



The Duty to Accommodate Employees with Disabilities

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Overview

This Help Sheet is about the legal duty to accommodate a person's disability, and more specifically about the duty to accommodate in the context of human rights in the workplace. It will cover the following topics:

- Defining disability
- Defining discrimination
- Discrimination in the workplace
- The duty to accommodate
- The employer's responsibilities
- The employee's responsibilities
- Defining undue hardship
- What to do if an employer will not accommodate
- Helpful resources.

Defining Disability

Human rights laws protect people with disabilities from discrimination in the workplace. Human rights laws use a very broad definition of disability and include people with:

- Physical and mental disabilities
- Temporary and permanent disabilities
- Disabilities related to substance use or substance dependence



- Learning disabilities.

You do not need a formal diagnosis from your doctor to prove you have a disability in order to receive accommodation, but you do need information from your doctor about any restrictions or limitations affecting you. Human rights laws also protect people from discrimination based on **perceived disability**. Perceived disability means that if you do not have a disability, but your employer believes you do and treats you differently based on that belief, you are still protected from discrimination.

Defining Discrimination

In the legal context, discrimination is negative treatment of a person or group when that treatment is based on certain protected personal characteristics, or “prohibited grounds.”

Prohibited grounds in British Columbia include: Indigenous identity, gender identity or expression, marital or family status, age, physical or mental disability, race, colour, ancestry, place of origin, religion, political beliefs, sex, sexual orientation, and being convicted of a crime that is unrelated to your employment. If your employer treats you negatively because of one of these personal characteristics, that is discrimination.

The specific personal characteristics, or “prohibited grounds” that are protected can be different depending on which province you are in, and whether your employer is regulated by the federal government or the provincial government, but the protection is very similar in all places. No matter where you are in Canada and which human rights law applies to you, the law says you cannot be treated poorly due to having a disability.

Human rights laws also protect people from discrimination in other areas of life, such as housing, union membership, and services provided by businesses or government. The information in this handout is limited to disability-related discrimination in the workplace.

Discrimination in the Workplace

Discrimination in the workplace includes any action or decision that negatively impacts you because of your disability (or because of the employer’s perception of your disability), such as:

- Failing to hire or promote someone
- Firing an employee
- Changing an employee’s job in a way that reduces their salary, responsibilities, or status



- Failing to offer reasonable accommodation
- Assault or harassment by the employer, where that assault or harassment is related to the employee's disability.
- Assault or harassment by anyone else in the workplace, such as other employees or customers, where that assault or harassment is related to the employee's disability.

The Duty to Accommodate

Sometimes treating people equally and fairly means treating them differently from others. Employers have a duty to accommodate employees with disabilities. The duty to accommodate involves eliminating or changing rules, policies, practices and behaviours that negatively affect or impact a person's ability to complete their tasks or otherwise participate equally in their work environment.

Examples of accommodation may include:

- Modifying an employee's duties
- Physically modifying a work area
- Providing special equipment or computer software
- Allowing a leave of absence so an employee can receive treatment.

Duty to Accommodate: Employer's Responsibilities

The law says employers have a duty to accommodate up to the point of undue hardship. Undue hardship means that an employer cannot afford the cost of an accommodation, or that it would create health and safety risks. What does an employer have to do to meet its "Duty to Accommodate"?

- Employers must consider an employee's request for accommodation in good faith. This means they should accept that the employee's reason for requesting accommodation is because the employee genuinely believes they require accommodation in order to continue working, and not for an alternative reason.
- Employers must request information needed to make a decision about the accommodation request. Depending on the nature of the accommodation needed, an employer may simply talk to the employee, or they may request information from the employee's doctor or other medical professional.
 - Employers may only ask for the information needed to respond to an employee's request for accommodation. They may **not** ask for information about a specific diagnosis, or ask for information not relevant to the accommodation request.



- o Employers must maintain the confidentiality of all the information provided.
- Employers should address accommodation requests in a timely manner. Any delays by the employer should not impact an employee's ability to work and earn a wage.

An employer also has an obligation to investigate whether employees may need accommodation even if they do not specifically ask for it. For example, if an employee was previously able to do a certain task but is suddenly unable to do it anymore, the employer has an obligation to ask if they need accommodation. This is called the "Duty to Inquire."

Duty to Accommodate: Employee's Responsibilities

As an employee, you should communicate with your employer about your need for accommodation. Written communication (for example, by email) is preferred so that you can have a record of your conversations. You should provide enough information about your individual circumstances to support the accommodation you are seeking. All your employer needs to know is how your disability affects your capacity to do the essential tasks of your job. This means that:

- You do **not** have to tell your employer your diagnosis, or name your disability.
- Your employer **can** ask for proof that your disability affects your ability to do your job. For example, an employer can ask for a medical report from your doctor or medical care provider that addresses your restrictions or limitations. If you are asked to provide this, you must comply, but the employer must pay any costs or fees related to the report.
 - o In most cases, an employer may not ask you to attend an independent medical examination or talk to their doctor, but there are some circumstances where the law says this is acceptable.
- Your employer can ask for confirmation that you are following your doctor's treatment plan but cannot ask for details of the plan.

Employees must consider reasonable accommodation offers made by their employers. In some cases, an employer may be able to prove that they did not discriminate if they can show they offered a reasonable accommodation, but the employee rejected it without a good reason.



Undue Hardship

There is a limit to an employer's duty to accommodate. The law refers to this limit as "undue hardship." An employer is not required to accommodate an employee with a disability if it will cause "undue hardship." It is rare for this to be the case. **In most cases employers can accommodate employees' disabilities.**

What counts as undue hardship depends on the circumstances of each situation. Here are some of the factors that go into determining whether accommodations may result in undue hardship for the employer:

- The financial cost to your employer
 - It must be **very high** to count as undue hardship.
- Health and safety risks
- The size and flexibility of the employer
 - For example, a big company will have a harder time establishing undue hardship, compared to a smaller business with fewer resources.
- The impact on the rights and interests of other workers
 - Mere inconvenience or disruption is not usually enough to count as undue hardship.

While employers must accommodate to the point of undue hardship, that does not mean they are required to create a new position or give one person's job to another person.

What to do if your employer will not accommodate you

The best way to ensure you receive the accommodation you need is to communicate clearly with your employer and your healthcare provider(s), and if necessary be persistent in requesting accommodation.

If you are in a union, the union can also assist you in communicating with your employer about the accommodation request.

Unfortunately, even when an employee does everything they can to communicate with their employer, sometimes employers do not understand or may still not be reasonable. Sometimes employers will even retaliate against an employee seeking accommodation by terminating their employment. Sometimes it is necessary to take legal action to enforce your right to reasonable accommodation. In BC, that generally means filing a complaint against the employer at a human rights tribunal.

- Most employers in BC are regulated by the provincial government, so human rights complaints must be filed with the BC Human Rights Tribunal:
<http://www.bchrt.bc.ca/>.



- Some employers are regulated by the federal government, and in those cases human rights complaints must be filed with the Canadian Human Rights Commission: <https://www.chrc-ccdp.gc.ca/>.

Complaining to a human rights tribunal can be stressful. The process usually takes a long time and it is always difficult to predict the outcome. But in some cases it can be the only way to force an employer to provide reasonable accommodation or get justice for the employee.

You may also want to seek legal advice regarding your situation.

If you are in a union, you should speak to a union representative about a grievance. There may be very short timelines to file a grievance if you lose your job, so you should speak to your union right away.

The deadline to file a human rights complaint is generally one year from the date of discrimination, but determining the exact date when the discrimination started can be difficult. If you are considering a human rights complaint you should try to get legal advice as soon as possible.

Below are a few places that provide free legal advice on this issue for people with modest or low incomes:

- The Disability Law Clinic can provide legal advice, usually in the form of summary advice via telephone. Please reach out at lawclinic@disabilityalliancebc.org.
- BC Human Rights Clinic: <https://bchrc.net/>
- Law Students' Legal Advice Program: <https://www.lslap.bc.ca/>.

If your income is too high to qualify for assistance from these services, you can call the Lawyer Referral Service at Access Pro Bono to get referred to a lawyer with experience in human rights law: [Lawyer Referral Service | Access Pro Bono](#).



Helpful resources

- DABC's guide on disclosing your disability: <https://disabilityalliancebc.org/disclosureguide/>
- People's Law School webpage on the employer's duty to accommodate: <https://peopleslawschool.ca/everyday-legal-problems/work/rights-work/your-employer's-duty-accommodate>
- BC Office of the Human Rights Commissioner webpage on employers responsibilities in accommodating employees: <https://bchumanrights.ca/human-rights/rights-and-responsibilities/employer/>
- BC Civil Liberty Association webpage on the employers duty to accommodate: <https://bccla.org/privacy-handbook/main-menu/privacy5contents/privacy5-9.html>.

**The information contained in this handout is provided for informational purposes only, and should not be taken as legal advice on any matter.*

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