

SECTION: Application

Effective date: April 11, 2003

SUBJECT: EMPLOYMENT — MARITAL AND FAMILY STATUS- ANTI-NEPOTISM  
POLICIES

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**Purpose:**

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

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**Context:**

*The Human Rights Code* prohibits unreasonable discrimination based upon marital and family status (see Policy # I-6). 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*<sup>1</sup> analysis. (see Policy # G-4)

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?);

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

- ii. evidence of disparate impact on a particular group of persons [systemic discrimination];
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:

"Janet Baldwin"  
Chairperson

April 11, 2003  
Date