To: Scott Payne, Director of Communications UFCW 401
From: Emily Machura, Legal Counsel UFCW 401
Re: Legal Opinion – The Employer's Duty to Accommodate during the ATA strike

Do employers have a duty to accommodate parents of school-aged children during the Alberta Teacher's Association (ATA) strike?

Brief Answer:

Yes.

The Alberta teachers' strike, which commenced on October 6, 2025 has created a widespread need for accommodation from hundreds of thousands of families who would ordinarily have their children in school at this time of year. Many parents are faced with the question: How can I fulfill my duties at work while also making sure my kids are taken care of while the teachers are on strike?

"Family status" is a protected ground under both the *Alberta Human Rights Act* and the *Canadian Human Rights Act*. Employers are required to accommodate their employees on the basis of family status, which includes childcare obligations. Childcare obligations during the ATA strike trigger the same duty to accommodate from the employer.

Employees are encouraged to seek accommodation from their employer if they are unable to fulfill their duties during the teacher's strike due to childcare needs. Accommodation may take many forms and should proceed on a case by-case basis. Some types of accommodation which may be appropriate include:

- Temporary re-assignment to a different shift, to allow workers to be home during the day with their children
- The ability to work remotely, if appropriate
- Adjustment of work hours to accommodate different start/end times

Employees, their Union, and their employer must work together to find a suitable alternative and solution to their request for accommodation, however employers are not required to provide a "perfect" accommodation, or even the employee's preferred accommodation. The Duty to Accommodate will be met if the employer can demonstrate that they have proposed an arrangement that will meet the employee's family obligations.

Employees should be aware that accommodation offered during the strike will not be considered permanent, and that they will be expected to return to their regular duties once the strike ends.

Employees should be aware that they may also be able to access personal leave days under their collective bargaining agreements and under both provincial and federal employment statutes. Although their employer cannot require them to use these days prior to granting an accommodation, and we do not encourage employees to use vacation days or sick time to care for their children during the strike, some parents may prefer to use these personal days in place of seeking an accommodation.

An Employer's duty to accommodate is not infinite, if they are able to establish that granting the accommodation would cause "undue hardship" to their business or their other employees, they may still be found to have met their duty to accommodate, even if there was no practical accommodation available for the employee requesting it.

Background

On October 6, 2025, approximately 51,000 teachers in Alberta went on strike after voting "no" in resounding numbers to a proposed collective agreement on September 29, 2025. This is the largest strike in Alberta's history. Teachers have been negotiating a new province-wide contract since 2024. The possibility of a teachers' strike has loomed over the heads of parents in Alberta since teachers voted "YES" in a strike vote in June 2025, after an initial proposed contract was rejected by Alberta's teachers.

Having failed to reach an agreement in September 2025, and with the June strike vote set to expire on October 7, 2025, teachers and school principals across Alberta did not show up to school the morning of October 6, 2025. On October 6, 2025, the Teachers' Employers Bargaining Association (TEBA) issued a lockout notice to Alberta's teachers. As of October 9, 2025, teachers are not only on strike, but are locked out by their employer.

As teachers are now locked out, there is no opportunity for the ATA to change their strike action. They will not be able to resume teaching in any form – rotating job action or work-to-rule are now off the table as a result of the lockout. Classes will not resume until an agreement is reached between the ATA and the TEBA.

At this time, the duration of the strike is unknown, although the ATA and the TEBA have committed to return to the bargaining table as early as October 14, 2025. Even if a tentative agreement is reached after this date, it is likely that schools will continue to be out until at least the week of October 20, 2025. The last time teachers in Alberta went on strike was in 2002; that strike lasted approximately 3 weeks.

The strike affects all schools in the province, except for private schools and schools in Lloydminster, where the schools fall under the Saskatchewan Board of Education. However, employees and parents who work in Lloydminster may still be affected by the strike, as schools in the surrounding towns and rural communities fall under the Buffalo Trail Public School board, an Alberta-based school board.

The strike has placed parents across Alberta in a state of uncertainty, as there is no indication how long the job action will last. Parents are faced with having to find childcare for their school-aged children on a last-minute basis. Municipal facilities and universities across the province have opened up their doors and arranged for additional day-camps and activities to be made available to students affected by the strike. Many daycares have expanded their hours. However, these options come with significant costs, which not all parents will be able to afford. There are also fewer options available to parents than there are during the summer months, where programming and childcare are more plentiful and arranged months in advance.

Some parents have older children who can be left alone for the duration of their parents' workdays, or who can provide care for their younger siblings. Others have family close by, or friends with whom they have arranged childcare for their young children while the strike is ongoing. Many parents do not have access to these supports or options and have been left scrambling to figure out what to do with their children while they must be at work during the day.

The Law

Legislation

"Family status" as a protected ground stems from the *Alberta Human Rights Act* and the *Canadian Human Rights Act,* specifically s. 7(1) of the *AHRA* and ss. 3(1) and 7(1) of the *CHRA.* It is well established that childcare and family obligations fall under the banner of "family status" as it is referenced in the legislation. Employers are required to provide accommodations under this legislation for people who have children and who may require some special treatment in their employment situation due to the needs of their children.

Alberta Human Rights Act, RSA 2000, c A-25.5

Discrimination re employment practices

7(1) No employer shall

(a) refuse to employ or refuse to continue to employ any person, or

(b) discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.

(2) Subsection (1) as it relates to age and marital status does not affect the operation of any bona fide retirement or pension plan or the terms or conditions of any bona fide group or employee insurance plan.

(3) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

Canadian Human Rights Act (RSC 1985, c H-6)

Prohibited grounds of discrimination

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Employment

7 It is a discriminatory practice, directly or indirectly,

- **(a)** to refuse to employ or continue to employ any individual, or
- **(b)** in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

Provincially regulated employers are also required to provide employees with over 90 days of employment with up to 5 days of unpaid leave for Personal and Family Responsibility under s. 53.982 of the Employment Standards Code.

Unpaid leave for personal and family responsibilities

53.982(1) An employee who has been employed by the same employer for at least 90 days is entitled to up to 5 days of unpaid leave in a calendar year, but only to the extent that the leave is necessary

(a) for the health of the employee, or

(b) for the employee to meet his or her family responsibilities in relation to a family member.

(2) Before taking a leave under this section, the employee must give the employer as much notice as is reasonable and practicable in the circumstances.

Federally regulated employees who fall under the Canada Labour Code are similarly entitled to 5 days of personal leave under s. 206(6), with the primary difference between the provincial and federal Codes being that for federally regulated employees, the

Leave — five days

206.6 (1) Every employee is entitled to and shall be granted a leave of absence from employment of up to five days in every calendar year for

(a) [Repealed, 2021, c. 27, s. 6]

(b) carrying out responsibilities related to the health or care of any of their family members;

(c) carrying out responsibilities related to the education of any of their family members who are under 18 years of age;

(d) addressing any urgent matter concerning themselves or their family members;

(e) attending their citizenship ceremony under the *Citizenship Act*; and

(f) any other reason prescribed by regulation.

Leave with pay

(2) If the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of the leave with pay at their regular rate of wages for their normal hours of work, and such pay shall for all purposes be considered to be wages.

Case Law

The duty to accommodate based on child care obligations is well established in case law, both in the Supreme Court of Canada and from the Alberta Court of Appeal. Federally regulated employees are subject to a decision from the Federal Court of Appeal, which applies a more rigorous standard for establishing discrimination than the provincial standard in Alberta.

***Moore v British Columbia (Ministry of Education)*, 2012 SCC 61 (*Moore*)**

Moore established the leading test for discrimination for family status and in particular, child care obligations. To prove discrimination, a complainant has to prove that:

1. they have a characteristic protected by the *Human Rights Code* [***Code***];
2. they experienced an adverse impact with respect to an area protected by the *Code*; and
3. the protected characteristic was a factor in the adverse impact.

Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur. [*Moore* at para 33]

Since *Moore*, the test was often interpreted alongside a federal court case, *Johnstone*, which imposed a more onerous standard of proof for establishing that significant effort had been made. However, the Alberta Court of Appeal ruled that only the *Moore* test should be used and that the higher burden of proof from *Johnstone* should not be applicable to discrimination on the basis of family status in Alberta.

***United Nurses of Alberta v Alberta Health Services*, 2021 ABCA 194 (*UNA*)**

> 109 The test for *prima facie* discrimination in *Moore* does not require a claimant to prove self-accommodation. There is no justification for requiring a family status claimant to prove an additional element of self-accommodation at the *prima facie* stage of the inquiry. To do so would unfairly and unjustly elevate the burden of proof on family status claimants, perpetuating rather than ameliorating human rights inequality. Rather, the multi-party inquiry into accommodation, properly belongs in the second justification stage of the inquiry, where the burden remains on the employer to prove a *bona fide* occupational requirement for the impugned policy, and accommodation to the point of undue hardship in accordance with the principles set down in *Meiorin.*

The *Moore* test, when paired with the *UNA* decision, establishes that parents do not need to prove that they have tried everything before triggering the duty to accommodate. For provincially regulated employers, attempts for self-accommodation only become relevant at the stage where the employer must prove that they will experience undue hardship by extending the accommodation.

***British Columbia (Public Service Employee Relations Commission) v. BCGSEU (Meiorin)*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3**

In *Meiorin,* the Supreme Court of Canada established the ‘three step test’ that’s routinely referenced in training and articles on the duty to accommodate in the workplace. The test is used to confirm if a

discriminatory workplace standard is a bona fide occupational requirement (BFOR). The three steps ask if the standard:

- 1. was adopted for a purpose rationally connected to the job
- 2. was adopted in an honest and good faith belief that it is necessary and,
- 3. is reasonably necessary to accomplish that legitimate work-related purpose.

To show that the standard is reasonably necessary, the employer must demonstrate that accommodating the employee would cause undue hardship.

Federally Regulated Employees Only:

***Attorney General of Canada* v. *Johnstone*, 2014 FCA 110 (*Johnstone*)**

In *Johnstone*, the Federal Court of Appeal stated that the test for *prima facie* discrimination on the basis of family status is the same test as is applicable to other grounds of discrimination under the Act; however, the Court also states that the test is "flexible" and "contextual". In the context of family status, the Court of Appeal agreed with the lower court that "the childcare obligations arising in discrimination claim[s] based on family status must be one of substance and the complainant must have tried to reconcile family obligations with work obligations". [*Johnstone* at para 87]

> The Court concluded that in order to establish *prima facie* discrimination on the basis of family status, a claimant must show
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> (i) that a child is under his or her care and supervision;
> (ii) that the childcare obligation at issue engages the individual's legal responsibility for that child, as opposed to a personal choice;
> (iii) that he or she has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions, and that no such alternative solution is reasonably accessible; and
> (iv) that the impugned workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of the childcare obligation.
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> [*Johnstone* at para 96]

Once the *Johnstone* test has been met and it is established that *prima facie* discrimination has occurred, *Moore* and *Meiorin* both apply.

Analysis

Discrimination and Accommodations

It is clear from the above caselaw and legislation that employers across Alberta have a duty to accommodate their employees based on their family status. This remains true during the teachers strike. The 2025 ATA strike occurred on relatively short notice, with parents being unsure whether a strike would occur until less than a week before the strike began. Parents did not have any significant amount of time to prepare for the strike, making it difficult to secure and arrange childcare during the week.

It follows that the strike has presented an unprecedented need for weekday childcare in Alberta. Some employers across the province have already indicated to their employees that they will be flexible during this time of temporary need and upheaval. Others have said nothing.

Employees who do not have childcare for their children during the teachers strike should request accommodation from their employers if they require it. Employers who have not already indicated to their employees that they will accommodate their employees circumstances during the strike are still required to accommodate their employees during this time. Failure to fairly or properly accommodate these workers is considered discrimination.

Accommodation can take many different forms and should be tailored to the individual needs of each parent and family. A parent who is a single-parent with no family nearby may have very different childcare obligations than a parent who has a partner who works from home, or who has retired parents who can care for their children part-time during the strike. In circumstances where both parents work for the same employer, accommodations should be explored that allow both parents to meet their familial obligations. The circumstances for each family will depend on a multitude of factors that should be considered on a case-by-case basis.

Notwithstanding the decision in *Moore,* which does not require employees to have established that they have made efforts to self-accommodate to establish *prima facie* discrimination, employees have a duty to participate in the accommodation process, part of which includes making efforts to find alternative solutions to their childcare obligations.

Employers are not required to provide employees with their desired accommodation under the Duty to Accommodate. They will be found to have met the duty if they have offered a reasonable accommodation to an employee that allows the employee to continue to work in some capacity while also meeting their family obligations. In cases where an employee disagrees with a proposed accommodation, they must be able to establish why that accommodation is not reasonable based on their individual circumstances.

Employers are also only required to offer these accommodations while the need for the accommodation exists – for most employees seeking an accommodation during the ATA strike, the accommodation will end once students and teachers have returned to school.

Employers cannot require that employees use their personal days, sick time, or vacation days when assessing a reasonable accommodation. While some employees may choose to use these days instead of accepting a temporary accommodation such as an adjusted schedule, the fact that an employer may offer these days as an option to them does not eliminate an employers need for accommodation.

<u>Undue Hardship</u>

Meorin involves a multi-party inquiry into the standards that must be met in order for an employer to claim “undue hardship”. In the case of the teachers’ strike where a significant amount of the workforce may be met, it is possible that Employers may raise a defence of undue hardship on the grounds of operational requirements– “if every parent needs time off, then we will have no employees left to perform the necessary work and properly operate our business”.

In these circumstances, where the need for accommodation is widespread, even though self-accommodation is not required to establish discrimination, an employee’s efforts of self-

accommodation will be significant if we are required to argue that their Employer did not meet the bar of "undue hardship" when denying an accommodation. If an employee is able to establish that they have explored every avenue available to them when trying to find an accommodation that will work for both their circumstances and those of the employer, it is more likely that an employer's attempts to raise an "undue hardship" defence will fail.

For federally regulated workplaces, the law in *Johnstone* still applies. *Johnstone* requires employees seeking accommodation on the basis of family status, and for childcare obligations, to establish that they have exhausted all of their options for childcare in order to even raise a claim that they have been discriminated against on the basis of their family status.

For these reasons, employees should continue to seek alternative solutions for childcare, even as they request accommodation from their employer. Employees should document their efforts in case they are needed for future litigation.

Conclusion

The ATA strike has left many parents wondering what they should do with their children while school is not in session due to the strike. Family status is a protected ground under provincial and federal human rights legislation, and childcare needs can trigger the duty to accommodate.

Employers must accommodate parents during the ATA strike if it is requested by their employees. In meeting their duty to accommodate, employers must embark on a good-faith exploration of possible accommodations for these employees. Employees are required to work with their employer and their union to find an accommodation that works for their individual circumstances. Employers who allege that they cannot accommodate their employees are required to establish undue hardship, which is a very high threshold to meet.

Accommodations should be considered on an individual and case-by-case basis.

Employees may have personal days available to them, either through the provincial or federal legislation or through their collective bargaining agreements. However, employees should not be required to exhaust these days before other accommodations are explored.