

The Glenn Commandments: The Duty to Accommodate an Employee's Breastfeeding Schedule



Treating an employee unfavourably because she's pregnant breastfeeding is a form of sex discrimination banned by human rights laws. Employers must also provide protected employees reasonable accommodations to the point of undue hardship. Here's a look at how courts have applied these principles to employees seeking breaks, shift changes, or other work time adjustments to accommodate their breastfeeding schedules.

Cole Case Establishes Duty to Accommodate Breastfeeding Schedule

What Happened: The seminal case on breastfeeding accommodation began when a call centre employee requested an hour of unpaid personal leave at the end of each day so she could be home by 4:30 pm to breastfeed her newborn son. The employee explained that the baby was born with a congenital heart defect and that doctors recommended scheduled breastfeeding to strengthen his immune system. Upon being told that the company couldn't honour her request, the employee asked for fixed 8 am-to-4 pm shifts instead. The centre eventually agreed but required the employee to make numerous trips to the doctor to get proof of her medical need for fixed shifts. After a year, the centre determined that the employee no longer needed to work a fixed shift and ended the arrangement. So, the employee sued for discrimination.

The Ruling: The Canadian Human Rights Tribunal found the employer liable. Human right protections against for sex discrimination extend to breastfeeding, the Tribunal explained. As such, breastfeeding employees are entitled to reasonable scheduling accommodations. But the call centre denied the employee's request to keep working a fixed schedule without explaining why or demonstrating how it would impose undue hardship. Moreover, while breastfeeding must be accommodated, it's not a disability or medical issue. So, the centre had no right to demand proof of the employee's medical need to breastfeed [[Cole v. Bell Canada](#), 2007 CHRT 7 (CanLII)].

Flatt Case Limits Breastfeeding Accommodation Duties

What Happened: Eight years after *Cole*, a federal court drew some important lines clarifying the limits of employer breastfeeding accommodation duties. The case involved a government employee who wanted to work from home after a one-year

maternity leave so she could continue breastfeeding her child. Negotiations over a suitable schedule ensued with the employee indicating her willingness to return, provided that she got paid time off to breastfeed without forfeiting her lunch breaks. After seven months of impasse, the employee sued for sex discrimination and failure to accommodate.

Ruling: The Federal Court of Appeal upheld the labour board's ruling that the employee didn't have a valid discrimination claim. While affirming an employer's duty to accommodate it, the court in this case treated breastfeeding as an issue of family status and childcare rather than sex discrimination. While it may sound like so legal mumbo jumbo, this is an important distinction because, unlike sex, childcare accommodations stemming from family status are subject to important restrictions. [While standards vary by jurisdiction](#), employees must generally show that the [childcare scheduling accommodations](#) they seek are driven by the child's particular needs and not just, as in this case, the employee's personal choice or preference to breastfeed her child during work hours [[Flatt v. Canada \(Attorney General\)](#), 2015 FCA 250 (CanLII)].

Takeaway

Human rights laws do require employers to accommodate an employee's breastfeeding schedule needs. However, mere preference to breastfeed a child during work hours isn't enough to justify accommodation. Despite the *Cole* ruling, there is a medical aspect to the issue. The employer prevailed in *Flatt* because the employee seeking permission to telecommute didn't produce medical evidence of the need to breastfeed during work hours or of how bottle feeding during those hours would "substantially interfere" with the employee's maternal obligations.

Bottom Line: All companies should have a [written policy](#) expressing their commitment to accommodate employee breastfeeding needs (which may include not just schedule changes but lactation or pumping breaks, access to refrigeration or storage, privacy space, and hybrid or remote work arrangements) not simply because [the law requires it](#) but as part of the broader effort to establish an equitable workplace culture in which employees can achieve balance between work and family caregiving responsibilities. The policy should outline a clear accommodation process in which:

- Both sides engage interactively.
- Options are assessed individually and alternatives are explored.
- Preferences and genuine caregiving needs are distinguished without bias or prejudice, e.g., the assumption that breastfeeding is just a personal lifestyle choice.
- All parties are treated with dignity and respect.