

Helpful Legal Information for MAHCP Members

Reclassification

You should be paid for the job that you do. If you are performing the work of a higher classification and are being paid at a lower paid classification, that is unfair because you are providing more value to your employer than you are receiving in return. This article will examine some of the issues around reclassification, generally what it means and when it applies. It is not intended to be legal advice for any particular situation.

Reorganisation

The issue of reclassification most often occurs where the employer has reorganised its workplace. An employer has the right to organise its workplace. This is stipulated in the collective agreement and is part of the arbitral jurisprudence in the area. Implicit in this ability is the right to “re-organise” the procedures and methods of performing work within a bargaining unit. The employer must act “reasonably”, however, when reorganising. The employer can’t indiscriminately assign jobs and duties to an individual that belongs to another classification.

Where an employer has re-organized and added duties to the work of an employee that are not within the job description, there is an evaluation that has to take place. That is, do the additional duties mean there is a “material” change to the position? If the added duties are minor and do not go to the heart of what the job is, there is not necessarily a material change in classification. If it can be shown that the job is now different than it was, there is likely a change in classification.

Where the re-organisation means that an employee’s duties are changed to such a degree so that the job is no longer the same, that employee should act quickly to address the problem. The first thing to do is to make sure that the Association has been made aware that there has been a reorganisation to the extent that it has affected the way that the employee is doing the job. It may be that the employer had an obligation under the collective agreement to notify the Association about the changes before imposing them on the employee.

Changes in Job Duties over Time

Where there has been a change to an employee’s duties over time, the employee may have recourse to a reclassification process. Again, an evaluation has to be

done in order to determine whether the change is “material” or “substantial”. In order to support a reclassification the employee “must not only establish that his [or her] ability and work are beyond the present job description but [s]he must bring him[her]self squarely within the description of the classification [s]he seeks both as to ability and responsibility.” (Brown and Beatty Canadian Labour Arbitration 3rd ed., para 5:2430). A rule of thumb to determine whether the changes are material or substantial is whether the core duties of that position have been changed. Each case is different and in each case the employee should determine what are the core duties of that position. The core duties will not necessarily be listed on the job description for that position as separate duties.

If the employee feels that the core duties have substantially changed, the employee should act quickly in bringing that to the attention of the employer. Article 302 provides that “Where an employee believes that there has been a material or substantial change in her job content since she was last classified, she shall be entitled to request a review of her classification”. The employer then has the obligation to examine the duties of the employee and determine whether a reclassification should be made. Where the employee is not satisfied with the employer’s determination, the employee should talk to an Association representative about whether to file a grievance in the matter.

Change in Duties Must be Imposed not Volunteered

The employer will sometimes deny a reclassification on the basis that the employee voluntarily did the additional duties. A reclassification depends on the employer having imposed the material or substantial changes on the employee.

Sometimes the employer’s assignment of new or material duties is not direct. It can be that a job is changed by the addition of new technology or a new method of doing things. Where it is implied that the employee has to have substantially more training and higher qualifications to do the job, even where the employer has never directed the employee to perform the new duties, in these circumstances the direction is implied. This can be a fairly complex analysis and should probably be done with the assistance of an Association representative.



Timeliness

Many reclassification applications have been refused by the employer on the basis that the reclassification was not brought on a timely basis. It is often the case that an employee will assume additional duties slowly, not all at once. It may take years for the additional duties to add up to a “material” or “substantial” change. Once that change is material, the employee must act quickly to seek a reclassification.

Where the employee fails to act quickly, an arbitrator may find that he or she does not have the jurisdiction to deal with the reclassification. This happens where the material change occurs during the course of one collective agreement and the employee grieves the reclassification during a subsequent agreement. If the arbitrator finds he doesn’t have jurisdiction, even where there is a substantial change to the job, the arbitrator will not force the employer to reclassify the employee.

Conclusion

Health care professionals are often on the leading edge of technology, its development and application. Because of the dynamic nature of modern technology and the myriad tasks and duties associated with its use, a health care professional’s duties may change to meet the changes of the technology. Health care professionals deserve to be paid for the work that they do. Being appropriately classified allows you to ensure that your employer recognises your contribution and rewards you for it. If this article raises a concern for you, talk to an Association representative about how to address that concern.

By: Jacob Giesbrecht