

NEW DEVELOPMENTS IN FAMILY ACCOMMODATION

It is now common for employees to request accommodation from their employer in regard to family obligations. The accommodation may take the form of scheduling meetings earlier due to child pick-up obligations, or extending a lunch break in order to allow attending to an elderly parent.

During our Annual Employment Law Update, we discussed the fact that the Federal Court of Appeal had recently ruled that federally regulated employers generally only had to accommodate an employee on the basis of family status where the family obligation was a legal obligation and the employee had attempted to self-accommodate. It was believed that this federal test could eventually lead to Ontario employers having flexibility in family related accommodation.

Recently, the Human Rights Tribunal of Ontario considered the test adopted by the Federal Court of Appeal and rejected it. In particular, the Tribunal held that, for provincial employers, the test for establishing family status discrimination is the same as the test for establishing other forms of discrimination. As such, in Ontario, employers have an obligation to accommodate employees in regard to family status up to the point of undue hardship. There is no obligation for employees to attempt to first self-accommodate. The fact that the employee could have another person attend to the family obligation(s) does not negate an employer's duty to accommodate.

Employers should be careful to ensure that requests for accommodation, including those based on family status, are properly handled. Failure to accommodate where required, up to the point of undue hardship, can expose a company to substantial liability. For more information or for assistance with addressing an employee's request for accommodation, please contact our firm.

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