

DISABILITY AND THE DUTY TO ACCOMMODATE

The Ontario workplace has changed significantly over the past decade, a result in part to our cultural diversity and employers meeting individual needs of prospective or current employees.

The duty to accommodate a person with a disability faces all employers in Ontario, however it is suggested that our sector faces an even greater challenge due to the following realities unique to the not for profit sector. These include limited financial resources and higher public expectations due to the receipt of public funds.

In the workplace, employees are entitled to the same opportunities and benefits as people without disabilities. That is, an employee with a disability cannot be denied an opportunity for promotion or training, simply due to the presence of a disability. You must look at the person in light of the job requirements. In some circumstances, employees with disabilities may require special arrangements or “accommodations” to enable them to fulfill their job duties.

Disability has a very broad definition and includes conditions that are visible and not visible. It includes physical, mental, learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions.

Under the Ontario Human Rights Code, protection from discrimination because of disability includes past, present and perceived conditions. For example, a person who experiences discrimination because he/she is a recovering alcoholic is protected by the Code. The duty to accommodate is the legal obligation that employers and a union (if there is one) have under legislation. The goal of accommodation is to allow equal benefit from and participation in the workplace.

Accommodation is a shared responsibility – the employee has to cooperate in the process, exchange relevant information and explore accommodation solutions put forth by the employer. A collective agreement may not, in many circumstances, be considered a barrier to a reasonable accommodation. Many accommodations may be made easily and at a minimal cost. In some cases, a solution may not be possible without “undue hardship”. This is the standard which an employer must pursue to meet its obligation.

Undue hardship must be evaluated based on the specific circumstances faced by the organization. An employer should ask:

- What is the accommodation required?
- What is the financial cost of the accommodation?
- Will the accommodation require a change to a collective agreement if one is in place?
- Will your funding agency contribute to the cost of accommodation?
- Will the accommodation cause you to reduce staff to meet the costs?

The list is not exhaustive, but is meant to focus ourselves on a process. To accommodate an employee will require the input or cooperation from other employees. In approaching other employees an employer has to first ensure that it is emphasized that the employee has a legal right to pursue an accommodation. Secondly, details of personal health status cannot be revealed. Please remember, an accommodation is not special treatment or reverse discrimination. It is the ability to participate, for a person with a disability, which is based on measuring ability to the job qualifications.

There are, of course, jobs where a disabled person may not be able to be accommodated. Arguably, a person confined to a wheelchair may not qualify as a firefighter. That same person, may however be qualified to be a guide in a museum, social worker, accountant, program manager, or a cook in some cases.

Each case is unique and should be looked at in an atmosphere without emotion.

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