

| Type of Decision | | | | | | | | | |
|-------------------|----------------------|------------------|---|----|-----------------|--------------------|------|--|--------|
| Meeting Date | Friday, May 10, 2013 | | | | Report Date | Tuesday, May-07-13 | | | |
| Decision Required | | Yes | X | No | Priority | X | High | | Low |
| Direction Only | | Information Only | | x | Type of Meeting | X | Open | | Closed |

| REPORT TITLE |
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| Clerk's Report -on HR training on line and in class April 29, 30 - #10/05/13/801-C |

Module 1

1. Employer policies

- all can be included in manual, they can't conflict with collective agreement or legislation to the extent they do they will be ineffective.
- Are considered in legal proceedings and will assist your legal position if you are able to demonstrate that they were communicated.
- Make sure that employees regularly review the policies. Make sure that employees see any complaints/disciplinary notes taken so that they are aware of them – have them sign off.
- Need to prove after the fact that employees have received the information. – meeting attendance or sign off sheet for each policy. – need to prove it.

2. Termination of employees and how disputes are resolved.

- Unionized you cannot terminate without cause.
- Only way you can terminate is with cause. – hard to get to.
- Non-unionized employer – can terminate without cause – minimum standards ESA; but may be requirement for reasonable notice over and above ESA – law of wrongful dismissal.

3. Termination is difficult and costly to the employer – because it is intersection of ESA, Common Law (Wrongful dismissal) and written employment contract.

Dispute resolution

- Non-union – not usually a grievance process or procedure – some do have them, some allow an employee with an issue to appear before Council to argue their case to allow them opportunity to remedy. This practise is not recommended; CAO is the manager of the corporation and should resolve all issues.
 - Employees can sue their employers – ex and/or existing.
- Employer is the custodian of the workplace. Talk about internal responsibility system under OHSa. Employer has the biggest list of responsibilities. The employer is in control of the workplace. For OHSa purposes the board or Council is the “employer”. For other issues “the corporation or the municipality” is the employer.
 - HRC – Poisoned workplace – poisoned for reason under code – disability – sexually charged – concept built around the fact that the er has control of the workplace. Harassment - er has positive obligation to create and maintain a workplace free of harassment. Section 5. If harassment occurs, it is the employer's responsibility to remove it.
 - Courts have acknowledged a power imbalance in the employment relationship. Especially at time of termination. Supreme Court of Canada created concept of

good faith dealing with employees. "In the manner of termination the employer owes a duty of good faith to the employee".

- b. If you breach that duty of good faith and there is evidence that the employee has suffered there will be increased damages.

GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES UNDER THE *HUMAN RIGHTS CODE*

6. If you file a HR complaint you can ask that the tribunal consider a policy and/or decision of the Commission and then they **MUST** consider it in your case.

Module 2

7. Under new ESA you can bank hours – if overtime, must be paid at the OT rate.

Termination

8. During notice period upon termination and payment in lieu – have to continue to pay benefits or you will be liable for insurance payments should there be a claim during that period.

April 28, 2013 - Module 3 – OHSA

9. Generally speaking, a health and safety representative has the same responsibilities and powers as a joint committee member. These include:
 - a. identifying workplace hazards [section 8(10)];
 - b. inspecting the workplace at least once a month [section 8(6)];
 - c. being consulted about workplace testing [section 8(11)];
 - d. making recommendations to the employer [section 8(10)]; and
 - e. investigating work refusals [section 43(4)] and serious accidents [section 8(14)].
10. If it is not practical to inspect the workplace at least once a month, the health and safety representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month.

PP with audio

11. Make sure that Pat, Darrel and Ken have copies of our Workplace H&S policies and understand that they are to comply with them.
12. Rights only apply to those being investigated and not to witnesses and include: right to legal Counsel; freedom from unreasonable search and seizure; freedom from unlawful detention; right of a suspect to remain silent.
13. Section 50 of OHSA deals with reprisals. The onus is on the employer to prove that they were not acting due to reprisal. Difficult for an employer to win.
14. Employer must be able to show that it did not breach the act as opposed to the employee having to prove that the employer did breach the act.
15. We are required to complete workplace risk assessment for violence.
16. Requirement to train employees on Workplace violence and harassment. Make sure that one of our employee meetings deal with this issue and that we have a sign off sheet attesting to a promise of compliance and understanding.
17. Budget - Add one full day of training to the health and safety budget for specific training for employees not normally at work – Bob, Linda, Bill and Gayle.
18. Bill 168 - Recent court cases have proved that the employer must show that it has trained the employees on the intent and specifics of the legislation. It is not enough to have a

policy; there must be evidence that it has been explained to those it covers including consequences of actions; in our case, Council as well as employees.

- a. Must be training.
- b. Best practise to have each employee and member of Council sign that they understand and they will comply.

19. Canadian Charter of Human Rights and Freedoms only apply to actions of governments and not those of private individuals. Can be used to strike down unconstitutional laws or practises.

20. Ontario Human Rights code applies to private and public sector and between individuals but only within the listed social areas.

21. Human Rights code has been proved to cover volunteers as well.

22. Human Rights complaints can be filed against members of boards of directors similar to Councils.

23. With a Human Rights case, the applicant must show that the Code was violated against.

Accommodation for Accessibility

24. Have an obligation to provide individualized emergency response plans if made aware of the need.

25. Extremely important that the disabled employee participate in return to work plan.

26. Need to inform employees of supports and accommodation.

Module 5 - Accommodation

27. What are the obstacles which prevent full participation in the workplace?

28. An employer's perception of a disability (we don't think he can do this job because he's too obese - as per the example on the audio) resulted in the findings of a successful claim of discrimination when an overweight man was not rehired for a highway flagging job after a winter's lay off.

29. An employer has a duty to inquire as to whether or not an employee requires accommodation once certain facts are known. Failing to find out may prove detrimental, costly and embarrassing.

30. Sometimes denial of the disability by the employee relieves the employer of liability, sometimes it does not. For example, an issue of substance abuse, the employer can only pursue a course of respectful inquiry – repeating as often as necessary. If the employee fails to admit a problem and work issues arise as a result, the employer may treat the incidents and the employee with disciplinary measures.

31. In one case, upon termination the Tribunal sided with the employee due to the lack of evidence that the employer took sufficient measures to attempt to dispute the employee's denial of a substance abuse problem. They stated that the employer should have worked with the employee more.

32. Definition of "undue" hardship considering: cost; external sources of funding and health and safety. As a municipality, it is very difficult to convince a tribunal that an accommodation is

too difficult due to cost. Adjudicators subscribe to the “deep pockets” line of thought. To prove undue hardship, proving a health and safety issue is likely the most reliable for a municipality in relation to the public, the co-workers and the individual.

33. Case law has shown the following factors may be applicable: business inconvenience, morale of other employees, third party preference, and collective agreements.
34. The employer is not required to add or create a new position for the employee if there is no accommodation or alternate position available.
35. Tasks may be bundled for short term accommodation but the employee ultimately must be able to perform a useful and productive job in the context of the employers operation.

Attendance Management Programs

36. There are reasonable reasons to be absent. These programs are provided to manage unreasonable or culpable absenteeism.
37. Personal leave days and/or legitimate illness absences are not included as absenteeism for the counting of absences.
38. Program must not be disciplinary when dealing with non-culpable or innocent absenteeism.
39. Should review and update our absenteeism policy. Upon review of the issues which are documented in these policies and the structure of our workplace there are few areas of concern for us. We can address and define culpable and non-culpable better and the steps to be taken upon evidence of culpable absenteeism. Pg. 4 of York doc.

Day 3, April 29, 2013 – Mr. Steven Potter, HR Law – Key HR Processes

40. At common law, dismissal an employee may get more at court than required under ESA. Very often settled out of court. Often up to one month of pay for every year of service. Specifics are based on the type of position, length of service, age of employee, opportunity for similar employment etc.

HR Roles and Responsibilities

41. In the Municipal Act definition of the role of Council the word “ensure” is inserted because Council members generally are not elected based on their qualifications. They are not necessarily qualified to complete the tasks but they are required to “ensure” that they are in place.
42. They need to ensure that qualified employees are hired to perform the tasks listed in section 224.
43. A good idea is to have a by-law which specifies what a CAO does and/or specifically what he/she is not to do.
44. Outline what Council retains authority for. CAO should be able to change policies without bringing them to Council to approve line by line.
45. The CAO should have a document which outlines exactly what authorities he has.

HR Processes

46. Why do things go right?
 - a. A good process exists and is followed.
 - b. Good luck.

47. Why do things go wrong?
 - a. A good process exists but is not followed.
 - b. The process that exists is bad.
 - c. There is no process.
 - d. Bad luck.
48. Dispute resolution. Grievance policy should be reviewed. The only time anything should go to Council is when it involves the CAO. Everything else is the responsibility of the CAO and the CAO's decision should be the end of the issue.
49. Council should not be a decision maker – let management do its job.
50. The only aspect of the hiring/management process which is the purview of Council is the establishment of plans, goals, programs and services.
51. Determining and approving pay rates and benefits should only be decided by Council at a budgetary level (aside from the CAO).
52. Evaluating jobs to determine pay level, hiring and promoting staff, assigning tasks, performance appraisals, merit increases and terminating employment should all be the responsibility of the CAO.
53. Every municipality should have a strategic plan. It sets priorities and creates a map or direction for staff and council. It lets Council, staff and the public know what the municipality is all about.

How do you group jobs?

54. Goal is to create the ultimate organization chart. How would you ideally staff your municipality? Create that model. Write it down. Review it. Play with it. See if you can make it a reality over time. Get buy in from Council and most staff. Work to make it a reality. Take advantage of retirements, resignations etc. Fill the positions the way they would ideally be filled, not the way they have been.
55. E.g. For HCM
 - a. Merge the Road Super job with disposal site position.
 - b. Merge Disposal site with recycling.
 - c. Hire student for recycling duties on Saturdays.
 - d. Merge librarian with office assistant position to make it one with more hours per week.
 - e. Upon retirement of incumbents, move towards this. Brainstorm other ideas.
 - f. Discuss and obtain buy in with Council and employees. Work towards the ideal.
56. Personal Values
 - a. Complete the personal values exercise at an employee meeting. Find out what employees value. Then determine how their job duties meet those expectations or values. Do they?
57. How much time does CAO spend in attempting to determine what employee's value? Are their job duties and responsibilities in line with their values? Are other factors being met to attain job satisfaction?
58. Does Council spend any time attempting to determine what the CAO values?

59. Motivation needs. Why do people do what they do?

- a. Set expectations.
- b. The task is completed.
- c. Complete a performance assessment.
- d. Rewards are provided. Monetary as well as non-monetary. (Thank you, good job.)
Does this process meet the individual's goals and values? If yes, they'll do it again satisfactorily. If no, you'll have challenges.

60. A process needs to be in place that makes sure that you are motivating individuals through their personal values.

61. It is a good idea for senior staff to meet one on one with council members individually to determine what they find important. Confidential meeting to determine goals etc.

Internal vs. External pay equity.

62. It is important to determine external pay equity first. If not, you will not likely be able to fill a position if they are not equitable to similar positions.

63. Once you have advertised and filled those positions, you need to evaluate based on internal equality, equal pay for equal work and female vs. male positions.

64. External equity is not all about money. A positive fulfilling workplace and culture is important to achieving workplace satisfaction.

65. If you have extra money to spread around, spend it on the CAO and other senior staff, they will create a positive work environment and will save money eventually through retention and low turnover.

66. Salary surveys and comparisons must be considered carefully. Low results could be ignored. High results could be dismissed. Hourly rates need to be considered based on 35 or 40 hour weeks. Data can be manipulated. Be careful with these comparisons.

67. Never complete 1 on 1 interviews – instead ensure that preferable 3 people take part in interviews. Council members should not be involved.

68. Behavioural based interviewing – tell us about something that you have planned, implemented etc. what were outcomes? What have you learned from the experience? – use global scoring for 10 – 12 criteria

69. Interview s/b a conversation. Use testing but something appropriate for the job, based on skills required and tasks to be completed.

70. Reference checks and social media – accessing personal information over social media sites might result in obtaining information which is protected and a basis for discrimination including family status, age, sexuality, race, religion etc. Because it is password protected there is a reasonable expectation of privacy.

71. Ensure that you use a formal letter of offer provided with applicable HR policies. Ensure that the ee is given the opportunity to review and ask questions prior to starting work. There is no employment contract at that time.

72. Benefits, salary etc. should be at the purview of management not Council.

73. Update PA form.

74. Budget and income statements should not be a line item for departments with only one ee. Need to change asap. Will group all salaries together.

Day 4 – April 30 – Alan Whyte

75. Well drafted policies should be created and followed to be used as defense in event of any type of HR challenge – union or not.

76. Labour Board practise - <24 hours per week is part time anything >24 hours is full time.

77. Discipline – policy should determine a length of time in which to keep disciplinary notes in ee file; follow policy. Discipline must be proportional to the offense.

78. Policies need to be general enough to address many situations but specific enough to be useful.

79. Issues to review:

- a. Definition of “sick day”;
- b. Use of independent medical exams;
- c. Culpable vs. non-culpable;
- d. Hours or work definition;
- e. Benefit;
- f. Train staff and Council on policies;
- g. Disciplinary process and letter;

80. Counselling/coaching required prior to termination, if applicable situation. Some causes warrant immediate dismissal.

81. Complaint investigations.

82. Er has an obligation to investigate harassment complaints in an objective manner. Don't promise confidentiality.

83. Termination w/o cause.

- a. Illegal if discrimination can be proved.
- b. Can produce increased damages
- c. Courts still want to see a reason, or may be determined to be “bad faith”. Damages would be increased.
- d. Reprisal could result in fines and increased damages.

84. Wrongful dismissal

- a. Common law – reasonable notice is months not weeks;
- b. Bardol factors result in increased damages.
 - i. Older ee – over 45
 - ii. Length of service
 - iii. Position held – senior, harder to get a new equivalent job
 - iv. Alternate employment availability – market factor.
 - v. Generally a 24 month cap.
 - vi. One month per year of service is routine.
 - vii. Do everything you can as er to get ee a new job.
 - viii. Aggravated damages – bad faith, proof of injury to reputation or loss over and above normal feelings of job loss;

85. LTD will not be paid by most insurers for the notice period however; the er still has an obligation to provide insurance. Be careful with self-insuring in case an event occurs – may end up paying for insured benefits until ee reaches 65.
 - a. Case where terminated ee got cancer. Er paid all costs until ee reached 65. Can be costly.