

Did you know?



Substance dependence is a disability protected by the Human Rights Code

- Substance dependence is a serious disease which involves the compulsion to procure and use alcohol and/or drugs. The disease is characterized by a progressive pattern of usage that if untreated is ultimately fatal.
- Human rights tribunals and labour arbitrators recognize substance dependence (alcohol and/or drug addiction) as a disability protected under the *Human Rights Code*. This means the employer and union have a joint duty to accommodate employees suffering from substance dependence in the workplace.
- Substance dependence can result in behaviours that lead to disciplinary consequences, such as theft of narcotics. Individuals will engage in theft to satisfy the need for large dosages and/or frequent usage and to avoid the effects of withdrawal.
- Allegations of theft are often accompanied by other allegations of professional misconduct, such as improper charting, diversion – *continued on page 3*

MESSAGE FROM ONA'S VICE-PRESIDENT, HUMAN RIGHTS AND EQUITY TEAM Issue focus: Obesity and human rights



ANDY SUMMERS

Human Rights and Equity Caucus a success

Happy New Year to all! Along with our Human Rights and Equity Team, I invite you to celebrate the success of ONA's 2010 Human Rights and Equity Caucus Meeting, held this past November. Your participation as ONA representatives, leaders and front-line members was outstanding and we had a record number of members in attendance! Some of the

evaluation comments included:

"This was beyond excellent. The break-out sessions were well-organized and topics and questions well directed. The speakers shared vast knowledge, which can and will be taken back to the workplace."

"Motivated speakers and good panel – keep going with the diversity presentations."

The team will be reflecting on all of your helpful feedback in the months to come as design begins for the 2011 Caucus meeting.

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New amendments to ONA's Statement of Beliefs

Key amendments were passed at the 2010 Biennial Convention, bringing ONA's Statement of Beliefs in line with current legislation and ONA's current practices.

- ONA's Statements of Beliefs on human rights and equity now recognizes "gender identity" as an area of diversity in our membership and as a prohibited ground of discrimination and harassment in the workplace and in the union. Gender identity concerns our internal sense of being

male or female and is different from our sexual orientation and our biological sex.

- In addition, the prohibited ground once referred to as "gender" has been changed to "sex" to reflect the language used in the *Human Rights Code*. The terms gender and sex are often used interchangeably, but they do have different meanings, sex referring to biological sex and gender referring to the social construct of gender.

- Finally, specific references are made to "bullying, Code and Non-Code harassment," all of which are forms of harassment that ONA is currently addressing in collective bargaining, member education and member support mechanisms. ■

MESSAGE FROM ONA'S VICE-PRESIDENT, HUMAN RIGHTS AND EQUITY TEAM
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Obesity is a human rights issue

Our focus in this edition is on obesity as a human rights issue. As an ONA member, how do you respond when disparaging comments are made in the workplace about someone's weight? What if the comment is self-deprecating? What if the person complaining about his or her own weight is in fact someone you view as already having what society would call an "ideal" weight?

One HR&E representative recently recounted an experience she had when a patient said to her in an apparent state of distress, "I'm so fat, I have to lose 10 to 15 pounds." The rep tried to put the patient at ease by commenting, "You look really healthy to me."

In this case, the patient could not have been described as "fat" by any

definition of the word. Comments like these, which are not uncommon, can be experienced by others as put-downs of large or fat people when the message conveyed is that being large or fat is unacceptable and something to be ashamed of. As ONA members, we need to be sensitive of the impact of our comments and our actions, and speak out about hurtful stereotypes and prejudices.

We have included an FAQ article on obesity as a human rights issue by Yasna Beheshti, ONA's 2010 intern in human rights. We look at the concepts of obesity and disability and highlight when obesity might be the grounds for a complaint of discrimination or harassment in the workplace. ■

Andy Summers,
ONA Vice-President,
Human Rights and Equity Team



HUMAN RIGHTS INTERN
 ONA welcomed its first Human Rights Intern in August 2010. **Yasna Beheshti** is a second year student in the Common Law JD program at the University of Ottawa. ■

We want to hear from you!

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. Please contact us at asummers@ona.org

Contact Human rights and Equity Team by email at: asummers@ona.org or call ONA toll-free at 1-800-387-5580 or 416-964-1979, press 0 and follow operator prompts to access voicemail boxes 7768 or Andy Summers 7754.

HUMAN RIGHTS 101

Addressing human rights violations through the grievance procedure

Every ONA collective agreement provides members with the right to equal treatment and freedom from discrimination and harassment because of personal characteristics, including race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

ONA representatives should encourage the member to make a complaint under the employer's anti-discrimination and harassment policy.

When an ONA member experiences discrimination because of a rule or requirement, he or she is entitled to reasonable accommodation of his or her personal characteristics, for example, a disability, a religion requirement and/or a family status obligation. If the employer can do so without incurring undue hardship, the employer must arrange the employee's workplace, duties, work schedule or hours of work to enable the employee to do his or her work.

The ONA grievance procedure is the appropriate place to enforce ONA members' human rights and seek remedies for violations by the employer. This is because the protections of the *Human Rights Code* are incorporated into ONA collective agreements, and an arbitrator has the power to interpret and apply the requirements of the *Code*. It is not necessary for a

member to file an application at the Ontario Human Rights Tribunal.

In addition to filing a grievance, ONA representatives should encourage a member to make a complaint under the employer's anti-discrimination and harassment policy. Sometimes ONA will defer filing a grievance or will put a grievance on hold until the employer has had an opportunity to conduct a full investigation into the complaint and take steps to resolve the issues. ■

Did you know?

Substance dependence

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- of narcotics from patients, or practising while impaired.
- Denial is a central feature of the disease. Individuals will deny they have engaged in compulsive behaviour and that they have a problem with alcohol and/or drugs, both to others and themselves. It is important that ONA representatives understand the powerful role denial plays in the disease and that individuals may not be in a position to accept that they are suffering from substance dependence until they begin a treatment program.
- Feelings of shame and embarrassment can immobilize individuals from seeking the help they need and from discussing their situation with others, including their ONA representatives.
- Substance dependence can be arrested through treatment followed by an active lifelong recovery program. Most ONA members return to work and have successful, long-term nursing careers. ■



Want to learn more about representing members suffering from substance dependence?

ONA offers an ideal one-day workshop for ONA representatives and front-line members called *Supporting Members with Addictions*. You will find information about this workshop and other human rights workshops on the ONA website at www.ona.org.

Talk with your Local Coordinator or Bargaining Unit President to express your interest in attending any of these sessions. Also, stay tuned for the upcoming publication of ONA's *Tip Sheet on Representing Members with Substance Dependence*, which will be available in 2011. ■

FAQ



Obesity as a human rights issue

What is obesity?

Obesity has been defined by the World Health Organization as an excess or surplus of body fat, having a Body Mass Index (BMI) of 30kg/m² or more. BMI is a measure of body fat based on height and weight. A BMI of 18.5kg/m² to 24.9kg/m² is considered average.

According to the 2004 Canadian Community Health Survey, 23 per cent of Canadians, or an estimated 5.5 million adults, are obese. This is a growing trend.

Is obesity a disability?

The blanket statement that obesity is a disability is incorrect. It's something that has to be assessed on a case-by-case basis. There may or may not be any health complications or functional limitations associated with obesity.

Dr. David Lau, chair of the diabetes and endocrine research group at the University of Calgary, believes Class III Obesity, a BMI of 40 and up, should be considered a disability and a disease because the majority of medical problems are associated with this kind of weight.

But Dr. Yoni Freedhoff of the Bariatric Medical Institute in Ottawa says there are people who weigh well into the super-obese range who have no health complications.

Is discrimination related to obesity a human rights issue?

Yes, in some cases. Obesity on its own is not a prohibited ground of discrimination in the *Human Rights Code*. However, when linked to the ground of disability, it can be given human rights protection.

The *Code* explicitly protects employees against discrimination and harassment based on disability. The *Code* definition of "disability" requires the disability to be caused by bodily injury, birth defect or illness. In the case of obesity, it would be inaccurate to classify it as condition caused by a birth defect or an illness in all cases. Therefore, at face value it may seem obesity would not always fall under the definition of disability.

However, the Ontario Human Rights Commission has noted that the definition of disability in the *Code* is a set of "various types of conditions and it is not an exhaustive list." In fact, in certain cases, the Commission has decided not to follow the definition literally and therefore not place emphasis on a direct cause of a disability. The Commission has focused on the effects of discrimination. As long as an obese person can demonstrate he or she is being disadvantaged because of others' stereotypes and prejudices, she can claim protection under the *Code*.

In addition, the law has moved in a direction to protect employees from discrimination based on the perception of a disability. No longer is the focus solely on functional limitations from a disability. This means if an employer does not hire an obese person because it thinks that person will be incapable of doing her job because she may tire easily, the perception can constitute discrimination.

The focus on perception is important because it means stereotyping and prejudices against obese people will be deemed discriminatory.

What are some of the implications surrounding obesity in the workplace?

If an obese person believes he or she is being treated differently and in negative ways because of size or weight, there may be grounds for bringing forward a complaint of discrimination or harassment.

Examples of discrimination because of obesity in the case law include:

- An applicant was refused employment because he was considered to be "too big and too heavy" and unable to keep up with the "fast-paced" work environment.
- An employee was denied a promotion because her supervisor thought she would be unable to perform certain tasks "as quickly and as efficiently as other applicants" due to her weight.
- An employee was refused recall after a layoff because his supervisor thought that he had gained "too much weight" and therefore could not do his job. There was no evidence that the weight gain (if it occurred) would affect his job performance.

Repeated comments that denigrate and cause embarrassment for obese people do not have to be taken lightly.

ONA members who have concerns about discrimination or harassment related to obesity should talk to their Bargaining Unit representative about filing a complaint under their employer's workplace policy and filing a grievance under the collective agreement. ■