

# HRTO Decision Offers Insights Into Employer Obligations To Accommodate Scheduling Requests On The Ground Of Family Status



How far does an employer have to go to accommodate employees' scheduling requests on the ground of family status? The recent decision from the Human Rights Tribunal of Ontario (the Tribunal) in *Aguele v Family Option Inc.* offers some helpful insights.

## **Background**

The Applicant was single parent of a six-year-old, working as a residential support worker for the Respondent. The Respondent provided residential housing and support services to adults with developmental and intellectual disabilities.

The Applicant alleged that the Respondent breached the *Human Rights Code* (the Code) by discriminating against the Applicant on the ground of family status, failing to accommodate the Applicant's shift-change requests, and via a reprisal against the Applicant for asserting rights under the Code.

The Applicant was first engaged as an independent contractor by the Respondent in 2015. Subsequently, the Respondent offered the Applicant a permanent position with a combination of day and night shifts. The Applicant accepted the permanent position without citing any accommodation needs at that time.

In August 2017, the Applicant submitted a request to change the night shift to a day shift. When submitting the request, the Applicant revealed that they had childcare needs at nights and would "appreciate if you (the Respondent) could accommodate me (the Applicant)." The Applicant later testified that they could work during the night shifts, but it was not an "ideal" situation for them. Furthermore, the timeframe for the day shift proposed by the Applicant was not an existing shift. In response, the Respondent offered alternative shift schedules, which were rejected by the Applicant without providing further reasons. As a result, the Respondent advised that it could not put the Applicant on a regular schedule and had to have them pick up shifts individually.

In October 2017, the parties agreed to transfer the Applicant to another location and for the Applicant to work day shifts on Thursdays, Fridays and Saturdays. Despite the

signed agreement and the Respondent's clear communication on the fixed schedule via email, the Applicant quickly submitted new shift-change requests.

The Respondent denied the request on the basis that it had limited flexibility on staffing and scheduling due to the needs of its vulnerable clients (who required consistency in terms of staffing) and constraints on its funding model.

## **Tribunal's Decision**

The Tribunal found that the Respondent's conduct did not amount to discrimination on the ground of family status, a failure to accommodate, or a reprisal, and emphasized that the duty to accommodate is a co-operative and collaborative process.

Although the Tribunal recognized the Applicant's family status as a single parent was a protected characteristic under the Code, and therefore warranted Code-protected accommodations, it drew the distinction between "needs" and "preferences" – the former is Code-protected while the latter is not. The Tribunal also observed that, in some situations, an employer would need to make further inquiries into an employee's accommodation needs if the employer had reason to believe such needs existed. In this case, it was not clear based on the evidence exactly when the Applicant began requesting scheduling changes on family status grounds, but the Respondent at all material times made sufficient efforts to work with the Applicant to accommodate both their "preferences" and "needs." Further, the evidence showed that the Applicant failed to provide sufficient reasons/explanations for their accommodation requests and was oftentimes unresponsive to the Respondent's inquiries.

Lastly, the Tribunal reiterated that the standard for accommodation is not perfection, but rather only that accommodations be offered that are reasonable in the specific circumstances. Due to the nature of its business, arranging non-existing shifts or splitting shifts for the Applicant would cause "*undue interference in the operation of the employer's business.*"

The Tribunal dismissed the application.

## **Key Takeaways**

This decision is an important reminder on the difference between preferences and needs. Furthermore, this decision is a good example of the limitations on accommodation requests and the need for both employers and employees to collaborate in the accommodation process.

Although each case is unique and must be evaluated on its own merits, employers should be mindful of scheduling change requests from employees and ensure they are fulfilling their role in the duty to accommodate.

*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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