



## 3.2 Duty to Accommodate



The **“duty to accommodate”** is a **legal obligation**, which has been confirmed and clarified by the courts, including the Supreme Court of Canada. The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.

Accommodating employees varies for each employee. Employers want every employee to be the most productive they can be, and this is accomplished by providing the tools that they need to be effective and efficient.

The duty to accommodate applies in relation to any aspect of employment, including pre-employment testing, work environment, training and/or promotions.

### **What does “duty to accommodate” up to the point of “undue hardship” mean?**

The duty to accommodate applies to protected characteristics under the human rights legislation applicable in your jurisdiction. Although the specifics may vary from jurisdiction to jurisdiction, these grounds generally include gender, nationality, disability, race, ethnic origin, colour, religion or creed, age, sexual orientation, marital or family status, and criminal convictions for which a pardon has been granted.

Employers, service providers, and unions must take steps to eliminate any disadvantages to employees, prospective employees, or clients resulting from rules or physical barriers that may have an adverse impact on individuals or equity-seeking groups. True equality means respect for people’s different needs.

With respect to employment and the workplace, this means valuing and accommodating differences so that all employees can work to the best of their abilities. Building your capacity to accommodate employees is increasingly a factor in attracting and retaining talent and demonstrates that you are an inclusive employer.

Don’t let your need to learn about accommodation prevent your business from attracting the talent you need. Accommodation is typically low-cost or no-cost and usually involves a slight change to schedule or duties.

## Obligation to Accommodate

Although an employer is not obligated to provide accommodation tailored exactly to an individual worker's preference, the employer cannot arbitrarily determine an accommodation without consulting with the worker who identifies as having a disability.

The worker has an obligation to cooperate in an effort to arrive at a reasonable accommodation.

Employers have an obligation to offer accommodation to an employee if they see a clear need for it.

The phrase "undue hardship" implies that the employer has an obligation to incur at least some hardship when accommodating employees.

*The most successful accommodation outcomes happen when workplace parties are able to work collaboratively and respectfully with a view to finding meaningful and effective solutions. This rules out situations in which the parties analyze how far the law says they have to go, or how much they can hold back.*

The Canadian Human Rights Commission has developed an easy-to-read guide for employers:

A Place for All: A Guide to Creating an Inclusive Workplace, ©2006. This guide is designed to assist employers in understanding their legal obligations regarding the duty to accommodate, as well as in creating workplace accommodation policies and procedures.

How must employers accommodate physical or mental- disabilities?

Accommodation strategies that address disabilities are intended to support productivity and performance. The range of possible accommodations is very wide and should be considered on a case-by-case basis. Accommodations generally fall into four categories, and do not necessarily incur any costs.

## Accommodation Categories

Individual – workers' disabilities, injuries, strengths, abilities and skills.

Environment – Information Technology (IT) infrastructure, building, safety, natural environment and workplace support.

Tasks – job description redesign, performance requirements and areas of flexibility.

Tools assistive technology encompassing aspects of the other categories.

Applicants are not required to inform an employer about their accommodation requirements prior to being hired. However, if an employer reasonably believes that an applicant would not be able to perform a certain job function because of an evident disability, then the employer could ask about the potential need for accommodation. If the applicant or employee then chooses not to identify a need for an accommodation, the employer's responsibilities would likely have been fulfilled.

Many employers require new employees to take and pass a medical examination as a condition of employment. If a medical examination is a job requirement, the examination can only be conducted after the job offer has been made and accepted.

The need for accommodation cannot be used to evaluate the merits of an applicant of employee during the selection process.

Employers should be aware that the need for accommodation could arise during the employment selection process, at the start of employment, or at a point after employment has already started.

An employee's probationary period can only start after an employee has been appropriately accommodated.

## Take the Challenge!

### True or False

A person who is denied accommodation would have the right to file a complaint in relation to any aspect of employment, including pre-employment testing, the work environment, training and/or promotions.

**True.** If a person is denied an accommodation, they would have the right to file a complaint with the Canadian Human Rights Commission.

An employer can consider the need for accommodation when evaluating whether an applicant is the best person for a job.

**False.** The need for accommodation cannot be used when evaluating the merits of an applicant during the selection process.

### Source:

<sup>1</sup>Canadian Human Rights Commission, *A Place for All: A Guide to Creating an Inclusive Workplace*, ©2006.

### Disclaimer:

*Hire for Talent has made every effort to use the most respectful words possible while writing these materials. We realize, however, that the most appropriate terminology may change over time. We developed these materials with the intent to respect the dignity and inherent rights of all individuals.*

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