right to available bargaining unit work?

Can an employee invoke bumping rights in this regard?

Does the clause make reference to bona fide occupational qualifications, or similar concepts?

Does it reference the Human Rights Code in this regard?

Does it reference the Workplace Safety and Insurance Act, and if so, are the parties clear on the interaction between obligations under that Act and under the Human Rights Code?

Is there a procedure that is either included in the collective agreement, or referenced in the collective agreement, for working out accommodation issues in the workplace?

If accommodation measures are fulfilled through employer policies, is the union familiar with these policies and do they meet the needs of the membership?

Are there procedures for

- Identifying the nature of the accommodation required?
- Providing for training in accommodated positions?
- Identifying positions in which accommodations can be provided?
- Severance pay, should accommodation measures still not enable the employee to meet the bona fide occupational requirements?

Is it recognized that accommodation needs may be permanent as opposed to temporary or Awork hardening@ measures?

Are such procedures included in or referenced in the collective agreement without prejudice to the grievance and arbitration rights of the members regarding such matters?

Does your collective agreement deal with the provision of medical information to the employer?

If your collective agreement requires medical information to be provided, is it clear

- Who pays?
- Whose doctor will provide the information (the employer=s or the employee=s)?
- When such information may be required?
- Whether the employer may require examinations?
- Whether the employee has access to the results from employer requested medical examinations and reports?

WORKERS COMPENSATION

Does the collective agreement address workers= compensation issues?

Does the collective agreement provide for more generous return to work and re-employment provisions than the Workplace Safety and Insurance Act?

Does the collective agreement make clear how other benefits will accrue to employees while they are on workers= compensation (i.e. seniority, service, statutory holiday pay, vacations, sick leave days, and other rights that may accrue over time)?

OCCUPATIONAL HEALTH AND SAFETY

Are there linkages made in the collective agreement between the right to be free from discrimination and harassment, and the right to a safe workplace?

Is it recognized that discriminatory and harassing actions by others can create an unsafe workplace?

If such connections are made, is it clear which procedures are available to bargaining unit members to address situations of discrimination and/or harassment when they have occupational health and safety implications?

Are there provisions dealing with technological change?

Do they provide for:

- Notice of change
- Consultation
- Retraining
- Job security
- Income protection
- Layoff and severance protection

AGE DISCRIMINATION AND MANDATORY RETIREMENT

Does your collective agreement prohibit discrimination on the basis of age?

Does your collective agreement provide for mandatory retirement?

If the mandatory retirement age is less than 65, are you satisfied that such earlier retirement age is a bona fide occupational requirement?

PAY EQUITY AND EQUAL PAY

Does the collective agreement provide for equal pay for equal work, or equal pay for work of equal value?

Has the union fulfilled its initial duties under applicable pay equity legislation?

Has the union incorporated pay equity adjustments, clearly identified as such, in its wage and salary provisions?

Has the union taken steps to ensure the maintenance of pay equity?

Are these requirements and the steps taken to ensure them referenced in the collective agreement?

PRIVACY RIGHTS

Is there a clause protecting the employee=s right to personal privacy?

If surveillance, searches, drug and alcohol tests and similar matters are in issue in your workplace, are there clauses in place to

- Limit the employer=s ability to utilize such intrusive steps?
- Require the employer to implement such measures in a fair and reasonable manner?
- Require the union representatives to be notified where such steps are to be taken?
- Prohibit random testing and requiring any such testing to have a rational connection to the job requirements?
- Protect employees from discipline where tests reveal substance abuse?
- Provide access to employee assistance and counselling?

OTHER CLAUSES WITH ANTI-DISCRIMINATION ASPECTS

MANAGEMENT RIGHTS

Is it clear that the management rights clause shall be read as subject to the anti-discrimination and anti-harassment clauses in the agreement?

LABOUR MANAGEMENT COMMITTEES

Is there a provision for a labour-management committee?

If so, have the parties clearly delineated what, if any, its authority over human rights issues in the workplace shall be?

GRIEVANCE AND ARBITRATION PROVISIONS

If special processes are included in the collective agreement for dealing with discrimination, harassment, accommodation, or other related matters, is it made clear in the grievance and arbitration provisions how these special processes are to fit in?

Is it clear that issues may be dealt with under the special processes without prejudice to any collective agreement rights to grieve and arbitrate the issues?

Is it clear how such issues should be grieved and/or referred to arbitration if a special process has been used first to try to resolve the issue?

Is an abbreviated process for grieving or referring such a matter to arbitration included?

Is it clear whether or not the union and the affected employee(s) have any right to the materials generated through using a special process to try to resolve the matter (i.e. complaints, responses, investigation reports)?

Is it clear that the arbitrator-s powers include resolution of matters which may involve the Human Rights Code or other legislation prohibiting discrimination?

Is it clear that the arbitrator-s powers to remedy human rights issues extend to requiring management to take whatever steps the arbitrator deems necessary to correct the matter?

SENIORITY

Seniority is the fundamental principle underlying many benefits and protections your collective agreement offers. Is it applied equitably among your members:

Across the bargaining unit, to allow for interchange between jobs and advancement?

When they are on leaves such as:

- Maternity leave
- Paternity leave
- Parental leave
- Sick leave
- Adoption leave
- Child care leave
- Bereavement leave
- Change of residence leave
- Family responsibility leave
- Marriage or commitment ceremony leave
- Spousal relocation leave
- Personal leave

Are there bridging of service provisions where an employee resigns due to, for example, family responsibilities, that allow the employee to be credited with previous seniority where he returns to the workplace?

BENEFITS AND PENSIONS

Are employees' same sex spouses and their families entitled to the benefits package under the collective agreement?

Is this clearly stated in either the benefits entitlement language or in the definition of Aspouse@?

Has provision been made for equal treatment of gay and lesbian employees and their spouses under the pension plan provided for under the collective agreement?

Are other benefits which are extended to the spouses of employees equitably offered to gay and lesbian employees (i.e. pre-paid legal services, child care)?

Is the collective agreement clear on how benefits will accrue to those employees who are absent due to illness or other disability?

OTHER BENEFITS

Does the collective agreement make provision for employees who are members of religious minority groups to observe their religious holidays (i.e. through use of vacation days, other days which are owed, or through days off without pay)?

Is the collective agreement clear on how benefits will accrue to those employees who are absent due to illness or other disability (i.e. vacation days, further accumulation of sick days, payment for statutory holidays)?

WAGES AND HOURS

Has consideration been given to the interaction of general job classification systems and pay equity requirements?

Is this reflected in language in the job classification or job evaluation clauses?

Does the collective agreement provide for equal pay for equal or similar work?

Does the collective agreement provide for equal pay for work of equal value?

Does the collective agreement include provision flexible work practices, such as flex time, modified work weeks, trading of shifts and job sharing, so that work and family issues, as well as religious accommodation can be addressed?

How does the collective agreement address the issue of part time workers?

Is seniority transferable if the member gains a full-time position?

Do part time workers have access to full time opportunities?

Are the same or equivalent benefits available to part time workers?

PROMOTIONS, TRANSFERS AND ACTING POSITIONS

Does your collective agreement address these issues?

How does your collective agreement address the allocation of these opportunities?

Strictly by seniority?

By a combination of education, experience, skills, ability, training and seniority?

Does your employer recognize non-Canadian experience and education?

Does your employer credit work experience as equivalent to education?

LEAVES OF ABSENCE

Does the collective agreement provide for

- Sick leave
- Maternity leave
- Paternity leave
- Parental leave
- Adoption leave
- Child care leave
- Bereavement leave
- Change of residence leave
- Family responsibility leave
- Marriage or commitment ceremony leave
- Spousal relocation leave
- Personal leave

Does the collective agreement specifically recognize the need for accommodation of workplace and family issues?

Are these leaves afforded to all employees on an equitable basis?

Are these leaves equally available to gay and lesbian employees and their families?

DEEMED TERMINATION CLAUSES

Does your collective agreement use deemed termination clauses for certain kinds of absences from work?

Does the collective agreement reference that these clauses shall be interpreted in a manner consistent with the Human Rights Code?