

[This Ain't Brewster's Millions: "None Of The Above" Not An Option When Employer Offers Reasonable Accommodation](#)



The recent decision in [Aguele v. Family Options Inc.](#), by the Human Rights Tribunal of Ontario (“HRTO”) is a significant ruling in the context of employment law and the duty to accommodate under the Human Rights Code (the “Code”). This decision particularly sheds light on the nuances of family status accommodation in the workplace, emphasizing the balance between employee rights and employer operational needs.

Background of the Case

In this case, the applicant, a residential support worker employed by the respondent, alleged that her employer discriminated against her on the grounds of family status, failed to accommodate her scheduling needs, and engaged in reprisal. The applicant – a single mother – requested a shift change to accommodate her childcare responsibilities. Specifically, she sought to alter her Saturday shift from 4:00 p.m. – 12:00 a.m. to 9:00 a.m. – 3:00 p.m., a shift that did not exist in the employer’s scheduling framework. The employer, constrained by its operational model and the need for consistency in staffing for vulnerable clients, declined the request but offered alternative accommodations. These included working from 9:00 a.m. – 9:00 p.m. every Saturday or an every-other-weekend shift from 8:00 a.m. – 4:00 p.m. on both Saturday and Sunday, both of which the applicant rejected.

HRTO’s Decision

The HRTO found that the Employer had acted within its rights and did not breach the Code. The Tribunal underscored that the duty to accommodate does not require an employer to grant a perfect or ideal accommodation, but rather one that is reasonable under the circumstances. The Tribunal determined that the employer’s offers constituted reasonable accommodations, especially given the operational constraints and the need to maintain consistent staffing for the vulnerable population they serve. The HRTO highlighted that the applicant’s refusal to accept these reasonable alternatives effectively discharged the employer’s duty to accommodate.

Moreover, the Tribunal clarified the distinction between a “need” and a “preference” in accommodation requests. The Tribunal noted that while the applicant framed her request as a necessity, it was more of a preference for an ideal shift that suited

her personal life better, rather than a shift that addressed an essential need under the Code. This distinction was pivotal in the Tribunal's decision, as the duty to accommodate is triggered by a bona fide need rather than a mere preference.

Implications for Employers and Employees

This decision is instructive for both employers and employees. For employers, it reinforces the principle that while the duty to accommodate is robust, it is not limitless. Employers are not obligated to create new shifts or positions or to provide accommodations that would result in undue hardship or significant operational disruption. Instead, they must engage in a cooperative process to find a reasonable solution that balances the needs of the employee with the legitimate operational requirements of the business.

For employees, the decision serves as a reminder that the duty to accommodate is a two-way street. Employees must engage in the accommodation process in good faith, including being open to reasonable alternatives proposed by the employer. Refusing a reasonable accommodation can lead to a situation where the employer's duty is considered fulfilled, as was the case in *Aguele*.

Broader Legal Context

The *Aguele* decision fits within a broader legal context where Canadian tribunals and courts have grappled with the extent of the duty to accommodate family status. Previous cases, such as [Johnstone v. Canada \(Border Services Agency\)](#), established that family status accommodations must be grounded in a genuine need, not merely a preference, and that employees must take reasonable steps to reconcile their work and family obligations before seeking accommodation. The HRTO's ruling in *Aguele* reaffirms these principles, emphasizing that accommodation is about finding a workable compromise, not an optimal outcome for one party at the expense of another.

Conclusion

The HRTO's decision in *Aguele* serves as an important step in understanding the limits of accommodation under the Code, particularly concerning family status. It underscores the importance of distinguishing between genuine needs and personal preferences and highlights the collaborative nature of the accommodation process. For employers, it affirms the right to impose reasonable limits on accommodations that would disrupt business operations. For employees, it is a cautionary tale about the necessity of engaging constructively in the accommodation process and accepting reasonable solutions even if they are not perfect.

This ruling will likely be cited in future cases as it clarifies the parameters of family status accommodation and reinforces the balanced approach that must be taken by both parties in employment relationships. As always, the [team at CCP](#) will continue to monitor the development of the case law in this area, and if you have any questions regarding a particular accommodation scenario, don't hesitate to reach out.

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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