

Employment: Duty to accommodate

INFORMATION SHEET

Duty to accommodate

The Supreme Court of Canada has ruled that an employer has a legal duty to take **reasonable** steps, in policies or conditions of work, to accommodate an employee's individual needs. This duty applies to all grounds of discrimination covered under the *Alberta Human Rights Act* (race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation).

For example, a person may be unable to work on a particular day because it conflicts with his or her religious beliefs. In such cases, the employer must try to resolve the conflict in a way that is agreeable to both parties.

However, this legal duty does not apply if the only way to resolve the problem will cause the employer undue hardship.

Undue hardship

The Supreme Court of Canada has ruled that the employer's hardship must be "substantial in nature." For example, an employee who, as a result of a disability, cannot climb stairs may be required to carry boxes up a flight of stairs as part of his or her job duties. If the business has no elevator, it may be deemed an undue hardship to expect the employer

to install an elevator to accommodate the employee. However, it may be possible to have another employee do that task. In exchange, the person with a disability could assume one or more of that employee's regular tasks.

Accommodation that is reasonable in one case may not be reasonable in another. Every case should be handled and assessed in an individual manner and in consultation with employees.

Union agreements

Unions or union contracts cannot prohibit an accommodation that is considered reasonable, even if that accommodation contravenes a collective bargaining agreement.

For example, a reasonable accommodation for an employee who cannot work a certain day for religious reasons may be to have that employee work overtime on another day at regular pay. Even though a collective agreement may prohibit regular pay for overtime work, the employer may not be bound by the agreement in this case.

An employee must consider an accommodation that is deemed reasonable. Accommodation requires give and take by both the employer and the employee.

Exceptions

In some cases, an employer may not be required to accommodate employees if the discriminatory rule or condition of work can be shown to be **reasonable** and **justifiable** in the circumstances. In other cases, there may be *bona fide occupational requirements* (BFORs) for employment in certain positions. Employers, then, would not have to accommodate employees who do not meet those requirements.

For more information

For more information about the duty to accommodate and related court decisions, see these Commission interpretive bulletins:

- Duty to accommodate
- Rights and responsibilities related to pregnancy, childbirth and adoption
- Defences to human rights complaints

You can find the interpretive bulletins on the Commission's website or order a printed copy from the Commission. 

Contact us

The Alberta Human Rights Commission is an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

**Hours of operation: 8:15 a.m. to 4:30 p.m.
Monday to Friday (holidays excluded)**

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To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

TTY service for persons who are deaf or hard of hearing

1-800-232-7215 Toll-free within Alberta

Email: humanrights@gov.ab.ca

Website: albertahumanrights.ab.ca

Please note: The Commission must receive your completed complaint form or letter within one year after the alleged contravention of the *Alberta Human Rights Act*. The one-year period starts the day after the date on which the alleged contravention of the *Act* occurred. For help calculating the one-year period, contact the Commission.

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