



NAVIGATING THE DUTY TO ACCOMMODATE: WHAT EMPLOYERS NEED TO KNOW NOW

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THE LEGAL FOUNDATIONS OF THE DUTY TO ACCOMMODATE IN BRITISH COLUMBIA

The Duty to Accommodate: The Legal Framework

- The duty to accommodate arises from the prohibition against discrimination under the *BC Human Rights Code*
- Employers must take reasonable steps to accommodate an employee where a workplace requirement, rule, or practice creates a barrier related to a protected characteristic
- The standard is reasonableness, not perfection: *Klewchuk v. City of Burnaby* (No. 6), [2022 BCHRT 29](#) at para. 425.
- Accommodation is about doing what is reasonable and practical to avoid the negative impact related to an employee's protected characteristic: *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (Meiorin Grievance)*, [1999 CanLII 652 \(SCC\)](#) at para. 38; *Central Okanagan School District No. 23 v. Renaud*, [1992 CanLII 81 \(SCC\)](#), at 994–995.
- There is no freestanding duty for an employer to accommodate an employee: *Kerness Mines Ltd. v. International Union of Operating Engineers, Local 115*, [2006 BCCA 58](#) at para. [28](#).

The Duty to Accommodate: The Legal Framework (cont'd)

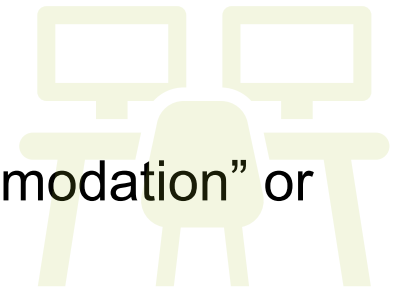
- The duty is generally engaged where an employee experiences adverse treatment or a disadvantage because of a protected ground
- The duty includes positive procedural obligations: employers may need to make reasonable inquiries, obtain reasonably necessary information, identify potential solutions, and initiate reasonable accommodation proposals: *Gordy v. Painter's Lodge (No. 2)*, [2004 BCHRT 225](#) at para. 84; *Renaud* at 994–995.
- Accommodation is a process of inquiry and problem-solving, not a one-time decision: *Renaud* at 994–995.
- The employee also has an obligation to cooperate and facilitate the accommodation process: *Renaud* at 994; *Latreille v. Solectron Global Services (No. 2)*, [2006 BCHRT 9](#) at para. 48.
- The duty is context-specific and is subject to the limit of undue hardship



**WHAT TRIGGERS THE DUTY TO
ACCOMMODATE, DUTY TO INQUIRE AND
THE PROTECTED GROUNDS COMMONLY
ENGAGED**

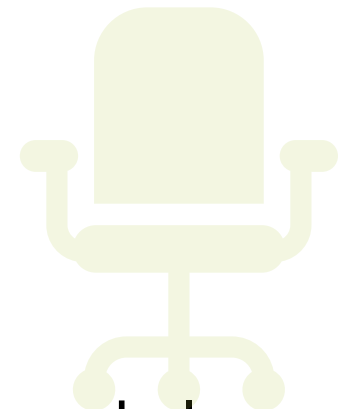
When Is the Duty to Accommodate Triggered?

- The duty is triggered where an employee's protected characteristic creates a workplace barrier
- Common protected grounds engaged in accommodation include:
 - Disability, including physical and mental disabilities
 - Family status and pregnancy
 - Sex and gender-related grounds
 - Religion
 - Indigenous identity, race, ancestry and place of origin
 - An employee does not necessarily need to use the words “accommodation” or “human rights” to trigger the employer's obligations



When Is the Duty to Accommodate Triggered? (cont'd)

- Accommodation requests may arise in a variety of contexts:
 - Attendance and scheduling
 - Modified duties or workload
 - Leave and return-to-work
 - Workplace policies and rules
 - Performance management
 - Religious observance
- The key question is whether there is a connection between the workplace requirement and a protected characteristic



The Duty to Inquire: When Should Employers Ask?

- The duty to inquire can arise before an employee makes an express accommodation request
- Employers should consider whether they have a duty to inquire where there is reason to believe that a protected characteristic may be affecting an employee's ability to work
- Circumstances that may warrant an inquiry include:
 - Significant or unexplained changes in attendance or performance
 - Repeated or unusual absences
 - An employee discloses a medical condition, personal circumstance, or religious need
 - Observable circumstances suggesting that a disability may be affecting the employee's ability to work
 - Information suggesting that an existing accommodation may no longer be sufficient

The Duty to Inquire: When Should Employers Ask? (cont'd)

- The duty to inquire is context-dependent – it is not triggered by every workplace difficulty or performance issue
- Employers should not make assumptions, diagnose employees, or jump to conclusions
- The inquiry should be neutral and focused on whether accommodation may be required
- Employers should seek only the information reasonably necessary to understand the employee's limitations and accommodation needs
- If the inquiry identifies a potential accommodation issue, the employer should engage the accommodation process



The Duty to Inquire: What should the Employer ask? (cont'd)

- The employer should ask itself:

1. **What do we know?**

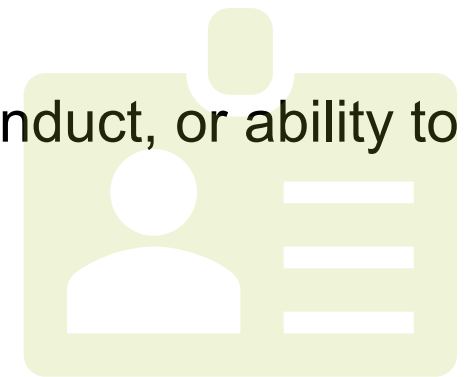
Do we have information suggesting a protected characteristic may be affecting the employee?

2. **What are we observing?**

Are there unexplained changes in attendance, performance, conduct, or ability to perform duties?

3. **Is there a reasonable basis to inquire?**

Would a reasonable employer recognize that accommodation may be required?



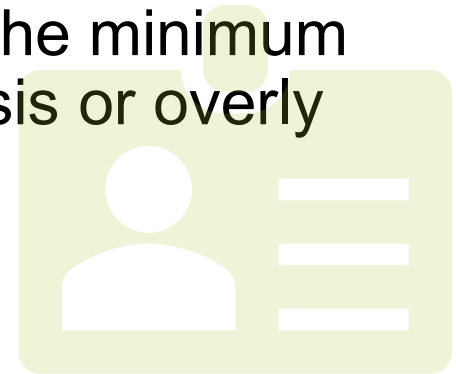
The Duty to Inquire: What should the Employer ask? (cont'd)

4. How do we ask appropriately?

Raise the issue neutrally and give the employee an opportunity to identify whether there is an accommodation-related issue.

5. What information is actually necessary?

Seek information sufficient to understand the employee's restrictions, limitations, and accommodation needs, but no more than the minimum information required. Do not seek an unnecessary diagnosis or overly detailed medical history.



The Duty to Inquire: What Medical Information Can an Employer Request?

- Where an employer has knowledge that a medical condition may be impacting the employee's ability to work, the employer is under a duty to make inquiries before making a decision that adversely affects the worker's employment: *Tuson v. The Board of Education of School District No. 5 (No. 4)*, [2020 BCHRT 195](#) at para. [167](#)
- Generally, employers may need information about:
 - Functional limitations and restrictions
 - Expected duration of restrictions
 - Whether restrictions are temporary or permanent
 - Ability to perform particular job duties
 - Prognosis or anticipated changes relevant to accommodation
 - Recommended workplace modifications

The Duty to Inquire: How Many Times Should an Employer Inquire?

- The duty to inquire is context-dependent. While the Tribunal has not established a fixed number of inquiries that will satisfy the duty, case law indicates that employers may be required to make repeated and meaningful inquiries where the circumstances warrant.
 - [Lord v. Fraser Health Authority and another](#), 2020 BCHRT 64 – Six inquiries over four years before termination were considered sufficient to discharge the duty to inquire
 - [O'Beirne v. District of Mission](#), 2020 BCHRT 199 – More than ten inquiries spanning five months were considered sufficient to discharge the duty to inquire
 - [Danielson v. Grant Illuminated Signs and others \(No. 2\)](#), 2020 BCHRT 19 – Two inquiries in rapid succession were considered sufficient to discharge the duty to inquire

The Duty to Inquire: When Should Employers Ask?



Practical example: An employee with a previously strong attendance record begins having frequent unexplained absences and a noticeable decline in performance. The employee has not requested accommodation.



Ask: Should the employer proceed directly to performance management, or should it first inquire whether there is an underlying accommodation issue?



THE ROLES AND RESPONSIBILITIES OF EMPLOYERS, EMPLOYEES, AND UNIONS IN THE ACCOMMODATION PROCESS

Who Does What? The Accommodation Process

■ Employer

- Recognize when the duty to accommodate – or potentially the duty to inquire – is engaged
- Initiate the accommodation process where appropriate
- Obtain information reasonably necessary to understand the employee's limitations, restrictions, and needs
- Consider reasonable accommodation options and alternatives
- Maintain confidentiality and respect employee privacy
- Communicate with the employee and, where applicable, the union
- Document the accommodation process and the reasons for decisions
- Revisit accommodations where circumstances change

Who Does What? The Accommodation Process

■ Employee

- Communicate the need for accommodation, including sufficient information to establish the need for accommodation
- Participate meaningfully and cooperate in identifying potential solutions
- Provide relevant supporting information where reasonably required
- Consider reasonable alternatives, even where they are not the employee's preferred option
- Keep the employer informed of relevant changes affecting the accommodation

Who Does What? The Accommodation Process

■ Union

- Participate in the accommodation process where the collective agreement and circumstances make the union a relevant party
- Assist in identifying workable accommodation options
- Represent the employee's interests while also considering the collective agreement
- Cooperate with reasonable accommodation proposals
- Avoid unnecessarily creating barriers to an accommodation that could otherwise be implemented



The Duty to Accommodate is a Process, Not Just a Result

- In assessing whether the employer has met its duty to accommodate, the Tribunal considers not only the substantive outcome of the employer's accommodation process and efforts, but also the process and efforts themselves: see *Emergency Health Services Commission v. Cassidy*, [2011 BCSC 1003](#) at paras. 34-38 .
- The goal of accommodation is to identify a reasonable solution that provides meaningful access to employment
 - The employer is not required to provide the employee's preferred accommodation
 - The employee is not required to accept every accommodation proposed
- The parties should consider multiple reasonable options
- Accommodation may need to be revisited as circumstances change

Accommodation Options: Think Broadly

- Accommodation options may include:
 - Modified hours or schedule
 - Modified duties
 - Redistribution of certain duties
 - Temporary leave
 - Gradual return to work
 - Changes to workplace procedures
 - Equipment or workspace modifications
 - Remote/hybrid work where appropriate
 - Reassignment or alternative work
 - Other reasonable modifications to the workplace

- Appropriate accommodation depends on (1) the employee's actual restrictions, (2) the essential duties of the position, and (3) the workplace context.

The Employee's Preferred Accommodation is Not Necessarily the Required Accommodation

- Employees are entitled to a reasonable accommodation, not a perfect one, and where an employee rejects a reasonable proposal, or fails to facilitate one, an employer will be found to have discharged its duty to accommodate: *Renaud v. Central Okanagan School District No. 23*, [1992 CanLII 81 \(SCC\)](#), [1992] 2 S.C.R. 970.
- The employee may identify a preferred accommodation
- The employer must meaningfully consider the request
- The employer may consider reasonable alternatives
- The employer should explain why a proposed accommodation is not workable
- The focus is on reasonable accommodation, not necessarily the employee's preferred outcome
- Communication and problem-solving are critical



UNDUE HARDSHIP AND MANAGING ACCOMMODATION REQUESTS

Undue Hardship – General Principles

- [Kelly \(by Kelly\) v. Saputo Dairy Products Canada and another \(No. 3\), 2021 BCHRT 128:](#)

Undue hardship is reached “when reasonable means of accommodation are exhausted and only unreasonable or impractical options ... remain”:

- Employer should be the driver of the accommodation process
- Duty to accommodate short of undue hardship is serious and substantial
- Proportionality analysis: cost vs. resulting benefit to employee
- Assessed on case-by-case basis



Undue Hardship – Common Factors

Financial
hardship



Safety risks

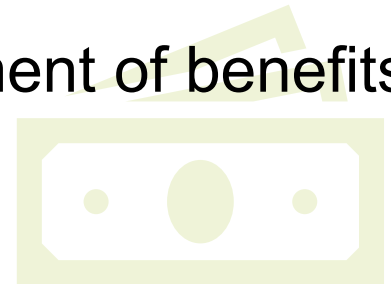
Impact on
morale of other
employees

Disruption of a
collective
agreement



Cost Considerations

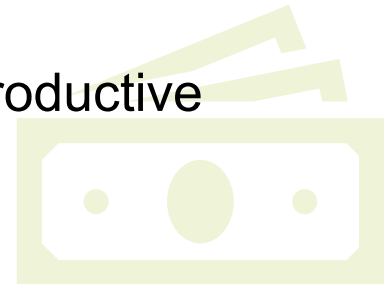
- Context-specific analysis about whether the employer can absorb the cost
- Employer must show the cost of a requested accommodation and how this cost affects its financial situation.
- Examples:
 - Equipment and renovations
 - Modified job duties, hours, and leaves of absence
 - Replacement of personnel
 - Administrative costs and costs of disability premiums/payment of benefits



Cost Considerations

■ Recent decisions:

- [*Sharma v. Best Buy Canada \(No. 2\)*, 2026 BCHRT 173](#)
 - Employee suffered a knee injury which prevented him from returning to his full duties
 - Employee's position was eliminated and employee was terminated
 - Employer had a duty to explore other positions that accommodated the employee's limitations
- [*Kelly \(by Kelly\) v. Saputo Dairy Products Canada and another \(No. 3\)*, 2021 BCHRT 128](#):
 - Employer was not required to create a position that would not be productive



Safety Considerations

- Nature and seriousness of the risk
- Likelihood of risk materializing
- Whether the risk can be reduced or eliminated through other measures
- Who bears the risk?
- [Disbrow v. University of Victoria Properties Investments Inc., 2024 BCHRT 235:](#)
Requested accommodation request would have caused safety risk because unsafe to use elevator during her night shift



Disruption of a Collective Agreement & Impact on Employee Morale

- Primary concern is the effect on other employees
- Duty to accommodate is shared between employer and union
- Cannot contract out of human rights legislation
- Disruption of collective agreement must be substantial



Other Factors

Size of business
and
interchangeability of
workforce or
facilities

Duration of the
accommodation

Customer
preference

Strategies for Managing Requests and Reducing Legal Risk

Investigate

Propose and
consider
accommodation
options

Engage in
cooperative
dialogue

Consult
collective
agreement, if
applicable

Continue
dialogue after
accommodation
is in place

**Document
everything**



RECENT AWARDS AND NOTABLE DECISIONS

Recent Injury to Dignity Awards for Breach of the Duty to Accommodate

- Absent exceptional circumstances, injury to dignity awards in cases involving the discriminatory termination of employment generally fall within the range of \$10,000 to \$30,000: *Banfield v. Strata Geodata Services Ltd.*, [2021 BCHRT 142](#) (\$10,000); *Zheng v. Kimberlite (Canada) International Business Inc and another*, [2025 BCHRT 260](#) (\$20,000); *Flynn v. DF Architecture Inc. (No. 2)*, [2025 BCHRT 81](#) (\$25,000); *Benton v. Richmond Plastics*, [2020 BCHRT 82](#) (\$30,000).
- Failure to accommodate followed by termination:
 - *Sharma v. Best Buy Canada (No. 2)*, [2026 BCHRT 173](#) – failure to accommodate followed by termination - \$20,000
 - *Shaikh v. Colliers Project Leaders Inc. (No. 2)*, [2026 BCHRT 93](#) – failure to accommodate followed by termination - \$15,000

Recent Injury to Dignity Awards for Breach of the Duty to Accommodate

- Failure to accommodate without termination:
 - *AB v. City (No. 3)*, [2025 BCHRT 46](#) – The City offered \$20,000 for injury to dignity after the Tribunal issued an application to dismiss decision finding that it failed to accommodate an employee. The employee had not been terminated from his role. The Tribunal held this was a reasonable settlement offer and dismissed the complaint under s. 27(1)(d)(ii) of the *Code*.

Notable recent decision: *Kayembe v. Carl Zeiss Canada Ltd.*, 2026 BCHRT 130

- The Complainant was a former employee who requested accommodations due to a religious exemption. On an application to dismiss, the Tribunal found that the employer was reasonably certain to prove it discharged its duty to accommodate because it:
 - engaged in meaningful accommodation efforts with the Complainant even in the absence of information it requested regarding the basis for the religious accommodation;
 - there were only two accommodations that the Complainant was willing to accept, and the employer could not accommodate him in either position without incurring undue hardship;
 - the employer offered the Complainant a reasonable accommodation that he refused; and
 - after he refused the reasonable accommodation offer, there were no “further reasonable or practical steps” the employer could have taken to accommodate short of undue hardship.

THANK YOU



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