

SECTION: Legislation

Effective date: April 11, 2003

SUBJECT: MARITAL AND FAMILY STATUS – ANTI-NEPOTISM POLICIES

Purpose

This policy is intended to assist in the understanding and application of *The Human Rights Code*, when applied in the context of anti-nepotism policies. Where there is any conflict between this policy and *The Code*, *The Code* prevails.

Context

The Human Rights Code prohibits unreasonable discrimination based upon marital and family status (see Policy #1-1-6-1). Discrimination on the basis of these grounds is *prima facie* contrary to *The Code*. Therefore, policies or practices designed to exclude family members from the workplace, or accessing services, housing, *etc.*, which often go by the name of *anti-nepotism policies*, will similarly be considered *prima facie* discriminatory based on family status or marital status, as the circumstances require. As a result, the onus will then be placed upon the person applying the policy to prove that it meets the requirements set out in the *Meiorin*¹ analysis. [See also Policy # L-11 “Reasonable Accommodation: Bona Fide & Reasonable Occupational Qualification”.]

In determining whether an anti-nepotism policy is justifiable, the Commission will consider the individual circumstances of each case.

Factors for consideration may include:

1. In relation to the potential impact on the **employee** of the exclusion or limitation on employment opportunities as a result of marital and/or family status:
 - a. Extent of the detrimental impact on the employee as a result of the restrictive policy:
 - i. alternative opportunities for employment available to the employee (for example, is the affected employee excluded from hire or promotion generally throughout the employer’s operation, or only with respect to a small segment of that operation?);
 - ii. evidence of disparate impact on a particular group of persons [systemic discrimination];

¹ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3

2. In relation to the alleged need for the **employer** to maintain an exclusion or limitation on employment opportunities as a result of marital and/or family status:

a. Based upon the specific nature of the employment situation, is there is potential for detrimental impact on the employer which would not exist if the employees were not related:

i. likelihood of actual or a reasonable perception of collusion, favouritism, breach of confidentiality, conflict of interest, etc.;

ii. degree of potential harm to business if matters in (i) were to occur.

b. How broadly drawn are the lines of relationship which will trigger the proposed policy? Does it apply only to dependants, and/or the spouse or same- or opposite-sex common law partner of the individual, and/or natural or adopted children who reside with the individual)? Does it extend to children who no longer reside with the individual? To other degrees of blood relationship (nephews/nieces, uncles/aunts, etc)?

c. Whether the employer has available to it an alternative policy or procedure which will meet its requirements while being less restrictive than excluding family members [ability to accommodate without undue hardship].

e.g. Would the introduction of appropriate policies and disciplinary measures applicable to all employees sufficiently address the employer’s concerns with respect to the possibility of favouritism, collusion, etc.?

e.g. Given the nature of reporting relationship between the targeted individual employee and their family member within the organisation:

i. Is there a direct reporting relationship between them where one has decision-making power over one or more of the following: the other’s hiring, performance evaluation, salary, premiums, special permissions, potential for promotion, conditions of work, discipline or termination, and similar employment matters?;

ii. Is there an indirect reporting relationship where some other person in addition to the family member has influence/input into the decision-making?

iii. Can the reporting relationship be altered, without undue hardship?

APPROVED BY:

Original Signed By

“Janet Baldwin”

Chairperson

21 May 2003

Date