

SCENARIO

1. The Opposing Unions Grand Hotel (TOUGH or, the Employer) operates a resort and spa in Ocean View, BC.
2. Bringing Employees Together (BEsT Union) is the certified bargaining agent for employees at TOUGH. BEsT Union's certification covers employees in the dietary department, clerical areas, housekeeping, laundry, plant maintenance, and patient care.
3. TOUGH and BEsT Union have entered into a Collective Agreement with a term of April 1, 2019 to March 31, 2022. It includes the following articles:

ARTICLE 5 - MANAGEMENT RIGHTS

5.01 The Employer shall determine competency and efficiency; the Employer shall have the right to select its employees and to discipline or discharge them for proper cause; seniority will be considered on the matters of promotions, other things being equal.

17.01 PROPER DRESS

- (a) All Bar employees shall wear, in the absence of uniforms provided by the Employer, dark trousers or skirts and white blouses or shirts. A tie may be required to be worn and such tie shall complement the attire worn. Comfortable shoes will be worn which will also complement the attire worn. This dress and the cleaning thereof shall be the responsibility of the employee. Any additional specific articles or styles of clothing required by the Employer shall be provided and cleaned by the Employer at no cost to the employee.
 - (b) Unless uniforms provided by the Employer, all service employees shall wear clothing which is neat and tidy in appearance. A tie may be required and such tie shall complement the attire worn. Comfortable shoes may also be required to be worn and such shoes shall complement the attire worn. This clothing, and the cleaning thereof is the responsibility of the employee. Any additional specific articles or styles of clothing required by the Employer shall be provided and cleaned by the Employer at no cost to the employee.
 - (c) Other than as defined in (a) and (b) above, the Employer is not entitled to specify clothing of specific colour, style or quality.
4. In 2010, TOUGH published the *Appearance, Grooming and Etiquette* policy. The footwear section states:
 - Footwear must be clean, polished, of a colour that matches/compliments the uniform, and in accordance with departmental guidelines and Policy 4002 (Personal Protective Equipment – Footwear).
 - Clogs for kitchen associates are acceptable.
 - Females: Shoes must have a closed toe with a heel no higher than three inches.

While sling back shoes are acceptable, open heeled shoes, mules, slip-ons and sandals are unacceptable. Boots are acceptable however should be conservative in nature and well maintained.

- Males: Shoes must be leather or leather-like dress with slip resistant soles, clean and in good repair at all times.
5. Greta Richards works in the hotel café – the Brewed Bean - as a barista, making drinks and serving food items to guests and the public.
 6. In January 2020, Greta Richards bought a pair of shoes called Workout Walkers. Workout Walkers are "toning" footwear with a rounded or wedged sole, and are designed to change the way a person walks. The intent is to force wearers to use muscles to maintain balance in a way that is not used when wearing shoes with flatter soles. The brand claims that they encourage muscle toning while walking.
 7. On February 3, 2020, while walking at a normal pace from a washroom on one of the inclining hallway floors that provide wheelchair accessibility to guests, Ms. Richards "tripped over her own feet" and an ankle rolled. She did not fall.
 8. She returned to the Brewed Bean and completed the remaining two or three hours of her shift. At home, she iced her ankle and took pain relief medication. She did not miss any time from work. She reported the incident to her supervisor the next day, and to Mr. John Meagre, Director of Human Resources, the following week.
 9. In accordance with TOUGH's Occupational Health and Safety Program, on February 16, 2019, Mr. Meagre published the concern among employees and requested their input by widely distributing the following email under the subject "Workout Walkers Shoe Safety Issues":

It has recently been brought to the attention of our Occupational Health & Safety Committee (OH&SC) that a few of our associates are wearing Sketchers "Shape-Ups" shoes to work. For those of you not familiar with these shoes, they are similar to a running shoe; however, the sole of the shoe is a curved platform. The intention is that the curve forces you to change the way you walk which in turn claims to help you get in shape by toning certain muscle groups not normally impacted by walking.

The concern is that the curved platform sole can cause instability and potentially a rollover of the ankle. As well there have been several lawsuits against Sketchers in the States from people claiming that the shoes have caused unexpected and serious injuries from repeated use of the shoes (including but not limited to: hip pain/fractures, lower back pain, stress fractures, and Achilles tendon injuries.)

Unfortunately, safety testing pertaining to these shoes is extremely limited.

In light of this information, and on behalf of our OH&SC, I would like to recommend that these shoes be banned as acceptable/approved footwear for

all associates.

Your feedback and input on this issue is valuable. If you have any questions or concerns, please see me directly no later than Monday, February 28 th.

Thank you for your consideration of this matter.

10. No one replied to the email.
11. TOUGH did not conduct a written risk assessment of Workout Walkers footwear, but Mr. Meagre did speak with a representative at WorkSafeBC. The Worksafe BC representative wrote an email to Mr. Meagre, which said:

...

Upon examination 'Workout Walkers' style shoes have a high center of gravity because the sole of the shoe is quite thick in the middle of the sole. This combined with the softness of the sole, and the lack of stability in the support system (thereby requiring more muscle use by the wearer) appear to make them unsuitable for activities other than the process of walking forward on firm, even ground. The shoes do not have a flat sole, (at best only a portion of the sole contacts the ground or floor at any one time) indicating less traction is provided than conventional footwear.

Employers should conduct risk assessments to determine appropriate footwear. An element of any risk assessment is previous experience(s) at the work place. For example if an incident occurs and it is determined that one of the causations is a particular type or style of footwear, that knowledge would be utilized in the risk assessment to determine appropriate and non-appropriate footwear.

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12. On March 1, 2019, TOUGH issued the following memorandum to all employees:

Re: Footwear Safety

It has recently been brought to the attention of TOUGH management that a few of our associates are wearing Workout Walkers (or other comparable brands) shoes to work. For those of you not familiar with these shoes, they are similar to a running shoe; however, the sole of the shoe is a curved platform. The intention is that the curve forces you to change the way you walk which in turn claims to help you get in shape by toning certain muscle groups not normally impacted by walking.

The concern is that the curved platform sole can cause instability and potentially a rollover of the ankle. As well, there have been several lawsuits against Workout Walkers in the States from people claiming that the shoes have caused unexpected and serious injuries from repeated use of the shoes (including but not limited to: hip pain/fractures, lower back pain, stress fractures, and Achilles tendon injuries).

As such, TOUGH management has determined that this type of footwear is inappropriate for use at work, and is prohibited effective immediately.

Thank you in advance for your immediate compliance with this policy. If you have any questions or concerns, please contact me directly.

13. On March 17, 2019, a Laundry Department employee obtained a physician note: "Patient has a medical condition that requires her arch rocker flex plus shoes." The employer allows this employee to wear her shoes to work.
14. Two employees who work in the Spa wear Workout Walkers continue to wear the shoes to work.
15. A server working in TOUGH's main restaurant has been sent home for wearing Workout Walkers to work, when he did not have any other footwear available.
16. Some employees have complained that their feet hurt wearing shoes other than the shoes banned as inappropriate.

Occupational Health & Safety Regulations

Footwear

General requirement

8.22 (1) A worker's footwear must be of a design, construction, and material appropriate to the protection required and that allows the worker to safely perform the worker's work.

(2) To determine appropriate footwear under subsection (1), the following factors must be considered:

- (a) slipping;
- (b) tripping;
- (c) uneven terrain;
- (d) abrasion;
- (e) ankle protection and foot support;
- (f) potential for musculoskeletal injury;
- (g) crushing potential;
- (h) temperature extremes;
- (i) corrosive substances;
- (j) puncture hazards;
- (k) electrical shock;
- (l) any other recognizable hazard.

(...)