

EMPLOYMENT RIGHTS AND RESPONSIBILITIES



As an employer, it's important to know that federal and regional legislation is in place to promote accessible employment practices for people living with disabilities. This resource helps you understand your obligations under relevant legislation to ensure an inclusive and productive workforce. Organizations that work towards accessibility report better job retention, higher attendance, lower turnover, enhanced job performance and work quality, better safety records, stronger competitive capabilities and greater customer loyalty ([Conference Board of Canada](#)).

WHAT IS THE RELEVANT LEGISLATION?

Under the Canadian Human Rights Act, employers are required to ensure anyone employed by their organization is treated fairly, regardless of whether or not they have a disability. This includes people living with chronic conditions such as arthritis that can cause ongoing or episodic disabilities at work. Depending on your region, additional legislation may exist through an accessibility law and/or a human rights act. These laws work together to promote equality and accessibility in the workplace and other areas of life.

EPISODIC DISABILITIES

A disability is an impairment or a functional limitation that can be permanent, temporary or episodic in nature, evident or not, that when met with a barrier hinders a persons' full and equal participation in society. This definition comes from the [Accessible Canada Act](#), another piece of legislation that affects everyone. Arthritis is a disability that is often "episodic in nature" in that pain, stiffness, fatigue and other symptoms can flare up and dissipate from time to time, meaning that functional limitations may come and go in "episodes." This also means accommodations may be needed during these episodes, or on a more continuous basis. Many people with arthritis may not require accommodations, but for those who do, having supports in place can help them thrive at work.

WHAT IS THE DUTY TO ACCOMMODATE?

Employers are obligated under the Canadian Human Rights Act and other relevant regional legislation to remove barriers to employment for people living with disabilities. This means taking actions so that a person living with a disability can fully participate at work, which can include adjusting rules, policies, practices or the physical environment. These actions are accommodations, which are alternative arrangements that eliminate or help to eliminate any barriers or negative treatment of employees living with disabilities.

As the [Canadian Human Rights Commission](#) states, "The duty to accommodate means that sometimes it is necessary to treat someone differently in order to prevent or reduce discrimination." Accommodation is required when a worker experiences "functional limitations" that prevent them from performing an "essential duty" of their role.

It's helpful for an organization to incorporate accommodations and accessibility in key business functions, such as recruitment and hiring policies, workplace communications, accommodation planning processes, talent and performance management processes, return-to-work practices and physical environments.

WHAT IS A “REASONABLE” ACCOMMODATION?

Studies have shown that the majority of accommodations are easy to implement and often cost nothing or less than \$500, while they demonstrate a commitment to an inclusive, supportive workplace ([Job Accommodation Network](#)). An accommodation is deemed “reasonable” so long as it does not place an “undue hardship” on the employer.

The United Nations Convention on the Rights of Persons with Disabilities defines “reasonable accommodation” as adjustments or modifications made to ensure people living with disabilities are able to participate on an equal basis as others, without imposing undue hardship.

An employer is not obligated to implement a particular requested accommodation if another accommodation will similarly meet the employee’s needs. **Accommodations are required to the point of undue hardship.**

WHAT IS UNDUE HARDSHIP?

Undue hardship is the point where an accommodation would cost too much, create disruption of business, or create risks to health or safety. Each situation needs to be assessed individually, as there is no prevailing legal definition of undue hardship. Employers should take into account the size of their organization, along with safety considerations and how they operate. If contested, an employer may be required to prove undue hardship. In these instances, an employer will need to provide evidence of the challenges or risk of the hardship.

ACCOMMODATION PROCESS

The steps suggested below are adapted from the Government of Canada’s [“Duty to Accommodate: A General Process for Managers”](#).

The process of providing accommodation(s) should be as simple as possible. Always respect the dignity and privacy of the individual requiring accommodation(s). Remember that each individual has unique needs, and all employees have the right to be accommodated up to the point of undue hardship.



STEP 1 - RECOGNIZE THE NEED FOR ACCOMMODATION

Providing accommodations allows you to remove barriers that otherwise make it difficult for employees living with disabilities to do their jobs effectively. Employees living with disabilities may also require more than one accommodation to meet the needs of their jobs. There are a number of ways you might recognize the need for accommodation(s):

- ▼ An employee has requested accommodation(s)
- ▼ You have identified the need for accommodation(s)
- ▼ A third party acting on behalf of one or more employees has requested accommodation(s)

The request can be verbal or written. Someone requesting an accommodation is not required to disclose a diagnosis or disability in order to receive accommodations, only their work-related functional limitations. As a manager, you are legally required to provide an accommodation to the point of undue hardship.



STEP 2 - GATHER INFORMATION AND ASSESS NEEDS

Accommodation documents must be stored separately from all human resources files and kept strictly confidential.

Ask the employee what types of accommodation are needed, such as changing working locations or an assistive device. Only ask for supporting documentation (from a doctor, for example) if necessary. Next, find out about and follow your organization’s processes. This might include documenting your steps, consulting a health professional (such as an occupational therapist), and referring to relevant collective agreements and/or policies.

Assess the employee’s work environment so that you can best meet the request. At the same time, identify any potential issues for the rest of your team.



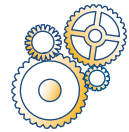
STEP 3 - ENSURE THAT THE RIGHT PEOPLE ARE INVOLVED

Protecting privacy and confidentiality is the responsibility of everyone in the workplace. However, it is not uncommon for there to be a need to share some pertinent information about the accommodation process with others. Ensure that the right people are involved in discussions throughout the accommodation process to maximize the chances of success. This includes the employee, who may sometimes be left out of discussions. It may also include supervisors or managers who have to implement accommodations in their work unit. Omitting key individuals can erode trust and support.



STEP 4 - MAKE AN INFORMED DECISION

Deciding which accommodations will work best for an employee will differ from person to person. Work together with that employee to find the right solution. Take time to understand the needs of the individual to find the most effective and appropriate accommodations. Don't forget to document the accommodation agreement in line with your policies and processes. If a request for an accommodation(s) is denied based on undue hardship, ensure that the reasons for the decision are discussed with an employee. Visit arthritis.ca/work for accommodation options.



STEP 5 - IMPLEMENT THE ACCOMMODATION

Once an accommodation plan is agreed upon, start the process of putting the plan into action in a timely way. If the accommodation involves purchasing equipment, work with the employee to begin this process. Alternatively, other changes to the employee's schedule, work environment or workload may be implemented immediately or over time. Work with the employee to discuss the best way to explain the accommodation to anyone that might be affected.



STEP 6 - FOLLOW UP AND KEEP RECORDS

Information about an accommodation should always be kept private. You only need to share necessary information to those who need to know. In following up with the accommodated employee, you should:

- ▼ Check in regularly and modify the accommodation if needed
- ▼ Document changes on a regular basis, respecting privacy of the employee
- ▼ Consider integrating accommodation into future business planning

ADDITIONAL PROCESSES AND STANDARDS

Many provinces have additional accommodation processes and standards, such as:

- Accessible recruitment processes, including notifying candidates that accommodations are available upon request.
- Accessible workplace information, such as job descriptions, health and safety information and training manuals available in different formats (such as large print, braille, audio, etc.).
- Performance management process enhancements, considering the needs of employees with disabilities through feedback, coaching and improvements.
- Clearly communicated accessibility policies, shared through a variety of channels including newsletters, emails, and in-person conversations.
- Written accommodation plans, outlining components of the process for your organization.
- Written return to work process, detailing steps you will take so that an employee can return to work after an absence due to disability.
- Training on accessibility processes and responsibilities, including the recruitment process, creating accessible workplaces and understanding human rights legislation.

WHAT ABOUT EMPLOYEES?

Employees have the right to reasonable accommodation to the point of undue hardship and the responsibility to inform their employer of their need for accommodation. In addition, an employee should not turn down any reasonable proposal for accommodation that is offered. Depending on your region, employees may need to provide different information on their functional limitations to request an accommodation, ranging from detailed medical information to an accommodation form.

Employee responsibilities according to the Government of Canada's "[Employee and Candidate Responsibilities](#)" webpage include:

- ▼ Communicating the need for accommodation directly
- ▼ Working with the organization by providing relevant supporting information as needed
- ▼ Cooperating in a health assessment
- ▼ Working with manager to identify the right accommodation solutions
- ▼ Considering all suggested proposals that respond to accommodation needs, even if proposals are not employee's preferred option
- ▼ Advising manager of any changes or if accommodation has not worked as intended
- ▼ Exploring ways to modify accommodations as needed

MORE RESOURCES

- Canada Human Rights Commission - www.chrc-ccdp.gc.ca/eng/content/what-duty-accommodate
- Manitoba Human Rights Commission - www.manitobahumanrights.ca/v1/education-resources/resources/reasonable-accommodation.html
- Saskatchewan Human Rights Commission - www.saskatchewanhumanrights.ca/learn/fact-sheets/employment-discrimination-and-the-duty-to-accommodate
- Quebec Human Rights Commission - www.cdpcj.qc.ca/en/droits-de-la-personne/droits-pour-tous/Pages/accommodement_obligation.aspx
- Nova Scotia Human Rights Commission - www.humanrights.novascotia.ca/know-your-rights/businesses-and-other-organizations/employers
- Newfoundland and Labrador Human Rights Commission (FAQ) - www.thinkhumanrights.ca/education-and-resources/frequently-asked-questions/
- Ontario Human Rights Commission - www.ohrc.on.ca/en/iv-human-rights-issues-all-stages-employment/8-meeting-accommodation-needs-employees-job
- Alberta Human Rights Commission - www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Pages/duty_to_accommodate.aspx#dutytoaccommodate
- Human Rights Legal Support Centre (Ontario) - www.hrlsc.on.ca/en/how-guides-and-faqs/your-right-accommodation
- Government of Canada: Accommodation Process - www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/working-government-canada-duty-accommodate-right-non-discrimination/duty-accommodate-general-process-managers.html
- Managers Guide to Reasonable Accommodation (BC) - www2.gov.bc.ca/assets/gov/careers/managers-supervisors/managing-employee-labour-relations/managers_guide_to_reasonable_accommodation.pdf

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