



DUTY TO ACCOMMODATE

What is it?

The duty to accommodate refers to the obligation of an employer or union to take reasonable steps to eliminate disadvantage to employees or prospective employees resulting 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*.

The duty to accommodate recognizes that true equality means respect for people's different needs.

Definition:

Employers and unions in Canada are required to make every reasonable effort, short of undue hardship, to accommodate an employee who comes under a protected ground of discrimination within human rights legislation.

The duty to accommodate is a legal obligation. It arises from two federal statutes: *Canadian Human Rights Act (CHRA)* and the *Employment Equity Act (EEA)*, and from different court rulings (*Meiorin*, *Grismer*, *Renaud*, etc)

The most radical change to the duty to accommodate concept is the redefinition of "accommodation" to mean:

first of all that all workplace standards, policies & practices must be proactively designed to be "inclusive", ie. designed to reflect and meet the needs of all segments of society, so far as is reasonably possible short of undue hardship.

The duty rests on **employers, union** and the **employee seeking the accommodation**, all assuming legal responsibility for ensuring the success of an accommodation request.

There is no accommodation if there is no discrimination.
Needs that must be accommodated result from factors such as:

sex or sexual orientation age family status ethnic or cultural origin	religious belief physical\mental or disability dependence on alcohol or drug, ancestry or place of origin
--	--

This responsibility requires the employer to look at *all* other reasonable alternatives.

The employee is expected to participate in the accommodation process, and cannot refuse a reasonable accommodation offer.

Workplace standards - such as lifting requirements or work schedules - that unintentionally distinguish among employees on a protected human rights ground (i.e. disability, gender, religion, etc.) may be struck down or modified. Employers must build liberal conceptions of equality into workplace practices.

Employers must ask themselves a series of questions when considering an employee request for accommodation.

The employer must accommodate up to the point of “**undue hardship**”.

What is undue hardship?

Accommodation is a positive obligation on all employers. However, the courts have recognized that the duty to accommodate is not open-ended. It may not be required if it can be shown that providing an accommodation would pose an “undue hardship”.

Canadian courts have put a very high value on achieving equality in Canadian society. To this end, the Supreme Court has accepted that failure to accommodate will only be justified where it would be impossible to do so without incurring an undue hardship. A considerable measure of hardship must be anticipated in ensuring accommodation.

Boundaries on the employer’s duty to accommodate

Holmes v. Attorney-General of Canada (Federal Court)

does not require that an employer act as a placement officer or create a new position expressly for the disabled employee comprising new duties that were previously non-existent and that to do not suit its need.

The employer's obligation is to make a *genuine* effort to accommodate an employee, efforts that are consistent with the type of work for which the worker was hired.

For more detail see PSAC Booklet "Duty to Accommodate":

www.psac-afpc.org/what/humanrights/Duty_to_accommodate-e.shtml

(November 2005)