

CAR ALLOWANCES: NOT A SACRED RIGHT

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Canada's human rights codes generally impose a duty on employers to accommodate employees' disabilities to the point of undue hardship. Employers will be pleased to know, however that they may be able to impose cut-off dates for benefits provided to employees on leave for disability or other leaves without having to demonstrate undue hardship.

Background

Arbitrator Michael Lynk recently released his decision in *Canadian Union of Labour Employees v The Public Service Alliance of Canada*. The dispute in this case arose where two employees, one on disability ("Mr. W") and the other on maternity leave ("Ms. U") (and collectively, "the Grievors"), were denied a car allowance benefit they were previously entitled to while actively at work. The car allowance was designed to reimburse the Grievors and other bargaining unit members for the depreciation, maintenance, and general wear and tear on their personal vehicles incurred as a result of travel for work purposes.

The collective agreement provided that an employee on leave would continue to receive the car allowance up to a maximum of four consecutive months following the commencement of leave. However, once the leave exceeded four consecutive months, two things happened: (1) the car allowance stopped, and (2) the employer was entitled to recover all of the car allowance payments it had made to the employee during the initial four month period. If the employee and employer knew at the outset of the leave that it would last longer than four consecutive months, the employer could discontinue the car allowance immediately following the commencement of the employee's leave.

After Mr. W's disability leave extended beyond four months, the employer stopped his car allowance payment and took the necessary steps to recover the car allowance payments it had made to Mr. W going back to the start of his leave. The employer stopped paying Ms. U her car allowance benefits as soon as she went on leave, for both parties knew she would also take parental leave and would not return until the following year. The Grievors claimed that their leaves from work were involuntary and based on characteristics that were protected by human rights legislation. As a result, they claimed the discontinuance of their car allowance was discriminatory and that the employer was required to demonstrate undue hardship. Failing the employer's ability to meet that burden, the Grievors claimed they were entitled to both the payment of the car allowance

for the initial four months of their leave, and to a continuing payment after the first four months of leave.

Reasons

The arbitrator engaged in a two-part analysis. First, the arbitrator held that he must first determine the purpose of the employment entitlement when assessing whether a valid human rights claim of discrimination could exist. The arbitrator considered the purpose of the car allowance: whether it was tied to an active work status, or simply to a general employment status. Second, he considered whether the Grievors were given differential treatment in the payment of the car allowance, and whether that treatment was discriminatory.

The Ontario Court of Appeal in *Orillia* previously held that requiring the active performance of work in exchange for certain benefits was justified under human rights analysis. In the case at hand, the evidence clearly established that the purpose of the car allowance under the collective agreement was to compensate employees for the use of their personal vehicle while performing the assigned work of the employer. Accordingly, the car allowance was sufficiently tied to the employee's active work status. The fact that the employee was on leave for a reason connected to a protected human rights ground was not determinative. This finding weighed in favour of the employer's ability to terminate the benefit when the Grievors failed to maintain an active work status.

However, the collective agreement did provide that employees on leave for terms shorter than four months were still entitled to the car allowance. Thus, the arbitrator considered whether the employer's failure to pay the car allowance to the Grievors constituted differential treatment and, if so, whether or not that differential treatment was consistent with human rights obligations. The arbitrator held that the Grievors were clearly subject to differential treatment and there was no discernible rationale for why employees on longer term leave were not entitled to any car allowance whatsoever, while employees on short term leave were entitled to up to four months of payments.^[1] Employees on long-term disability were disadvantaged in a way that employees on short-term disability were not, without justification.^[2] The arbitrator held that this differential treatment was discriminatory and warranted relief. As a result, the arbitrator ordered the employer pay the car allowance to the Grievors for the first four months of their leave, after which the employer could terminate the payments until the Grievors returned to work.

Takeaways for Employers

There are two main takeaways for employers. First, if a benefit is connected to an active work status, employers may not need to establish undue hardship in order to terminate those benefits to employees on leave for disability or other statutorily protected grounds, and it is sufficient that the benefit is connected to an active work status. Employers can impose an end date for employees on leave for payment of these kinds of benefits, and, according to the arbitrator, this is consistent with human rights law. However, the second take away is

that while the employer can impose end dates, it must still ensure that all employees entitled to the particular active work status benefit are treated in a manner that is non-discriminatory. If an Employer provides a benefit for a particular time to one group, but not the other, it risks claims of discrimination and the potential obligation to provide the benefit to all applicable groups.

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1 Para 60-62[ps2id id='1' target='/']

2 Para 64[ps2id id='2' target='/']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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