

3.3 Undue Hardship



The Supreme Court of Canada has stipulated that a person's disabilities must be accommodated unless the employer or service provider can prove that doing so would be an *"undue hardship."*

The courts have not yet provided a comprehensive definition of "accommodation" or "undue hardship."

"Undue hardship" describes the point beyond which employers are not expected to accommodate, and the factors to be considered are not entrenched, except to the extent that they are expressly included or excluded by the relevant statute in your jurisdiction.

For example, an accommodation would be considered overly burdensome if it would impose undue hardship or undue risk to the health or safety of any worker. An employer may be able to claim undue hardship if the cost of a proposed accommodation is considered excessively high, thus jeopardizing the business's survival, or if the accommodation threatens to change the business's essential nature. The relative importance of these factors varies on a case-by-case basis. However, the term "undue" implies that there may necessarily be some hardship in accommodating someone's disability, and unless that hardship imposes an undue or unreasonable burden, it yields to the need to accommodate.

The requirement to accommodate up to the point of undue hardship means that employers must identify and eliminate any rules that have a discriminatory impact that cannot be justified under the law.

The goal is to prevent barriers to accessibility from occurring in the first place, rather than having to remove them retroactively. When we design inclusively from the start, our products and services work for everyone. Accommodation also means changing rules or practices to allow people to do things in a different way.

Example: a small business's installation of an elevator is likely undue hardship, but the installation of a front door ramp is not.

Take the Challenge!

True or False

Because accommodations must be provided up to the point of undue hardship, employers can decide exactly what the level of undue hardship is.

False. Undue hardship describes the point beyond which employers are not expected to accommodate.

Source:

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

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