

Federal Court of Appeal Provides Further Clarity on Family Status Accommodations

On February 28, 2013, we published an [Alert!](#) regarding the January 2013 decision of the Federal Court of Canada, *Attorney General v. Johnstone*.

On May 2, 2014, the Federal Court of Appeal unanimously upheld this decision.

What does this mean for employees?

In order to trigger a claim for discrimination on the basis of family status (with respect to childcare), the employee must show:

- a) that a child is under his/her care and supervision;
- b) that the childcare obligation is in essence a legal duty and not one that relates to a personal choice (i.e. soccer practice or piano lessons);
- c) that he/she has made reasonable efforts to accommodate the requirement for childcare (i.e. considered the various options regarding childcare available in the employee's family and in the community); and
- d) that the workplace rule substantially interferes with the childcare obligation.

What does this mean for employers?

Employers when faced with an employee request for a change to a workplace rule or policy are necessarily required to ask questions that formerly would have been perceived as very personal to the employee. These questions will include but may not be limited to:

- a) has the employee investigated available childcare services in the community that would meet the childcare needs?
- b) has the employee investigated family members or close friends who could provide childcare services to meet the parents' needs?
- c) has the employee investigated any other means of meeting the childcare needs?
- d) does the employee have the financial means to obtain the services of a nanny?

Assuming the employee can establish, based on the answers to these questions, that he/she has made reasonable efforts to "self-accommodate", then the "refusing" employer will have to show that to accommodate this

employee's request for childcare would result in undue hardship to the employer.

As we all know (and certainly as Canada Border Services Agency learned!), the establishment of undue hardship is VERY DIFFICULT.

Please contact e2r Solutions® should you require assistance addressing employee requests based on family status, and when seeking the evidence that you are entitled to prior to considering employees' requests for accommodaton.

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