

# RTW: “DUTY TO ACCOMMODATE” & RETURN-TO-WORK PROGRAMS

One of the advantages in having a Return-to-Work (RTW) program is that it can assist an employer in meeting legal “Duty to Accommodate” obligations. A RTW program provides a workplace with a planned process to follow and the tools (medical restrictions form, RTW plan form, etc.) necessary to document its RTW practices.

“Duty to Accommodate” is not a WCB regulation. “Duty to Accommodate” is defined by case law and supported by Human Rights and Labour Standards legislation.

The role of the WCB is not to provide legal advice to employers, workers or unions. The WCB cannot say, in any given circumstance, whether or not the duty applies to a particular employer, or whether an employer’s legal obligations have been met to the point of undue hardship in any specific case. In the event of a dispute, that determination would be made by the courts or a Saskatchewan Human Rights tribunal.

Nonetheless, in a circumstance where “Duty to Accommodate” applies a RTW program provides a structured process for identifying and providing alternate or modified work for persons with disabilities and, as such, can offer valuable assistance to a workplace.

## “Duty to Accommodate”

“Duty to Accommodate” is a legal obligation that falls on employers to make every reasonable effort, short of undue hardship, to accommodate workers who fall under a ground protected against discrimination by human rights legislation.

In Saskatchewan and throughout Canada employers cannot discriminate on the basis of a prohibited ground. Prohibited grounds include that of disability. This is true regardless of whether the disability is occupational, non occupational, temporary, or permanent.

## “Undue Hardship”

The obligation is not limitless. An employer must only accommodate up to the point of “undue hardship”. The Canadian Human Rights Commission writes:

The term “undue hardship” refers to the limit of an employer’s capacity to accommodate without experiencing an unreasonable amount of difficulty... This means an employer is not expected to provide accommodation if doing so would bring about unreasonable difficulties based on health, safety and/or financial considerations.... There is no precise legal definition of undue hardship, nor is there a standard formula for determining undue hardship. Each situation is unique and should be evaluated individually... Generally, some hardship can be expected in meeting the duty to accommodate. Employers are required to carefully review all options before they decide that accommodation would cause undue hardship. It is not enough to claim undue hardship based on an assumption or an opinion. To prove undue hardship, employers have to provide evidence.

Canadian Human Rights Commission, *A Guide for Managing the Return to Work*, page 7,  
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Once again, a RTW Program is helpful by providing a workplace with a structured process to follow as well as the tools necessary to document its RTW practices in the event it has to prove it.

## Saskatchewan Human Rights Code

### Section 9

Every person and every class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination on the basis of a prohibited ground.

### Section 16(1)

No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term of employment on the basis of a prohibited ground.

## The Saskatchewan Labour Standards Act

### Section 44.3(1)

Where an employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties, the employer shall, where reasonably practicable, modify the employee's duties or reassign the employee to another job.

### Section 44.3(2)

In any prosecution alleging a contravention of this section, the onus is on the employer to prove that it is not reasonably practicable to modify the employee's duties or reassign the employee to another job.

### Additional Resources:

For more information outlining key legal principles of "Duty to Accommodate", "Undue Hardship" as well as the roles and responsibilities of employers, workers and unions see the publication below:

A Guide for Managing the Return to Work  
Canadian Human Rights Commission  
© Minister of Public Works and Government Services 2007  
Cat. No. HR21-63/2007  
ISBN 978-0-662-69728-2

For more information on drafting workplace accommodation policies or procedures see the publication below:

Place for All: A Guide to Creating an Inclusive Workplace  
Canadian Human Rights Commission  
© Minister of Public Works and Government Services 2006  
Cat. No. HR21-62/2006  
ISBN 0-662-49503-9

These publications are available on the Canadian Human Rights Commission's website:  
Go to: [www.chrc-ccdp.ca](http://www.chrc-ccdp.ca)

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- Publications A to Z
- "Guide to Managing the Return to Work" or "Place for All: A Guide to Creating an Inclusive Workplace"