



Duty to Accommodate

The North East School Division's legal obligation for the duty to accommodate arises out of Federal and Provincial Human Rights laws that were developed to protect fundamental employment rights of certain individuals and classes. In Saskatchewan that law is set out in The Saskatchewan Human Rights Code; Section 16 provides that no employer can discriminate against any individual on the basis of a prohibited ground.

The Saskatchewan Human Rights Code does not set out details of how the accommodation process must take place. However, the accommodation can be initiated by either the employer or the employee.

To further understand accommodation, some examples that can be explored may be as simple as offering a graduated return-to-work program, changing an assignment, or obtaining tools and equipment to assist the employee in effectively performing tasks. Ultimately, the goal is to provide safe, productive, and meaningful work that continues to meet the needs of the North East School Division and respects the medical or other requirements of the employee. Again, each accommodation is undertaken based upon the unique circumstances of the case and it should be noted that the duty to accommodate does not mean a requirement to create a position or work that does not add value to the North East School Division.

Procedures

The North East School Division, the employee, the medical practitioner and the union (where applicable) share in the responsibility of managing a successful accommodation. Below are the main roles and responsibilities that each party has in the process.

1. To determine whether or not the North East School Division has the obligation to accommodate an employee, the employee must:
 - i. Demonstrate there is a disability verified by a medical practitioner
 - ii. Identify the need for accommodation
 - iii. Participate and cooperate throughout the process
 - iv. Provide sufficient appropriate and ongoing medical information to the North East School Division so that:
 - The medical issue clearly fits the definition of a disability under *The Saskatchewan Human Rights Code* and related jurisprudence.
 - The medical restrictions that will require accommodation are clearly identified.
 - v. Take the medically recommended steps towards rehabilitation and self-improvement
 - vi. Try the proposed accommodation before it is refused

It should be noted that medical restrictions does not require disclosure of the diagnosis of the condition.

2. If an employee refuses to provide the required medical information, the school division's duty to accommodate the employee ends or is suspended until such time as the employee provides the required medical information.
3. All medical information supplied by the employee will be treated as confidential by all parties and in accordance with The Local Authority Freedom of Information and Protection of Privacy Act.
4. The law recognizes that accommodation requires a balancing act between the right of an employee to equal treatment and the right of the employer to a productive workplace. Specifically, the *Saskatchewan Human Rights Code* requires the accommodation of an



employee who suffers from a disability. In addition, the *Saskatchewan Employment Act* requires the employer, where reasonably practicable, to modify duties or reassign if the employee becomes disabled and cannot perform job duties. Therefore, the North East School Division:

- a. Has the inherent management right to propose the accommodation and determine the work assignment.
 - b. Has the obligation to investigate and/or initiate where evidence suggests the need for an accommodation.
 - c. Is required to make every reasonable effort, short of undue hardship, to accommodate an employee who comes under a protected ground of discrimination.
5. Undue hardship exists when the steps required to accommodate the employee are so extreme, onerous or difficult that it is clear that it is unreasonable to expect the North East School Division to implement them.
- The onus is on the North East School Division to show undue hardship as per the *Saskatchewan Human Rights Code*.
6. Factors that can be considered in determining whether or not the point of undue hardship has been reached may include:
- a. Financial cost to the employer.
 - i. Financial cost alone is not usually sufficient to show undue hardship.
 - ii. The size and financial resources of the employer will be significant.
 - iii. External sources of funding may limit the financial ability of the employer.
 - b. The availability of other jobs.
 - c. Disruption to other employees.
 - d. Impact on students.
 - e. The employee's return to work poses a real and immediate risk of relapse or aggravation.
 - f. The nature of the work.
 - g. The number of employees and their interchangeability.
 - h. The impact of accommodation on a collective agreement or working conditions.
 - i. The need to replace someone with special skills.
 - j. A significantly increased workload for other employees.
 - k. The need for a major reorganization of the work unit.
7. In the case of employment, undue hardship will generally be reached when the employer is able to show:
- a. That there is no reasonable chance that the employee will be able to return to work within the reasonably foreseeable future.
 - b. That all reasonable efforts at accommodation have been tried and found unsuccessful. This conclusion must be based on appropriate and up-to-date medical information.
8. If the North East School Division can show undue hardship, we are not obligated to provide accommodation at that time.

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