
Accommodation and Return to Work Guide

A Road Map

Presented by: Return to Work Staff Network - April 29, 2015

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Ontario Nurses' Association

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Return To Work Staff Network

- **ONA's newest staff network**
- **Mandate**
- **Accommodation and Return to Work Guide**
- **Accommodation Toolkit**

Overview of Guide

- Purpose
 - Resource/primer
 - Disability as a ground of discrimination under human rights law
- Tip sheets and guidelines
- Detailed table of contents
- Features of the electronic copy
- Update of education materials

Disability is a Human Right – p. 5-8

Canadian Human Rights Framework

- Canadian Charter of Rights and Freedoms
 - S. 15 equality rights provision
- *Canadian Human Rights Act*
 - Prohibits discrimination on basis of disability, in federal sector
- *Ontario Human Rights Code*
 - Prohibits discrimination on basis of disability, in provincial sector

Disability is a Human Right – p. 5-8

- Ontario Human Rights Tribunal
 - Mediation, hearings
- Ontario Human Rights Commission
 - Mandate – education, public policy
- ONA's collective Agreements
 - 1993 Supreme Court case – human rights legislation incorporated into every collective agreement
 - The right to be accommodated is enforced through the grievance procedure

The Duty to Accommodate – p. 8, 9

- Definition of disability
 - *S. 5 Ontario Human Rights Code*
- What is the duty to accommodate?
 - Employers required to make every effort short of undue hardship
- Who does it apply to?
 - FT, PT, casual, probationary

Role of the Three Parties – p.10

Multi-party obligation set out by the Supreme Court of Canada:

- Employer
- Union
- Employee

Role of the Employer

- Accept request to accommodate in good faith + in a timely manner
- Primary responsibility to provide the accommodation, communicate the restriction to staff, ensure staff are supportive –
- Effective return to work process
- Limits to the duty to accommodate – undue hardship

Role of the Employer – con't

- Cannot substitute own views for that of health care provider
- Maintain confidentiality
- Procedural and substantive obligation

Role of the Union

- Facilitate, advocate, support all aspects of the accommodation process
- Work with member to identify potential accommodations
- Act as an intermediary between co-workers and the member being accommodated where co-worker is confusing duty to accommodate with special treatment

Role of the Union – con't

- Duty to accommodate under the Code prevails - must be flexible re the application of the collective agreement in appropriate circumstances
- Ensure confidentiality
- File grievances

Role of the Employee

- Trigger the duty to accommodate with medical documentation
- Cooperate throughout the process – identify possible solutions
- Accept reasonable, suitable accommodation
- Take all necessary steps towards rehabilitation

Role of the Employee – con't

- Work within the medical restrictions
- If changes in restrictions or issues with the accommodation contact union for support and guidance
- Cooperation of the member is integral to success or failure

Role of the Co-workers

- Cooperate, support, not be a barrier
- Accept that duties in the workplace may be reorganized in order to accommodate the individual

Triggering the Duty to Accommodate – p. 10

Two Ways:

- Advise Employer of medical restriction
- If Employer has reason to believe a disability exists, it has a duty to inquire

Elements of Accommodation – p. 13

Employer Obligations:

- Procedural Duty
 - Individual assessment
 - Investigate accommodation options

- Substantive Duty
 - Provide the necessary accommodation

Elements of Accommodation – con't

4 step Process:

- Start with the pre-disability job
- Can it be modified?
- If not, look at another job
- Does that job need to be modified?

Elements of Accommodation – con't

Reasonable Not Perfect Accommodation:

- Member is entitled to reasonable and suitable accommodation
- Member must try it, including on a trial basis
- If failure to cooperate, grievance likely to be dismissed by an arbitrator

Linking Accommodation with Disability Prevention – p. 20

- ONA promotes the Disability Prevention Model;
 - Identify the barrier + remove it so employee can return to work
 - Adapt the environment, reorganize the work
- In contrast, Employers apply the Disability Management Model:
 - Employee has to be managed, adjust to fit he job

Appendices to the Guide

- # 1 – Glossary of Terms used throughout the Guide

- # 4 – Representing Members Seeking Accommodation
 - 5 page, step-by-step outline
 - Direct reps to this guideline – it provides the foundation for representation + leads them to various aspects of the Guide for more information

Appendix # 4 con't, 8

- # 4 – Representing Members Seeking Accommodation
 - Prior to meeting with management
 - Meeting with the member
 - Meeting with the Employer

- # 8 – Representing Members with Substance Abuse

Additional Sections of the Guide

- G – Legislation Pertaining to Accommodation:
 - WSIB
 - Health & Safety

- J – Confidentiality and Privacy Issues

Safe Return to Work/Work Accommodation Rep – Appendix # 2

- This role is set out in the BU Accountabilities Handbook
- Not mandated but consider developing the role
- Allows for focused work which can be supported with ONA education

Accommodation Toolkit

- Accommodation solutions database
- Template letters to be sent to member by local leader
- Develop executive section of ONA website

The Return to Work Staff Network is planning tele-connects on specific accommodation topics

ANY Questions?

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A Road Map



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