



ONA Equity Bulletin

News Bites from the Human Rights and Equity Team

ONTARIO NURSES' ASSOCIATION

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Did You Know?

Women and the Economy

- In Canada, as in all advanced industrial countries, there is still very marked occupational segregation between women and men. Women and men hold very different kinds of jobs, working in almost parallel occupational worlds.
- Women employed in professional jobs are mainly to be found in health, education and social services in the broader public sector. Of the 32.5 per cent of all women who are professionals, two in three are employed in these occupational groups.
- By contrast, the majority of professional men are to be found in business/finance and natural sciences/engineering/mathematics occupations in the private sector (where women account for just 22 per cent of employment).
- In 2006, women accounted for 87.4 per cent of jobs in nursing.

Source: "Reality Check on Women's Equality," *The Canadian Labour Congress*, February 2010, www.canadianlabour.ca/national/news/reality-check-women-s-equality

Contact Information for the Human Rights and Equity Team

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A Message from ONA's Vice-President, Human Rights and Equity Team

Andy Summers

Welcome to our first bulletin of 2010!

A new decade brings fresh perspectives and renewed commitment to promoting greater awareness and understanding of human rights and equity issues among our membership.

In January, two new members joined ONA's Human Rights and Equity Team: Robin Fern from Local 96 in Region 3, and Charlene Schiffer from Local 14 in Region 1. Robin is representing LGBT Members, and Charlene, a past graduate of ONA's 2006-07 Leadership Development Program, is representing Members with Disabilities. Acknowledging these two important equity groups in our membership, we have chosen to highlight gender identity and disability accommodation issues in this edition of the bulletin.

While gender identity discrimination is a new area for member education, disability accommodation is an increasingly complex area to navigate after two decades of legal decisions from the courts, arbitrators and human rights tribunals. We need to stay on top of all developments and ensure our rep-

resentatives and members are informed on all the key issues that impact members in the workplace.

Our new Human Rights and Equity Team members join three ONA members who are completing their second year on the team: Usha Arora (Local 25, Region 4, representing Racialized Members), Eric Drouin (Local 83, Region 2, representing Francophone Members) and Pamela Mancuso (Local 46, Region 1, representing Members of Aboriginal Descent). The team has a busy year ahead and planning is underway in the areas of member education, engagement and advocacy.

The team is excited about engaging more members in the role of Bargaining Unit Human Rights and Equity Representative, and we would like to hear about your successes and challenges in the role. You are an important piece of the puzzle, so please get involved by sharing your ideas, opinions or stories with us.

Many thanks to those of you who attended the first ever Bargaining Unit Human Rights and Equity Representatives networking session, held in conjunction with the November 2009 Human Rights and Equity Caucus. We received great feedback from you! This was an exciting event with standing-room only. Members raised issues and shared their experiences and insights as Human Rights and Equity Representatives. We built solidarity and celebrated our successes in our workplaces!

Disability Accommodation Hierarchy: Providing Reasonable Accommodation

Are employers offering to accommodate ONA members with disabilities in lower-rated positions outside the ONA Bargaining Unit? This is not appropriate unless a number of steps have been followed by the employer. Finding a reasonable accommodation requires that the employer conduct an individual assessment of each case and consider the full range of accommodation opportunities available in the workplace.

While it is the employer's right to determine the accommodation that it will offer the em-

ployee, there is a hierarchy that arbitrators will expect to see the employer follow in making this determination. Employers should explore whether the employee can be accommodated without undue hardship through the employer proceeding through each step of this hierarchy:

- Own position.
- Own position with modifications (may include bundling of duties).
- Another position in the Bargaining Unit.
- A position in the Bargaining Unit with modifications (may

include bundling of duties).

- A position with or without modifications/bundling of duties outside the Bargaining Unit.

The employer must provide a reasonable accommodation, not one that is ideal or perfect. The employer is not required to grant the employee his or her preference. Arbitrators will not allow an employee to simply refuse a reasonable accommodation offer without trying it out on a trial basis.

For more information about the accommodation process, contact your Labour Relations Officer.

Managers Should Avoid Substituting their Personal Views when Reviewing Medical Information

In an interesting case from Saskatchewan, an arbitrator has decided that a nurse manager overstepped her role in the accommodation process and unnecessarily delayed an employee's return to work.

In *Prairie North Health Region v. Saskatchewan Union of Nurses* (Pel-lack grievance), [2009] S.L.A.A. No. 5 (Hood), a pregnant employee with medical complications was not permitted to return to work because the nurse manager did not accept the physician's statement that she could return to work in an accommodated capacity.

The arbitrator examined the reasons for the delay in returning the employee to work and concluded that the nurse manager had overstepped her role by disregarding the medical evidence and acting on what she believed was good for the employee:

"The employee, having made the choice to return to work and objectively demonstrating the capacity to perform the work with or without modifications, is to be granted the right to work unless the accommodation required creates an undue hardship to the employer. The employer's personal view of the soundness of the employee's choice to work during a pregnancy is not a factor in the accommodation process. The employer has no right to substitute its views for those of the employee when the choice to pursue work belongs to the employee."

This case demonstrates that the employer and its managers must avoid substituting their own personal views when interpreting medical information provided by an employee.

Understanding Trans Issues in the Workplace

ONA is working to educate union representatives and members about the issues faced by transgendered people in workplace.

Transgendered people (also referred to as "trans" or "gender variant" people) come from all walks of life and are represented in every race, class, culture and sexual orientation.

Gender identity concerns a person's internal sense of being male or female. Transgendered people are not comfortable with or reject their biologically and socially assigned gender identity or express their gender in unconventional ways. A transgendered person may be gay, lesbian or heterosexual; there is no direct connection between gender identity and sexual orientation.

There are estimates that one in every 24 people designated male at birth, and one in every 103 people designated female at birth are transgendered people. Approximately one in 30,000 adult men and one in 100,000

adult women seek sex reassignment surgeries. There is a much larger population of people who transition from their birth gender who cannot afford surgeries or choose to not alter their bodies surgically and/or with hormones.

Discrimination against transgendered people is rooted in sexism and gender stereotyping. Transgendered people do not fit the "norm" because their personal gender identity or expression is not the same as their biological sex.

Sexism and gender stereotyping exists at every level of society. It causes many trans people to decide to not express their gender identity in the workplace, at school, or within their families. Trans workers are particularly vulnerable to acts of discrimination on and off the job.

Issues at work include:

- Employers refusing to hire, train or promote trans workers.

- Employers firing trans workers when they transition or come out as transgendered.
- Supervisors and coworkers taunting, isolating, and verbally and physically abusing transgendered individuals.
- Supervisors and coworkers refusing to refer to trans people by the name and gender of their choice.
- The use of gender appropriate washrooms and changing facilities can arise as issues.

The Canadian labour movement has begun to examine its role in the fight to end discrimination on the basis of gender identity and expression. Unions have a responsibility to defend the rights of all members on the job.

ONA is taking up and supports the fight against discrimination on the basis of gender identity and expression. ONA has a membership equity group for lesbian, gay, bisexual and transgendered people (LGBT Members) where members are encouraged to raise issues and bring forward recommendations that will help our union confront discrimination against trans workers and promote awareness and understanding of trans people. The equity group meets yearly at the Hu-

man Rights and Equity Caucus and receives communications monthly via the LGBT e-mail network.

As Leslie Feinberg, author of *Trans Liberation: Beyond Pink and Blue* (1998) writes, "The union movement was built on this granite truth: An injury to one is an injury to all."

ONA representatives and members who wish to learn more about trans issues are encouraged to contact the Human Rights and Equity Team (see page 1 for contact information).

This article was adapted from the Canadian Labour Congress discussion paper, "Trans Issues for the Labour Movement" (2006), www.canadianlabour.ca/sites/default/files/pdfs/TransissuesEn.pdf

SEND US YOUR FEEDBACK!

The Human Rights and Equity Team would like to hear what's going on at your Bargaining Unit or Local and how we can provide support or assistance.

Contact us at:

asummers@ona.org

Save the Date!

This year's Human Rights and Equity Caucus Meeting and Networking Session for Human Rights and Equity Representatives will be held on Monday, November 8, 2010.