

# OSSTF Limestone District 27

## Teachers' Bargaining Unit

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## Memorandum

To: All Members  
From: Steve Newstead, District and Teachers' Bargaining Unit President  
Date: 12/14/2007  
Re: Religious Holidays

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Recently, some inquiries have come to the District Office regarding Religious Leave for non-Christians. Currently the Limestone District School Board Guidelines for Granting Teacher Leave Requests state:

"With an ever-increasing diverse workforce, requests for time off for various religious observances have increased. Under the Ontario Human Rights Code, employers are obligated to provide up to three days of paid leave over the course of a year for major holidays for individuals who celebrate other faiths."

Currently, the Limestone District School Board does approve religious leave requests for major holidays. Approved leaves are not deducted from your sick leave provided proper procedures for requesting leave requests are followed.

I have attached a copy of the "Religious Leave" resource document from the Ontario Human Rights Code. It can also be viewed online at:

<http://www.ohrc.on.ca/en/resources/Policies/PolicyCreedAccomodEN?page=PolicyCreedAccomodEN-SPECIFIC.html#Heading287>

Any members with questions or concerns with respect to the granting of Religious Leave should contact the District Office for assistance.

## 4. Religious Leave

When an employee requests time off to observe a holy day, the employer has an obligation to accommodate the employee. The extent of the accommodation required is an issue that comes up frequently: does the person have to be paid? Until what point? What about unpaid leave?

Two Christian holidays (Christmas Day and Good Friday) are also statutory holidays in Ontario. This is sometimes held up as evidence of the "non-discriminatory" nature of these holidays. Some employers have argued that because these holidays are now statutory, the employer has no obligation to accommodate employees by paying for other religious holidays. The Supreme Court of Canada has stated that this approach is incorrect.

In *Chambly*<sup>27</sup>, the Court examined the issue of whether the "secularized" nature of Good Friday and Christmas can excuse a policy alleged to be discriminatory based on religion because it is based on the Christian calendar. The Court wrote:

*Here the schedule of work is based upon the Catholic calendar of holidays. Nonetheless, I think the calendar should be taken to be secular in nature and thus neutral or non-discriminatory on its face. It will be remembered that the majority of the Court of Appeal determined that since the calendar did not have any religious aims, it was not discriminatory. With respect, I think this was an erroneous conclusion. It is true that this approach can properly serve to determine that there has been no direct discrimination. However, the analysis cannot stop there. Consideration must still be given to the **effect** of the calendar in order to determine if there is indirect or adverse effect discrimination.*<sup>28</sup> [Emphasis in original.]

In other words, the secularized nature of traditional Christian holidays may remove the taint of direct discrimination but not of constructive discrimination.

**Example:** In *Chambly*, three Jewish teachers employed by a Catholic school board were denied access to the special purpose paid-leave provisions in the collective agreement so that they could observe Yom Kippur. They were told instead that they could take the day off, but unpaid. The Court held that the school board's leave policy had an adverse effect on Jewish teachers despite the secularized nature of Good Friday and Christmas. The analysis which led to the Court's finding of adverse effect is set out by Mr. Justice Cory.

*... Christian holy days of Christmas and Good Friday are specifically provided for in the calendar. Yet, members of the Jewish religion must take a day off work in order to celebrate Yom Kippur. It thus inevitably follows that the effect of the calendar is different for Jewish teachers . . . [t]hey . . . must take a day off work while the majority of their colleagues have their religious holy days recognized as holidays from work. In the absence of some accommodation by their employer the Jewish teachers must lose a day's pay to observe their holy day. It follows that the effect of the calendar is to discriminate against members of an identifiable group because of their religious beliefs. The calendar or work schedule is thus discriminatory in its effect.*<sup>29</sup>

The Court then examined the nature of the accommodation which would be required to alleviate the adverse effect. It rejected the view that the school board's offer of unpaid leave to the Jewish teachers was sufficient accommodation. Mr. Justice Cory wrote:

*If a condition of work existed which denied all Asian teachers one day's pay, it would amount to direct discrimination . . . The loss of one day's pay resulting from direct discrimination would not be tolerated . . . and would fly in the face of human rights legislation. Similarly adverse effect discrimination resulting in the same loss cannot be tolerated **unless the employer takes reasonable steps to accommodate the affected employees**<sup>30</sup> [emphasis added.]*

The Court concluded religious leave should have been available under the special purpose paid-leave provision in the collective agreement. This did not cause undue hardship to the school board.

A number of general principles emerge from this case that are not limited in their application to the particular terms of the collective agreement examined in *Chambly*.

- i. The employer has a duty to consider and grant requests for religious leave, including paid religious leave, unless to do so will cause undue hardship.
- ii. Equality of treatment requires at a minimum that employees receive paid religious days off, to the extent of the number of religious Christian days that are also statutory holidays, namely two days (Christmas and Good Friday).
- iii. The number of paid days may be three under some collective agreements which also make Easter Monday a holiday.
- iv. Beyond this point, *i.e.*, two or three days, individuals may still seek accommodation. For example, measures might include additional paid leave days such as floating days or compassionate leave days, if such exist under company policy or collective agreements, or through unpaid leave.
- v. The standard for *all* accommodation requests is undue hardship, which places a specific burden on the employer to produce evidence to the standard of undueness of the hardship and of its effect.