

Successful Accommodation: A Three-Party Partnership

When an employee requires an accommodation or returns to work (RTW) after an injury or illness, the employer has a duty under the *Ontario Human Rights Code* to accommodate the employee's medical restrictions. The duty to accommodate is a legal obligation among three parties: the employer, the union and the employee seeking accommodation. Modified work and accommodation will vary based on each member's individual and unique needs which must be considered, assessed and accommodated.

The employer, the union and the employee each share in the responsibility in making the RTW process a success. However, the primary responsibility is on the employer who oversees the management of the workplace. The union is a partner that works with the employer and member to support an accommodation for the member.

Below are the responsibilities and roles of each party in the accommodation or RTW process:

The Role of the Employer

The employer has the primary responsibility to offer and implement a safe and suitable accommodation. In doing so, it must actively work with the employee and the union. ONA will raise concerns and file grievances where appropriate. The employer's obligations include the following:

- Provide an effective written return-to-work process for its employees and ensure this policy or process is communicated to the Bargaining Unit.
- Accept the request for accommodation and deal with it in a timely manner. This may include creating a temporary solution until a permanent or long-term one is available.
- Request only that information that is required to identify and implement the accommodation including medical restrictions and length of time the accommodation may be required.
- Take reasonable measures – short of undue hardship – to accommodate the employee's disability.
- Once an accommodation is agreed to, an employer needs to ensure effective implementation of the accommodation. The employer must respect the privacy of the employee's medical information, at the same time they should provide enough information for managers and co-workers to understand the nature of the accommodation being provided.
- The employer and its managers – including the occupational health department – should not substitute their own personal views for those of the employee's treating physician.
- Maintain the confidentiality of the employee's health information and disclose information necessary to implement the accommodation.

The Role of the Employee

- The employee must identify the need for accommodation arising from a disability.
- Contact the union early for support and guidance.
- Request accommodation and provide the employer with the medical restrictions. This will trigger the employer's duty to accommodate.
- Cooperate with the employer and the union in all aspects of the accommodation/return-to-work process including attending meetings and discussions about accommodation solutions.
- Comply with the employer's ongoing reasonable requests for medical information or updates.
- Comply with treatment and rehabilitation recommendation from treating practitioners.
- Where the employer has offered an accommodation that is reasonable based on the medical restrictions, the employee must try the proposed accommodation, including on a trial basis.
- Work within the medical restrictions and communicate to the manager if the work assignment does not fit within those restrictions or whether further modifications to the job are needed.

The Role of the Union (ONA)

- Ensure that the employer is meeting its duty to accommodate to the point of undue hardship.
- Ensure that the employer is actively involving the member and the union in its efforts to accommodate and assess the needs of employees on an individual case-by-case basis.
- Actively work with the employer and member to identify potential safe and suitable accommodations and propose these to the employer. ONA will assess whether the employer has given adequate consideration to accommodation options that minimize any impact to other members in the workplace and to the collective agreement.
- Advocate for and support the member in all aspects of the accommodation process.
- The union's goal is to ensure the employer agrees to and implements a reasonable accommodation in a timely way.
- Educate our members on the duty to accommodate, the role of the union in advocating for and facilitating the accommodation of its members and the role of co-workers in supporting their colleagues who are being accommodated.
- Ensure personal health information related to the accommodation remains confidential.
- Ensure requests for accommodation are properly made by the member and file grievances where the employer has failed to accommodate.

The most optimal approach for a worker's return to work is when all three parties – the employer, the employee and ONA – work together to ensure a smooth and successful accommodation or transition back to work.



Ontario Nurses' Association