

Member's Quarterly

Fall 2021 Edition

Feature

Working Remotely

Is it the "new" accommodation?

Over the last eighteen months, working remotely became the new norm for many employees out of necessity. While vaccination rollouts foreshadow a potential return to the workplace for many, has the relative success of working remotely impacted the reasonableness of working from home as a means of accommodation? As recently as ten years ago, this idea would not have been widely considered, if at all. However, with many employers able to operate their organizations effectively through the pandemic with remote workers, this is an accommodation which may be requested by employees with more regularity and therefore must be considered by employers.

A recent decision by the Alberta Human Rights Commission (AHRC) addressed working remotely as a reasonable means of accommodation. As with any workplace accommodation, the onus is first on the employee to request accommodation and substantiate that request with adequate medical information providing that the employee suffers from a disability as contemplated by the *Alberta Human Rights Act*, and has restrictions/limitations as a result. From this point, there is an obligation on the employer to engage in the accommodation process by reasonably modifying the employee's job to accommodate their individual needs to the point of undue hardship.

In *Chiarelli v Bow Valley College*, the AHRC considered whether the employer-College discriminated against the complainant-employee by refusing to allow her to perform a portion of her duties (administrative in nature) at home. The complainant suffered from a medical condition which affected her eyes, causing pain when reading, writing or using a computer for extended periods. She required frequent breaks, use of a laptop (versus a desktop), the ability to pace her work and specifically to work remotely. The complainant's request to work remotely was denied by the employer, who took the position that the complainant would be able to work on campus while meeting the other recommended accommodations.

As a result, the complainant felt she had to resign due to the fact that her working conditions had become intolerable. She filed a complaint with the AHRC, which was investigated and dismissed. On review of the initial dismissal, the sole issue for determination was whether requiring the complainant to work on campus as opposed to her home was reasonable and justifiable.

The AHRC considered that in the past, the complainant and other employees had performed administrative tasks from their home "outside of a duty to accommodate scenario" and that the respondent's proposed accommodation may not fully address the complainant's medical needs.

Despite the AHRC's initial findings that the respondent had provided reasonable accommodation and that the complainant had refused the same, the AHRC found a reasonable basis in the evidence to proceed to a hearing on the issue of whether the respondent's rule that the complainant physically attend at the workplace to perform these duties was reasonable.

While *Chiarelli* is only an interim decision, we believe the hearing stage will provide helpful commentary with respect to how this issue will be treated moving forward. While the complainant in this instance was only requesting to work from home with respect to a portion of her job duties, there is no reason to believe that an employee seeking full-time/permanent accommodation could not avail themselves of the same arguments. With the proliferation of technology making remote work not only possible in situations where it was not previously, many employers over the last year have not seen a reduction in efficiency (or



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have seen an increase) compared to having employees in the workplace. While working remotely is not necessarily a 'new' development, during the COVID-19 pandemic many workplaces utilized remote work for the first time on a wide scale and were relatively successful in doing so. This type of success likely becomes very persuasive evidence when a decision-maker is deciding whether a request to work from home is a viable means of accommodation.

While working remotely will obviously be more applicable to certain types of employers and work than others, and would still require an otherwise medically necessary accommodation request from an employee, this case serves as an important reminder to employers. Keep in mind when considering all of the information available in the accommodation process, that this may now extend beyond the traditional workplace and into the remote.

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