

Parental Discrimination Quiz



Must Parental Benefits Be Perfectly Equal to Avoid Discrimination?

SITUATION

Two companies provide for parental benefits as part of their collective agreements:

- Company A tops off EI benefits of employees on adoptive parental leave. The policy is designed to help defray the additional expenses of adoption and thus doesn't apply to biological parents.
- Company B tops off EI benefits of female employees on maternity, but not male employees on parental leave.

QUESTION

Which company's policy is discriminatory?

- A. Company A's policy because it discriminates against biological parents
 - B. Company B's policy because it discriminates against men
 - C. Both policies are discriminatory
 - D. Neither policy is discriminatory
- D. Neither of the 2 policies is discriminatory**

EXPLANATION

Discrimination laws don't require that parental benefits be perfectly equal. It's okay, in other words, to favour a particular sex and/or parental group to the extent the arrangement is necessary to address the special needs or disadvantages of the group receiving favourable treatment. Both policies in this scenario, which come from actual cases, meet these criteria.

WHY WRONG ANSWERS ARE WRONG

A is wrong because the extra benefits were designed to "ameliorate" the disadvantages faced by adoptive parents in the form of additional costs not

incurred by birth parents. Result: The Nova Scotia Court of Appeal said the arrangement was not family status discrimination [*Int'l. Assoc. of Firefighters, Local 268 v. Adekayode*, 2016 NSCA 6 (CanLII) Feb. 10, 2016].

B is wrong because the law is clear that making biological fathers ineligible for pregnancy or maternity-related benefits under a collective agreement is *not* sex discrimination. Courts have repeatedly recognized that such favourable treatment of female parents may be necessary to ensure equality and remedy the historic disadvantage of women in the workplace, the BC Human Rights Tribunal explained in a recent case [*World v. Health Employers Association of BC and another*, 2016 BCHRT 58 (CanLII), Apr. 26, 2016].