

How a teacher's strike may affect your workplace

The ongoing conflict between the Ontario Government and the union representing Ontario elementary school teachers has resulted in rotating strikes, leaving parents uncertain about how they will meet their childcare responsibilities. The current circumstances raise the question: what is an employer's obligation to employees whose children cannot attend school due to a strike?

One potential source of rights for employees is provincial human rights legislation. The Ontario *Human Rights Code* compels an employer to accommodate an employee's 'family status', which includes a parent's caregiving obligations. The threshold test that is typically applied by the Ontario Human Rights Tribunal requires that an employee prove that they have childcare obligations and that a workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of those childcare obligations. In some cases, but not all, the employee may also be required to show that they have made reasonable efforts to meet their childcare obligations through alternative means.

Regardless of which test is used, an employee in Ontario has a relatively low threshold to meet in order to be entitled to accommodation. In light of this, requests for time off to care for a child during a teacher's strike could give rise to an accommodation obligation to grant the requested time off. Other possible requests for accommodation may include working remotely or bringing the child to work. Like any type of workplace accommodation, an employer must only accommodate up to the point of undue hardship.

Although family status is a protected ground of discrimination in most jurisdictions in Canada, not all provinces treat the duty to accommodate an employee's family status in the same manner. For example, in British Columbia, employees must demonstrate that a *change* in the terms or conditions of employment *seriously interferes with a substantial* parental or family obligation. This threshold is much higher than the standard to which employees are held in Ontario and elsewhere across Canada.

Another potential source of rights for employees in Ontario is Family Responsibility Leave. The Ontario *Employment Standards Act, 2000* provides employees who have worked for their employer for at least two consecutive



weeks with up to three Family Responsibility Leave days each calendar year. These days are unpaid and can be taken where the employee is faced with the illness, injury, medical emergency or urgent matter relating to a family member, including their child. The Ontario Ministry of Labour defines an urgent matter as “an event that is unplanned or out of the employee’s control, and can cause serious negative consequences, including emotional harm, if not responded to.” Interestingly, the Ministry of Labour lists an employee’s babysitter calling in sick as an example of an urgent matter. With this in mind, it is likely that an employee would be permitted to use Family Responsibility Leave during a teacher’s strike, which would make the right to take time off work statutorily protected.

We have yet to see clear directives from the Ontario Human Rights Tribunal or the Ministry of Labour on the topic. Despite this, requests for time off work due to a teacher’s strike should be addressed carefully.

If you have any questions about how to accommodate your employees during this time or anything related to family status, please contact us to speak with an e2r® Advisor.

