

DCIF Project – Accommodation Tool 1: Understanding Workplace Accommodations

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Tags

Who is this for?

High priority:

- Direct managers

Practical information:

- Corporate cross-departmental managers

Useful to know:

- HR Professionals

What guidance does it provide?

- Understanding the duty to accommodate and the duty to inquire

Take home points

- Accommodation is as much about organizational culture and trust as it is about the policies that are created and the legal rules that are in place. An open and accepting culture towards accommodation will increase inclusion and reduce conflict during the accommodation process
- Employers have a legal duty to accommodate. This duty ensures that individuals requiring accommodation are not unfairly excluded where working conditions can be adjusted
- A lesser-known legal obligation that has been very clearly established in Canadian case law is the duty to inquire. The duty to inquire exists when an employer is either made aware of or perceives that a worker may need an accommodation - even if they have not outrightly asked for one.
- By adopting a yes by default approach and asking all employees “what do you need” is a fundamental change in workplace culture. A “yes” approach prioritizes the processing of solutions for accommodation for all employees, including those with disabilities without the time-consuming and quality of current adjustment processes.

What Are Workplace Accommodations?

The Government of Canada¹ defines a workplace accommodation as:

- Workplace accommodations involve the adaptation of work duties or the working environment, to enable all employees to fully participate in employment.

Rooted in collaboration between the employer and the worker, proper workplace accommodations can lift workplace barriers¹ and allow persons with disabilities equal access to new job opportunities, support the retention of meaningful work, or facilitate the return to work if a person has been absent because of their disability.

Workplace accommodations can benefit everyone at your company.

Workplace accommodations are not solely for people with disabilities. Organizations frequently offer a wide variety of employees workplace adjustments, including flexible work hours, remote or hybrid working arrangements, the provision of childcare benefits, or even offering specialized technology like modified keyboards or dual monitors set-ups for a workspace.

An Employer's Duties

Accommodations are a win-win: they are a unique, effective business solution and a means to support the human rights and full participation of persons with disabilities in the workplace.

The **Duty to Accommodate**

Employers have a legal **duty to accommodate**. This duty:²

- Ensures that individuals requiring accommodation are not unfairly excluded where working conditions can be adjusted
- Applies to any aspect of employment, including pre-employment testing, work environment, training and/or promotions.
- Activates when an employee makes their needs known

Legally, employers MUST make every effort, short of **undue hardship**, to accommodate an employee who falls within the prohibited grounds of discrimination within the Canadian Human Rights Code³ **(For more information, check out the Disability Confident [Legal Briefing](#)).**

What is undue hardship?

Undue hardship is the limit beyond which employers and service providers are not expected to accommodate. There are three considerations: health, safety, and financial costs. Proving **undue hardship** is a legal process requiring significant evidence.

- For example, if the financial costs of accommodating the needs of one employee would put the business at risk of shutting down, this would be their limit of undue hardship.

¹ A barrier means anything — including anything physical, architectural, technological, or attitudinal, anything that is based on information or communications or anything that is the result of a policy or a practice — that hinders the full and equal participation in society of persons with an impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment or a functional limitation (Accessible Canada Act, 2019).

The Duty to Inquire

While most employers are familiar with the duty to accommodate, a lesser-known legal obligation that has been very clearly established in Canadian case law is the **duty to inquire**:⁴

The **duty to inquire** exists when an employer is either made aware of or perceives that a worker may need an accommodation - even if they have not outrightly asked for one.

The **duty to inquire** is built upon the notion that employers still have a responsibility to fulfill their duty to accommodate, even if an employee does not choose to disclose their disability. In some ways, it takes the onus off the person with the disability to out themselves in the workplace because:

- Individuals may not want to disclose
- Individuals may feel unable to make their needs known
- They may be unable to identify their needs

The **duty to inquire** protects employees from discrimination and unfair, adverse decisions in the workplace solely based on performance.

Pop Up: Importantly, employers cannot legally ask an employee about a diagnosis. Rather, conversations should be focused on asking if they need a reasonable adjustment in the workplace, and how it can be implemented.

Here are some signs that an employee may require an accommodation:⁵

- Feedback from colleagues that indicate the employee is behaving unpredictably
- An abrupt change in attendance and increased usage of sick leave
- Patterns of lateness at work
- Rapid changes in behaviour
- Poor work performance

Yes-by-Default

Since the Government of Canada's launch of an accessibility strategy for the public service,⁶ organizations across the federal government have started to review accommodation practices, and many have established central accommodations processes to help lower wait times and improve outcomes for their workers.

While accommodations can certainly benefit everyone, for employees with a disability who require the adjustments to work proficiently, it may be the difference between having a job and being unemployed. It is not simply a benefit to someone needing that accommodation, it is a necessity. Adopting a yes by default approach and asking all workers "what do you need?" is a fundamental change in workplace culture. A yes-by-default approach prioritizes the processing of solutions for accommodation for all employees, including those with disabilities, and will increase both the timeliness and the quality of accommodation services.⁷

Whereas some accommodations are implemented in direct response to a worker's request for an accommodation, a **disability confident** employer will take the initiative to think about how adjustments can be made more broadly to support the inclusion of everyone in the workplace. To help recruit, employ, and develop all workers fairly, consider:⁸



Roles and Responsibilities of Key Stakeholders

Accommodation is a team effort. It is also a process. Both the individual seeking and the individual providing an accommodation need to be involved in the process of designing, implementing, and modifying accommodations.

If you are manager looking to provide accommodations, it is important to know the key roles of all relevant stakeholders in the accommodation process – such as your employee, HR professionals, union representatives, and others. You, as an employer, are not alone in this process. To become more **disability confident**, familiarize yourself with your colleagues who may be involved in the accommodation process:

The Worker ^{9,10}	The Employer ^{9,10}	HR Professionals ^{9,10}	Union Representatives ^{9,10}	Other Experts ^{9,10}
<ul style="list-style-type: none"> • Inform the employer about the need for an accommodation when they are able to identify their needs • Provide details about relevant restrictions—including information from health care professionals—when appropriate and as required • Collaborate with the employer to find an appropriate accommodation and participate in the development of an individual accommodation plan • Work with the employer to monitor and evaluate the accommodation 	<ul style="list-style-type: none"> • Duty to inquire • Accept a worker's accommodation request in good faith • Help workers who may need accommodations identify their needs • Record every accommodation request and any actions taken • Collaborate with the worker to find an appropriate accommodation • Maintain the employee's privacy • Request only the functional capacity information that is required to determine an appropriate accommodation • Seek expert opinion where needed and investigate alternative accommodations • Provide an accommodation in a timely manner 	<ul style="list-style-type: none"> • Provide guidance and support to workers and supervisors regarding workplace accommodation and the duty to accommodate • Respond to requests in a confidential and sensitive manner • Inform the worker about any documentation/supporting information that may be necessary • Request guidance from internal and external resources as appropriate • Collaborate with all parties to generate reasonable accommodation options based on the information provided 	<ul style="list-style-type: none"> • Participate actively in the accommodation process • Work with the employer to facilitate the accommodation • Support the accommodation irrespective of collective agreements, unless to do so would constitute undue hardship for the employer 	<p>Other experts include accessibility experts, assistive technology professionals, procurement department, healthcare, and insurance providers.</p> <ul style="list-style-type: none"> • Provide appropriate and effective guidance to the employee and employer • Impart required information about the worker's functional abilities, if requested • Support stakeholders in connecting with community resources and training opportunities

** this chart does not reflect the legal responsibilities of an employer/organization in the duty to accommodate. More so, the language within the chart reflects guidance on building a disability confident accommodation process.

References

¹The Government of Canada (2015). Working for the Government of Canada: The duty to accommodate and your right to non-discrimination. <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/working-government-canada-duty-accommodate-right-non-discrimination.html>

²The Government of Canada (2015). Working for the Government of Canada: The duty to accommodate and your right to non-discrimination. <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/working-government-canada-duty-accommodate-right-non-discrimination.html>

³ *Canadian Human Rights Act* (R.S.C, 1985, c. H-6). <https://laws-lois.justice.gc.ca/eng/acts/h-6/>

⁴ Policy on preventing discrimination based on mental health disabilities and addictions, Duty to accommodate. (2014). *Ontario Human Rights Commission*. <https://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/13-duty-accommodate>

⁵Government of Canada (2011). Duty Accommodate: A general Process For Managers. <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/working-government-canada-duty-accommodate-right-non-discrimination/duty-accommodate-general-process-managers.html>

⁶Government of Canada (2022). Accessibility in the public service. <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/accessibility-public-service.html>

⁷Treasury Board of Canada Secretariat (2019). Nothing Without Us: An Accessibility Strategy for the Public Service of Canada. https://publications.gc.ca/collections/collection_2019/sct-tbs/BT22-221-2019-eng.pdf

⁸Business Disability International (n.d.). The Disability Confident Employers' Toolkit. *Inclusive Futures. Recruiters Intro to Workplace Adjustments WPA .docx*

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¹⁰McGill University (n.d.). Accommodations for employees with disabilities. *Human Resources*. <https://www.mcgill.ca/hr/benefits/disabilities>