How Far Must Employers Go to Accommodate the Scheduling Needs of Working Parents?



You needn’t make work schedule changes that impose undue hardship on your company.

Family status is a ground that human rights laws protect from employment discrimination. **Result:** Employers must accommodate a job applicant and employee’s family needs up to the point of undue hardship. One of the most common forms of accommodation involves making reasonable adjustments to an employee’s work schedule in accordance with his/her parental needs. But at what point do requested schedule accommodations cross the line between reasonable and undue hardship. Here are 2 cases illustrating the factors courts consider in making this determination.

Requested Schedule Accommodation Is Undue Hardship

Situation

After returning from maternity leave, an esthetician with extraordinary skills in the arts of nail fills, Brazilian waxing and electrolysis asks to be removed from the 4:00 to 7:00 pm late shift that she works once a week. Her childcare situation has changed and now she can’t find anyone to stay that late to watch her kids. Her husband is of no help at all—he often works late and teaches karate 2 nights a week. The beauty spa owners tell the esthetician that they need her to work at least one night a week. But she refuses. So, they fire her. The esthetician sues the spa for family status discrimination.

Ruling

The Alberta Human Rights Commission dismisses the complaint.

Explanation

Letting the esthetician out of the night shift would have imposed undue hardship on the spa owners, the Commission determined, since having her on duty from 4 to 7 pm one night a week was important to the business. The spa had already gone through one extended spate without the esthetician working her normal weekly night shift. It happened when the esthetician went on maternity leave. Customers became enraged and the business suffered drastically. The owners didn’t want to go through that experience again. They had also tried to make accommodations for the esthetician by using other employees to fill in. But nobody could fill nails like the esthetician!

Under these circumstances, the spa owner’s refusal to let the esthetician get out of working the night shift so she could care for her kids wasn’t a failure to accommodate.

Rennie v. Peaches and Cream Skin Care Ltd., File N2005/07/0112, Human Rights Panel Alberta (Dec. 4, 2006)

Requested Schedule Accommodation Is Not Undue Hardship

Situation

When a call centre employee returns from maternity leave, she requests one hour of unpaid leave each day so she can go home to breastfeed her baby. The baby has a congenital heart defect and the doctor has advised breastfeeding him for as long as possible to strengthen his immune system. The call centre denies the employee’s request. The employee eventually gets a fixed shift with times that work for her. But after a year, the call centre revokes the arrangement. So, the employee files a family status discrimination complaint.

Ruling

The Canadian Human Rights Tribunal rules that the call centre discriminated against the employee and awards her damages.

Explanation

Failing to accommodate an individual who’s breastfeeding is a form of sex discrimination unless such accommodation would subject the employer to undue hardship, the Commission explained. Unlike the spa in the Alberta case, the call centre could have accommodated the employee’s schedule demands without hurting its business. According to the tribunal, there was no indication that letting the employee leave an hour early to breastfeed her son would have caused the employer any hardship, let alone undue hardship.

Cole v. Bell Canada, 207 CHRT 7 (CanLII), April 4, 2007