# Duty To Accommodate: When Childcare Intersects With Employment Responsibilities


The duty to accommodate an employee with childcare responsibilities is not unlimited. The recent decision of *Aguele v. Family Options Inc.,* 2024 HRTO 991[1] from the Human Rights Tribunal of Ontario ("HRTO") provides some insight for employers responding to requests for schedule changes from employees with childcare responsibilities.

**Case Summary:**

The employer provided housing and support services to adults with developmental and intellectual disabilities. The employer operated twenty-four hours a day, seven days a week. As such, all employees were scheduled to work some weekend or evening shifts. The complainant was employed as a residential support worker.

The employee had requested, and been permitted, to switch her work location and schedule based on a preference for more day shifts. She was specifically told, at the time she requested the switch, that the new schedule would entail working Saturdays from 4:00 p.m. to 12:00 a.m. Notwithstanding this, shortly after the schedule for her new location was posted, the employee requested changes to her schedule, citing lack of childcare. She emailed the employer requesting a change to her Saturday shift from 4 p.m. to 12 a.m. to 9 a.m. to 3 p.m. The employer replied that the requested shift did not exist and that it would be difficult to get coverage for the remaining hours. The employee responded that she did not have childcare available after midnight and therefore could not work the Saturday shift from 4 p.m. to 12 a.m.

The employer offered to schedule the employee for a 9 a.m. to 9 p.m. shift every other Saturday. The employee rejected this offer. The employer then offered to schedule the employee to work 8 a.m. to 4 p.m. on both Saturday and Sunday every other weekend, but the employee would not agree to this. The employee did not give any reason for rejecting these proposed schedules other than she did not like either schedule and wanted to work only the weekend shift she had identified (which was not an existing shift). Because the employee would not agree to any of the shifts offered, the employer did not put the employee on the schedule for the following month and instead had the employee pick up available shifts individually.

The employee later agreed in writing to a new schedule at a new location, which included work on Saturday from 7:00 a.m. to 3:00 p.m. Shortly after accepting this

position, however, the employee submitted vacation and shift-change requests to get rid of her Saturday shifts.

The employee filed a human rights complaint alleging discrimination in employment on the ground of family status under the Ontario *Human Rights Code*. The employee alleged that she had difficulty obtaining childcare and had requested alternate shifts to accommodate her status as a single parent of a young child. The employee alleged that her employer failed to accommodate her by not providing her with the shifts she asked for. The employee further alleged that the employer retaliated against her by reducing her shifts.

The HRTO ultimately dismissed the employee's claim of discrimination. The HRTO held that the employee had accepted the 4:00 p.m. to 12:00 a.m. shift when granted the first transfer to a new location and did not provide any evidence of a change of circumstances between the time she accepted the position and the short time later when she requested this shift change. The HRTO observed that many of the employee's requests for shift changes appeared to have been because of preference and not need (on cross-examination the employee explained she could have worked the shifts in dispute but that it was not "ideal").

The HRTO found that the employee was unwilling to co-operate with the employer in the accommodation process. The employer made good faith efforts to accommodate the employee, such as providing different shift times, and the employee would refuse these shifts.

The HRTO stated that the duty to accommodate is not unlimited, and that employees are not entitled to a perfect accommodation but to an accommodation that is reasonable in the circumstances. In this case, the employee requested shift times that did not exist and were not feasible for the employer's business operations.

**Takeaways:**

This case provides helpful takeaways for employers responding to requests for accommodation by employees with childcare responsibilities.

There is a difference between an employee seeking an alternate shift based on their "preference" rather than a "need" that is tied to a protected ground under human rights legislation, such as family status. A request for a schedule change based on a "preference" does not trigger the duty to accommodate.

The duty to accommodate is a collaborative process between the employee and the employer. If an employee refuses a proposal that is reasonable in the circumstances, the employer has discharged their duty to accommodate. An employee is entitled to reasonable accommodation, not **perfect** accommodation. An employer does not have to provide an employee with their preferred accommodation, if reasonable accommodation has been offered.

**Footnote**

1 *Aguele v. Family Options Inc.*, 2024 HRTO 991 (CanLII). Link

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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