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Significant human rights tribunal awards for an employer's failure to use their preferred pronouns

Both the BC and Ontario Human Rights Tribunals have recently issued significant general damages awards to employees where an employer failed to respect the employee's request for the employer to use their preferred pronouns.

In *Nelson v Goodberry Restaurant Group LTD.*, the BC Human Rights Tribunal awarded a former server \$30,000.00 in general damages for the employer's decision to terminate the employee for asking managers and co-workers to call the employee by the employee's proper pronoun.

The employee identifies as non-binary and uses the pronouns they/them. The Tribunal found that the bar manager persistently referred to the employee with she and her pronouns, as well as gendered nicknames like "sweetheart", "honey", and "pinky" (in reference to the employee's pink hair). The employee asked management to intervene and was told to wait. The employee subsequently tried to talk to the bar manager directly about the issue. This resulted in a verbal altercation during which the employee touched the bar manager's shoulder and called the bar manager "sweetheart". Four days after this altercation, the employee was terminated.

In the termination meeting the employee was advised that they had "come off too strong too fast" and were "too militant". The employee was also advised that "they had made people uncomfortable".

The Tribunal found that the employee's gender identity was a factor in the termination of the employee's employment, and as such, was discriminated against in their employment in violation of the BC *Human Right Code*.

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In *EN v Gallagher's Bar and Lounge*, the Ontario Human Rights Tribunal awarded \$10,000.00 in general damages to three former employees. In this case, all three applicants also preferred the pronouns they/them. The employees requested the owner of the bar to refer to them using these pronouns, but he refused to do so. He was also overheard referring to these employees as “trannies” when speaking to customers. When the employees confronted the owner about these comments, he denied it.

The three employees took the position that they were constructively dismissed from their employment because of the employer's failure to respond to the employees' concerns. The Ontario Human Rights Tribunal agreed that remaining in the workplace was no longer an option for any of the applicants. Accordingly, the Tribunal agreed that the employer violated the Code and discriminated against all three employees in the workplace.

These cases send an important message to employers that an employee's preference regarding the use of pronouns in the workplace must be treated with respect and any complaints regarding discrimination must be taken seriously.

If you have any questions regarding any similar situations in your workplace, please do not hesitate to contact e2r™ to speak with an Advisor regarding your specific situation.