



Understanding the Duty to Accommodate

A Practical Guide for the Workplace

Disclaimer: The content in this document is provided for information purposes only. It should not be interpreted as legal or other professional advice.

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Human Rights Approach

The duty to accommodate is grounded in the principle that everyone deserves the same access to rights and freedoms, regardless of race, gender, disability, religion, or other personal characteristics.

It upholds the idea that fairness sometimes requires different treatment. While the law establishes this duty, we also share an ethical responsibility to ensure that individuals disadvantaged by common practices have a fair opportunity to participate fully in society. This is also known as substantive equity. Accommodations acknowledge that people have diverse needs and may require varying levels of support to contribute equitably.

Providing alternative arrangements or supports can help address systemic barriers and forms of oppression that prevent some individuals from meaningfully participating.

What is the Duty to Accommodate?

Under the Newfoundland and Labrador [Human Rights Act](#), employers and service providers have a duty to provide alternative arrangements and/or supports for human rights-related needs, up to the point of undue hardship.

Human rights legislation prohibits discrimination on the basis of prohibited grounds, also referred to as protected personal characteristics. These personal characteristics may be inherent or acquired over the course of a person's life.

Employers are not obligated to accommodate requests unrelated to a protected ground, such as a preference to leave early to attend a child's sporting activity. However, considering these kinds of requests, when possible, can support work–life balance and improve employee morale.

- Age
- Association
- Disability
- Disfigurement
- Ethnic origin
- Gender expression
- Gender identity
- Family status
- Retaliation
- Criminal conviction (employment only)
- Marital status
- Nationality
- Religious creed
- Religion
- Source of income
- Perceived disability
- Political opinion
- Sex
- Sexual orientation
- Skin Colour/Race

⚠️ Reminder:

A failure to accommodate these grounds in employment could result in discriminatory treatment.

The following are some examples of accommodations based on human rights-related needs (protected personal characteristics):

- Adjusting break times to allow employees to attend prayers
- Flexible scheduling to accommodate certain childcare needs
- Modifying tasks to ensure people who are pregnant avoid heavy lifting or exposure to harmful substances
- Providing assistive technology or altering job duties due to physical limitations
- Adjusting workload or offering additional breaks to support employees with mental health conditions

⚠️ Reminder: Accommodation needs can change. Employers and employees should review accommodations regularly and adjust them accordingly.

Responsibilities and Expectations

We all have duties and responsibilities throughout the accommodation process. The [Ontario Human Rights Commission](#) has outlined how these responsibilities and expectations differ.

Employees must:

- Request an accommodation and explain why it is required
- Make their needs known to the best of their ability, preferably early and in writing
- Answer questions or provide information about relevant restrictions or limitations, including information from healthcare professionals
- Actively take part in discussions on possible accommodation solutions
- Co-operate with any experts who are consulted
- Work with the employer on an ongoing basis to manage the accommodation process
- Discuss accommodation needs only with persons who need to know²

Employers must:

- Accept the employee's request for accommodation in good faith, unless there are legitimate reasons for acting otherwise
- Get expert opinions or ask for more information to support the request (e.g., medical information)
- Keep a record of the accommodation request and action taken

² Ontario Human Rights Commission. (n.d.). *Meeting accommodation needs of employees at work*. Ontario Human Rights Commission

- Maintain confidentiality
- Grant accommodation requests in a timely manner
- Consider paying the cost of any required information (e.g., additional medical assessments or other health-related documents)
- If a particular accommodation causes undue hardship, explain reasoning clearly to the employee and be prepared to show why this is the case
- Monitor, evaluate, and adjust implemented accommodations, as needed in light of employee needs and operational requirements

Employers have a duty to also:

- Train managers and supervisors to receive and respond to accommodation requests, even if the response is to guide the employee to the correct place to make the request
- Monitor and adjust accommodations as needed in light of employee needs and operational requirements

Unions representatives can:

- Take an active role as partners in the accommodation process
- Share responsibility with the employer to facilitate conversations, including suggesting alternative approaches
- Respect the privacy of the person requesting accommodation
- Support accommodation measures even if collective agreements say otherwise, unless doing so would result in undue hardship

Employees and job applicants can expect:

- To be treated with respect and dignity throughout an accommodation process
- To have their needs accommodated up to the point of undue hardship when the request is based on a prohibited ground
- To be informed of the reasons, if their accommodation request is denied³

The Duty to Inquire

It is important to note that people cannot always come forward and disclose their needs. Individuals with substance misuse or other mental health disabilities may not recognize or admit that they have a disability. Stigma and fear can also make individuals reluctant to admit there is a problem which decreases their likelihood of requesting an accommodation⁴.

Under this duty, the employer may need to start a conversation about accommodations, especially if changes in an employee's attendance, behavior, or performance suggest they might need support.

Accommodation Policies

Workplaces are expected to have accommodation policies and procedures in place. Unions and employers should work together to make sure that policies are developed and promoted so that employees know their rights and how to exercise them in the workplace.

³ Canadian Human Rights Commission. (2024). *Developing a Workplace Accommodation Policy - A Template for Federally Regulated Employers*.

⁴ Canadian Human Rights Commission. (2024). *Developing a Workplace Accommodation Policy - A Template for Federally Regulated Employers*.

An accommodation policy can also help employees understand what is expected of them and what the process involves before they request accommodations.

The Canadian Human Rights Commission has developed a resource for employers looking to develop an effective accommodation policy. More about this resource can be found here: [Developing a Workplace Accommodation Policy - A Template for Federally Regulated Employers | Canadian Human Rights Commission](#)

Managing Accommodation Requests

Employers should be ready to engage in open, respectful, and solution-focused discussions with employees who request accommodations. When an accommodation is requested, employers should consider the following:

1. **Do I understand the individual's needs?**

Employers should take time to understand the employee's limitations and explore potential accommodation options. Do not make assumptions about functional limitations!

2. **Do I have enough information to support the request?**

Employers may request supporting documentation that explains the need for accommodation. This information may also outline functional limitations and how long the accommodation is required.

3. **What is possible considering operational requirements?**

Employers should assess each accommodation request in the context of operational needs, while remaining flexible and creative in identifying alternative solutions.

4. **What other options are feasible?**

If providing the requested accommodation would cause undue hardship, what other solutions could be considered to minimize impact on operations while still meeting needs.

 **Reminder:** Refer to the Commission's chart for visual guidance on accommodation processes: <https://thinkhumanrights.ca/files/Requesting-Accommodations.pdf>.

What is a Reasonable Accommodation?

In Newfoundland and Labrador, a reasonable accommodation is one that helps the employee do their job tasks while also considering the needs of the employer. Reasonable accommodations might include:

- Changing work hours or job duties
- Providing assistive devices or technology
- Making temporary or permanent changes to work location or schedule

If a reasonable solution for an accommodation cannot be found, keep the conversation open. Listen carefully to what the person needs and explore other options. This might include adjusting their work tasks or helping them move to a role that fits their needs better.

A reasonable accommodation is when alternative supports or arrangements provided give the person an equal opportunity to participate in the environment. These accommodations usually:

- Respect dignity
- Meet individual needs
- Support inclusion and meaningful participation

⚠ Remember: An employee has the right to a reasonable accommodation, but they do not have the right to a perfect or their preferred accommodation.

⚠ Reminder: Deciding on the right accommodation is separate from deciding if it would be too difficult for the organization. If the best option isn't possible, pick the next most suitable one.

Requesting Documentation

To support an employee's accommodation needs, employers may ask for medical information such as the completion of a fit-for-work assessment. They should only request information that is needed to understand how the employee's condition affects their specific job tasks. This section follows the best practices recommended by the [Alberta Human Rights Commission](#) for collecting medical information.

Medical Notes

Medical notes provide formal documentation of an individual's health or functional limitations. This helps the employer understand the specific accommodation needs of the individual, the limitations they experience, and why accommodations are necessary.

Without medical information, it may be difficult to determine the appropriate accommodation and ensure an equitable environment. **When requesting medical information, an employer can ask:**

- Whether the condition or injury is permanent or temporary
- How long the accommodation will be needed for
- What restrictions and limitations an employee has
- Whether a treatment or medication the employee is taking will affect the employee's ability to perform job duties⁵

 **Reminder:** Employees should only be removed from the workplace when recommended by a medical professional, even when waiting for a fit-for-work assessment.

⁵ Alberta Human Rights Commission. (2025). *Obtaining and responding to medical information in the workplace: Human rights guide*.

⚠ **Remember:** Employers do not need to know an employee's medical diagnosis – only how the condition affects their ability to do their job.

To gather necessary information, the employer should provide the medical professional with the following information:

- Description of the employee's job function/responsibilities
- The employee's work schedule
- Whether the employee is in a safety-sensitive position
- Any other relevant information that is particular to the workplace

⚠ **Remember:** The duty to accommodate works both ways. Employers cannot provide reasonable accommodation if the employee does not share the necessary information.

Privacy and Confidentiality

When asking for medical information to support an accommodation request, employers must use the least intrusive means possible and respect the employee's privacy rights.

An employer only has a right to an employee's confidential medical information to the extent needed to accommodate an employee, develop a return-to-work plan, and/or assess the employee's ability to perform their duties in the workplace. **Any medical or personal information gathered must be properly documented and securely handled.**

⚠ **Remember:** Record all discussions, accommodation attempts, and any reasons an accommodation was not possible.

Key Points for Gathering Medical Information

- Employers should give healthcare providers a copy of the employee's job duties or a detailed job description so forms can be filled out correctly
- Employers should check with a lawyer before requesting an Independent Medical Evaluation (IME), and only ask for information needed to support the employee
- Employees should only be removed from the workplace when recommended by a medical professional
- Avoid making assumptions about an employee's abilities in decision-making processes.

⚠️ Reminder: If an employee refuses to provide information to the employer, then the employer may be relieved of their duty to accommodate.

Assessing Undue Hardship

Employers must provide reasonable accommodations unless it would cause undue hardship. Undue hardship can include high costs or major disruptions to operations that make the accommodation impractical.

Altering common practices and procedures can be challenging. Considering this, some hardship is expected when making an accommodation. Here are some examples of situations where an accommodation might cause undue hardship:

- The accommodation would seriously affect business operations, such as stopping essential services or greatly reducing efficiency

- The employee cannot return to work soon, or their frequent absences would cause the employer significant financial hardship
- The job is safety-sensitive, and the accommodation could create a safety risk for the employee, coworkers, clients, or the public⁶

Key Points for Assessing Undue Hardship

- **Employers should make every reasonable effort to accommodate** the employee
- **Claims of undue hardship must be based on facts** and a careful review of options. Guesses or assumptions are not enough
- **Even if undue hardship exists, employers should still look for other options** that do not cause the same problems

⚠️ Reminder: The Commission cannot say when undue hardship applies as it depends on each situation, the workplace, and evidence presented.

⁶ Canadian Human Rights Commission. (2024). *Developing a Workplace Accommodation Policy - A Template for Federally Regulated Employers*.

Termination and Discipline

Before deciding to discipline or terminate an employee, the employer must determine whether the employee's conduct is related to a disability that requires accommodation under the [Human Rights Act](#).

⚠ Remember: Termination must be approached carefully and be in compliance with both the [Labour Standards Act](#) and the [Human Rights Act](#).

Performance Issues

If an employee's behaviour has changed or their performance has declined, employers have a responsibility to explore what might be impacting them at work. This is an example of how the duty to inquire shows up in practice.

Key Points for Discussing Performance

- **Invite** the employee to a private meeting in a quiet and comfortable setting
- **Share** your observations in a supportive way and explain that you want to understand what might be contributing to the changes you've noticed
- **Reassure** the employee that your goal is to support their success and wellbeing, and ask if there's anything you can do to help
- **Provide** information about accommodation processes or additional support, especially if the employee's challenges arise from a human rights-related need

- **Follow up** to check on their performance and the impact of any supports or alternative arrangements provided⁷

⚠ **Remember:** Performance issues may have underlying factors that activate the duty to accommodate.

Excessive Absenteeism

If an employer is considering ending someone's employment because of unplanned or consistent absences, it's important first to determine whether those absences are related to a human rights issue.

Key Points for Discussing Absenteeism

- “I have noticed that you have recently taken some sick days. To make sure we can provide the right support, are these absences related to a health-related need such as a disability?”
- “I have noticed you have been away from work recently and I want to ensure we are supporting you appropriately. Are these absences connected to a disability or underlying health condition?”
- “We understand that absences can occur for many reasons. If any of your recent absences are connected to a human rights-related need such as a disability, please let us know so we can discuss possible accommodations and ensure you have the support you need.”

Human rights tribunals and courts usually consider these factors when assessing if termination for excessive absenteeism is justified:

⁷ Presidents Group. (2021). *Duty to accommodate and to inquire*. Accessible Employers.

1. **If the absences were related to illness or disability**, whether the employer made genuine efforts to accommodate the employee up to the point of undue hardship before proceeding with termination⁸
2. **Whether the absenteeism was excessive**
3. **Whether the employee was informed** that their level of absenteeism was unacceptable and warned that continued absences could lead to termination
4. **The nature of the employment** and whether there are other employees that can complete job tasks while they are absent
5. **The nature of the disability** and the likelihood of continued absenteeism at the time of dismissal⁹

⚠ Reminder: The Commission is not able to give advice on whether ending someone's employment is appropriate, even if you share background information about the situation.

⁸ *Canadian National Railway Company v Teamsters Canada Rail Conference*, 2018 ABQB 405 (CanLII).

⁹ *Scott v Sonco Group Inc.*, 2022 CanLII 11186 (NL HRC).

Human Rights Inquiry Process

When individuals believe they have experienced discrimination or harassment – including a failure to accommodate – they can submit an inquiry to the Commission. The inquiry will be reviewed under the [Human Rights Act](#) to determine whether, and how, the Commission can provide support.

We can only proceed further with a complaint if there's a reasonable basis to believe:

- You were treated unfairly
- The unfair treatment happened in Newfoundland and Labrador
- The unfair treatment happened within the last 12 months
- The unfair treatment happened in a protected area (e.g., at work, going to a store or accessing government services)
- The unfair treatment was based on a protected personal characteristic (e.g., disability, race, sex, gender identity)

The Commission recognizes there are other ways to resolve human rights conflicts. Not all inquiries become human rights complaints and not everything has to go through a legal process to be resolved. If you are interested in filing an inquiry to see how we can support you, complete the following form: [Inquiry Form – Human Rights Commission](#).

⚠️ Reminder: Employers and service providers can still contact the Commission with questions about the duty to accommodate or other human rights issues.

⚠️ Remember: The Commission offers free presentations. To request one, fill out this form: [Request a Presentation on Human Rights - Human Rights Commission](#).

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