HUMAN RIGHTS, PREGNANCY, AND PARENTAL RIGHTS AND RESPONSIBILITIES

Alberta Human Rights Commission

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HUMAN RIGHTS GUIDE

This publication is produced by the Alberta Human Rights Commission (the Commission). It discusses the principles of human rights law and is based on decisions made by human rights panels,[1] tribunals, and courts. These decision-makers have interpreted certain sections of the *Alberta Human Rights Act* (the *Act*)[2] given the facts of particular cases. As this case law evolves, so does the Commission's application of the *Act*.

This publication will:

- Help individuals, employers, service providers, and policy-makers understand their rights and responsibilities under Alberta's human rights legislation
- Assist organizations and individuals in setting standards for behaviour that complies with human rights law

The information in this publication was accurate at the time of release. If you have questions related to this publication, please contact the Commission.

This publication does not provide legal advice. Should you require legal advice, please consult legal counsel.

Introduction

This publication explains the provisions of the *Act* as they apply to pregnancy, breastfeeding, maternity and parental leave, adoption, and childcare obligations. It also provides resources for finding more information about maternity leave and parental leave, which includes leave for adoptive parents.

What you will find in this publication

This publication informs:

- Employees about their rights and responsibilities in the area of employment, specifically as it relates to the *Act's* protections of gender
- Parents about their rights and responsibilities in the area of employment, specifically as it relates to the *Act*'s protections of gender and family status
- Employers about their rights and responsibilities related to preventing discrimination and the duty to accommodate to the point of **undue hardship**[3]

[1] In October 2009, as part of the amendments to Alberta's human rights legislation, panels were renamed human rights tribunals. In this publication, the word panel is used where it reflects accurate historical references.

[2] RSA 2000, c A-25.5.

[3] Undue hardship occurs if accommodation would create onerous conditions for an employer, for example, intolerable financial costs or serious disruption to a business. For more information on the duty to accommodate and undue hardship, see the Commission's publication titled *Duty to accommodate*.

Gender protection

Protection from discrimination based on gender under the *Alberta Human Rights Act*

In Alberta, the *Act* protects individuals from discrimination on the basis of gender. Section 44(2) of the *Act* states:

> Whenever this *Act* protects a person from being adversely dealt with on the basis of gender, the protection includes, without limitation, protection of a female from being adversely dealt with on the basis of pregnancy.

Section 44(2) makes it clear that the protected ground of gender includes pregnancy. Alberta cases also establish that this protection from discrimination based on pregnancy applies during the pre-delivery, childbirth, and recovery from childbirth periods. An Alberta labour arbitration case, which interpreted discrimination principles, established that gender includes protections for those who are breastfeeding.[4] The arbitrator in that case found that, although breastfeeding is a choice, it is intimately connected to pregnancy and should be protected in the same manner.

In addition to gender, the *Act* also protects people from discrimination based on other protected grounds: race, religious beliefs, colour, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, and sexual orientation. A pregnant individual may experience discrimination based on more than one of the protected grounds due to stereotypes about pregnancy and race, disability, source of income, and family status, for example. For more information on the protected grounds, see the Commission's information sheet *Protected areas and grounds under the Alberta Human Rights Act* or contact the Commission.

The right to be free from discrimination on the basis of gender, including pregnancy and breastfeeding, applies to all areas protected under the *Act*:

- employment practices (section 7)
- employment applications and advertisements (section 8)
- residential or commercial tenancy (section 5)
- goods, services, accommodation or facilities customarily available to the public (for example, restaurants, stores, hotels, or provincial government services) (section 4)
- publications, notices, signs, symbols, emblems or other representations that are published, issued or displayed before the public (section 3) and
- membership in trade unions, employers' organizations or occupational associations (section 9)

[4] *Carewest v HSAA,* 2001 CarswellAlta 1938, 62 C.L.A.S. 400, 93 L.A.C. (4th) 129.

Most pregnancy-related complaints accepted by the Commission fall under the area of employment practices or employment applications and advertisements. **This publication focuses on situations that occur in the workplace.** However, it is important to remember that pregnancy-related discrimination can occur under any of the *Act's* protected areas. For more information on the other protected areas, see the Commission's publication *Duty to accommodate*.

Other jurisdictions

A human rights tribunal in British Columbia held that pregnancy extends to miscarriages, as it is one of the possible outcomes of pregnancy. As such, miscarriage is protected under the ground of sex (the *British Columbia Human Rights Code's* equivalent to gender).[5] This precedent was affirmed in 2010 when the Human Rights Tribunal of Ontario ruled that dismissing employees due to miscarriage constituted sexual discrimination.[6] A Saskatchewan human rights tribunal similarly found that dismissing an employee following an abortion was discrimination on the basis of sex.[7]

These cases illustrate that human rights tribunals have been willing to interpret human rights legislation to include conditions related to pregnancy as part of the protections from discrimination based on sex. It is possible that an Alberta human rights tribunal would accept similar arguments concerning conditions stemming from pregnancy.

Discrimination based on pregnancy

As stated in the previous section, the *Act* prohibits discrimination in the workplace based on pregnancy, which is protected under the ground of gender.

Discriminatory acts

Examples of discriminatory acts include:

- Treating a person differently based on gender or creating hostile working conditions using degrading comments or offensive actions (this is commonly referred to as a "poisoned work environment")[8]
- Preventing breastfeeding in public or at work, or refusing to accommodate breastfeeding[9]
- Asking individuals on job applications or in job interviews if they are pregnant or plan to have children[10]

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5 *Tilsley v Subway Sandwiches & Salads*, 2001 BCHRT 2.

6 *Ford v Adriatic Bakery,* 2010 HRTO 296 (CanLII).

7 *Bird v Ross* (1987), 88 CLLC 17, 9 CHRR D/4531.

8 *Shields v Bunkhouse Bar and Grill,* 2015 BCHRT 192; *Pelchat v Ramada Inn and Suites (Cold Lake),* 2016 AHRC 11.

9 *Poirier v British Columbia (Ministry of Municipal Affairs, Recreation and Housing)* (1997) 29 CHRR D87.

10 *Baker v Crombie Kennedy Nasmark Inc.,* 2006 AHRC 4.

- Refusing to hire a potential employee because of pregnancy or breastfeeding[11]
- Refusing to consider an employee for promotion because of pregnancy[12]
- Firing, laying off, demoting, or reassigning (without consent or a reason that is reasonable and justifiable in the circumstances) an employee because they are pregnant or breastfeeding[13]
- Firing, laying off, demoting, or reassigning (without consent or a reason that is reasonable and justifiable in the circumstances) an employee because of absenteeism due to medical issues during or after pregnancy[14]
- Failing to accommodate, to the point of undue hardship, medical restrictions that are in place during pregnancy[15]
- Denying a leave request due to pregnancy
- Denying an employee the choice between a maternity leave or a valid medical leave
- Mandating when maternity leave or a valid medical leave will begin
- Preventing the use of a benefit plan for a medical leave before, during, or immediately after childbirth[16]
- Denying an employee the use of any earned overtime or vacation time before, during, or immediately after pregnancy leave when the option to take earned overtime or vacation time is available to other employees (if granting overtime or earned vacation time would cause the employer undue hardship, it may be acceptable for the employer to deny this use of earned overtime or vacation time)
- Asking an employee to pre-pay their benefit premiums or to pay the employer's share of premiums while on sick leave during maternity or parental leave[17]

More subtle actions on the part of the employer, such as groundless criticism of an employee's work, may also be discriminatory if they are based on pregnancy, pregnancy-related conditions, breastfeeding, or stereotypes about gender-related characteristics. Employers must ensure that an employee's pregnancy is not the basis for demeaning practical jokes, teasing, or other hostile behaviour that would contribute to a poisoned work environment.

In addition, systemic discrimination (a pattern of discriminatory behaviours, policies, or practices that are part of the structure of the organization) may negatively affect a pregnant employee. For instance, workplaces that perpetuate negative attitudes and biased policies regarding gender may be considered systemic discrimination.[18]

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[11] *Gilmar v Alexis Nakota Sioux Nation Board of Education*, 2009 CHRT 34.

[12] *Jahelka v. Fort McMurray Catholic Board of Education*, 2002 CanLII 61208.

[13] *Parker v Vapex Electronics Ltd*., 2020 AHRC 32.

[14] *Lise Shannen Jovel Abreu c Transport Fortuna,* 2020 CHRT 35, 2020 TCDP 35.

[15] *Canada (Procureur général) c Nadeau*, 2015 FC 1287; *Turnbull v Edmonton Pipe Trades Educational Fund o/a Alberta Pipe Trade College*, 2021 AHRC 172.

[16] *Brooks v Canada Safeway Ltd*, [1989] 1 SCR 1219, [1989] 4 WWR 193 (*Brooks*).

[17] *Alberta Hospital Association v Parcels* (1992), 1 Alta LR (3d) 332, 90 DLR (4th) 703 (*Parcels*).

[18] *CN v Canada (Canadian Human Rights Commission), 1987 1 SCR 1114*.

Compliance with human rights legislation

It is the responsibility of the union (if any), as well as the employer, to adhere to human rights laws in Alberta. Unions and employers are jointly responsible for ensuring that collective agreements comply with the *Act* and do not discriminate based on pregnancy.

An employer's actions will be deemed not to be a contravention of the *Act* if the employer can provide evidence that their actions were reasonable and justifiable in the circumstances or that their actions were based on a **bona fide occupational requirement**. Bona fide occupational requirement means the standard was put in place to achieve a legitimate work-related purpose and it is impossible to accommodate a particular employee's needs without the employer experiencing undue hardship.

In an Ontario case, a tribunal found that an employer's actions were not reasonable in the circumstances, as they had forced a pregnant employee to clean on her hands and knees when accommodations could have been made, such as using a mop.[19] For more information about reasonable and justifiable contraventions of the *Act* and undue hardship, see the Commission's publications *Defences to human rights complaints* and *Duty to accommodate*.

Duty to accommodate pregnant and breastfeeding employees

Employers' duty to accommodate

While an employee's pregnancy may prevent them from performing part of their job, this does not mean that pregnant employees should not or cannot continue to work. The *Act* requires employers in Alberta to accommodate an employee's pregnancy to the point of undue hardship so that pregnant employees can continue to work if they choose to do so.

Employers are also expected to make sincere efforts to the point of undue hardship to accommodate breastfeeding employees. Accommodations for pregnant and breastfeeding employees could include:

- Changing a pregnant employee's job duties if a pregnancy prevents the employee from performing parts of their job. For example, a pregnant store clerk who, for health reasons, is restricted from lifting more than ten pounds cannot be asked to carry boxes heavier than that weight. Another employee may be able to do this task temporarily. The pregnant employee might be expected to assume additional, less physically demanding duties in exchange for not carrying heavy boxes
- Providing a flexible work schedule to accommodate the needs of an employee who is pregnant or breastfeeding. This may include time off for medical appointments, arranging for an employee to work from home, allowing the employee to work flexible hours, providing a quiet space for breastfeeding, or allowing an employee to arrange their scheduled breaks to breastfeed their child

[19] *Korkola v Maid Day! Maid Day! Inc,* 2013 HRTO 525.

- Ensuring employees are permitted to have their infants brought to their workplace so that they can breastfeed or allowing time off to breastfeed outside of the workplace
- Ensuring that a pregnant employee has full access to any earned benefits such as illness or vacation leave
- Ensuring that pregnant employees and job applicants have equal access to workplace opportunities, which includes being willing to accommodate job applicants and current employees who apply for a promotion
- Making other reasonable changes in the workplace that have been recommended for a pregnant or breastfeeding employee by a medical professional[20]

Reasonable accommodation

Accommodation should begin as a discussion between the employee and the employer. Each case is unique and will require that both parties communicate their needs and concerns to achieve a successful accommodation. Employees are required to cooperate with an employer's sincere efforts to develop a suitable accommodation for particular needs arising from pregnancy or breastfeeding. Cooperating with the accommodation process may mean that an employee tries a reasonable accommodation and communicates with the employer if it does not work or needs to be modified, instead of rejecting it outright.[21]

Negative comments or reactions from customers or staff about an employee's pregnancy or breastfeeding are not a reason to fire, lay off, demote, or reassign the pregnant employee. Negative comments can result in harassment and it is the employer's duty to provide an environment free of harassment on the basis of pregnancy.

An employer cannot force a pregnant employee to begin leave due to pregnancy earlier than the employee chooses, unless required for medical reasons. Employees have the right to work when they are pregnant and may choose to work as close to their due date as medically possible. The only exception to this is when the employee's duties cannot be modified to accommodate pregnancy or accommodating the employee would result in the employer incurring undue hardship. If this situation occurs, the pregnant employee should be allowed to take any other paid options for which they qualify, such as earned overtime, vacation leave, sick leave, short-term disability, or long-term disability.

[20] *Watters v Creative Minds Childrens Services LTO Daycare,* 2015 HRTO 475 (CanLII).

[21] *Purres v London Athletic Club (South) Inc.,* 2012 HRTO 1758; *Callan v Suncor Inc.,* 2006 ABCA 15; *Brewer v Fraser Milner Casgrain LLP,* 2008 ABCA 435.

Pregnant employees' access to medical leaves and benefits

Same access as other employees

As a general principle, once an employer decides to provide an employee benefit package, the employer is required to do so in a non-discriminatory manner. A pregnant employee on a health-related leave has a right to access the same level of benefits as other employees, and a health-related leave will form at least part of any leave due to pregnancy. As long as these benefits are usually open to other employees who are on sick leave, they must also be available to employees on leave due to pregnancy.[22] Access to these benefits is available regardless of whether the health-related leave occurs in the pre-delivery, childbirth, or recovery from childbirth period, and employers cannot impose arbitrary start or end dates for this leave. Nor does a pregnant employee have to choose between a voluntary leave and a health-related leave (which is an absence that is required by the patient's medical condition); they may take a voluntary maternity leave prior to or after taking a health-related maternity leave.[23]

Benefit plans differ from one employer to another. Employers should ensure that benefit plans do not discriminate against employees taking a valid health-related leave during or following pregnancy. Employees need to be informed of existing benefit plans and how to apply for them.

Sick leave benefits during pregnancy

The Supreme Court of Canada[24] laid out basic principles that prohibit discrimination in providing sick leave benefits during pregnancy:

- Pregnancy is a valid health-related reason for absence from the workplace.
- Conditions stemming from pregnancy, including health-related maternity leave, should be compensated by an employer's existing disability plan, where such a plan exists.
- If an employer compensates employees during sick leave but does not provide the same level of access to or excludes pregnant employees from those benefits, the employer is discriminating based on pregnancy.

These principles have been interpreted by the Alberta Court of Queen's Bench[25] to mean that a pregnant employee may access their work's sick leave benefit plan during the time they have a valid medical reason for being absent from work, and pregnancy itself can be a valid health-related reason.

In Alberta, employers are required by law to continue to pay employee benefit premiums during the medically-required portion of the employee's maternity leave if they normally

[22] *Malko-Monterrosa v. Sheet Metal Workers' International Association Local Union No. 8*, 2012 AHRC 13.

[23] *Parcels,* supra at para. 38.

[24] *Brooks*, supra.

[25] *Parcels,* supra.

pay for employee benefit premiums when their employees become ill or injured while on a non-medical leave. An employer can ask a pregnant employee to provide relevant information on their medical condition to confirm that they have a valid health-related reason for an absence, as with any other medical absence.[26] For more information about medical information in the workplace, see the Commission's publication *Obtaining and responding to medical information in the workplace*.

Employers cannot require a pregnant employee to prepay 100 per cent of employee benefit premiums if it does not require that level of prepayment from employees on other types of sick leave.[27] However, if an employee chooses to maintain some or all of the employee benefits while on voluntary leave due to pregnancy, the employer could require the employee to pay both the employer and employee portions of the premiums. An employer could do this if it normally requires all employees who choose to maintain employee benefits while on other types of voluntary leave (such as a sabbatical) to pay both the employee and employer portions of the premium.

An employee may also be required to pay these premiums in full prior to taking voluntary maternity leave, if employees taking voluntary leave for other reasons are also required to prepay. Prepaying premiums for a voluntary leave may cause some difficulty if the pregnant employee subsequently must transition to a health-related leave. As a result, it is permissible for the employee to prepay the premiums from the date the voluntary leave begins to the expected due date, and then receive a rebate for any period of health-related leave within those dates. Alternatively, after a health-related leave, the employee can decide to prepay benefits for the duration of voluntary maternity leave.[28]

Pregnant employees and maternity leave

An employer cannot decide which portion of an employees' absence from work because of pregnancy is medical leave and which portion is maternity or parental leave, as defined in Division 7 of the *Employment Standards Code*.[29] As mentioned above, an employee does not need to decide between a health-related maternity leave and voluntary maternity leave. An employee is entitled to take a valid health-related maternity leave prior to or following a voluntary leave, as well as between two periods of voluntary leave.[30] The decision of whether to take a voluntary leave or a health-related leave depends on the individual's pregnancy and birth experience, their personal choice, or the advice of a medical professional.

[26] *Parcels,* supra.

[27] *Parcels,* supra.

[28] *Parcels*, supra at para. 39.

[29] *Employment Standards Code*, RSA 2000, c E-9 (*Employment Standards Code*).

[30] *Parcels,* supra.

Discrimination against employees who take maternity or parental leave

The Supreme Court of Canada has established that a protected characteristic only needs to be a factor in an adverse treatment. A person may establish **prima facie discrimination** if the person can show that maternity or parental leave was a factor in the employer's decision to terminate that individual's employment. For example, an employer typically would be liable for discrimination if they terminated a person for planning to take parental leave.

Under the *Act*, employers are prohibited from discriminating against employees on the basis of gender, including pregnancy, and family status. The *Act* defines family status as "the status of being related to another person by blood, marriage or adoption."[31]

The *Act*, however, does not require employers to prioritize employees who will take or have taken maternity or paternity leave. Before or after an employee's maternity or parental leave, an employer may terminate that person's employment, so long as the maternity or parental leave was not a factor in that decision. For example, under human rights legislation, an employer could lay off an employee who was recently on maternity or parental leave if there has been an economic downturn and the employer is downsizing the company, including eliminating the position that the employee filled.

The Alberta *Employment Standards Code* requires that employers give employees returning from maternity or parental leave the same job that they had before their leave or a substantially similar job.[32] The *Code* also expressly prohibits employers from terminating or laying off employees who are entitled to maternity or parental leave or while they are on maternity or parental leave,[33] with limited exceptions.[34] This prohibition on terminating or laying off employees during leave applies even if the company has a genuine reason apart from the maternity or parental leave, such as an economic downturn, and would have terminated or laid off the employee when the person returned to work.[35]

In addition, the Alberta *Employment Standards Code* allows maternity leave for eligible pregnant employees and parental leave for both natural and adoptive parents. As previously mentioned, employers cannot dismiss employees while they are on maternity or parental leave.[36]

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[31] The *Act*, s 44(1)(f).

[32] *Employment Standards Code,* supra s 53(7).

[33] *Employment Standards Code,* supra s 52.

[34] For information on the exceptions, see section 53.1 of the *Employment Standards Code* and https://www.alberta.ca/maternity-parental-leave.aspx.

[35] *Jayman Masterbuilt Inc, (Re),* 2011 CanLII 97926 (AB ESU).

[36] The Government of Alberta provides information on maternity and parental leave at https://www.alberta.ca/maternity-parental-leave.aspx.

Court decisions in other jurisdictions

Two Ontario human rights cases addressed the issue of pregnancy discrimination. These cases are useful to help illustrate how the Supreme Court of Canada's principles on maternity leave have been applied in other jurisdictions. These cases also may be persuasive to an Alberta human rights tribunal because pregnancy is protected by human rights legislation in both locations.

In one case, an employee who had not requested maternity leave was placed on an unpaid maternity leave by her employer following the birth of her child.[37] The complainant had chosen to have her child while on vacation, rather than take maternity leave. After the birth of her child, the employee became ill, and her employer decided to place her on maternity leave rather than allowing her access to her sick leave benefits. The complainant made a human rights complaint, alleging that the employer's action constituted discrimination based on pregnancy.

The Ontario Board of Inquiry that heard the case cited *Brooks v Canada Safeway Ltd*,[38] in which the court stated, "if an employer . . . enters into the field of compensation for health conditions and then excludes pregnancy as a valid reason for compensation, the employer has acted in a discriminatory fashion." The Board of Inquiry determined that the ability to choose whether to utilize benefit options and to what extent is part of the right to equal access to employment benefits. An employee would lose this right to choose if an employer was allowed to force them to use government benefits rather than employment benefits. The Board concluded that, where an employee does not request maternity leave, their employer cannot unilaterally place them on such a leave.

In the second case, an employee claimed that her employer had discriminated against her by denying her sick leave benefits because of her pregnancy.[39] The Board of Inquiry found that an employee has the right to choose whether to apply for maternity leave under the provincial employment legislation or use employment benefits, including sick leave.[40] Even if the employee may apply for maternity leave, it is discriminatory for the employer to deny them sick leave.

The Board found that there had been a breach of the Ontario *Human Rights Code*. The policy's sick leave provisions were applied unequally based on pregnancy in that, except for pregnancy, all other employees were eligible for benefits after 20 days of service. However, benefits were denied for pregnancy-related illnesses. The employer acted promptly to amend the discriminatory aspects of its policy and paid the complainant the sick pay due to her under the policy.

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[37] *Ontario Cancer Treatment & Research Foundation v Ontario (Human Rights Commission)*, 1998 CanLII 14955 (ON SC), upholding *Crook v Ontario Cancer Treatment & Research Foundation* (No.3) (1996), 30 CHRR D/104.

[38] *Brooks,* supra.

[39] *Wight v Ontario* (No. 2) (2000) CHRR Doc 00-130.

[40] The Court in *Wight v Ontario* relied on *Brooks* for the proposition that pregnancy is a valid health-related reason for being absent from the workplace.

Maternity and parental leave and federal Employment Insurance benefits

Individuals who meet certain requirements may receive federal Employment Insurance maternity benefits. Employment Insurance includes maternity benefits for biological and surrogate parents who are unable to work because they are pregnant or have recently given birth. Parental benefits are also available through the Employment Insurance program. Parents may apply for these benefits if they are caring for a newborn, a newly adopted child, or other children.[41]

Protection of adoption

Adoptive parents have the same rights and responsibilities under the *Act* as other parents. The relationship between adoptive parents and their children is protected by the ground of family status, which includes the status of being related to another person by adoption.[42] Under the protected ground of family status, employers are prohibited from discriminating against adoptive parents who are eligible for or take parental leave. These employers also have a duty to accommodate adoptive parents' childcare obligations.

Protection of childcare obligations

Under the *Act*'s protections of family status, employers have a duty to accommodate parents' childcare obligations to the point of undue hardship. An employee must make efforts to reconcile childcare obligations with work obligations by finding appropriate childcare. However, if no suitable alternative options for childcare are available, the employer must cooperate with the employee to adjust work requirements in a manner that allows the employee to fulfill childcare obligations, provided the accommodation required does not impose undue hardship on the employer.

[41] For more information, see the EI Maternity and Parental Benefits – Overview page on the Government of Canada website at https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html.

[42] The *Act*, s 44(1)(f).

Self-accommodation and childcare obligations in Alberta

In 2021, the Alberta Court of Appeal in *United Nurses of Alberta v Alberta Health Services*,[43] stated that the proper test for establishing a case of prima facie family status discrimination in Alberta is the three-part test described in *Moore*. The Court of Appeal decided that the adoption of this three-part test does not include a requirement of self-accommodation.

The Court of Appeal stated that:

> … While the Supreme Court of Canada has not yet specifically applied the *Moore* test to the protected ground of family status, the test has nevertheless been adopted in Canada as the leading framework for establishing prima facie discrimination. Until the Supreme Court expressly alters the test for prima facie discrimination in family status cases, the *Moore* test governs in such matters.[44]

The Court of Appeal added:

> *Johnstone* and like cases importing a fourth requirement of self-accommodation into the *Moore* test for prima facie discrimination are wrong, and inappropriately hold family status claimants to a higher standard than other kinds of discrimination.[45]

Thus, in Alberta, "the test for prima facie discrimination is found in the Moore decision and does not require a claimant to prove self-accommodation. Claims relating to family status do not need to prove an additional element of self-accommodation at the prima facie stage of the inquiry."[46]

[43] *United Nurses of Alberta v Alberta Health Services*, 2021 ABCA 194 (CanLII) (*United Nurses of Alberta*).

[44] *United Nurses of Alberta*, supra at para. 65.

[45] *United Nurses of Alberta,* supra at para. 99.

[46] *United Nurses of Alberta,* supra at para. 109.

Related resources

Commission human rights guides

- *Duty to accommodate*
- *Obtaining and responding to medical information in the workplace*, which includes sample medical information forms, *Medical Absence Form* and *Medical Ability to Work Form*

Commission information sheets

- *Obtaining and responding to medical information in the workplace: A summary for employers*
- *Obtaining and responding to medical information in the workplace: A summary for employees*
- *Obtaining and responding to medical information in the workplace: A summary for doctors*

Other Commission resources

You can access the Commission's human rights guides and information sheets, as well as other resources, online at albertahumanrights.ab.ca.

Government publications

- Government of Alberta, *Maternity and parental leave*
- Government of Canada, *EI Maternity and Parental Benefits – Overview*
- Government of Alberta, *An Employer's Guide to Employment Rules*
- Canadian Human Rights Commission, *Pregnancy & Human Rights in the Workplace – Policy and Best Practices*
- Ontario Human Rights Commission, *Policy on preventing discrimination of pregnancy and breastfeeding*

Appendix: Cases on human rights, pregnancy, and parental rights and responsibilities

Alberta Cases

Discrimination

Woo v Alberta (Human Rights & Citizenship Commission),
2003 ABQB 632, 26 Alta LR (4th) 144 (Alberta Court of Queen's Bench)
Gender discrimination based on pregnancy – failure to consider qualified job applicant due to gender discrimination

Jennifer Woo held the position of vice principal on an interim basis in order to fill the position while the prior vice principal was on maternity leave. Almost six months later, Woo requested maternity leave. In response, the school board terminated her contract as of the date of the requested maternity leave "due to maternity reasons." According to the board, Woo was only entitled to maternity leave after she had worked for 52 consecutive weeks (as set out by the *Employment Standards Code*). Gwen Jahelka replaced Woo as vice principal. At the end of the school year, Jahelka went on maternity leave. Woo applied for the vacant vice principal position and a program coordinator job. Jahelka also expressed interest in the vice principal position and said that she could return to work part way through the school year. Woo and Jahelka were not hired, and both positions were filled by men.

Woo brought forward a human rights complaint, alleging that the school board discriminated against her by terminating her employment due to pregnancy and not considering her for the vice principal and program coordinator positions due to her gender and past maternity. Jahelka brought a claim that asserted that she was discriminated against on the basis of gender because she was not considered for the vice principal position due to her pregnancy and that she would be on maternity leave for part of the year.

The Court of Queen's Bench upheld the Tribunal's decision that Woo's termination was discriminatory because it related solely to her gender and pregnancy. The school board's decision not to consider Woo for the vice principal position also discriminated against her on the ground of gender, as Woo would have met the qualification of being an internal candidate if she had not been dismissed due to her maternity. However, the school board did not discriminate against Woo when it did not hire her for the program coordinator position, as it was based on the school board's opinion that the successful candidate had better qualifications. The Court also held that the school board had discriminated against Jahelka because she would have been hired if she had been available for the fall term and the reason she was unavailable was her maternity.

Employment termination

Baker v Crombie Kennedy Nasmark Inc,
2006 AHRC 4 (Alberta Human Rights Panel)
Discrimination on the basis of gender – termination due to pregnancy

The complainant was hired by the respondent. During the interview process, the complainant was asked when she planned to have children. She chose not to disclose the fact that she was pregnant. Three months after she was hired, the complainant wore maternity clothing for the first time at the office and many co-workers asked if she was pregnant. She was called into her manager's office the following day to discuss her probationary period, at which time she was given a termination letter, which stated that she did not perform at the level that the company required in administrative assistants. The complainant stated that her probation period ended three days prior and she refused to sign the termination letter.

The evidence showed that the complainant's pregnancy was a factor in her termination of employment and the Panel found she was discriminated against on the basis of gender. The complainant was awarded $3,000 in damages for injury to self-respect and dignity, $2,437.50 for the difference in wages between the time of her termination and going on maternity leave, and $3,310.50 for the difference in maternity leave benefits between what she would have received from the respondent and what she did receive.

Bauknecht v. 1055791 Alberta Ltd. o/a Elkwater Lake Lodge & Resort et al,
2020 AHRC 16 (Alberta Human Rights Tibunal)
Termination within probationary period and not linked to pregnancy

The complainant was a housekeeper at Elkwater Lake Lodge. She provided her employer with a note on September 12, 2012 stating that she required modified duties because she was pregnant. Later that month, the supervisors in housekeeping terminated her employment within the three-month probationary period. There were no reasons given for the termination. The respondent provided evidence and two witnesses who were responsible for the housekeeping unit that there were performance concerns. Specifically, the complainant would not call in advance to inform the employer of appointments, she spent too much time chatting while at work, she did not take direction on these issues, and she was "unteachable."

The complainant must prove a prima facie case of discrimination by showing that she was discriminated against based on a protected ground, that there was an adverse effect, and that the two were linked. The Tribunal found that the complainant had proven the first two elements of a prima facie case of discrimination, but had not proven the third element linking her pregnancy to the termination. While the timing of the decision was suspect, the Tribunal accepted the respondent's evidence that the complainant was terminated at that time because it was the end of her probationary period and it was for legitimate performance issues. The Tribunal noted that pregnancy only had to be one part of the reason for termination, but found the respondent's evidence convincing that the termination was strictly because of performance concerns. The complaint was dismissed.

Parker v Vapex Electronics Ltd.,
2020 AHRC 32 (Alberta Human Rights Tribunal)
Discrimination on the basis of gender – termination due to pregnancy

The complainant accused the employer of discrimination on the basis of gender, which is contrary to section 7 of the *Alberta Human Rights Act*. The complainant was working as a sales associate for the respondent and she claimed there was no indication of any performance issues. However, when the complainant learned of her pregnancy and informed the owner, the owner abruptly terminated her employment the same day. The complainant further contended that the respondent's actions contributed to her subsequent miscarriage. In contrast, the owner argued that the dismissal was connected to the complainant's poor work performance. He alleged that the complainant was rude to customers and challenged him in front of his employees. The respondent also posited that the pregnancy was terminated by an abortion, not a miscarriage.

In terms of the evidence, the Tribunal drew adverse inferences against the respondent, as he was unable to produce a customer who the complainant had treated poorly and there were gaps in the respondent's testimony.

The Tribunal ruled that the complainant fell under the protected area of gender, as she was pregnant during the time of dismissal. This was corroborated by a physician who confirmed her pregnancy. The Tribunal further ruled that the dismissal had an adverse impact, as it resulted in the complainant's termination of employment. Finally, the Tribunal ruled that the pregnancy was a factor in the complainant's termination. While the respondent argued he was not aware of the complainant's pregnancy during the time of dismissal, the Tribunal believed the complainant to be a credible witness and accepted the evidence she provided. The Tribunal ruled in favour of the complainant and she was awarded damages.

Pelchat v Ramada Inn and Suites (Cold Lake),
2016 AHRC 11 (Alberta Human Rights Tribunal)
Discrimination on the basis of gender – termination due to pregnancy

The complainant filed a complaint with the Commission alleging that during her employment she suffered discrimination due to her gender in the nature of: sexual harassment in the form of two unwelcome comments of a sexual nature and one instance of unwelcome touching from her general manager, and discrimination on the ground of pregnancy in the form of a written warning and terminating her employment, both of which she alleged were unjustified. The respondent terminated her employment while she was eight months pregnant. The Commission found that the complainant had established gender discrimination in both sexual harassment and pregnancy, contrary to section 7(1) of the *Act*. She was awarded $25,000 in injury to feelings and $3,253.92 in lost wages.

Serben v Kicks Cantina Inc.,
2005 AHRC 3 (Alberta Human Rights Panel)
Hours reduced due to pregnancy – no accommodation

The complainant was a bartender for the respondent. In August 2001, the complainant found out she was 16 weeks pregnant. She informed her employer and said she would like to work until the end of January 2002 because her previous three children were born two weeks overdue. The next month, the complainant advised the respondent that she would not be able to unload beer cases because of her pregnancy. Within a couple of months, the complainant's hours were reduced and she was eventually terminated. There was little attempt at accommodation. The complainant was awarded $4,000 for pain and suffering.

Turnbull v Edmonton Pipe Trades Educational Fund o/a Alberta Pipe Trade College,
2021 AHRC 172 (Alberta Human Rights Tribunal)
Termination after being informed of a medical issue related to pregnancy

The complainant discovered she was pregnant and that there were some complications, which would require modifications to her work as an instructor at the respondent trade college. The complainant met with the department head and outlined that she needed accommodation for a medical disability and would need to have a reduced workload, change in work hours, and lifting restrictions. The department head agreed to meet again the next morning to continue the conversation. When the complainant arrived at the meeting, she was dismissed.

The Chair found that the request for accommodation was related to the ground of gender (pregnancy), which triggered the termination. The respondent tried to have the complaint thrown out on the technical argument that they were not informed that the complainant was pregnant. The Chair found that the respondent could not "hide behind its own inaction" and should have inquired into the nature of the medical disability.

The respondent has a procedural, as well as a substantive, duty to accommodate. While there is some jurisprudence to support that there is no independent procedural duty to accommodate, the respondent usually must take certain steps to provide substantive accommodation. The respondent knew what accommodations the complainant needed in general, but did not explore how they might be implemented or ask the complainant for further information.

The complainant was awarded $35,000 in damages and seven weeks in lost wages. The complainant asked for solicitor client costs, but none were awarded. Costs against a respondent are generally only awarded where there is improper conduct.

Gender protection

Burgess v Stephen W Huk Professional Corporation,
2010 ABQB 424, 30 Alta LR (5th) 262 (Alberta Court of Queen's Bench)
Pregnancy was not a factor in employment termination

The complainant was a dental assistant. The complainant had repeated cleanliness issues at her workstation and when her employers spoke to her about these issues, she used inappropriate language for the workplace. The complainant became pregnant, but did not tell her employer about the pregnancy. The complainant subsequently missed two days of work for pregnancy-related medical issues.

The employer terminated her employment, and the complainant brought a human rights complaint partially based on gender. Her complaint was dismissed. Even though the complainant advised her employer that she was pregnant just before her termination and the pregnancy was the underlying reason for her absences from work, the complainant did not provide sufficient evidence to establish that her pregnancy was a factor in the decision to terminate her. Instead, it was her failure to notify the dental clinic of her absence that was a factor in the termination.

Carewest v Health Sciences Association of Alberta,
2001 93 L.A.C. (4th) 129, 62 CLAS 400 (Alberta Arbitration)
Breastfeeding is part of the protected ground of gender

The complainant requested permission to have her child brought into the workplace to breastfeed. When her request was denied, she asked for a six-month leave of absence to continue breastfeeding, which was also denied. Her employer, Carewest Cross Bow, terminated the complainant's employment when she did not return to work at the end of her maternity leave. The arbitrator ruled that an employer's refusal to permit an employee to breastfeed her child in the workplace constituted discrimination on the basis of gender. In the decision, the arbitrator said "discrimination on the basis that a woman is breastfeeding is a form of sex discrimination." As a remedy, the arbitrator ordered Carewest to reinstate the complainant and issue back pay to cover her loss of wages and benefits.

Jayman Masterbuilt Inc, (Re),
2011 CanLII 97926 (AB ESU) (Alberta Employment Standards Umpire)
Employer cannot terminate employment during maternity or parental leave

The complainant took maternity and parental leave. During this leave, her employer advised her that her employment would be terminated on the day she returned from leave due to an economic downturn in the housing industry. The Umpire upheld a decision that the employer violated the Alberta *Employment Standards Code* by terminating the complainant's employment during her maternity and parental leave. If the employer had not provided notice of termination to the complainant during her leave, she would have returned to work. The employer could then have terminated her employment with two weeks' notice or termination pay in lieu of notice.

This case interpreted discrimination principles while reaching its final decision that the employer could not provide notice of termination to an employee who is on maternity or parental leave. Importantly, it also demonstrates that provincial legislation on employment standards may completely bar an employer from terminating an employee while the person is on maternity or parental leave, even if the applicable human rights legislation may not be as stringent.

Repas-Barrett v Canadian Special Service Ltd,
2003 AHRC 1 (Alberta Human Rights and Citizenship Commission)
Poisoned work environment – pregnancy as causative factor in employment termination

The complainant filed a human rights complaint in the area of employment under the ground of gender. The complainant worked as an office manager. She generally had a good relationship with the company's owners and was told that she was doing a good job. A new operations manager began supervising the complainant. This supervisor made derogatory comments about the complainant's hair and personal appearance. The complainant later informed her supervisor that she was pregnant. The supervisor made frequent direct and indirect comments about her pregnancy, which the complainant found to be insulting. The complainant's employment was terminated while she was on pregnancy-related medical stress leave.

The Tribunal found that the complainant's supervisor "made gender specific, discriminatory and demeaning remarks to the complainant before she was pregnant [and the] remarks became even more specific and directed when she became pregnant."[47] The Tribunal also found that the company's owners knew about the complainant's concerns about how the supervisor was treating her and did nothing to address these concerns. Finally, the Tribunal determined that there were no performance-based issues prior to the complainant being terminated from her position. The Tribunal held that the employer discriminated against the complainant on the basis of gender, due to the supervisor's behaviour and remarks that were related to the complainant's gender. The employer also discriminated against the complainant on the ground of gender related to her pregnancy, as the complainant's pregnancy was a causative factor in her dismissal.

[47] At para 33.

Duty to accommodate

Hansen v Big Dog Express Ltd,
2002 AHRC 18, 45 CHRR D/266 (Alberta Human Rights Board of Inquiry)
Failure to accommodate pregnancy – pregnancy a significant factor in employment termination

The complainant was employed by Big Dog Express Ltd. Her employment duties included receiving freight and distributing it to customers, preparing bus tickets, cleaning buses, calling customers, and filing new freight. The complainant advised her employer that she was pregnant and that she would not be able to lift anything over 20 pounds, which was a restriction she imposed herself (with no direction from her doctor) because of a previous miscarriage. Her employer cut her hours, stating that it was unfair for her to work while she could not lift more than 20 pounds. The complainant's employer also made it clear that her pregnancy was an inconvenience to him, as evidenced, in part, by him telling her that her employment was not working out due to her work restrictions (even though she did not have significant restrictions). The complainant's employment was subsequently terminated.

The complainant brought forward a human rights complaint on the basis of pregnancy in the context of employment. The Board of Inquiry found that the employer did not accommodate the complainant to the point of undue hardship. The employer did not discuss appropriate accommodations with the complainant or attempt to implement accommodation initiatives. The Board also held that the complainant's pregnancy was the main reason for her employer dismissing her. As a result, the employer had discriminated against the complainant.

Jahelka v Fort McMurray Catholic Board of Education,
2002 AHRC 12, 44 CHRR D/90 (Alberta Human Rights Board of Inquiry)
Duty to accommodate pregnant job applicant and new employee – pregnancy-related absence for new employee not necessarily undue hardship

The complainant was offered the position of temporary vice principal at St. Anne School. The complainant subsequently began an approved maternity leave. When the vice principal position at the school became available on a full-time basis, the complainant applied for the job, but indicated that she would only be able to resume the position during the second term of the school year because of her maternity leave. As a result, the complainant was not considered for the job and she filed a human rights complaint on the basis of pregnancy, within the protected ground of gender.

The Human Rights Board of Inquiry (Board) stated that the duty to accommodate to the point of undue hardship is a well-established principle, and this duty extends to accommodating pregnant employees. The Board also referenced the Quebec Court of Appeal's decision in *Gobeil c CECQ*[48] for the proposition that an employer that is typically able to provide maternity leave to employees should also be able to provide maternity leave to new employees without incurring undue hardship. The school's superintendent testified that the complainant would

[48] (1992), 89 ACWS (3d) 503.

have been offered the job if she had been available at the beginning of the school year and that the school board was concerned with staff continuity. The Board found that the desire for continuity came second to the employer's duty to accommodate an employee wishing to return from maternity leave. As a result, the school's decision not to consider the complainant due to her maternity-related absence was held to be discriminatory.

This case demonstrates that an employer is required to seriously consider hiring an applicant even if the applicant may require an accommodation due to pregnancy or health reasons. It also indicates that an employee's or applicant's pregnancy-related absence may not amount to undue hardship, even if that person would be absent for a significant portion of the first year.

Childcare Obligations

United Nurses of Alberta v Alberta Health Services,
2021 ABCA 194 (CanLII) (Alberta Court of Appeal)
Protection of childcare obligations

A grievance was brought forward by the United Nurses of Alberta Union on behalf of a nurse employed by Alberta Health Services. After working at Alberta Health Services for almost two years, her shift schedule was changed to comply with the Collective Agreement. This resulted in the nurse having difficulty finding appropriate childcare for her children. The nurse requested for accommodations to be made, but these requests were denied, and the nurse was forced to take a casual position with fewer benefits. The grievance argued that the nurse had been discriminated against on the basis of family status.

The Labour Arbitration Board (the Board) applied the *Johnstone* test (*Canada [Attorney General] v Johnstone*, 2014 FCA 110) and dismissed the grievance stating that there was no prima facie discrimination against the nurse. The *Johnstone* test determines whether family status complainants had to first show that they had unsuccessfully sought out reasonable alternative childcare arrangements in order to prove prima facie discrimination.

The majority of the Board ruled that the nurse had failed to discharge her duty of self-accommodation, as she had not sought reasonable alternative childcare arrangements.

The nurse applied for judicial review of this decision to the Alberta Court of Queen's Bench where the court found that the Board had erred in following the *Johnstone* test. Alberta Health Services appealed the decision to the Alberta Court of Appeal (the Court of Appeal).

The Court of Appeal dismissed the appeal and clarified that the *Moore* test (*Moore v British Columbia [Education]*, 2012 SCC 61), and not the *Johnstone* test, applies in Alberta.

The Court of Appeal found that there was no justification for this additional requirement in cases of alleged discrimination on the basis of family status. The Court of Appeal added that requiring a complainant to prove self-accommodation at the prima facie stage of the inquiry would unjustly elevate the burden of proof.

Health benefits

Alberta Hospital Association v Parcels,
(1992) 1 Alta LR (3d) 332, 90 DLR (4th) 703 (Alberta Court of Queen's Bench)
Pregnant employees have the same access to health benefits as other employees

Susan Parcels brought a complaint against her union on the basis that the collective agreement between her employer (Red Deer Hospital) and the union required employees on maternity leave to prepay 100 per cent of the premiums for particular benefits, while employees on sick leave were only obligated to pay 25 per cent of the premiums for the same benefits. Parcels alleged that this difference was based on pregnancy and, therefore, constituted gender discrimination.

The Board of Inquiry found that it was discrimination for the collective agreement to require employees on maternity leave to prepay 100 per cent of the premiums in order to keep benefits during the portion of leave that is health-related, which includes leave due to the late stage of pregnancy or an illness during pregnancy. The Board further held that a benefits plan must cover pregnant employees absent due to a valid health-related reason to the same extent as it compensates employees who are on sick leave. This is true for the entire health-related absence, regardless of whether it occurs during the pre-delivery, childbirth, or post-childbirth recovery period. The health-related portion of the absence can begin at any time, including prior to or after a voluntary maternity leave, or between two periods of voluntary maternity leave. However, the pregnant employee may be required to follow proof of claim procedures that establish that a health-related absence is based on a valid medical issue.

The Court of Queen's Bench upheld the decision that the difference between health-related leaves and sick leaves was discriminatory and that employees on maternity leave cannot be required to prepay 100 per cent of the premiums, and agreed that a health-related absence could begin at any time.

Relevant cases in other jurisdictions

Discrimination

Bird v Ross,
1987 88 CLLC 17, 9 CHRR D/4531 (Saskatchewan Human Rights Board of Inquiry)
Discrimination based on a legal abortion is a form of sex discrimination

The complainant was a waitress at a restaurant. After the complainant underwent an abortion, her employer would not allow her to return to work and terminated her employment. The Board of Inquiry found that the complainant was dismissed because she had undergone an abortion. Under the *Saskatchewan Human Rights Code*, sex discrimination expressly included discrimination on the basis of pregnancy or pregnancy-related illness. The Board determined that the abortion was obtained because continuing the pregnancy would have threatened the complainant's life or health. As a result, the Board found that the complainant had a pregnancy-related illness, which was cured by a therapeutic abortion. Accordingly, the Board held that the employer had discriminated against the complainant on the basis of sex by terminating her employment because she had received an abortion.

Brooks v Canada Safeway Ltd,
[1989] 1 SCR 1219, [1989] 4 WWR 193 (Supreme Court of Canada)
Pregnancy discrimination is a form of sex discrimination – pregnancy is a valid health-related reason for a workplace absence

Three women brought a claim that Safeway's benefits plan was discriminatory based on pregnancy, because it excluded pregnant employees from receiving benefits for any reason during the 10-week period before confinement, the week of confinement, and six weeks following the week of confinement. The Supreme Court of Canada held that discrimination on the basis of pregnancy is sex discrimination. The Court further determined that pregnancy is a valid health-related reason for an absence from the workplace, even though it cannot be characterized as a sickness or an accident-related injury. If an employer provides a benefit package that includes compensation for employees who require sick leave, that benefits package cannot exclude employees that go on leave due to pregnancy. It is sex discrimination to exclude pregnant employees from these benefits.

Tilsley v Subway Sandwiches & Salads,
2001 BCHRT 2 (British Columbia Human Rights Tribunal)
Discrimination based on miscarriage is a form of sex discrimination

The complainant advised her supervisor that she was pregnant. The supervisor made it clear that she wanted the complainant to quit. The complainant had pregnancy complications and received a note from her doctor instructing her to take a few days off of work. The complainant was later admitted to the hospital and had a miscarriage. While in the hospital, the complainant's mother telephoned her employer to provide notice that the complainant could not come to work, and the employer told her that the complainant was fired. On the Record of Employment, the reason for termination was listed as "failed to show up for shifts."

The complainant brought forward a human rights complaint under the protected ground of sex. The Human Rights Tribunal noted that discrimination based on pregnancy is a form of sex discrimination. The Tribunal then concluded that discrimination on the basis of miscarriage is another form of sex discrimination. Further, an employer's obligation to accommodate an employee's pregnancy to the point of undue hardship extends to accommodating an employee's miscarriage because it is one of the possible outcomes of a pregnancy. The duty to accommodate requires that the employer give the employee a reasonable opportunity to obtain and provide medical information that confirmed the miscarriage and recommended the amount of leave required, as long as doing so would not cause undue hardship. The Tribunal held that the employer discriminated against the complainant on the basis of sex when the employer fired the complainant for failing to attend her shift because she was having a miscarriage.

Cole v Bell Canada,
2007 CHRT 7, 60 CHRR D/216 (Canadian Human Rights Tribunal)
Discrimination on the basis of breastfeeding is a form of sex discrimination – a person does not need to provide objective evidence of the need to breastfeed – protection of breastfeeding extends past child's first year

The complainant's child had a congenital heart defect and doctors had recommended that the complainant breastfeed for as long as possible to help improve this condition. As a result, the complainant requested that she be able to use personal unpaid time to go home an hour early to breastfeed her child at the same time every day, but her employer refused. She then requested that she have a fixed schedule that allowed her to finish at 4:00 p.m. every day. The complainant's employer asked for a medical note, and the complainant provided a medical note that stated that she required a fixed schedule for 12 months (which would end when the complainant's child was around two years old). At the end of this period, the employer required further medical documentation to extend the fixed schedule. The complainant's physician completed the request form, but the complainant's request for an extension was denied. The complainant's doctor amended the form and resubmitted it to the employer. The form recommended an additional 12 months of accommodation. Given the employer's reluctance to accept the medical forms, the complainant weaned her child. The complainant's request was subsequently approved, but she was not notified of that approval.

The complainant brought forward a human rights complaint under the grounds of sex and family status. The Tribunal agreed with the reasoning from *Poirier* and found that discrimination on the basis of breastfeeding is a form of sex discrimination. The Tribunal did not make any findings regarding family status because the complainant had not advanced any arguments on this ground during the hearing. However, the Tribunal indicated that it was inclined to consider discrimination against a person to be discrimination on the basis of the complainant's family status as a parent because she was the mother of the child she wanted to breastfeed.

The Tribunal found that the complainant had established prima facie discrimination. The employer argued that, before the duty to accommodate is triggered, an employee must request an accommodation and objectively demonstrate the need for that accommodation.

The employer also argued that the employee must provide relevant information that is sufficiently clear and detailed to support the request. The Tribunal disagreed with the employer's overall argument that it was justified in asking the complainant to provide independent proof of her need to breastfeed her child. The Tribunal stated, "… in the absence of any evidence that would lead the employer to doubt the sincerity of the female employee's assertion (i.e., that she has an infant whom she is nursing), she should not have to prove to her employer that nursing her child is necessary.… [B]reastfeeding, which is obviously unique to the female gender, is as intimately connected to child birth as pregnancy and should be safeguarded in the same way."[49] Finally, the Tribunal found that the employer had not provided sufficient evidence that a fixed shift or leaving up to an hour early would cause the employer undue hardship. As a result, the Tribunal found that the employer had discriminated against the complainant on the basis of sex.

Lise Shannen Jovel Abreu c Transport Fortuna,
2020 CHRT 35 (Canadian Human Rights Tribunal)
Discrimination on the basis of sex – pregnancy as a factor in employment termination

In this case, the complainant was hired as an administrative assistant for the respondent, a company specializing in the refrigerated transportation of produce. When she was hired, the complainant signed an agreement stating that she was willing to be terminated if she was on sick leave for a certain number of days. The exact number was not specified, and she did not discuss the particular provision with the owner before signing. The complainant became pregnant and learned that her pregnancy was considered high risk. After a string of instances where the complainant was unable to work due to medical reasons, the owner ultimately terminated her employment. The complainant brought forth this complaint on the grounds of pregnancy and race.

The Tribunal stated that the complainant's pregnancy falls within the prohibited grounds of discrimination under the *Canadian Human Rights Act*. It further ruled that she had experienced adverse impact due to the loss of her job, which was a discriminatory practice under paragraph 7(a) of the *Canadian Human Rights Act*. Finally, the Tribunal held that the termination was in fact linked to the pregnancy-related absences. While the respondent argued that the dismissal was related to the complainant's failure to complete files and other errors, the evidence showed that the owner was upset that he had to do the work while the complainant was away. As this showed that the pregnancy related absences were connected to the dismissal, the Tribunal ruled for the complainant and awarded $29,020.41 for the financial losses.

[49] At para 77.

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