

Infographic: What's the Test for Proving Family Status Discrimination?



What's At Stake

Every jurisdiction bans employers from discriminating on the basis of family status, such as by refusing to bend work hours to accommodate the childcare needs of working parents. But there are significant differences in how firm employers can be before the line is crossed. More precisely, there are different tests courts use to determine if an employer's work hour demands constitute family status discrimination, depending on where in Canada the case takes place.

The 4 Different Tests

Here's a rundown of the 4 competing standards and where each one applies.

1. The Pro-Employer *Campbell River* Standard: BC, Saskatchewan, Nova Scotia

To make out a case for family status discrimination, employee must show that:

- The employer imposed a change in the terms of employment; and
- The change resulted in "serious interference" with a "substantial" family obligation.

2. The Pro-Employer *Johnstone* Standard: Federal

To make out a case for family status discrimination, employee must show that:

- A child is under his/her care and supervision;
- The childcare obligation is more of a legal responsibility for the child than a personal choice;
- Reasonable efforts were made to meet those childcare obligations via reasonable alternative solutions, but no such alternative solution is reasonably accessible; and
- The policy interferes in a manner that's more than trivial or insubstantial with the fulfillment of a childcare obligation.

3. The Hybrid *SMS Equipment* Standard: Alberta

To make out a case for family status discrimination, employee must show that:

- He/She has a characteristic protected from discrimination, i.e., family status;
- He/She experienced an adverse impact;
- The protected characteristic was a factor in that adverse impact;
- A child is under the employee's care and supervision; and
- The childcare obligation is more of a legal responsibility for the child than a personal choice.

4. The Neutral *Misetich* Test: Ontario

To make out a case for family status discrimination, employee must show that:

- He/She has a characteristic protected from discrimination, i.e., family status;
- He/She experienced an adverse impact; and
- The protected characteristic was a factor in that adverse impact.