

# Teachers' Strike: What Does It Mean For Your Workplace?



While talks continue, there is no immediate end in sight for the ongoing teachers' strike. For employees with school-age children, this may mean facing a child care gap starting next week. As an employer, what are your legal obligations and what can you do to make sure work continues while school's out?

## **The Legal Framework**

First, the *Employment Standards Act* provides all employees in the province with up to five (5) unpaid days of family responsibility leave each year for the care, health and education of a child in an employee's care. Employers do not have the discretion to deny the leave, but can and should ask for sufficient information to confirm the employee's entitlement to it, such as the identity of the person for whom they are caring, the relationship and the reason for the leave. That said, employers should be sensitive when challenging employees' reasons, particularly in the current circumstances.

Second, the *Human Rights Code* prohibits discrimination in employment on the basis of family status. While the extent to which child care obligations are protected is still in flux (previously discussed here and here), employers should take a flexible but informed approach to employees' requests for accommodation due to child care obligations. We recommend that employers ask for sufficient information to determine the nature of the employee's child care needs and the extent to which they are affected by his or her employment obligations. For example, an employee who is able to arrange adequate child care through family, friends, neighbours or public or private programs in order to attend work should be expected to do so before requesting any accommodations. This is particularly true since the government has offered to pay families \$40 per day for each child under 13 years old to cover additional child care expenses. However, if an employee has no alternate child care options, then employers should consider a reasonable accommodation. If there is no workable accommodation that will suit the employer, the employer may provide the employee time off **without** pay.

## **Accommodating a Child Care 'Gap'**

The nature and extent of any accommodation will depend on the employer's requirements and policies, and the employee's needs, but accommodation may include:

- Working from home or tele-commuting;
- Providing or facilitating group child care at or close to the workplace (employers should get advice before initiating such an option);
- Allowing employees to bring their older children to work for some or all of the day;
- Flexible or reduced work hours;
- Using vacation or other paid personal leave (if provided under the employment contract or collective agreement); and/or
- Unpaid leave.

Finally, it is important to ensure that employees who work off-site continue to accurately record their hours and are reminded not to work any unauthorized overtime.

We will continue to keep you updated on any major developments with respect to the teachers' strike and its impacts on other employers.