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Women's day brings legal rights in workplace closer to home

Ritu N. Mahil

It is International Women's Day today, March 8 – an opportunity to bring the challenges women face in the workplace to the fore.

Laws to protect women being discriminated against in the workplace because of their "family status" have existed for some time. What has been less clear is what the legal definition of "family status" means. Even at the highest court level, it's unclear as there have been few decisions to help define the term.

Given this lack of clarity, employers have had to consider multiple interpretations when accommodating employees. However, two recent rulings provide some clarity on how "family status" is interpreted in court.

A federal case

A recent federal ruling in Ontario focused on a Canadian Border Services Agency (CBSA) employee, Fiona Johnstone. Johnstone was unable to find daycare for her children that would accommodate her seven-day rotating work schedule. Instead Johnstone was able to find childcare for three days a week and requested that her employer allow her to work three 13-hour shifts, so she could maintain her full-time status.

The CBSA refused as it didn't suit the needs of the organization, and they were concerned Johnstone would not be able to maintain the necessary "mental alertness" to perform her duties.

Instead CBSA offered an alternative solution: Johnstone could work 10 hours a day, three times a week plus an additional four hours on a fourth day. However, Johnstone would still lose her full-time employee status and wouldn't be entitled to her pension or other benefits.

In this case, the Federal Court ruled in favour of Johnstone. Her employer, CBSA, was required to accommodate Johnstone's childcare needs and offer three 13-hour shifts each week so she could maintain her full-time employee status.

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A B.C. case

A recent B.C. case also guides our understanding of what "family status" means from a legal perspective.

Shelley Howard claimed her rights were being violated when her 8:30 a.m. to 3:00 p.m. work schedule changed to 11:30 a.m. to 6:00 p.m. This time change meant Howard was unable to tend to her son, who had severe mental disabilities, during after-school hours.

Howard worked with the employer to try to meet the new shift patterns but felt the needs of her son were not being met. Howard had the support of her co-workers who signed a petition stating they supported changing Howard's schedule back to her original schedule, without negatively affecting the hours of other employees.

The court ruled in favour of Howard, stating that the decision by the employer to change Howard's hours was a serious interference with her ability to fulfill her parental obligation.

How the cases differ

There are obvious differences between these two cases. In Howard's case there were extraordinary circumstances involving a child that needs more support than the average child. That's why the court stated that there was a change in a term or condition of employment imposed by an employer resulting in "serious interference" with a substantial parental or family duty. In contrast, Johnstone's case involved everyday parenting obligations that many parents face.

What this means for employers

When changing employees' working schedules, employers must now ask themselves whether it interferes with an employee's ability to fulfill his or her parental obligation. Employers must also demonstrate whether granting the employee's request to change their working patterns would amount to undue hardship.

Although the Johnstone case recognizes the employer's duty to accommodate childcare obligations, the Federal Court also noted that employees have the obligation to make reasonable efforts to find suitable childcare before requesting such accommodation.

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