



## ***Human Rights and Equity: Frequently Asked Questions***

### **Accommodating Family Status in the Workplace**

Family status is an emerging area in workplace human rights accommodation. This document provides ONA members with general answers to commonly asked questions about the employer's duty to accommodate family status. Specific advice should be sought from your Bargaining Unit Human Rights and Equity Representative, Bargaining Unit President or Labour Relations Officer.

#### **What is "family status"?**

The Ontario *Human Rights Code* protects employees from discrimination in employment on the basis of "family status". Human rights protections are incorporated into ONA's collective agreements.

The *Code* defines "family status" as "being in a parent and child relationship". Common examples include parents caring for children (includes adoption, fostering and step parenting) and adult children caring for aging parents or parents with disabilities. Interpreted broadly, "family status" includes similar relationships of care, responsibility and commitment, e.g. a person caring for an aging or disabled spouse or relative.

#### **When does the employer have a duty to accommodate family status?**

As with other prohibited grounds of discrimination, employers have a duty to accommodate an employee's needs related to family status except where this would cause undue hardship.

Family status accommodation is usually associated with an employee's parental obligations, e.g. their child care responsibilities. In some cases, accommodation may be required where work requirements conflict with family responsibilities.

**In order to establish a case of discrimination, there must be an adverse or negative effect on the employee, i.e. the employee must experience a significant barrier or impact, not just inconvenience. The employer's duty to accommodate will not be triggered where the conflict is within the employee's ability to control.**

Employees are expected to arrange their family responsibilities to enable them to attend to their work duties. However, an employee may encounter a conflict as a result of a change in the terms and conditions of employment, for example, where an employer implements rotating shifts on a unit. Also, conflicts may arise as a result of a change in the employee's circumstances, for example, their child develops a disability and requires special care, or a caregiver is no longer available.

Regardless of how the work-family conflict arises, the employee must first take all reasonable steps to resolve it and cannot lay their responsibilities at the feet of the employer and say "you figure it out."

If the conflict cannot be resolved by the employee, the employer must consider whether it can make adjustments to accommodate the needs of the employee. This could involve changes to work schedules, assignments, hours of work, travel requirements or granting a leave of absence, etc.

The employer must provide accommodation *to the point of undue hardship*. This assessment is based on a number of factors including cost, health and safety requirements, size of the operation, interchange ability of the workforce, collective agreement provisions, and impact on the rights of other employees.

**Are there limits on the employer's duty to accommodate?**

Yes. Not all conflicts between a work requirement and an employee's caregiving responsibilities will attract human rights protection. Only those conflicts that amount to *discrimination* under the *Code* will trigger the employer's duty to accommodate.

Generally, discrimination has been found in cases where the caregiving responsibility is substantial or significant in nature. A substantial responsibility could be providing medication or care to a child with a disability or providing parental supervision to a child with behavioural difficulties. By contrast, adjudicators have found there is no discrimination when a work requirement conflicts with an employee's ability to escort her/his child to her/his extracurricular activities, sports events, graduation ceremony, school concert, etc.

**If the conflict is within the employee's ability to control, it will not rise to the level of discrimination. The employee must experience a significant barrier or impact, not just inconvenience. Unless the employee can establish that the conflict results in an adverse or negative effect, the employer's duty to accommodate will not be triggered.**

**What are some common examples of requests for family status accommodation?**

- An employee's spouse is deployed outside the country for a period of time and no adequate child care can be arranged at night. The employee requests to work no night shifts during this period of time.
- An employee's child is receiving treatment for behavioural difficulties and requires parental supervision after school. The employee requests a work schedule of straight days for the next six months.
- The only available daycare opens at 07:30 and the employee's shift begins at 07:00. The employee is unable to arrange for an adult to take her two children to the daycare. The employee requests to start her shift at 07:30 so she can drop her children off.

**What if there are several options for accommodation?**

The employer's duty is to provide a *reasonable* accommodation. While an employee can identify a suitable accommodation, they cannot choose their accommodation or insist on their preference.

**What is the process to request accommodation?**

- Contact your ONA representative as soon as possible for assistance and representation.
- Check whether the employer has a policy containing a process for accommodation requests.
- Provide a formal request to the employer identifying the family responsibility, the conflicting work requirement, the adverse effect on you, and the steps you've taken to resolve the conflict. Your ONA representative will identify any additional information or documentation that should be provided to support the request.
- Union and employer representatives must ensure the privacy of any medical information regarding the employee or their child.
- Grievances may be filed on behalf of an ONA member where necessary.

**Where can I get more information and resources that can help?**

- ONA presentation "The Duty To Accommodate Family Status in the Workplace" (found on ONA's website under "Human Rights and Equity/Teleconnects").
- ONA's *Human Rights and Equity Guide* (found on the ONA website under "Human Rights and Equity").
- Employer policies dealing with discrimination and workplace accommodation.
- ONA collective agreement (found in the members' section of ONA's website under "Publications").
- Ontario *Human Rights Code*.

**Contact your Bargaining Unit Human Rights and Equity Representative, Bargaining Unit President or Labour Relations Officer for more information, advice and support.**