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ONTARIO'S EQUITY LAWS

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What's New in this Update:

This Release of *Ontario's Equity Laws* updates Chapter 13 (The Pay Equity Hearings Tribunal) along with new case digests and legislation updates.

Case Highlights

- **Pay Equity Hearings Tribunal — Parties to a Proceeding Before the Tribunal/Anonymous Complaints** — The Pay Equity Hearings Tribunal ordered that an unidentified employee who was a party to the complaint had a right to participate in proceedings and could do so anonymously, through an agent. *Ontario (Pay Equity Office) v. Sexual Assault Support Centre of Ottawa*, 2016 CarswellOnt 585 (Ont. P.E.H.T.).
- **Pay Equity Hearings Tribunal — Remedies/Confirm/Vary/Revoke Review Officer's Order** — A delay of 14 years between the posting of a pay

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equity plan and the final order of a Review Officer was found to be unreasonable, prejudicial, and an abuse of process. The delay resulted in substantial and irreparable prejudice to the employer, which after believing that its non-union plan had been approved, completed its pay equity wage adjustments. To require the Applicant to incur the cost of making retroactive pay equity adjustments and pay interest on those amounts would be prejudicial. Additionally, due to the time lapse, the employer no longer had access to the payroll records that would be required to characterize pay increases it had made since 2005 as pay equity adjustments. Furthermore, allowing the complaint could bring the resolution system into disrepute by emboldening complainant employees to raise objections long after a pay equity plan had been “deemed approved”. The Tribunal, however, rejected the applicant’s preferred remedy that it be permitted to characterize all post 2005 wage increases as pay equity adjustments. The Tribunal concluded that there was nothing preventing the applicant from proceeding in that fashion without the Tribunal’s support, but it was not the role of the Tribunal to insulate parties from the legal consequences of their respective actions. Therefore, the Tribunal ordered the rescission of the Order. *Maitland Manor Health Care Centre v. Mattuci*, 2015 CarswellOnt 16269, 2016 C.L.L.C. 230-014 (Ont. P.E.H.T.).

- **Arbitrations — Grievance procedure — Policy grievance** — Union grieved employer breached collective agreement by eliminating Family Visitor classification and permanently laying off grievors as reprisal for grievors obtaining significant retroactive wage increases; employer subsequently assigned work normally performed by grievors to public health nurses. Employer submitted lay-offs were reluctantly undertaken to address chronic and sustained funding shortfall. Employer’s decision to eliminate classification and lay-off grievors was done in good faith pursuant to legitimate business purposes in light of budgetary pressures. Employer failed to provide union with 20 working days’ notice in order to provide union with opportunity to discuss and potentially put forward alternative options. Grievors entitled to all lost wages associated with lay-off taking place prior to completion of 20 working days’ notice period. *Lambton (County) and CUPE, Local 1291 (Layoff of Family Visitors), Re*, 127 C.L.A.S. 38, 2016 CarswellOnt 6554 (Ont. Arb.).

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