

Duty to Accommodate - Impact on Employers and Service Providers

Every territory and province in Canada has passed laws that protect people from discrimination. The Yukon Human Rights Act was enacted in 1987 and prohibits discrimination in certain protected areas governed by Yukon laws, such as employment, tenancy, and providing goods or services.

One of the areas in the Act that is least understood is the “duty to accommodate”. If you’re an employer, landlord, business owner, public service provider, educational institution, volunteer organization, professional association or union, you have a legal duty to accommodate certain needs of your employees, tenants, customers, students or members based on certain personal characteristics that are protected under the Act, known as prohibited grounds of discrimination. Although the Act specifically mentions the duty in relation to disability, human rights cases in Canada have applied the duty to all prohibited grounds of discrimination, such as sex, religion or family status.

This duty to accommodate may mean making changes to certain rules, standards, policies, workplace practices and physical arrangements or providing new technology or equipment.

Some familiar examples of duty to accommodate include:

- flexible work schedules to accommodate employees who can’t work on a specific day of the week because of religious belief,
- allowing time off from work for recuperation or participation in rehabilitation programs,
- audible signals at cross walks for visually impaired and blind people.

This duty to accommodate is limited; it cannot result in undue hardship to the employer, business owner or service provider. Undue hardship is determined by balancing the advantages and disadvantages of the provisions based on factors such as:

- safety
- disruption to the public
- effect on contractual obligations
- financial cost
- business efficiency.

In an education seminar sponsored by the Yukon Human Rights Commission, Tom Beasley, senior associate counsel at Coutts, Weiler & Pulver, made the observation that:

The duty to accommodate is like an elastic band. When the employer or service provider is government, that elastic band is very large ... However, when the employer or service provider is very small, the elastic band of the duty to accommodate becomes much smaller. There is far less room for flexibility or, therefore, for accommodation. (December 2004)

The accommodation process is a “two-way street” which requires cooperation by everyone involved, and where both parties have rights and responsibilities. The person in need of accommodation is advised to:

- Request accommodation and outline what is needed to accommodate the specific need based on one of the protected grounds such as disability, religion, sex, etc.
- Explain why accommodation is needed – what are some of the limitations or restrictions or individual needs in your situation. Provide enough information (medical or expert evidence) to support your request.
- Cooperate with those managing the accommodation process, discuss solutions and allow reasonable time for a response.
- If undue hardship is a factor, request details about why the employer or service provider believes they can’t accommodate your request. Provide additional information to clarify your needs or to explain the proposed solutions.
- Work with the employer and union, if applicable on an ongoing basis to manage, review or change the process.

The employer or person providing a service is advised to:

- Determine if the request falls under the areas and grounds protected under the Yukon Human Rights Act.
- Respect the dignity and privacy of the person.
- Consider the specific needs requested, review the information provided (medical or expert evidence) and their solutions.
- Explore ALL reasonable alternatives and solutions. Consult the Commission or seek legal advice. If accommodation is not possible because of undue hardship, (safety, cost, business efficiency, disruption to public, collective agreements), explain why, and be prepared to back it up with detailed information.
- Keep a record of the accommodation request, action taken and evaluate how it is working. Revamp if necessary. Ensure no discrimination occurs as a result of the action plan.

The purpose of the Yukon Human Rights Commission is the promotion and education about human rights and the investigation and resolution of complaints by people who feel they have been discriminated against under the Yukon Human Rights Act. For more detailed information check our website at www.yhrc.yk.ca. We welcome questions or comments from the general public, employees, employers, business owners and service providers. Contact us at #101-9010 Quartz Road in Whitehorse or phone 667-6226 or 1-800-661-0535. There is no charge for our services.