

Family Status Discrimination – Know The Laws Of Your Province



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. 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:

- They have a characteristic protected from discrimination, i.e., family status;
- They 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:

- They have a characteristic protected from discrimination, i.e., family status;
- They experienced an adverse impact; and
- The protected characteristic was a factor in that adverse impact.

Note: Some courts in Ontario have also applied the *Johnstone* test.

Test for Family Status Discrimination by Jurisdiction

Jurisdiction	Johnstone Campbell River	SMS Equipment	Misetich Unclear
Federal	✓		
Alberta		✓	
British Columbia	✓		
Manitoba			✓
New Brunswick			✓
Newfoundland			✓
Nova Scotia	✓		
Ontario			✓*
Prince Edward Island			✓
Québec			✓
Saskatchewan	✓		
Northwest Territories			✓
Nunavut			✓
Yukon			✓

* Courts in Ontario have applied both the *Johnstone* and *Misetich* tests