A New Trend in In-House Employment Policies

March 01, 2019

In July 2018, a corporate giant in the field of shared workspaces decided to encourage the consumption of vegan menus on its business premises. The story attracted widespread media coverage. In practice, the company in question decided to take meat off its cafeteria menus and to stop reimbursing employees who ordered non-vegetarian meals at business lunches. Notably, however, the company did not prohibit eating meat in its workspaces and did not control the contents of its employees' lunch-boxes. This new policy was motivated by the desire to preserve the environment and protect animal welfare.

After the policy was adopted, a number of legal commentators raised questions about its legality, invoking different rights protected by the Charter of Human Rights and Freedoms1(the Charter). This would appear to be the first time that any business enterprise had adopted a policy of this kind in Québec, with a view to actively promoting an ideology.

This policy fostering "meatless" food service on business premises seems likely to re-ignite disputes over employment policies affecting employee rights, but in a different perspective.

For a number of years, there was a dispute about whether restrictive dress codes or policies governing the physical appearance of employees were valid under the Charter. Courts held that employers were entitled to adopt such policies if they were reasonable and were designed to protect the health and safety of the employees or the public and/or the legitimate interests of the business, even if they restricted the employees' freedom of expression. Mere preferences expressed by customers could not be used to support such restrictions, however. For example, the case law established that a company would be justified in prohibiting tattoos having sexist or racist connotations, or inciting to violence, or which promoted drugs or alcohol, or were of an offensive nature. The controversy surrounding that issue now appears to be resolved, and it must be admitted that in recent years, tattooing, indeed even body piercing, have become quite current and commonplace practices.

But what of policies that address new concerns in our society? At the present time, issues dealing, among other things, with environmental protection, animal rights and health, are being discussed more than ever before. Would employers be justified in

adopting policies affecting the rights of its employees, on the grounds that such policies are reacting to current issues confronting society?

Such policies might, for example, preclude single-use plastic or cardboard items in the workplace or prohibit “lunches” that are not vegetarian, vegan or “zero-waste”. Such policies might also authorize employers to pay premiums to those of its employees using public transportation or bicycles to travel to and from the office, or to confer benefits on non-smoking employees, who never take “cigarette breaks”.

For employers to lay down policies that promote particular ideologies and lifestyles among their employees, or which confer benefits on some of their workers on the basis of their personal habits of daily living, may well spawn new controversies. Any such policy could eventually be contested, notably by way of complaints to the *Commission des droits de la personne et des droits de la jeunesse*, alleging interference with one or other right guaranteed by the Charter. Disconcerted employees could invoke their right to privacy, a right that protects their limited sphere of personal autonomy, where certain intrinsically personal and private choices are made, or their right to equality, since the effect of such policies would be to treat employees differently from one another.

On the other hand, employers could contend that, by adopting such a policy, they are not interfering with any rights contemplated by section 10 of the Charter, namely, race, colour, sex, pregnancy, sexual orientation, civil status, age, language, ethnic or national origin or a handicap, with the result that the impugned policy does not give rise to any discriminatory distinction, exclusion or preference.

Since each party will have its legitimate arguments to assert, the legal validity of any such policy will certainly have to be determined on a case-by-case basis. The courts will therefore be tasked with deciding such disputes in due course.

1 *Charter of Human Rights and Freedoms*, CQLR, c. C-12.

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