

Duty to Accommodate and Return-to-Work Programs

A RTW program can assist an employer in meeting legal Duty to Accommodate obligations. An RTW Program provides a workplace with a planned process to follow and the tools necessary to document its RTW practices.

Duty to Accommodate is not a Saskatchewan Workers' Compensation Board (WCB) regulation. It is defined by case law and supported by Human Rights and the Saskatchewan Employment Act.

The WCB cannot say in any one circumstance if an employer is in a situation where the duty applies. Nor can the WCB ever say in any specific case whether an employer has met its legal obligations up to the point of undue hardship or not. An employer or union must investigate and familiarize itself with these principles on its own. The WCB does not provide legal advice; employers, unions and workers must seek that elsewhere.

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 if 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 defines undue hardship as:

... 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.¹

1. Canadian Human Rights Commission, A Guide for Managing the Return to Work, page 7, © Minister of Public Works and Government Services 2007

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RTW programs provide 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 Employment Act

Section 2 - 41

An employer shall modify an employee's duties or reassign the employee to other duties if :

- a) *The employee becomes disabled and the disability would unreasonably interfere with the performance of the employee duties; and*
- b) *It is reasonably practicable to do so.*

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:

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:

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

- Resources link (top)
- Publications
- Archived publications
- "Guide to Managing the Return to Work or Place for All: A Guide to Creating an Inclusive Workplace"

