



Duty to Accommodate

“Accommodation” in an employment setting is the adjustment or change to a rule, practice, condition, or requirement of employment to consider the specific needs of an individual or group with one or more of the protected characteristics in the *Human Rights Act*.

The duty to accommodate arises when an employee has disability and requires some change to do their work or seeks modified duties to remain in the workplace. This could look like a person with a disability is capable of doing the work but must do it in a different manner than someone without a disability. Another situation it may arise would be when a disability has stopped a person from being able to perform all of the duties they did before or were done before in the job position.

The duty to accommodate is on the employer and it stays on the employer until the point of “undue hardship”. This is a legal concept that could be different for respective employers. This concept is also fact driven.

Employment

Employers are responsible for providing accommodations to employees with disabilities. An employer can request medical information from an employee to determine what is required for an accommodation. Employers can ask if the accommodation is related to a disability, the prognosis, and for particulars of what kind of accommodation is required. The employee is responsible for alerting the employer of the need for an accommodation and cooperating with reasonable requests for medical information.

The employer has a duty to accommodate to the point of “undue hardship”. Factors that can be used in determining whether the accommodation would pose an undue hardship are employee and customer safety, financial cost, interchangeability of the workforce and facilities, disruption of a collective agreement, disruption of services to the public, the morale of other employees, and the size of the employer’s operation.

If an employer had a human rights complaint made against them the Board of Inquiry would look at 3 points to determine if their duty to accommodate has been met once discrimination has been shown to exist.

- rationally connected to the job function being performed.
- adopted in good faith in that it was necessary to fulfill the job.



- modifying the action would cause undue hardship

From the perspective of the employee the Board of Inquiry would look at the following:

- Advise the employer of a disability (or other protected characteristic requiring accommodation).
- Notify employer (if possible, in writing) of specific needs.
- Answer questions & provide relevant medical information requested.
- Discuss solutions with employer.
- Cooperate with experts to design accommodation.
- Meet agreed performance standards when accommodation is made.

Access to Services

While most inquiries received by the Commission related to Duty to Accommodate concern an employee-employer relationship, the Duty to Accommodate extends to accessing services such as those offered in retail, healthcare, and education.

Undue Hardship

When examining undue hardship, the Board of inquiry would look at these points to assist in determining whether the accommodation was to the point of undue hardship.

- a. financial cost- Is the accommodation required or requested going to hurt the employer financially;
- b. disruption of a collective agreement- Is the request against a Collective Agreement;
- c. morale of other employees – Will the accommodation cause work issues that impact the work overall;
- d. interchangeability of workforce and facilities; and
- e. health and safety concerns.

But the duty to accommodate has limits. Those limits are set out in [the Human Rights Act](#), s. 6 (f)(ia). That section permits discrimination where it is “based upon a “bona fide occupational requirement.”

In summary, the search for accommodation is a multi-party inquiry involving the employer, the union, and the employee. There are many different disabilities that can and must be accommodated by employers.