

Key Considerations In Responding To Employee Requests To Work From Home



During the pandemic, many employers and employees have demonstrated exceptional adaptability in shifting their place of work from the office to the home. As COVID-19 case numbers decline and a return to office begins, however, some employees may wish to continue working from home. Employers should keep certain key considerations in mind.

1. Employers are not obligated to accommodate an employee's desire to work from home if it is merely a preference. If an employee's request to work from home is based on a human rights entitlement, the employer may have an obligation to accommodate the employee – for example, on the basis of their disability or family status.
2. If an employee requests a human rights-based work accommodation, the employer may ask for reasonable proof of entitlement to the accommodation. Employees requesting accommodation have an obligation to co-operate in the accommodation process, including providing information to assist the employer in understanding what constitutes a reasonable accommodation.
3. An employer is only required to accommodate an employee with a human rights entitlement to the point of undue hardship. As well, an employer is not necessarily required to provide the employee's preferred accommodation. At the same time, employers must provide a real and not theoretical reason for not accommodating an employee, assuming they are entitled to such accommodation.

One decision that provides some guidance in this area is *Syndicat des professeurs et professeures de l'Université Laval (SPUL) and Université Laval* (January 28, 2021). This decision involved a grievance brought by a unionized employee, an associate professor at a Quebec university, who was living in Honolulu, Hawaii with his family during a year's sabbatical from work that concluded around the time the COVID-19 pandemic struck. At that time, the employee asked his employer for permission to work remotely from Honolulu because of the low per capita COVID-19 infection rate and a prior health issue affecting one of his children. The employer refused.

The arbitrator decided that the employer was required to accede to employee's request. While on face value it may have been administratively burdensome for the employer to accommodate the employee, the employee showed that governmental regulations required that work be carried out remotely; he did not need to be physically present in Canada to complete his work duties for the period he

worked in Honolulu; one of his children had a health condition that potentially made her vulnerable to COVID-19; his health insurance would remain valid in Honolulu; and there would be no tax implications since his principal residence would still be in Canada.

It should be noted that human rights accommodation must be handled on a case-by-case basis. While this decision provides some guidance as to potentially relevant considerations, the question of whether employers must accommodate particular employees must be considered on the specific facts at issue.

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