

FREQUENTLY ASKED QUESTIONS: DUTY TO ACCOMMODATE

What is the duty to accommodate?

The duty to accommodate is a legal obligation under the [Ontario Human Rights Code](#) requiring employers and unions to make every reasonable effort to provide the employee with meaningful work suitable to the employee's medical restrictions/limitations. Each case is unique. The employer must accommodate the employee with a disability up to the point of undue hardship whether the employee is returning to work after being on sick leave, long-term disability or WSIB benefits. Duty to accommodate also includes employees who have not lost time from work.

How is the duty to accommodate triggered?

The duty to accommodate is triggered in two ways:

- The employee seeking work accommodation must advise her/his employer of any medical restrictions. Once the employer receives this information, the duty to accommodate is "triggered" and the responsibility shifts to the employer for accommodation.
- An employer is required to inquire into the possibility of a disability if the employer believes one exists in an employee. For example, if an employer sees that an employee is incapacitated at work, the employer has a duty to investigate this.

With whom does the duty to accommodate apply?

The duty to accommodate applies to all employees including full-time, part-time, casual and probationary employees who are returning to work from short-term or long-term disability benefits or from WSIB benefits. The obligation is ongoing as long as there is a disability and the accommodation over time does not amount to undue hardship.

How does the process of finding an accommodation begin?

The pre-disability job is always the starting point in looking for accommodation. Employers need to engage in a four-step process:

- Can the employee perform her/his existing job as is?
- If not, can the employee perform the existing job, modified or "rebundled"?
- If not, can the employee perform another job in its existing form?
- If not, can the employee perform another job in a modified or "rebundled" form?

The employer must look at the requirements of the job and consider whether the requirement(s) can be modified or changed to allow the employee to perform the task or duty. If that is not possible, the employer must consider whether reassigning the duty causes undue hardship to the employer.

What are some examples of accommodation?

The employer has an obligation to make reasonable efforts to eliminate barriers to the employee seeking accommodation and to offer accommodation up to the point of undue hardship. Reasonable accommodation measures refer to a change to the work, work methods or the workplace to enable the employee to participate fully in the workplace.

Examples of accommodation or modified work can include:

- Ergonomic adaptations to workstations such as desks, specialized chairs and stools, rolling carts, specialized telephones, head sets, foot rests, arm rests and voice-activated software.
- Reading materials that are made available in alternative formats including digitized text, Braille or large print.
- Changing door handles, installing grab bars in washrooms and lowering light switches.
- Modifying the duty to enable the worker to perform it. If this cannot be done, consider whether the duty can be reassigned.
- Modify work schedules to accommodate ongoing medical appointments, required rest periods and/or the inability to work all shifts.
- Job bundling: Combining tasks that are performed by staff and assigning them to the person seeking accommodation.
- Retraining for alternative positions.

Is there a set formula for accommodating persons with disabilities?

No. One size does not fit all. Each person with a disability must be considered, assessed and accommodated individually. A solution may meet one person's restrictions, but not necessarily another's. However, many accommodations will benefit many people with or without disabilities. For example, installing ceiling lifts to accommodate one person's restrictions may prevent injuries to the staff working in the unit.

Can I choose the accommodation?

No. The duty to accommodate does not require the employer to implement the accommodation you want or the accommodation you believe to be the perfect solution. The case law has established that an employee is entitled only to reasonable and suitable accommodation, not the "ideal" or "perfect" accommodation.

If there is a choice between two accommodations that are suitable to meet the medical restrictions and each choice provides the employee with dignity, the employer is entitled to select the one that is less expensive or that is less disruptive to the organization.

If the employer has initiated an accommodation proposal that is reasonable given the restrictions, the employee must try the proposed accommodation, including on a trial basis.