Accommodating Family Status

KATIE OVIATT

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Accommodation of family status in the workplace is an emerging and hotly debated area of the law. In 2004, the British Columbia Court of Appeal issued *Health Sciences Association of B.C. v. Campbell River and North Island Transition Society*, [2004] B.C.J. No. 922 ["*Campbell River"*], which provided that discrimination on the basis of family status only arose where the employer changed the terms of the employment, causing serious interference with a substantial family obligation. This decision created a different approach to family status accommodation than other grounds of discrimination, and represents an employer friendly approach to accommodating family status in the workplace. Under this test, the British Columbia Court of Appeal candidly acknowledged, "in the vast majority of the situations in which there is a conflict between a work requirement and a family obligation, it would be difficult to make out a prima facie case [of discrimination]".

The *Campbell River* decision has been criticized by the Federal Court and by the Canadian Human Rights Tribunal as being unduly restrictive on one particular ground of discrimination: *Johnstone*, 2007 FC 36, aff'd [2008] F.C.J. No. 427; *Hoyt*, 2006 CHRT 33. Instead, cases not following *Campbell River* tend to refer back to the test set out by the Supreme Court of Canada in *Meiorin*, [1999] 3 S.C.R. 3, which asks whether the employer's work standard is rationally connected to the performance of the job, whether the employer adopted the particular standard honestly and in good faith and whether the standard is reasonably necessary to accomplish the legitimate work-related purpose.

The result of these two types of approaches to accommodating family status creates uncertainty in the law with respect to employee rights and employer obligations in family status accommodation requests. Cases addressing family status accommodation have tended to be very fact specific.

The following are examples of cases where accommodation of family status was required:

- Where a working mother was required to attend to the very high needs of a child with a major psychiatric disorder, limiting her hours of work;
- Where a casual worker was asked to find childcare on short notice early in the morning;
- When an employee sought a revised schedule so that she could continue to breast-feed her child following her maternity leave; and
- Where an employee sought fixed shifts so that she could obtain regular childcare.

The following are situations where accommodation of family status was not required:

- Where an employee sought to have a position relocated to another Province in order to be closer to his family;
- Where an employee did not have childcare and had done an inadequate search for childcare;
- Where an employee refused to work one evening a week in a retail setting;
- Where the employee took time off to attend a diabetic child's hockey tournament; and
- Where a mother returning from maternity leave requested part-time work when full-time work or an extended maternity leave were available.

2000, 10235 - 101 Street
Edmonton, AB T5J 3G1
PH: 780.423.3003

400 The Lougheed Building
604 1 Street SW
Calgary, AB T2P 1M7
PH: 403.260.8500

201, 5120 - 49th Street
Yellowknife, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

Since the law continues to be uncertain in Alberta about what test will apply to determine whether an employer needs to accommodate family status, employers should carefully consider the purpose of any job requirement that impedes the worker's ability to meet his or her family demands, and consider whether accommodation is possible in the circumstances, particularly if serious health concerns are at issue. ▲