

**Summary of Stitt-Feld Handy Webinar**  
**Family Status Accommodations During COVID**

**May 27, 2020**

Family status - is defined as the relationship of parent/child (childcare or eldercare)

If there is a conflict between a work requirement and the care of a child or parent, the employer and employee need to determine how to resolve it.

Onus is on the employee to show, for example, that work conflicts with childcare obligations.

Due to the COVID pandemic, it is expected that the bulk of family status requests will be centered on the ability to work remotely. With COVID, people are very concerned about leaving home, commuting, and being exposed to coworkers etc. and potentially bringing illness home.

**What is the standard an employee would need to meet in making a family status request?**

Four-part test (FCA-Johnstone) is generally applied but there are slight variations depending on jurisdiction/province.

- 1) You have a child under your care /supervision
- 2) You have a legal responsibility to the child (depends on child's age)
- 3) Must be able to show that you have made efforts to deal with child or elder care conflict (self accommodate).
- 4) Must prove that the obligation is for child/parent relationship, that it is not trivial, and that the obligation is significant enough to require a work-related adjustment.

\*Under the provisions of the Employment Standards Act, an employee may take unpaid leave. Unpaid leave provisions recently introduced by the government due to the state of emergency allow an employee to take leave in order to care for their family.

### **What sort of proof can an employer ask for?**

Exchange of information is crucial to the process. Employees need to understand that they must release information to the employer. i.e. the age of the child, whether a spouse can take care of child etc. The employer may ask for information and if the employee refuses, they may not be able to establish the need for accommodation.

### **At what age can a child be left alone?**

There is no prescribed age. Obviously, one cannot leave an infant or toddler at home but there is a grey zone when looking at older children i.e. 10-14 years, based on contextual circumstances.

### **What if you have options like day camps available but choose not to send child due to health and safety concerns around COVID?**

This could be framed from the employee's perspective as not wanting to put the child in harms way.

If the child is older (17), individual facts will need to be considered i.e. does the child have special needs?

### **General Comments**

Family status accommodation is about accommodating needs, not preferences. Human Rights trump contractual obligations. Before you get to accommodation an employee needs to establish discrimination.

Accommodation is an ongoing discussion/negotiation. The employee needs to put forward the information and basis for the request and then request the specific accommodation. This usually involves discussion and negotiation. The employer will need to probe to determine what options are available.

If you have a spouse at home, it is not unreasonable for the employer to ask why the spouse cannot assist with child/elder care.

This is a negotiation that should be interest-based. Parties should not be taking legal positions. COVID is going to be temporary therefore focusing on the interests of both parties is key. There may be a need for compromise from both sides.