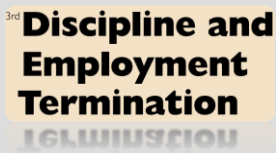




Feb. 13
2014

Federal Court of Appeal Clarifies Family Status Protection

James Heeneey spoke at the 3rd Discipline and Employment Termination course



For the last few years, the law with respect to family status protection under human rights legislation has been unclear with the case law providing differing views. Recently, the Federal Court of Appeal held that family status is a protected ground of discrimination that is on equal footing with other protected grounds and has clearly articulated a four part test in order for employers to determine if an employee’s child care obligations make out a prima facie case and therefore require accommodation to the point of undue hardship.

The employee must demonstrate the following:

- (i) That a child is under his or her care and supervision;
- (ii) That the childcare obligation at issue engages the individual’s legal responsibility for that child, as opposed to a personal choice;
- (iii) That he or she has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions, and that no such alternative solution is reasonably accessible; and
- (iv) That the impugned workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of the childcare obligation.

The decision of whether a particular employee’s child care responsibilities will require accommodation under human rights legislation must be determined on a case-by-case basis. If all of the above criteria are met, the employer’s duty to accommodate is triggered.

New Leaves of Absence under the *Employment Standards Act, 2000*

On October 29, 2014, three additional leaves of absence will be added to the *Employment Standards Act, 2000* – family caregiver leave, critically ill child care leave and crime-related child death and disappearance leave.

Family caregiver leave provides employees with an unpaid leave of up to eight weeks per calendar year to provide care or support to certain family member who has is experiencing a “serious medical condition” (which includes a condition that is chronic or episodic) as long as a qualified medical practitioner has issued a certificate confirming the serious medical condition.

Critically ill child care leave provides employees who have been employed for at least six consecutive months with up to 37 weeks of unpaid leave to provide care or support to a critically ill child as long as a qualified health practitioner issues a certificate that states that the child is a critically ill child who requires the care or support of one or more parents and sets out the time period during which the child requires the care or support.

Crime-related child death and disappearance leave provides employees who have been employed for at least six consecutive months to an unpaid leave of absence without pay for up to 104 weeks if the employee’s child dies and it is probable that the child died as a result of a crime. Employees who have been employed for at least six consecutive months are entitled to an unpaid leave of absence without pay of up to 52 weeks if the employee’s child disappears and it is probable that the child disappeared as a result of a crime. The employee is not entitled to this leave if the employee is charged with the crime or if it is probable that the child was a party to the crime. The legislation also outlines how the leaves are impacted if the circumstances surrounding the leave change.

Please contact us for further information regarding the new leaves of absences.

May,
2014

James Heeneey spoke at the Federated Press on a topic in employment law



Sept. 24,
2014

Sarah Vokey will be speaking at Humber College’s Human Resources Faculty on investigations

