



A Guide for Employers:

Duty to Accommodate

Accommodating Employees in the Workplace

Ontario

August 2019



PENINSULA

Duty to Accommodate

Accommodating Employees in the Workplace



As an employer in Ontario, does your workplace have the infrastructure and policies in place to accommodate all employees to the best of your abilities? Accessibility in the workplace helps ensure all people able to work can contribute to the economy. This guide is a summary of your employer obligations, relating to accommodation in the workplace.

Taking the time to understand Ontario laws on accommodation in the workplace, helps you protect your business; by complying with legislation and providing a professional and supportive work environment to your employees. Here are best practices pertaining to duty to accommodate in the workplace.



Understanding Duty to Accommodate

The duty to accommodate is founded on the following three principles: respect for dignity, individualization, as well as integration and full participation. The main objective behind the duty to accommodate is to ensure that individuals with the ability to contribute to the workforce are not unfairly excluded from doing so.

Examples of workplace modifications that can be made to allow for accommodation, are:

- Allowing for short-term and long-term disability leave
- Modifying job duties
- Providing specialized adaptation or assistive devices for computers, accessible technology
- Offering alternative work
- Providing alternative ways of communicating with the employee

Failing to provide adequate accommodations in the workplace can have repercussions for employers. If an employee feels their employer is not providing appropriate accommodation, they can file a complaint with the Human Rights Commission

How far do employers have to take accommodation?

Employers in Ontario are responsible for accommodating employees until undue hardship. This is the point at which accommodating an employee becomes excessively difficult for the organization. Three points to consider when evaluating whether accommodating an employee causes undue hardship, are the following:

Cost

Costs result in undue hardship if they are quantifiable, proven to be related to the accommodation, and so significant that they would alter the nature of the organization, or considerably impact its viability.

Outside sources of funding (if any)

If necessary, businesses have an obligation to seek outside funding, to assist in making the necessary accommodations for an employee.

Prior to being able to claim that accommodation would be an undue hardship, the organization would have to show proof that they received any available government funding or program to assist with the costs.

Health and safety requirements (if any)

Accommodating an employee can be considered an undue hardship, if it is likely to cause substantial health and safety risks.

It is important to note, these are the only considerations recognized by the Ontario Human Rights Code. Other considerations, such as, business inconvenience or third-party preferences are not recognized as valid in determining whether accommodating an employee causes undue hardship.

Rights and responsibilities related to accommodation

When it comes to accommodation in the workplace, this process is a joint effort between the employer and the employee. Under the Ontario Human Rights Code both parties have duties and responsibilities in achieving accommodation.

Below, are the duties and responsibilities of the

employee and employer:

Employee duties and responsibilities

- Explain your need for accommodation to the best of your ability; preferably in writing.
- Provide your employer with relevant information on your restrictions or limitations, including information from health care professionals.
- Co-operate with experts brought in to help manage the accommodation process.
- Make sure to meet the agreed performance standards and requirements, such as job standards, once accommodation has been provided.
- Continue to work with your employer to manage the accommodation process.

Employer duties and responsibilities

- Keep record of the request for accommodation and the action taken to rectify the situation.
- Communicate regularly, with the individual seeking accommodation, by providing updates on the status of the accommodation and the anticipated next steps.
- Strive to implement accommodations in a reasonable timeframe, to the point of undue hardship.
- Assume the costs associated with the accommodation.

Although both the employee and the employer have responsibilities in workplace accommodation, employers must recognize it is their responsibility to lead the accommodation process and create a solution.

Respecting an employee's right to privacy

An employee requesting accommodation, has the right to privacy; however, the employer has the right to information that helps to determine the extent of accommodation needed for the employee.

To ensure employers have the necessary information for accommodation, while respecting the employee's privacy, employers can ask for the following information:

- The projected length of disability and absence (prognosis for recovery);
- The employee's condition to return to work;
- The employee's ability to execute certain aspects of the pre-injury job and their ability to perform modified work; and
- The estimated duration of physical or mental restriction or limitations, following the employee returning to work.



Employer FAQs

What are employers asking about duty to accommodate?

1. Does an employee have the right to accommodation for religious beliefs?

Religious beliefs are protected under the AHR Act and deserve accommodation up until the point of undue hardship. Examples of accommodation relating to religious beliefs are dress-code, religious leave and work schedule.

2. What are examples of accommodation?

Accommodation will be unique depending on the situation; however, these are some examples of what workplace accommodation can look like:

- Incorporating computer software for blind or visually impaired individuals;
- Providing the employee with an ergonomic keyboard or mouse can be adequate accommodation for repetitive strain injury; and
- Allowing for large space between cubicles for wheelchairs or other accommodation needs.

3. Can I terminate an employee planning to go on maternity leave?

An employee cannot be terminated strictly because she is pregnant. If pregnancy is a factor in the employer's

decision to terminate an employee, they may be in violation of the AHR Act.

4. If an employee needs access to a stair lift, after suffering an injury from a car accident, do I have a duty to accommodate them?

Employers must understand they have a responsibility to accommodate up until the point of undue hardship. Also, it is important to consider whether implementing a stairlift is costlier than hiring and training a new employee.

Learn More

If you have questions about best practices for accommodations in the workplace, our HR experts can answer your questions. Learn more about your employer obligations today, by calling:

1 (833) 247-3652

We've got you covered.

Schedule A Callback

General Disclaimer: Peninsula Employment Services Limited is a company that provides external HR advice and support to businesses. Peninsula is not a law firm. This guide is for informational purposes only and is not intended to provide advice to individuals or businesses. The material contained in this guide is not intended to be legal advice. Peninsula does not warrant or guarantee the quality, accuracy or completeness of any information in this guide. You may not sell or license the information contained in this guide. Neither this guide nor any of the material contained herein may be reproduced, redistributed, or resold in whole or in part without the prior written consent of Peninsula Employment Services Limited.