



# **DISCRIMINATION AT WORK ON THE BASIS OF FAMILY SITUATION: EXPLORING THE BOUNDARIES OF THE DUTY TO ACCOMMODATE IN CANADA**

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**Discrimination at Work on the Basis of Family Situation :  
Exploring the boundaries of the duty to accommodate in Canada**

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Women workers have always confronted the challenges of reconciling family and the demands of paid work. In Canada, depending on the jurisdiction, employment standards, health and safety, and social security legislation has evolved over time to include job protection in the case of pregnancy or maternity leave, safer workplaces during pregnancy, paid maternity and parental leave, and, increasingly, the possibility of leave to care for a family member. The protection afforded is however essentially centred around the arrival of a newborn or an adopted minor child and the grave illness of a family member. With some exceptions, this protection does not allow women -or men- to reconcile work and family responsibilities over the life-cycle. The fundamental issue of control over working time is most often dissociated from work-family “balance” policy, since the organization of working time is seen to be a management prerogative that is limited only by workers’ bargaining power and some weak legislative provisions. This paper explores employers’ duty to accommodate workers on the ground of family situation. The duty to accommodate is well-anchored in human rights case law in Canada in the event of discrimination at work on the basis of several enumerated grounds, such as disability and religion. Yet, not all jurisdictions include “family situation” (or an analogous term) in the list of enumerated grounds of discrimination. Emerging case law in some jurisdictions recognizes the intimate link between scheduling and control over working time and discrimination on the basis of family situation, while case law in other jurisdictions considers a worker’s family situation and its incompatibility with her work schedule to be an exclusively private matter, beyond the scope of employers’ duty to accommodate. A human rights approach, based on the prohibition of discrimination and the duty to accommodate, generates debate in workplaces and among policymakers for several reasons. In workplaces with highly formalized and/or negotiated norms on scheduling and working time, accommodating family responsibilities, to the exclusion of other aspects of workers’ lives outside of work (e.g. pursuing a college degree, etc.), may create tensions between workers. As well, limiting employers’ right to organize working time according to their needs meets resistance. Finally, how should the notion of “family” be defined and what family responsibilities should be covered? Drawing on legislation, case law, and legal and social science literature, we attempt to determine the limits and the potential boundaries of the duty to accommodate family responsibilities under human rights legislation as a response to the challenges faced by women.