

# Employers can't punish parents over child care needs, says court

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## EXCERPTS

Two recent court decisions have made it clear that employers must be flexible when parents are faced with difficult child care arrangements.

The Federal Court of Appeal rulings confirm that cases where parents work for the same employer, they can't be forced to limit their career mobility or drop from full-time to part-time work to meet these obligations. This is especially so when the employers could easily accommodate their needs.

Pearson International Airport border guard Fiona Johnstone and Alberta CN Rail conductor Denise Seeley were restored to full-time from part-time status, paid for lost wages and given the maximum amount of \$35,000 in special damages.

Ottawa lawyer Andrew Raven, who handled Johnstone's case for a decade, says the decisions send a strong message to employers.

"They must take requests for accommodation of child care needs seriously and have a company policy regarding management of these claims," Raven says.

The court ruled on Johnstone's case this month. She and her husband worked at Pearson as Canada Border Services officers and in 2007 he was transferred to Ottawa. As a result of the transfer, Johnstone took a leave of absence to take care of their children.

Customs officers work in rotating shifts, with each cycle lasting 56 days. Employees are given 15 days notice of each new schedule.

When Johnstone's first child was born in 2003, she asked to work a fixed three-day week of 13 hours each day. Her request was refused. She asked again in 2004, when her second child was born. That was also turned down.

The Canadian Border Security Agency had an informal policy for employees wanting to work fixed shifts. They had to drop down to part-time status and work no more than 34 hours per week. This meant a reduced pension and fewer opportunities for promotion.

Johnstone made a family status discrimination application with the Canadian Human Rights Commission in 2004 and after a series of stops and starts, her case was heard in 2010. The tribunal ruled in her favour, the CBSA appealed to the Federal Court and then the Federal Court of Appeal, where it lost this month.

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The federal Attorney General has 60 days from May 2, when the decisions were released, to file further appeals. It is currently considering the options.

- reprinted from the Toronto Star

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