



November 29, 2018

## FAMILY STATUS ACCOMMODATION

The employer has an obligation under the Collective Agreement and the Canadian Human Rights Act to accommodate workers and this includes accommodation for family status. Unlike accommodation for physical restrictions, which is covered by Article 54 of the Urban Collective Agreement, there is no specific article covering family status. Like other matters requiring accommodation such as religion and gender, it is included in the prohibited grounds listed in Article 5.01 of the Collective Agreements.

The most common request for family status accommodation is for childcare. The requests vary in that some are due to the shift being worked while others deal with the hours within a shift or days of work.

When faced with a request for accommodation based on childcare responsibilities, the employer frequently denies the request and responds that childcare is not the employer's responsibility.

This position of the employer is contrary to the decisions of judges, arbitrators and adjudicators who have been almost unanimous in finding that family status incorporates parental obligations such as childcare obligations.

The Federal Court of Appeal in *Johnstone v. Canada Border Services Agency*, a leading decision on accommodation for family status, stated the following:

*"There is no basis for the assertion that requiring accommodation for childcare obligations overshoots the purpose of including family status as a prohibited ground of discrimination. Indeed, without reasonable accommodation for parents' childcare obligations, many parents will be impeded from fully participating in the work force so as to make for themselves the lives they are able and wish to have. The broad and liberal interpretation of human rights legislation requires an approach that favours a broad participation and inclusion in employment opportunities for those parents who wish or need to pursue such opportunities."*

Later in that decision the Court went on to say:

*"The childcare obligations that are contemplated under family status should be those that have immutable or constructively immutable characteristics, such as those that form an integral component of the legal relationship between a parent and a child, which a parent cannot neglect without engaging his or her legal liability."*

This means that an individual has a legal responsibility to care for the child, and their need for childcare is not a personal choice.

From this decision and others, we know that the following is required in order to be successfully accommodated:

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- A child is under the care and supervision of the worker requesting the accommodation,
- The child care obligations at issue engage the individual's legal responsibility for that child, as opposed to a personal choice,
- The worker has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions and that no alternative solution is reasonably accessible.

Decisions by judges, arbitrators and adjudicators on the issue of family status accommodation take somewhat different views in respect to the obligations of employers. The law is continuing to develop and we will follow it closely and update the membership.

This bulletin deals primarily with accommodation because of childcare. There may be other issues that arise under family status where accommodation is required-in those cases, the same principles will apply.

If you require accommodation based on family status, you should contact your Local Union so they can assist you.

In Solidarity,



Peter Denley  
National Grievance Officer

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