

Guidelines from Accommodation Law (Disability)

Right of the Employee to equal treatment balanced with the rights of the Employer to operate a productive workplace.

Who is eligible for the Duty to Accommodate (DTA) Program?

1. Employees who are:
 - a. Permanent, temporary or casual
 - i. Full time
 - ii. Part time
 - iii. Excluded
 - iv. Contract
 - v. Actively at work or on Leave
 - b. In addition to the above, the Employee must be:
 - o Unable to continue performing the Bona Fide Occupational Requirements of their position due to a permanent or prolonged functional limitation and/or restriction.

Disability is a protected ground in all areas covered by B.C.'s human rights legislation. Disability is not defined in the legislation but has evolved to include protection for people who have, or are perceived to have, mental or physical disabilities whether visible or non-visible, permanent (e.g., a visual or mobility impairment), or temporary (e.g., a treatable illness or temporary impairment which is the result of an accident).

Table 1: BC Human Rights Coalition Guidance

Responsible Person	Guideline
Employer	Timely and respectful accommodation process;
	Gather/Review necessary information to assess the accommodation needs;
	Ensure an inclusive process and multi-party participation;
	Consider and assess each accommodation on an individual basis; there is no 'one-size' fits all solution to accommodation;
	Be prepared to pay for required medical &/or documentation;
	Be willing to take substantial and meaningful measures to secure an appropriate accommodation;
	Be flexible and creative;
	Reply to requests in a reasonable time period and <u>document, document, document</u> ALL actions taken.
Employee	Provide sufficient & supportive documented evidence;
	Offer suggestions that would work for you (i.e. specific adaptive device, reduced hours of work, etc.);
	You are only obligated to discuss your requirements with management although you should cooperate with experts whose assistance may be required;
	Allow a reasonable amount of time for your employer to respond;
	Make sure you let management know of any changes;
	If the process loses momentum, provide more information to help;
	If your employer claims undue hardship, ask for written details;
	Remember there is no obligation on employers to provide the <i>perfect solution</i> . You must be prepared to accept an accommodation that provides a reasonable solution.

Employer (DMP) determines if the Employee's limitations and/or restrictions will temporarily or permanently interfere with their ability to perform all Bona Fide Occupational Requirements of their owned occupation. Once this is determined, the DMP communicates outcome with all relevant parties (Employee, Union, Manager, Human Resources) including a synopsis of Employee's accepted limitations/restrictions to begin job modification and/or search as needed.

DMP recommendations could also include one or more of: additional services (i.e. HBT); LTD/sick leave; modified work; assistive devices; temporary alternate placement.

Employee and Employer Roles and Responsibilities

Employee and Employer both have substantial and essential roles and responsibilities in this process, however the primary burden of proof typically rests with the Employer.

Process

Employee makes initial request for the accommodation and Employer responds promptly. Both parties ensure the process does not lose momentum as follows:

1. Employee provides all relevant information such as: medical, qualifications, etc..
2. Employee actively reviews job postings and apply for positions capable of performing.
3. Employer reviews medical evidence and provides response in a timely manner.
4. Employer documents all aspects of the search for an accommodation to ensure all steps of the process have been followed.
5. Employee accepts reasonable accommodation even if it is not their preference.
6. Employer's duty to accommodate lasts as long as employee is disabled and requires accommodation.

Pointers

- Accommodation requests often arise after extended sick leave, WorkSafeBC or long term disability.
- Employer meets with parties (employee, union, manager, HR and Disability Management) to open accommodation discussion early in process.
- Employer obligation to become "informed" by getting necessary information to make informed decision about employee's disability.

Union Roles and Responsibilities

Accommodation Law Guidelines

'It is a shared responsibility to the employer, employee seeking the accommodation and trade union to ensure the success of an accommodation.'

Cloverdale Paint Inc. v. Teamsters Local Union No.21, [2006] B.C.C.A.A.A. No. 29 (Dorsey)

Pointers

- c. Must cooperate with accommodation process and consider all viable options.
- d. Must consider undue hardship limits.
- e. Statutory duty to accommodate prevails over terms of collective agreement but only to point of undue hardship.

Checklist

- Employee has made a formal request for accommodation
- Employee has been provided with an overview of internal Duty to Accommodate (DTA) procedures
- Documented objective medical evidence has been received and reviewed
- Employee is advised of Employer's decision on Duty to Accommodate (DTA) Request
- Manager, Human Resources and Union have been notified in writing of Employer's decision on Duty to Accommodate (DTA) Request
- Employee instructed to provide Human Resources with an updated resume or curriculum vitae
- Employee is kept informed on status of Duty to Accommodate (DTA) Job Search results.