Return-to-office mandates and pregnancy: Employers have the right to propose alternative measures

February 03, 2025

On July 18, 2024, grievance arbitrator Mtre Francine Lamy rendered a decision in Syndicat des employés et des employées de la Commission des droits de la personne *et des droits de la jeunesse* (SECDPDJ-CSN) *et Commission des droits de la personne et des droits de la jeunesse* (CDPDJ) regarding the employer's duty to accommodate in relation to return-to-office policies. The arbitrator emphasized the employer's right to propose reasonable accommodations to meet an employee's particular needs.

If your organization is facing similar challenges with office attendance, make sure to read our tips for employers at the end of this article.

Background

The grievor challenged her employer's refusal to allow her to work remotely five days per week despite her pregnancy-related fatigue, which forced her to nap during the day.

When the COVID-19 pandemic ended, her employer implemented a hybrid work policy calling employees back to the office two days per week. The union and the employee argued that rigid application of this policy constituted discrimination on the basis of pregnancy.

In her grievance, the employee claimed the option to work remotely full-time until her maternity leave, as well as property, moral, and exemplary damages. The employer maintained that it had offered the employee various solutions in keeping with the policy and her needs. It asked the arbitrator to dismiss the grievance.

Decision

The arbitrator found that since decisions regarding the location of work fall within an employer's purview, the two-day back-to-office mandate was a legitimate standard, even though the employee worked independently.

Though the employee successfully demonstrated that she needed accommodations, the arbitrator found that the employer had provided reasonable solutions, such as providing a mattress in the office and offering to adjust her work hours, without needing to resort to full-time remote work.

The arbitrator also noted that the union and the grievor were uncooperative, rejecting any option that wasn't full-time remote work. This lack of cooperation compromised the accommodation process. As the employer's proposed solutions were reasonable, the grievance was dismissed.

Tips for employers

1. Propose tailored alternatives : Respond to accommodation requests with a number of reasonable solutions. Clearly explain that, while you are flexible, you are under no obligation to waive the organization's legitimate attendance standards. You also do not need to prove undue hardship before denying the initial accommodation request and proposing other options.

2. Document your process: For each proposal, keep records of your efforts to meet the employee's needs while complying with your organization's office attendance requirements.

3. Prioritize proactive cooperation: Encourage everyone involved to actively search for tailored solutions and consider all reasonable options, even if they don't fully meet the initial request. A lack of cooperation can undermine the entire accommodations process.

In sum, this recent decision on CDPDJ's return-to-office mandate reaffirms employers' right to decide where employees work and enforce attendance policies of their choosing. However, it also emphasizes the importance of taking a collaborative approach to accommodate employees' particular needs.

Contact us

BLG's Labour and Employment Group can assist you with any issue related to the duty to accommodate in the workplace. Reach out to our key contacts below or to any of our labour and employment lawyers for assistance.

BLG would like to thank Sixtine Rayon, articling student, for her contribution in writing this article.

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