

# Preferences vs. Needs: Human Rights Tribunal Finds Limits On Accommodation For Family Status



With the arrival of fall comes back to school. For some, it also means back to regular routines, and for others the start of new routines. This got us thinking about an issue that comes up frequently in our practice especially since the pandemic: employees seeking accommodation from their employer due to childcare responsibilities. A recent decision, [\*Aguele v. Family Options Inc.\* 2024 HRTO 991 \(CanLII\)](#) from the Ontario Human Rights Tribunal makes it clear that the duty to accommodate employees on the basis of family status is not unlimited when it comes to scheduling hours of work. This is a helpful and welcome decision for employers.

## **Overview**

These cases are always fact driven. What is important about the facts in the *Aguele* decision is that the applicant, a residential support worker, alleged discrimination on the basis of family status after her employer declined to accommodate her requests for specific shift changes. The employee, who was a single parent, requested to switch her weekend shifts to accommodate her childcare responsibilities. Initially, the employee had agreed to work a 4:00 p.m. to 12:00 a.m. shift on Saturdays when she was transferred to a new location. However, she later requested a change to a 9:00 a.m. to 3:00 p.m. shift on Saturdays.

Initially the applicant did not cite child care needs but later advised she needed the change because of her child care obligations. The employer responded that the requested shift did not exist and offered alternative shifts that were operationally feasible. The HRTO found that the employer did work in good faith with the employee to try and deal with this request within the structure of their shifts and employees.

The HRTO ultimately dismissed the employee's complaint, emphasizing that the duty to accommodate is a cooperative and collaborative process, and is not unlimited. In this context the employer was not under any obligation to create new shifts or making unfeasible operational changes. Further, the tribunal found that the employee's requests were based more on preference than necessity. Ultimately, the HRTO found that the employer had made reasonable efforts to accommodate her by offering various alternative shifts, which the employee rejected without sufficient justification.

## Legal Implications

This decision reinforces several important points regarding accommodation when it comes to family status in Ontario:

1. **Collaboration is Key:** The accommodation process is a collaborative effort between the employee and employer. Employees must engage in this process in good faith and accept reasonable accommodations, even if they are not ideal.
2. **Preference vs. Need:** The distinction between preference and need is crucial. A request for accommodation must be grounded in a genuine need related to family status, not merely a preference for more convenient work hours.
3. **Employer's Operational Needs:** Employers are not required to accommodate requests that would cause undue hardship, such as creating new shifts or significantly altering existing ones in a way that disrupts business operations.

## Conclusion

The *Aguele* decision serves as a valuable reminder that while employers have a duty to accommodate employees' family responsibilities, this duty has limits. Accommodation must be reasonable (and not based on an employee's perfect view of accommodation) and balanced against the operational needs of the employer. Employees, in turn, must be flexible and willing to cooperate in finding a workable solution. Accommodation is a two way street with the employer making the ultimate decision as to the appropriate accommodation.

For employers, this case demonstrates employer can discharge their duty to accommodate by providing the employee reasonable accommodation, and that it is crucial to document all accommodation requests and efforts on both parties during this collaborative process. The team at Goulart Workplace Lawyers is able to assist you with any questions you may have about workplace accommodation.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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