


ACCOMMODATIONS

TOOL 1:
UNDERSTANDING WORKPLACE
ACCOMMODATIONS

TABLE OF CONTENTS

- 1** What are workplace accommodations?
- 2** The Duty to Accommodate
- 3** What is Undue Hardship?
- 4** The Duty to Inquire
- 5** Yes-By-Default
- 6** Roles and Responsibilities of Key Stakeholders
- 7** References

TOOL 1: UNDERSTANDING WORKPLACE ACCOMMODATIONS

Who is this for

High priority

- Direct Managers

Practical

- 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?

What Are Workplace Accommodations?

The Government of Canada 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 barriers^[1] 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.

[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).

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. [2] The duty to accommodate:

- 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 Code [3] (For more information, check out the Disability Confidential [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.

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.

AN EMPLOYER'S DUTIES

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

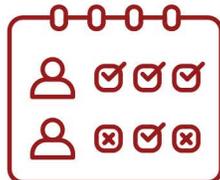
The duty to inquire protects employees from discrimination and unfair, adverse decisions in the workplace solely based on performance.

Note: 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 an employee may require an accommodation [5]



Feedback from staff that indicate the employee is behaving unpredictably



An abrupt change in attendance and increased usage of sick leave



A noticeable pattern of lateness at work



Rapid changes in behaviour



Poor or declining work Performance

AN EMPLOYER'S DUTIES

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]



AN EMPLOYER'S DUTIES

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:

✔ **Keep an open mind**

Give your employees the opportunity to contribute and treat them as you would like to be treated

✔ **'Think differently'**

Challenge your assumptions and move from “they can't do it” to “what could this employee do if we were flexible and accommodating?”

✔ **Create an accessible and usable environment**

Ensure that the access to the premises, signage, lighting, good acoustics, and more, are accessible.

✔ **Encourage new processes**

Although the process may take longer to attract diverse talent, assess individual capability, adapt the onboarding and training process, and to ensure that development programs are accessible. New changes are always worthwhile when the right talent is made to feel welcomed and a part of the organizational culture.

✔ **Change procedures and policies**

Make your workplace more accessible and appropriate for the role and assess what competencies are needed, adapting medical-related policies or allowing flexible work arrangements.

✔ **Provide training**

Widen your approach and train not only leadership, but frontline managers, colleagues, and IT, HR, facilities, and procurement departments too. Please click here for Training Resources

✔ **Remote IT barriers**

Assess your company's technology related policies and services, remove barriers, and enable access to assistive devices

✔ **Support persons/people**

Offer job coaches, cover the cost of ASL interpreters, welcome personal assistants, etc.

AN EMPLOYER'S DUTIES

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: [8]

The Worker

- 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

The Employer

- 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 accommodation
- Provide an accommodation in a timely manner



AN EMPLOYER'S DUTIES



HR Professionals

- 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



Union Representatives

- 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



Other Experts

- Other experts include accessibility experts, assistive technology professionals, procurement department, healthcare, and insurance providers
 - 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 list 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

[1]The 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>

[2]The 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>

[5]Government 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>

[6]Government 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>

[7]Treasury 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

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