

Key Decision Released On Accommodating Family Obligations In The Workplace



The Court of Queen's Bench of Alberta recently delivered its much-awaited decision in the case of [*SMS Equipment Inc. v. Communications, Energy and Paperworkers Union, Local 707, 2015 ABQB 162*](#). In the *SMS* decision, the Court upheld an arbitrator's decision that the employer discriminated against an employee on the basis of family status, by refusing to accommodate the employee's child care responsibilities. The Court also clarified the test to establish a *prima facie* case of discrimination based on family status.

Background

The issue of family status in the workplace has become a hot topic in recent years. This decision follows a line of other recent family status decisions which have held that an employer is required to accommodate an employee where a workplace rule interferes with the fulfillment of a childcare obligation.

However, the mere fact of having a family or some change in family status (ie. the birth of a child or family illness) does not give rise to special entitlements for employees. In order to get to the stage of the inquiry that considers whether accommodation is required, employees must first establish a *prima facie* case of discrimination on the basis of family status. In other words, the employee must be able to demonstrate that the employee was the subject of adverse treatment by the employer related to the employee's family status, which resulted in discrimination. If a *prima facie* case of discrimination is established, the burden then shifts to the employer to show that its discriminatory policy is a bona fide occupational requirement and that accommodating the employee would amount to undue hardship.

The *SMS* Decision

The facts in the *SMS* decision provide us with insight into when an employer may be required to provide accommodations to an employee with family obligations. The grievor, a single mother of two children, worked night and day shifts as a welder on a rotating basis at SMS Equipment Inc. (the "Employer"). The grievor asked to be placed on straight day shifts because she had no extended family members who could assist her with childcare. As a result, not only did she have to pay a third-party care-giver to look after her children while she worked night shifts, she then either had to also pay for care during the day so she could sleep, or she had to care for her children during the day, which gave her very little opportunity to sleep. The

Employer refused the request for straight day shifts. The griever's union then filed a grievance and took the position that the Employer's refusal to accommodate her request to work only day shifts was discriminatory on the basis of family status. The matter eventually proceeded to arbitration.

The Arbitrator found in favour of the griever and confirmed that "family status" under the *Alberta Human Rights Act* ("AHRA") included childcare obligations. The Arbitrator also concluded that the Employer's rule requiring employees to work both day and night shifts imposed a burden on the griever due to her childcare responsibilities that was not imposed upon other employees who did not share her status. As such, the griever had established a *prima facie* case of discrimination. Further, the Employer did not prove that it could not accommodate the employee without suffering undue hardship, especially because the evidence showed that another employee was willing to work straight night shifts.

The Court in the *SMS* decision applied a 'reasonableness' standard of review in upholding the Arbitrator's determinations. The Court also confirmed that the correct test to establish *prima facie* discrimination based on family status under the *AHRA* requires that:

1. the complainant has a characteristic that is protected from discrimination;
2. the complainant has experienced an adverse impact; and
3. the complainant must show that the protected characteristic was a factor in the adverse impact.

Consideration for Employers

To date, there is still some uncertainty across the country regarding the appropriate test to be applied to establish *prima facie* discrimination based on family status. While the law on accommodating family status in the workplace continues to evolve, employers should carefully consider requests for accommodation by employees with family obligations. If an employee's request for accommodation relates to a legitimate family status need, the employer may have a duty to canvass potential accommodations including scheduling modifications or flexible work arrangements to assist with the employee's care-giving responsibilities.

Last Updated: March 30 2015

Article by M. Ashley Mitchell