



e2r Alert!

Accommodation 101: Employees with Disabilities

The legal obligation to accommodate employees with disabilities is a cornerstone of workplace inclusivity and equality. Rooted in human rights, accessibility, and employment standards legislation, the duty to accommodate is a mechanism to ensure that employees with disabilities are treated with dignity in the workplace.

Understanding the Duty to Accommodate

The duty to accommodate refers to an employer's obligation to make adjustments or modifications to the workplace or job duties to enable employees with disabilities to perform their work effectively. These may be temporary or permanent.

1. Types of Accommodations

Accommodations for employees with disabilities can vary widely depending on the nature of the disability and the specific needs of the employee. Common types of accommodations include, but are not limited to:

- **Physical Modifications:** Adjusting the physical workspace to improve accessibility. This could involve installing ramps, modifying restrooms, or providing ergonomic furniture.
- **Assistive Technologies:** Providing tools or devices that assist employees in performing their job duties. Examples include screen readers for visually impaired employees or voice recognition software for those with mobility impairments.

- **Work Schedule Adjustments:** Offering flexible work hours, remote work options, or modified break schedules to accommodate medical appointments or other needs related to the disability.
- **Job Restructuring:** Altering job duties or reassigning tasks that an employee with a disability may find challenging. This ensures that essential functions of the job are still being performed without imposing undue strain on the employee.

2. The Process of Accommodation

The process of accommodating an employee with a disability generally involves several key steps:

- **Request for Accommodation:** Employees should inform their employer of their disability and the need for accommodation. This can be done verbally or in writing, but it is recommended to formalize the request in writing for clarity. In some instances, this duty may be activated by an employer's 'belief or suspicion' that there is a disability – without being explicitly advised by the employee.
- **Assessment:** Employers should assess the employee's needs by engaging in a dialogue with the employee. This involves discussing potential accommodations and determining what adjustments would be reasonable (not perfect accommodation or the employee 'preference') and effective. Medical information is crucial to substantiating the request for accommodations and ensuring the employer remains compliant with the law (while an employer is not entitled to a diagnosis, they are entitled to information regarding any medically necessary accommodations).
- **Implementation:** Once an accommodation is agreed upon, employers should implement it promptly. This could involve physical changes to the workplace, providing specific equipment, or adjusting work schedules.
- **Follow-Up:** Regular follow-ups are crucial to ensure that the accommodation is working as intended and to make any necessary adjustments. This ongoing communication helps address any new needs or challenges that may arise.

3. Undue Hardship

While employers are required to make reasonable accommodations, there is an exception for situations that cause "undue hardship." In Ontario, only three

considerations matter to the assessment of undue hardship: cost, outside sources of funding, and health and safety requirements. It is very difficult to argue that most requests for accommodation cannot be met outside of these three areas of consideration. Employer inconvenience is not undue hardship. Employers must demonstrate that the accommodation would impose a significant burden before it can be considered unreasonable. Undue hardship is a very high standard to meet.

4. Bona Fide Occupational Requirements (BFOR)

A BFOR is a standard or rule that is integral to carrying out the requirements of a particular position within a workplace. For a standard to be a BFOR, an employer must establish that any accommodation or changes to that standard or rule would create an undue hardship. If an organization determines that removing barriers or changing workplace standards or rules cause an undue hardship, then it is likely that the standard or rule is a BFOR.

The Supreme Court of Canada has outlined a three-step test to determine if a rule or standard is a BFOR:

- i. Was the rule adopted for a purpose rationally connected to the performance of the job?
- ii. Did the employer adopt the rule in an honest and good faith belief that it was necessary to the fulfillment of a legitimate work-related purpose?
- iii. Is the rule reasonably necessary to the accomplishment of the legitimate work-related purpose?

Where a BFOR exists, the organization does not have a duty to accommodate to the point of undue hardship.

4. Legal Liability

Failing to properly accommodate an employee with a disability can expose the employer to legal liability. An employee may make a complaint that will require time, energy, and resources to properly defend. There are also public relations considerations if an employer fails to accommodate. It is also worth noting that Human Rights claims in Ontario do not carry cost consequences, which means that an employer will not be able to recoup its legal expenses from a complainant even if they successfully defend the matter.

Best Practices for Employers

To effectively meet their duty to accommodate, employers should:

- **Educate and Train:** Provide training for managers and HR professionals on the duty to accommodate and the importance of inclusivity.
- **Develop Policies:** Create clear, accessible policies on accommodation that outline procedures and responsibilities.
- **Encourage Open Communication:** Foster a workplace culture where employees feel comfortable disclosing disabilities and requesting accommodations.

Review and Revise: Regularly review and update accommodation practices to ensure they remain effective and compliant with current laws.

Providing appropriate accommodations that comply with the law and meet business needs can be tricky. It is always recommended that you speak with an e2r™ advisor to potentially avoid costly consequences.