



FACT SHEET

Duty to Accommodate

What is the duty to accommodate?

The duty to accommodate refers to the obligation of an employer or service provider to take measures to eliminate disadvantages to employees, prospective employees or clients that result from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected under the *Canadian Human Rights Act* or identified as a designated group under the *Employment Equity Act*. In employment, the duty to accommodate means the employer must implement whatever measures necessary to allow its employees to work to the best of their ability. In the provision of services, the provider must implement whatever measures necessary to allow clients to access its services. Unions are also obligated to facilitate the accommodation of the needs of their members by not impeding the reasonable efforts of the employer to accommodate an employee.

The duty to accommodate recognizes that true equality means respecting people's different needs. Needs that must be accommodated could be related to a person's gender, age, disability, family or marital status, ethnic or cultural origin, religion or any of the other human attributes identified in the two federal acts.

When can accommodation be denied?

Accommodation can only be denied if a rule, standard or practice is based on a bona fide occupational requirement (BFOR), or on a bona fide justification (BFJ). This means that an employer or service provider can only deny accommodation if it does something in good faith for a purpose connected to the job or service being offered, and where changing that practice to accommodate someone would cause undue hardship to the employer or service provider, considering health, safety and cost. The Supreme Court of Canada has decided the steps an employer or service provider must take in order to show a BFOR or BFJ (*Meiorin* and *Grismer* tests).

Some Examples

A bank branch which is not wheelchair accessible has potentially not met its duty to accommodate the needs of its disabled clients.

An employer that does not allow flexibility in work schedules for an employee who is a single parent with childcare responsibilities may not have met its duty to accommodate the family related needs of its employee.

An employer that does not allow its employees to wear certain clothing items required by their religion, or to be able to pray at particular times, or attend religious services on particular days, may not have met its duty to accommodate the religious needs of its employees.

An employer that does not assign an employee with a medical condition work that is consistent with his medical restrictions may not have met its duty to accommodate the needs of its disabled employees.

A union that refuses to allow a reorganization of work duties amongst employees as a way of accommodating the needs of a disabled employee may be held liable for the failure to accommodate the employee.

What is undue hardship?

The employer's or service provider's duty to accommodate is limited only by "undue hardship" i.e. the employer or service provider need not accommodate an employee or client if it can show that the accommodation would cause the employer or service provider to suffer undue hardship. Section 15(2) of the *Canadian Human Rights Act* states that "it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost" in order for the accommodation to be considered too much of a burden.

Undue Hardship - Health and Safety

If accommodating a person's age, physical or mental disability, family or marital status, or religious practice would pose an undue risk to the health and safety of that person, or others, then an employer or service provider may be able to establish undue hardship. For example, an airline may require its pilots to have a certain level of uncorrected vision, hearing and manual dexterity in order to land a plane with all its passengers, safely, without instruments in an emergency. This requirement could prevent persons with certain disabilities from being a pilot.

Undue Hardship - Cost

The cost of a proposed accommodation would be considered "undue" if it is so high that it affects the very survival of the organization or business, or it threatens to change its essential nature. The mere fact that some cost, financial or otherwise, will be incurred is insufficient to establish undue hardship. Some factors that can be considered in appraising undue hardship are the size and financial resources of the employer, the availability of external financing, and details of any additional risks or detriments.

For further information, please contact:

Commission regional offices in Halifax, Montréal, Toronto, Winnipeg, Edmonton and Vancouver, toll free 1-800-999-6899 (addresses available on the Commission's website);

-or-

National office at 344 Slater Street, 8th floor, Ottawa, Ontario K1A 1E1.

Telephone: (613) 995-1151, or toll free 1-888-214-1090 TTY: 1-888-643-3304

E mail: info.com@chrc-ccdp.ca

Website: www.chrc-ccdp.ca

This document is available on our website and in multiple formats on request.

Employer, Service Provider or Union Role

- Review corporate policies, procedures, practices and activities to identify and remove discriminatory barriers.
- Inform employees, applicants, clients or members of their right to accommodation and foster an environment in which accommodation needs can be communicated.
- Inform managers, supervisors and client service personnel of their responsibilities regarding accommodation.
- Obtain information necessary to assess the accommodation requirements, such as a medical assessment which identifies abilities or work restrictions.
- Implement, with the agreement of the person requesting accommodation, measures that result in the least disruption to operations while meeting the needs of the person requesting accommodation.

Employee, Job Applicant or Client Role

- Responsible for making their accommodation needs known, by requesting accommodation measures, and suggesting, if possible, the type of accommodation that would be appropriate.
- Provide sufficient information to the employer or service provider to determine appropriate accommodation options.
- Participate in the process with the employer or service provider, in good faith efforts, to find appropriate accommodation options.

Other publications available on our website

- *A Place for All: A Guide to Creating an Inclusive Workplace*
- *Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act*
- *Duty to Accommodate - Frequently Asked Questions*