



The duty to accommodate and undue hardship

Empowering Community and Removal of Barriers (ECRoB)

Duty to accommodate

The "Duty to Accommodate" is a term that essentially refers to the responsibilities of employers, landlords, and service providers to adapt the working environment or services to cater to the needs of individuals with disabilities. It's anchored in human rights laws and aims to ensure everyone has equal opportunities, regardless of any disabilities.

In practice, this duty means that employers and service providers should make necessary adjustments to their policies, physical environment, or offer certain assistive tools to ensure an individual with a disability can fully participate in the workplace or access services. These adjustments should be tailored to meet individual needs, considering both the requirements of the person with a disability and the resources available to the organization.

The concept of "duty to accommodate" plays a critical role in promoting inclusivity and equality, as it ensures persons with disabilities can fully and effectively participate in the workplace and in society at large. This accommodation is fundamental for individuals with disabilities to maintain their employment, engage in societal activities, and uphold their overall well-being.

In Canada, if an employer doesn't fulfill this duty, it may be viewed as discrimination, which is against the law and could lead to legal consequences. This principle also applies to landlords and a variety of service providers, including banks, restaurants, and more.

In the duty to accommodate, two main ideas are important: 'intent' and 'effect'.

- 'Intent' is when someone knowingly acts in a way that discriminates. For example, an employer doesn't hire someone simply because they have a disability.
- 'Effect' is about accidental discrimination. This happens when a rule seems fair but ends up being unfair to certain people. In the case of *Di Marco v. Fabrice*, a landlord promised to build a ramp and railing for a tenant with a disability before the move-in date. But the landlord didn't finish the work in time, so the tenant couldn't move in as planned. The court said that even though the landlord didn't mean to discriminate, their actions ended up being unfair to the tenant.



What are the rights and obligations of each party?

- **Accommodation providers:** Accommodation providers are required to develop their policies, procedures, and practices in a way that doesn't block employees' participation based on grounds protected under human rights law. They also need to modify the environment - including physical space, equipment, rules, and practices - to ensure all individuals can fully engage. For more information on Multiple Chemical Sensitivity (MCS) appropriate accommodations, please refer to MCS Accommodation examples.
- **Accommodation seeker:** Accommodation seekers have the right to an environment, including a workplace, where they can carry out their lives effectively and free from discrimination, whilst enjoying the same benefits as others.

Their rights encapsulate:

- Easy and unrestricted access to their workspace or building.
- An environment that is free from harassment and discrimination.
- The assurance of respect and privacy for their personal and medical information.
- Reasonable and appropriate accommodations, when necessary, based on any ground protected under human rights law.
- If applicable, the right to be represented by a union.

Temporary or contractual workers, like their permanent counterparts, are entitled to request accommodations for issues related to the protected grounds mentioned above. The employer has the duty to work with these employees to identify and implement appropriate accommodations that would allow them to perform their job duties effectively.

If you require accommodation, what should you do?

- Inform the accommodation provider about your needs.
- Work alongside the accommodation provider to identify possible solutions.
- Provide necessary medical documentation to support your request for disability-related accommodation (you don't need to disclose your diagnosis).



- Accept a reasonable and appropriate offer of accommodation, even if it's not the perfect solution you had in mind.

You may personalize our Templates of Accommodation Request Letters to suit your needs. We strongly recommend keeping a written record of all relevant information, as it may be useful in building a case if the accommodation provider is uncooperative. Remember, communication is key to obtaining accommodation. The accommodation provider can only fulfill their duty to accommodate when they are aware of the need.

Undue Hardship

The legal term "undue hardship" is used in the context of the duty to accommodate individuals with disabilities. It refers to a set of clear and objective considerations set out in law, such as costs and health and safety, that an accommodation provider must demonstrate if they do not provide the accommodations requested. When an accommodation provider claims undue hardship, it is their obligation to prove that they meet the very high standard of this defense.

Undue hardship creates a limit or a defense to the duty to accommodate. The purpose of undue hardship is to establish limits to costs and risks associated with the duty to accommodate that are of a nature to be so significant or "undue" that would fundamentally alter the nature of the organization or the work performed or its viability.

It is important to note that undue hardship is a high standard to meet, and organizations have the obligation to explore all accommodation options before determining that an accommodation would cause undue hardship. The determination of undue hardship requires a careful and individualized assessment of the particular circumstances, including the nature of the accommodation, the size and financial resources of the organization, and the impact of the accommodation on the organization's operations.

In determining whether an accommodation would amount to undue hardship, the following factors may be considered:

- **Cost:** The financial cost of the accommodation, taking into account the organization's financial resources and the impact on its operations.
- **Health and safety risks:** Whether the accommodation would create an unacceptable risk to the health or safety of employees, customers, or the public.



It is important to note that undue hardship is determined on a case-by-case basis, taking into account the specific circumstances of the organization in relation to the accommodation request. The standard of undue hardship may vary depending on the jurisdiction, and organizations are required to make a good faith effort to provide accommodations, even if they may result in some hardship, cost, or risk.

Resources

For further information, please consult the following pages.

The right to reasonable accommodation for environmental sensitivities – UQAM Project:
https://hypersensibiliteenvironnementale.com/old/images/pdfs/en/5-right_to_reasonable_accommodation.pdf

Duty to accommodate - Ontario Human Rights Commission:
<https://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/8-duty-accommodate>

Duty to accommodate: A Public Service Alliance of Canada guide for local representatives:
<https://psacunion.ca/duty-accommodate-psac-guide-local-representatives>