Alberta human rights decision highlights employer's responsibility to accommodate childcare obligations as family status [1]

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EXCERPTS

In Clark v Bow Valley College, (2014 AHRC 4), Ms. Leah Clark filed a human rights complaint on April 11, 2011 against her employer, Bow Valley College, (the "College"), that was heard by the Alberta Human Rights Tribunal. Her complaint alleged discrimination on the ground of family status after her employment was deemed to be abandoned by the College. Ms. Clark did not return from maternity leave on the date required by the College because she could not locate suitable childcare for her son.

Case Background

Ms. Clark had been a nursing instructor at the College since March 2007, and was approved for maternity leave from February 1, 2010 through January 31, 2011. Ms. Clark went on approved sick leave in November 2009, and her son was subsequently born on January 2, 2010, nearly seven weeks premature. In June 2010, the College sent a letter to Ms. Clark which stated that her maternity leave was February 2010 to January 30, 2011. Ms. Clark, however, became aware in November 2010 that she had been placed on the instructor schedule for January 3, 2011, a month earlier than her expected return. The College had moved the end date of Ms. Clark's maternity leave forward a month, yet Ms. Clark had not been informed until November 2010.

Ms. Clark contacted the College and explained that while she had childcare in place for February 2011, she had no other childcare options available for January. The College made no further inquiries with Ms. Clark as to why she had no other childcare options and denied her request for additional leave past January 10, 2011. The College subsequently sent a letter to Ms. Clark with two childcare brochures enclosed, with the message that she should "avail herself of these services", and that if she did not report to work by January 10, 2011 she would risk termination. Ms. Clark testified to the fact that due to her financial situation, and the sickness of her son, she could not find other childcare arrangements for January 2011.

When Ms. Clark did not report for work by January 13, 2011, the College considered her to have abandoned her position and she was deemed to have resigned from her employment. The College's response to Ms. Clark's human rights complaint originally relied on the fact that the collective agreement in place provided a maximum amount of 52 weeks of maternity and parental leave. While this argument was abandoned at the hearing, the Alberta Human Rights Commission Tribunal Chair (the "Chair") confirmed that all collective agreements must comply with human rights legislation, and the 52 week maximum maternity and parental leave in the collective agreement applicable here had no impact on the human rights analysis.

Ultimately, the Chair found that there was discrimination against Ms. Clark on the basis of family status, and that the College did not fulfill its duty to accommodate Ms. Clark. Ms. Clark was awarded $15,000 for general damages, and loss of income damages for about four months.

Employers Must Meaningfully Acknowledge Protected Human Rights

The College's response of providing two childcare brochures and advising Ms. Clark to "avail herself of these services" was not considered by the Chair to be a meaningful acknowledgment of Ms. Clark's family status. Further, once Ms. Clark communicated her childcare problem, she was requesting accommodation. At that point, the College should have gathered information to assess whether accommodation was required. The Chair found that if the College had genuinely engaged Ms. Clark with respect to her concerns, it would have been able to accurately assess Ms. Clark's childcare situation and the parties could have attempted to find possible ways to accommodate Ms. Clark.

This case provides a reminder that employers need to be proactive when an employee raises a concern that falls within the enumerated grounds protected by human rights legislation, regardless of the terms of employment. Employers should ensure that they not only seriously address the concern, but they also work with the employee to gather sufficient information, and assess whether an

accommodation is required or possible.

Region: Alberta [3]
Tags: work life balance [4]

Links
[1] https://childcarecanada.org/documents/child-care-news/15/01/alberta-human-rights-decision-highlights-employers-responsibility [2] https://www.dlapiper.com/en/canada/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original [3] https://childcarecanada.org/taxonomy/term/7859 [4] https://childcarecanada.org/category/tags/work-life-balance-0