

Diversity at Work in London

Newsletter



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in London

EDITORIAL

Welcome to the September edition of Diversity Works! - your source for best practices on managing workplace diversity. I wish to thank our readers who sent e-mails regarding our last issue, "Out At Work". Also, thanks to readers who expressed appreciation for our acknowledging that sexual orientation in the workplace is a diversity issue.

Our international readership is growing, and we welcome our new readers from India, Spain, Germany, Denmark and South Africa!

I would also like to welcome Wen Zou to our team of associates. Wen will be assisting with preparing marketing materials and project management.

Our hope is that this newsletter will be an interactive one, so we encourage your input. We ask you to send questions to the "Ask the Elocution Teacher", and "Ask the Diversity Consultant" sections. Here are some suggestions for infusing diversity into your workplace by using our newsletter:

- We encourage you to post the newsletter on your bulletin board, or on your internet site.
- Consider using the questions we receive from our readers for discussion in your staff meetings.
- Assign your staff some of the recommended reading which they can present at a staff meeting.

These are low-cost ways to keep diversity concerns alive in your organization, and to keep your staff informed.

OUR NEWEST ADVERTISER

We would like to welcome our new advertiser, La Jornada, a bilingual Hispanic newspaper originating in London, Ontario. We look forward to future collaboration with George Perez, President, and his team. La Jornada will be featuring my monthly workplace advice column geared toward assisting new Hispanic workers understand cross-cultural issues.

THIS MONTH'S FEATURE COLUMN

This month, instead of our usual column, "Ask the Diversity Consultant", we will be featuring "Ask the Aboriginal Business Development Advisor". I would like to highlight our associate, Cheryl Tremblay, who is the Aboriginal Business Development Advisor for Diversity At Work.

In light of the fact that increasing numbers of Aboriginal communities are seeking to build business relationships with Aboriginal and non-Aboriginal groups for economic development, Cheryl has some very relevant and useful advice for you. Currently, Cheryl lives in a northern community where she has been instrumental in bringing industry to her First Nations community by working sensitively and cooperatively with both Aboriginal and non-Aboriginal business leaders. Building collaborative, culturally sensitive bridges between Aboriginal communities and the business community is one of the key services offered by Diversity At Work.

This issue of Diversity Works! is focused on the costs of workplace discrimination. When we began to research this topic, we realized that it is, indeed, expansive. Conventionally speaking, discussions around workplace discrimination tend to focus mainly on the legal aspects of the subject.

However, too often we do not take into consideration the costs of discrimination that lie outside the measurable legal costs. Less tangible costs of discrimination affecting individuals' lives, and the morale and health of the workplace itself are more difficult to measure than legal costs. Just one incident of workplace discrimination can have grave consequences on many aspects of a company's or organization's wellbeing, even with global ramifications.

Also in this issue, we will explore the many costs of workplace discrimination, learn ways of preventing it, as well as including a consultation with a lawyer, Aida Gatfield, whose practice focuses on discrimination lawsuits.



Evelina Silveira, President

HOW TO PREVENT WORKPLACE DISCRIMINATION

1. Provide annual compliance training on sexual harassment, bullying and discrimination prevention. Move beyond only the conventional forms of training that involve just the legal ramifications of discrimination to include the human costs, feelings and behaviours associated with workplace discrimination. Make the training interactive with role playing and simulations based on actual cases. Cornell University, for example, uses an “Interactive Theatre” complete with scripts!
2. Ensure that all new employees receive anti-discrimination, anti-bullying, and sexual harassment training as early as possible in their orientation.
3. Insist upon Zero Tolerance for workplace discrimination.
4. Develop, circulate and implement workplace discrimination, bullying and harassment policies. Enforce your policies and ensure that they are visible and understood to all employees.
5. Take all complaints seriously. Immediately take action when you witness or become aware of any unacceptable conduct.
6. Promote Workplace Inclusion. Value diversity in your workplace and teach the people in your organization about the business case for diversity.

TERMINOLOGY

Workplace Discrimination -

Discrimination is defined as the unequal treatment of a person resulting in a distinction, preference, restriction or exclusion based on the Ontario Human Rights Code Prohibited Grounds as listed below:

- Race
- Ancestry
- Place of Origin
- Colour
- Ethnic Origin
- Citizenship
- Creed
- Sex
- Sexual Orientation
- Age
- Record of Offences****
- Marital Status
- Same Sex Partnership Status
- Family Status
- Disability

**** Record of offences refers to a conviction for:

- a) an offence of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked or
- b) an offence in respect of any Provincial enactment

Prejudice is a state of mind, while discrimination is an action.

Source: Ontario Human Rights Code

Harassment - is any physical or verbal abuse of a person because of his or her race, religion, age, gender, disability or any other legally protected status. Harassment in the workplace can further be clarified as any conduct that creates significant anguish to another person, with the intent to bother, scare or emotionally abuse him or her.

Direct Discrimination - discrimination occurs when race, colour, nationality, or ethnic or national origin is used as an explicit reason for discriminating

Indirect Discrimination - occurs when there are rules, regulations or procedures operating, which have the effect of discriminating against certain groups of people.

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OUR FEATURE ARTICLE

THE COSTS OF WORKPLACE DISCRIMINATION

Some Typical Cases of Workplace Discrimination

Mary is a new Canadian from the Sudan, who is working in a long-term care facility where she is the only employee of colour. She is repeatedly addressed by the “N” word by an elderly resident. Last week, this resident bit her when Mary tried to help her into bed. This resident is normally pleasant with all other staff members.

Doug is an internist who has recently discovered through the grapevine that some of his patients are complaining about him. They allege that he is gay and that they are afraid of catching some disease from him. Hence, they want another doctor.

Chava Bloomberg is contracted by a private school to teach English As A Second Language. She has numerous credentials and excellent student references. However, she is having a difficult time obtaining assignments. She has heard that once her name is mentioned, anti-Semitic comments are made, and that students request another teacher.

Marilyn had a nervous breakdown two years ago, when her only son died suddenly. Prior to the accident, she had a promising career as a senior manager in a bank. She has been back at work for six months, and is now putting in a full week. She has applied for several internal postings for senior management positions, but has not been granted interviews. Since she has been back at work, she is feeling that people are not treating her in the same way as prior to her nervous breakdown. Furthermore, the level of her job responsibilities has been greatly reduced by management.

Joe works in a high-stress position in a detention centre where he manages many human crises every day. Joe is given the most volatile clients, because the women he works with are afraid to work with them. Joe is getting worn out, and feels as if he is being taken advantage of, since the women who work there are paid at the same rate, but are not confronted with the same level of workplace risk.

What do all of these cases have in common? All of these employees feel discriminated against. No matter what type of discrimination employees are confronted with, it takes a devastating toll on both individuals and the workplace.

Workplace discrimination has both financial costs and human costs.

According to Dr. Kwame McKenzie of the Centre for Addiction and Mental Health in Toronto:

“Depression, anxiety and psychosis are all linked to discrimination. Discrimination does not have to be racial. It can be sex discrimination, or discrimination based on sexual preference. Numerous studies have shown that people who are victims of racism are about twice as likely to suffer from depression.” The Globe and Mail, Wednesday, November 19, 2008

Furthermore it is noted that:

“Studies in the U.S. also show that the lower level of racial respect, the shorter the lifespan for both African-Americans and whites.” The Globe and Mail, Wednesday, November 19, 2008

REASONS EMPLOYERS SHOULD BE CONCERNED ABOUT WORKPLACE DISCRIMINATION

Measurable Costs of Discrimination:

- The cost of defending lawsuits
- Payments of any settlement or judgments
- Increase in liability insurance costs

Less Measurable, but Equally Important Costs of Discrimination:

- Increased turnover, resulting in greater expenditures of time invested in recruiting and training
- Tarnished reputation among diverse communities resulting in difficulty in recruiting people from certain groups
- Depriving the organization of skills and viewpoints that could be valuable
- Public allegations of discrimination that can result in product boycotts, ultimately leading to reduced stock market prices

- Decreased worker morale and productivity
- Loss of valuable management time that could better be invested in building and expanding the business
- Higher rates of absenteeism – resulting in greater costs to the organization and lost productivity

Costs of Discrimination to the Individual:

- Problems with physical and mental health
- Possible retreat from employment or choice to be underemployed for fear of recurring discrimination
- Social isolation
- Loss of confidence
- Possible loss of financial stability
- Lack of equal rights to choice of job or advancement.

Global Costs of Discrimination:

- Social inequalities widen
- Social cohesion is lost
- Rise in unemployment rate when job seekers are without job opportunities and, therefore, are unemployed

Brian Amble in his article entitled, “Workplace Discrimination is a ‘Global Problem’” quotes the report, “Time for Equality at Work”, published by the United Nations International Labour Organisation. In this report it warns about the consequences of workplace discrimination world-wide:

“disastrous effects on national social cohesion, political stability, and hence growth,” in the years to come”.

Furthermore, the report notes that: “outlawing discrimination at work has failed to eliminate the practice. It blames stereotypes and biased institutions that have resisted decades of legal efforts and policy measures undertaken by governments, workers and employers. May 13, 2003 Management Issues

For more detailed information on this subject, please go to: <http://www.management-issues.com/2006/8/24/research/workplace-discrimination-a-global-problem.asp>

Ask the Aboriginal Business Development Advisor:



I am an entrepreneur who is thinking of opening a business in a First Nation Community. Is this feasible?

Signed Curious

Dear Curious:

First of all, you are not alone. More and more businesses are recognizing the benefits of working with First Nations, and are recognizing the availability and loyalty of their capable workforce. The federal and provincial government are also recognizing the value of non-native businesses and industries collaborating with and forming long-term partnerships with First Nations.

Without knowing more about your background or the reasons you have chosen to open your business in a First Nation Community, your question is somewhat more difficult to answer. Therefore, I will answer you in general terms. In some cases, establishing a business in a First Nation community is both possible and can be successful, depending on the nature and particulars of what you are proposing.

Are you a “Status Indian” as defined by the Indian Act, who is a band member of the First Nation where you wish to do business? If so, it has been my experience that First Nation Communities not only welcome their band members back to their communities, but also encourage any economic growth that may benefit the community. That being said, there are

some communities that wish to remain small and more traditional. Occasionally, First Nations communities are relatively selective regarding what businesses or industries are introduced into their communities and traditional territories. The environmental impact of your venture could be a key determining factor. Keep in mind that some communities have their own set of by-laws that govern new enterprises on their land base.

If you are non-native, there may also be an opportunity to establish a business or industry in a First Nation community, in the form of a Joint Venture and/or Long-term Agreement. Industrial entities, in particular, are becoming increasingly open and willing to work with First Nations on their traditional territories. Engaging in such an endeavour makes it necessary to recognize the impacts on available resources, on the environment, and on the First Nations peoples and their intrinsic values. These Joint Ventures come in many forms and begin with the parties signing a Memorandum of Understanding (MOU) and/or Letter of Intent (LOI). This allows the parties to continue negotiating the terms by which they will partner, for example, through an Impact Benefits Agreement (IBA) or by means of a Long-term Partnership Agreement, etc., while allowing the development stages of the business to go forward.

Because the federal and provincial government are also recognizing the impacts that business and industry have had on First Nations, they have incorporated into their legislation and regulations means by which First Nations communities are consulted before permits or certificates can be issued. As well, funding is easier to obtain for both parties if they have entered into a formal partnership agreement. Many First Nations begin with partners or investors who are able to bring with them expertise in a certain area, eventually leading to 100 percent ownership by the First Nation within a pre-determined length of time, such as 10 years. Other First Nations are content to maintain majority interest.

The best advice I can give anyone wishing to partner with a First Nation is to make it part of your standard practice to meet directly with any First Nation community within the territory in which you wish to operate before you obtain permits or begin development. Make initial contact with the Economic Development Officer. Develop a professional presentation outlining your project and the related benefits that will accrue to the community as a result of the establishment of your enterprise. Meet with Chief and Council. Do not be afraid of insulting the group by requesting clarification on anything you don't understand.

Above anything else, be genuinely transparent, honest and open to new and sometimes unconventional ways of doing business. The First Nations' ultimate goal will, no doubt, be the achievement of a sound balance between economics and their traditional values. Hiring an independent consultant who has a proven track record with First Nations communities, who has a solid understanding of First Nations issues and values, and who has First Nation heritage may be essential to the success of your endeavour.

Cheryl Tremblay, Aboriginal Business Development Advisor, Diversity At Work



Ask the Elocution Instructor



Dear Elocution Teacher:

My family and I arrived in Canada six months ago. While my children, who are 8 & 10, have learned English with great ease, my husband and I are in a state of complete frustration. We continue to make mistakes when we speak. We feel insecure when we are in the company of people that don't speak our language. The worst is that we're paralysed and humiliated when we are told to repeat ourselves because Canadians haven't understood us through our heavy accents. Why can't we learn English like our children?

In a state of complete frustration

Dear In a state of complete frustration:

The topic of second-language acquisition is one of keen interest and fervent discussion not only amongst first and second generations of New-Canadians, but also amongst academics. I hope I can shed some light.

First of all, you and your husband have my empathy in your predicament – acquiring a second language as an adult is never an easy task.

I'm not at all surprised by your children's ease into English. Children are able to assimilate into their immediate environment with greater facility than do adults. But a word of caution: a child's linguistic ease disguises some fundamental underlying concerns. Their oral facility can mask a general deficiency in other language functions such as reading and writing. Children make great mimics. And without

minimizing a child's life, they have little else to worry about, then to do well at school and fit in with their peer group. They quickly pick up on current vernaculars and colloquialisms making them sound "local". But again, this is not complete language acquisition. They might sound local, but deficiencies in areas such as vocabulary development can compromise comprehension and effective communication. So please, pay close attention and support your children's development, they'll need it.

You also make mention of your heavy accents and the humiliation of being taken to task by a listener. Don't allow these situations hamper your development. I have said elsewhere in this column that voice is central to our being as it defines personality. And when our voice is challenged, e.g. how we sound, what we say, how we say it, this experience strikes at the very core of our being. In my experience as an educator, the work that I do with my students is never entirely language-based, though this forms the premise of all our work, however, the underlying objective is to develop an individual's self-confidence. And this can be of even greater value as it creates an impetus for the individual to move forward in realizing their goals.

As for the main question: Why can't we learn English like our children? Complete language acquisition is complex. It requires focus, perseverance and time. To the best of my knowledge, there is no evidence that children acquire a second language any better than do adults. As explained above, children are quick in their oral development, but mask complete acquisition, and require conscientious support.

It might comfort you to know that parents are actually ahead of their offspring in the process of new language acquisition. This is so, given that the parents have some degree of formal education, as their development of language functions (speaking, listening, reading & writing) as a whole is more complete. Having said this, when you sum up the parts of the New-Canadian experience, an adult's life becomes much more fragmented, much more complex, perhaps, making learning more challenging.

It strikes me that as a new arrival – six months is a short time to reside anywhere, you need to allow time to take its course. Remember that we learn through all of our senses. Learning curbs demonstrate that in the learning process we all reach a plateau – a type of rest or digestive period, before we start anew. Through all this, our brains are expanding trying to take in all the new information, experiences, references and nuances. You both need to permit yourselves the time to get there and you will.

Alfredo Garcia, The Elocution Teacher

QUICK LINKS:

Ontario Human Rights Commission – Employment Rights
<http://www.ohrc.on.ca/en/issues/employment>

Equality at work : tackling the challenges. Global report under the follow-up to the ILO Declaration on fundamental principles and rights at work. Report of the Director-General, 2007

[http://www.ilo.org/global/Themes/Equality and Discrimination/lang-en/index.htm](http://www.ilo.org/global/Themes/Equality%20and%20Discrimination/lang-en/index.htm)

Hicks and Morley Law Firm

<http://www.hicksmorley.com/index.php?name=News&file=article&sid=18>

Hicks and Morley Newsletter – 2008 Focus on Human Rights

<http://www.hicksmorley.com/index.php?name=News&file=ftrquarterly&sid=36&catid=6>

 **La Jornada**
LONDON's Bilingual Hispanic Newspaper

<http://www.spanishjournalnews.com/Home.html>

Interview with Aida Gatfield

Could you tell us a little bit about the work that you do, as it relates to workplace discrimination?

Hicks Morley assists employers with all aspects of human rights law. That includes advising employers on the drafting of discrimination prevention policies, advising employers during investigations of allegations of discrimination, advising on appropriate steps to be taken in response to a finding of discrimination, representing employers in defending against human rights before human rights tribunals, before labour arbitrators or in court. We also provide human rights training to management.

Do all distinctions between employees amount to discrimination?

No. It is when an employer's distinction based on one of the prohibited grounds set out in the *Human Rights Code* has an adverse impact on an individual that discrimination may result.

What are the most common grounds for discrimination complaints in Ontario workplaces?

In our practice, the majority of complaints we see allege discrimination in the workplace on the basis of disability. The Ontario Human Rights Commission publishes an annual report setting out the number of complaints filed under each of the prohibited grounds. In its Annual Report for 2008-09 disability was the most common ground cited.

How do you help employers navigate through a workplace discrimination complaint?

We advise employers on how to conduct a timely, thorough and fair investigation. In some cases, that may require engaging an external investigator. Also, we remind them that confidentiality should be maintained to the extent possible.

If the complaint is substantiated, employers want to ensure that

appropriate steps are taken to address the specific incident as well as take steps to prevent similar incidents from occurring in the future. This will usually involve non-disciplinary measures such as training and in some case, depending on the severity of the incident, disciplinary sanctions.

What advice would you give employers who have been challenged that their policies or processes could be interpreted as discriminatory?

Employers should review the policy/process in question to determine if it complies with human rights legislation and the case law. This usually means seeking legal advice. If the policy/process does not comply with human rights legislation then changes should be made to make it compliant.

In what ways do you think employers are fairing better now in their understanding of workplace discrimination, than they were 20 years ago?

I think today employers are more aware of their rights and responsibilities under human rights legislation, as are employees. Twenty years ago, human rights issues were not raised as they are today. Also, workplaces have become more diverse. With the increased diversity, issues which may not have been as prevalent twenty years ago arise more often- For example, accommodating employees to allow them to observe their religious holy days.

Where can employers go for more information about their obligations to accommodate ?

The various human rights bodies publish policies and guidelines which can be accessed on their website free of charge. However, accommodation is a complex issue. It is determined on an individual case by case basis not by using a boiler plate template for all situations. Employers would be wise to seek legal advice from a lawyer practising in the area of human rights.



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