

Duty to Accommodate – Obligations of Employers and Employees

As an employer, you have a legal obligation to adjust policies and practices so employees can participate fully in the workplace. This is called a Duty to Accommodate and it means that sometimes it's necessary to treat someone differently in order to prevent discrimination.

The *employer* is responsible for:

- Eliminating barriers that prevent people from accessing or being included at work.
- Minimizing the need for accommodation by reviewing policies and practices to ensure they are not discriminatory.
- Ensuring that all employees and job applicants are advised of their right to be accommodated.
- Responding to accommodation requests in a timely, confidential and respectful manner.

This is a shared responsibility between the employer and the employee. An employee who requests an accommodation should be clear about the limitations they face and make reasonable suggestions about what adjustments could remove the barrier.

The *employee* is responsible for:

- Making their accommodation needs known (this does not require the disclosure of the specific diagnosis, only what creates the need for accommodation).
- Helping to identify accommodation options.
- Providing documentation in support of their request for accommodation (if required), including information about any restrictions or limitations.
- Accepting an offer of accommodation that meets their needs, even if it is not their preferred accommodation option.

Employers are obligated to do everything to accommodate a disability up to the point of undue hardship. This varies depending on the size and resources of the employer. For example, a highly successful multinational business with extensive financial resources will have a higher threshold to meet the point of undue hardship than a small business with limited resources.



Inclusion Tip *ATP*

Not sure what an employee needs or how to go about it? Try ATP - Ask The Person first. If they have been living with a barrier for a while, they probably know best what works. If it's a new situation (for example, they have experienced a car accident or developed a new illness), discuss how to adapt the workplace or job with your employee and connect with a subject matter expert if you need advice or support.





Employer Case Study: *Potluck Café Society*

*At Potluck Café Society, social impact is on the menu! They create jobs and provide healthy food for people living in Vancouver's Downtown Eastside. **Potluck uses culinary training and employment to help people regain their confidence, skills and economic independence.** Over 50% of their workforce currently faces or previously experienced persistent barriers to employment. Staff can work flexible schedules from 2 to 35 hours a week, based on their needs. They recognize that employment is a stabilizing force and a fundamental step towards gaining greater stability in life, and that many barriers can be overcome with the right support.*

***Potluck prides itself on its high retention/low turnover. Many staff have been with the organization for more than a decade - virtually unheard of in the food and beverage sector.** The leadership team believes that everyone has value and they have created a workplace culture where employees are treated like family. There is a sense of loyalty among staff who are proud to work there and some have even recruited family members to join the company.*

*They have a dedicated resource to help staff navigate through challenges or obstacles, so that they can continue to be productive in the workplace. **By providing a caring, compassionate, nonjudgmental workplace, staff feel comfortable discussing any sensitive issues they may experience personally.** When an employee finds they need to step away from work, or take some time to gain control over their life issues - which often would typically result in job loss with other employers, Potluck works with the employee to help overcome those challenges and they are welcomed back to work once they feel ready to return.*





Inclusion Tip *Requests for Accommodations*

Asking for an accommodation can be uncomfortable for anyone who may fear increased stigma by disclosing they have a barrier to employment. Or they may worry that other employees will learn about something they consider private. Whenever an employee discloses something of a personal nature, handling the situation with respect, empathy and sensitivity will help you to build trust and find reasonable ways to adjust, so everyone can do their best at work.

Duty to Inquire

If you notice an employee is acting differently or starts to experience performance issues, you have a duty to inquire if there is something having an impact on them at work. These situations, if they arise in your workplace, need to be handled carefully and with an empathetic approach. Taking disciplinary action can make the situation worse. To start the conversation, you can:

- Invite your employee to meet with you and hold the meeting in a quiet, private place
- Let the employee know what you have noticed lately and that you want to better understand what might be contributing to that
- Confirm you are here to support the person to do their best at work, that you care about their wellbeing and ask if there is anything you can do to help
- Follow-through on any adjustments you can make that are work related and follow-up to see the employee is progressing

Taking this approach will help you to understand the situation and better support your employee. What you might think is a performance issue could be a symptom of a health issue or something going on in their personal life. They may require an accommodation, time off or coaching.



Supportive Employer Top Tip

“The barriered employees I have are often not the most difficult ones to manage. It is the non-barriered people who usually need more accommodation and support overall. Those who come in naming their barriers up front do not leave you to realize six months into a job that they are not able to do the work, are overwhelmed and having a mental health crisis, and then don’t tell you about it until they are in the hospital. I think it is important to recognize that people disclosing their personal issues can be a very positive thing and should not be a reason to not hire or keep someone.”



Requesting Medical Information

To effectively accommodate an employee's disability, the employer may require medical information. Consider first if it's necessary, especially for more obvious situations such as a broken leg. When asking for medical information from a family doctor or specialist, employers must use the least intrusive means and respect the employee's right to privacy and dignity.

If you do require that an employee provide a note from a medical professional, ensure that the employee is reimbursed for the cost. Employees should not be required to pay these costs as part of the accommodation process.

Employers need to know:

- Whether the employee has a disability or barrier to employment; and if so
- What accommodation the employee needs

Employers do not need to know:

- The diagnosis or reasons for a barrier to employment; or
- What caused the need for accommodation



Inclusion Tip *Awareness of our Own Biases*

We all have unconscious biases. While we can't get rid of them entirely, it's important to be aware of them and what has influenced these beliefs. Do you view a certain group of people in a certain way? Have you spent time with people within that group or are you judging based on what you have heard from others or the media? A great way to mitigate bias and eliminate stereotypes is to learn about and spend time with people who are different than you.