

Could your office be unionized?

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There's a lot of talk about the possibility of unionization in dental offices.

In light of the recent publications by both the ODA and the ODAA on the subject, and requests by many dentists, we wish to provide you with some guidance on what employers can (and cannot!) lawfully do in response to a union drive. Many clients have asked us what the impact of their PPPTMs (i.e. gold standard contracts and policies) is on this issue. We also thought it would be helpful to provide some general strategies to help mitigate the likelihood that your staff will even want to join a union.

While we do not believe that unionization will ultimately be overly successful in the dental industry, it is imperative that you seek legal advice as quickly as possible if you receive an application for certification from a union because an employer generally only has a matter of days to submit a response.

What You Cannot Do

In Ontario, (and legislation is similar across the country) employees' right to unionize is protected under the *Labour Relations Act* and this right cannot lawfully be interfered with or limited through any employment contract or policy manual (not even MBC's Practice Protection PackageTM! However, a PPPTM can make important differences, as we will discuss further below.)

The *Act* prohibits an employer from engaging in “unfair labour practices” to interfere with employees’ rights to unionize. Among other things, this means employers are not permitted to use threats, intimidation, or promises to dissuade employees. For example, it is not permissible for an employer to terminate or threaten to terminate an employee on the basis of her support for a union or to promise bonuses only to staff who do not support a union. It is also generally not permissible for an employer to engage in surreptitious surveillance of staff to ascertain if they’re participating in union activities.

If an employer is found to have engaged in an unfair labour practice during a union drive, the Ontario Labour Relations Board has the power to order a workplace be automatically certified by the union without a vote by staff.

What You Can Do

Fortunately, there are things an employer can do!

An employer is permitted to express its general views about unionization that are not otherwise threats, intimidation, promises or spying. For example, you are permitted to tell staff that you prefer to deal directly with them rather than with a union, that you do not think a union is necessary in your office, and your view that the union will not improve working conditions.

An employer is also permitted to correct union misinformation. For example, a union may “guarantee” staff particular benefits such as raises, a pension, reduced work hours, *etc* but an employer is only obligated to bargain in good faith the union and it is not obligated to agree to any particular demands by a union.

More generally, however, the best union-avoidance strategy truly is to manage your employee relations proactively. For example:

All-star team: while employment contracts and policies cannot directly interfere with employees’ right to unionize, properly drafted employment documents do provide employers the tools to build and maintain an all-star team that has no desire to unionize. In many cases, it tends to be only one or two “bad apples” who get other staff on board to unionize and it is very likely you will have some early warning signs about who these bad apples are (e.g., employees who are very entitled or cause chaos in the office). Having a PPPTM in place allows an employer to easily and inexpensively terminate toxic staff members *before* there is even any talk of unionization.

Communication: employees often seek union representation when they feel their concerns are being ignored and that they have no 'voice'. It is therefore important to solicit employee feedback on day to day workplace issues and have a mechanism in place for staff to communicate their concerns and for you to ensure the concerns are addressed.

Fairness: employees often seek union representation when they feel a sense of unfairness in the workplace. It is therefore important to ensure you appear 'fair'; for example, it will appear unfair that some staff are disciplined for being late while others are frequently late without consequence. Similarly, we recommend properly rewarding your high performers and valued staff so that there is a sense of 'fairness' in terms of good work being rewarded (versus only seniority being rewarded).

An employer is obligated to negotiate in good faith with a union to try to come to an agreement. Whether an employer is meeting this obligation is often a contextual analysis: for example, is the employer delaying or cancelling meetings with the union? Is the employer agreeing to something then going back on it in the next meeting? Is the employer refusing to agree to even basic/standard demands (e.g., seniority provisions)?

To the extent that your having a PPPTM provides a 'starting point' for negotiations, it can be helpful to show you are engaged in good faith bargaining despite refusing the union's demands. For example if you had common law terms and then refused to agree to providing staff twice the statutory minimums for termination pay, it might be evidence of bad faith bargaining. However, if you start with the statutory minimums as set out in a PPPTM, it appears more reasonable to reject a demand for, for example, common law notice.

Also, once a union is certified, a 'statutory freeze' goes into effect until there is a collective agreement. In other words, the existing terms and conditions of employment stay in place until there is a collective agreement. Having a PPPTM would allow an employer to continue to have its protective terms in the interim.

With the world-wide drop in union membership, unions (businesses with a need for revenue) are looking increasingly to new industries for much needed membership dues. We do not feel that dentistry will ultimately prove very profitable for them. We can all work together to ensure that result and a future where dentists continue to deal directly with their employees.

Contact us today to learn more!



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