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Protection of “Family Status” Requires Accommodation of Childcare Obligations, Federal Court Rules

The Federal Court recently upheld a decision of the Canadian Human Rights Tribunal pertaining to the extent an employer is required to accommodate an employee’s childcare requirements.

The facts of the case are relatively straight forward. A border services officer with the Canada Border Services Agency (“CBSA”) working at Pearson International Airport requested a switch from her existing rotating shift schedule to a fixed day shift schedule to allow her to remain as a full-time employee while fulfilling her childcare obligations. The CBSA denied her request and instead offered her part-time employment on a fixed schedule as a possible alternative.

The Canadian Human Rights Tribunal concluded that the employee had been subject to discrimination on the basis of “family status”, and that the employer had failed to demonstrate that accommodating the employee would amount to an undue hardship. An application for judicial review was brought, challenging, among other things, the Tribunal’s conclusion that “family status” includes parental obligations.

Emphasizing that human rights legislation is to be interpreted broadly, the Federal Court concluded that the protection of “family status” under the *Canadian Human Rights Act* includes attending to the needs and obligations flowing from the parent-child relationship. The question to be asked is whether an employment rule interferes with an employee’s ability to fulfill her substantial parental obligations in any realistic way.

On the facts, the Federal Court was satisfied that a case for discrimination had been made out. Of significance, the Federal Court noted that while the CBSA had demonstrated a willingness to accommodate other employees on a full-time schedule for religious or medical reasons, the CBSA had failed to consider this alternative to accommodate this employee’s childcare obligations.

Although this case suggests that there may be a duty for employers to accommodate childcare obligations, the Federal Court noted that the employee may also have an obligation to make reasonable efforts to find suitable childcare before requesting accommodation.

In any event, this case potentially raises significant issues pertaining to the extent an employer is required to accommodate an employee as it relates to childcare obligations.

If you have any questions about the duty to accommodate, or any other questions relating to workplace law, please do not hesitate to contact a Mathews Dinsdale lawyer.

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