Workplace accommodation

A guide for federally regulated employers

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Introduction

Purpose of this guide

This practical guide is for all federally regulated employers, managers, and supervisors who want to learn more about how to accommodate a member of their team. It covers a wide range of accommodation issues with a single step-by-step process.

The accommodation process itself should not become an additional barrier to a worker's ability to participate in the workplace. This guide outlines legal obligations and various good practices for building successful workplace accommodation and return to work processes.

The information and guidance provided here will assist employers in setting the groundwork for proactively addressing workplace accommodation issues before disputes arise. Nothing in this guide limits the Canadian Human Rights Commission's (CHRC) discretion in accepting a workplace accommodation complaint or referring such a complaint to the Canadian Human Rights Tribunal for further review.

For additional guidance, please also refer to this guide's companion piece, "Developing a Workplace Accommodation Policy - A Template for Federally Regulated Employers."

Why accommodate?

It's the law. Under the Canadian Human Rights Act (CHRA), federally regulated employers have a legal obligation to adjust the working conditions for an individual or group to ensure that those individuals who are otherwise fit to work are not unfairly excluded. It is called the duty to accommodate. Employers have a duty to accommodate workers' needs related to any of the thirteen grounds in the CHRA. Disability-related accommodations are the most commonly requested types of accommodations.

It's good for everyone. Workplace accommodation is not only about an employer's legal obligation. It is a vital component of a healthy and thriving workplace. It is the key to building an accessible and thriving work environment that respects the unique needs and potential of all team members. It is one of the best ways to attract and keep top talent and cultivate a diverse and inclusive workplace. Good accessible design ultimately improves the work environment for everyone. For example, both a worker with a broken leg or a worker who is carrying something in their arms will benefit from having automatic door openers and elevators.

It creates a new and better normal. Having an inclusive workplace is really the best answer to meeting most needs without requiring a formal accommodation process. Building flexibility into workplace policies and practices can reduce the need for individual accommodations.

It's about all of us. Remember, over the course of our lives, many of us will need workplace accommodation at some point.

Examples of accommodation

Workers may require accommodations for a variety of reasons, not just related to disability. It's important to remember to treat each situation uniquely and evaluate it based on the individual's circumstances and specific needs. It's also important to remember that workers may require accommodation in relation to more than one personal trait linked to multiple prohibited grounds of discrimination. This is referred to as their intersecting identities or intersectionality.

Here are some examples of types of accommodation that workers may need:

- A modified workspace to accommodate a physical disability (ground of disability);
- A flexible work schedule or more frequent check-ins by their supervisor to accommodate needs related to a mental health disability (ground of disability);
- Modified work hours to accommodate religious practices (ground of religion);
- Modified job duties to accommodate needs related to pregnancy (ground of sex);
- Temporary leave to seek treatment for a substance use disorder[1] (ground of disability); and
- Flexible work schedule or location to accommodate caregiving obligations (ground of family status).

Important reminder about invisible disabilities

Many disabilities that require accommodation are not immediately apparent to other people. Invisible disabilities — also known as hidden disabilities or non-visible disabilities — are often misunderstood. People can face stigma as well as discrimination, including disbelief that a disability exists.

Part of creating an inclusive workplace is breaking down barriers, including attitudinal barriers, for all disabilities, including non-evident ones, to allow people to participate fully and with dignity.

Invisible disabilities may include:

- brain injuries,
- mental health disabilities,
- chronic pain,
- chemical sensitivities, and
- substance use disorders.

Other invisible disabilities may include episodic disabilities, like epilepsy, or a disease that a person has chosen not to disclose, like cancer.

[1] Substance use disorder will be the terminology used in this guide. The CHRA refers to "dependence on alcohol or a drug," which the CHRC considers outdated language. For the purposes of this publication, these terms have the same meaning.

Understanding the legislation

There are a few key human rights laws, both domestic and international, to know about when it comes to workplace accommodation.

Canadian Human Rights Act

The Canadian Human Rights Act (CHRA) is Canada's federal anti-discrimination law. Its purpose is to ensure that everyone has an equal opportunity to live the lives they are able and wish to have, free from discrimination. It applies to all federally regulated employers, such as federal departments and agencies, banks, radio and television broadcasting, and air or rail transportation.

A big part of preventing workplace discrimination is ensuring that individuals who are otherwise able to work do not experience discrimination by being excluded from their work because of things like their disability, their religion, being a parent, or a variety of other reasons listed in the CHRA. These are called grounds of discrimination, and are listed in the CHRA:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex (including pregnancy)
- Sexual orientation
- Gender identity or expression
- Marital status
- Family status
- Genetic characteristics
- Disability
- Conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

United Nations Convention on the Rights of Persons with Disabilities (CRPD)

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is an international agreement that promotes and protects human rights for people with disabilities. Canada agreed to follow the CRPD in 2010. The CRPD includes many rights that cover various aspects of a person's life, including the right to employment, the right to work in an environment that is open, inclusive and accessible, and the right to reasonable accommodation in the workplace.

Accessible Canada Act

The Accessible Canada Act (ACA) is a federal law that aims to create a barrier-free Canada. It requires federally regulated organizations to proactively find, remove and prevent barriers facing people with disabilities. Barriers can be in physical places, communication, technologies, policies and practices, and attitudes. The ACA requires organizations to consult people with disabilities and publish accessibility plans, feedback processes and progress reports. The Accessible Canada Regulations give details about these requirements.

The ACA does not replace the duty to accommodate under the CHRA. Organizations must still continue to comply with the CHRA by accommodating the unique needs of individuals while also meeting the requirements of the ACA.

Creating an accommodation policy

It is a good idea for an organization to have its own accommodation policy. It offers a prescribed set of steps to follow and guidance so that supervisors and managers within the organization can use to develop their specific case-by-case accommodation processes.

Managers and supervisors should be familiar with all aspects of the policy, and know where to direct questions as they arise. The policy should be available in accessible formats and be provided to all workers and applicants. For guidance on creating accessible documents, visit the Digital Accessibility Toolkit website.

For guidance on developing a comprehensive workplace accommodation policy, please refer to the Commission's "Developing a Workplace Accommodation Policy - A Template for Federally Regulated Employers".

Steps to accommodation

Step 1 – Have the conversation about accommodation needs

The first step in accommodation is to have an open conversation between the employer and the worker about the worker's unique needs. This conversation can happen in one of two ways:

1) The worker starts the conversation

Typically, the onus is on the worker to notify their employer if they need accommodation. If the need is related to a disability, a worker does not have to disclose a specific medical diagnosis when requesting an accommodation. They must only disclose their functional limitations or restrictions that create the need for accommodation. Employers should accept requests for accommodation in good faith. They should only request supporting information when it is absolutely required to implement the necessary accommodation. Employers have a duty to accommodate a worker's disability-related needs regardless of whether the disability results from a workplace incident.

The employer should have clear procedures available for workers on how to request accommodation. These procedures should be part of the employer's workplace accommodation policy and outlined in any workplace orientation programs and documents.

2) The employer starts the conversation

In some specific cases, it is the employer's duty to initiate a discussion with the worker when circumstances suggest that the worker may need an accommodation.

This is called the duty to inquire. The duty to inquire is essentially about checking in with a worker. It can be a sensitive process, particularly when it involves a possible mental health disability or substance use disorder.

We all have "off" days or weeks, but observing changes in a worker's attendance, performance or behaviour that is more sustained or dramatic in nature may trigger the employer's duty to inquire. However, it is important not to make assumptions about a worker's behaviour or its cause. Ask questions. Be curious. Also, be respectful, supportive and non-judgemental. Let the worker know that they can talk with any member of management or human resources with whom they feel comfortable sharing their story.

When starting a conversation about a worker's job performance, absenteeism, or concerning changes in the worker's appearance or behaviour, it is helpful to give concrete examples. It is a good practice to begin by asking how the employer may best support the worker. The discussion should be collaborative, and it may continue over time.

Having the conversation with job applicants

Generally, employers can only discuss a job applicant's accommodation needs if the applicant brings up the topic prior to being hired. Discussions about accommodations required for the worker to perform the job should only occur after the employer makes a conditional offer of employment.

However, job applicants may require accommodations to participate fully in the application process. Job advertisements should include information on how to request accommodations for the application process. A good practice is to provide all applicants with a copy of the organization's accommodation policy and invite them to identify their accommodation needs.

When having the initial conversation(s) about a worker's disability-related accommodation, the employer will need to know:

- Whether the worker has a disability or medical condition[2] that requires an accommodation;
- What the worker's functional limitations relevant to their job are; and
- What the worker's accommodation needs are.

Employers are not entitled to know:

- The worker's specific diagnosis or details about their treatment plan, except in exceptional circumstances, such as where the worker presents a potential threat to either themselves or others.

In some cases, the answers to these initial questions may come directly from the worker. In other instances, these questions may need to be answered by a health care provider. In some cases, medical information will help the employer to make an informed decision about reasonable accommodation options.

That brings us to Step 2.

Step 2 – Assess the accommodation needs

The next step is to assess whether the worker's accommodation needs can be met without a formal accommodation request. Oftentimes, a formal accommodation request is not needed. Ideally, the worker can simply tell the employer what accommodation they require without resorting to a formal request for accommodation. For example, a worker may need to have time off to attend a religious ceremony or may need an automatic door opener installed. All of this is possible without a formal accommodation request.

In other cases, it will be appropriate to require a worker to provide a more detailed explanation. For example, a worker may have caregiving obligations and they may be required to demonstrate that they cannot meet their needs through alternative arrangements and/or flexible scheduling.

Sometimes, employers will require additional information to support an accommodation request and/or to identify appropriate accommodation measures. These requirements are most often associated with disability-related accommodations, where medical information may be required.

[2] Pregnancy, for example, is not a disability but it is a medical condition linked to sex that may require accommodation.

Asking for supporting medical information

First, proceed with caution. Supporting medical information is not always necessary, and asking for it can pose privacy and other human rights issues. Ideally, workers and employers can agree on accommodation measures that meet a worker's needs without requiring formal documentation from a health care provider. In a formal accommodation process, it is important to document whether the employer requested supporting medical information. This information should be kept in the worker's accommodation file, separate from the rest of their human resources file.

Overall, throughout this entire Step 2 of the accommodation process, two competing rights must be balanced: the employer's right to manage the workplace, and the worker's right to privacy.

With all that in mind, the fact remains that in some cases of disability-related accommodation, the employer may require information from a health care provider. Here are some best practices for how to approach this sensitive step in the accommodation process.

Best practices for requesting medical information

- Use the least intrusive means possible that respects the worker's privacy rights and dignity.
- Be sensitive to the worker's beliefs and values.
- Where possible, limit requests for supporting medical information from physicians. This avoids putting unnecessary strain on the health care system, and it also is mindful of the fact that, despite their best efforts, some workers may not have access to a regular family physician.
- Be open to accepting medical information from other health care providers such as occupational therapists, psychologists, physiotherapists, nurse practitioners, chiropractors, or midwives.
- Consider using other assessments such as an ergonomic assessment to determine what specifically the worker requires to enable them to work productively.
- Ask specific questions rather than asking for general information, and ensure that these questions are specifically related to the worker's essential duties and their functional limitations. Here are some example questions to ask a health care provider:
    - Does the worker have a disability or medical condition that requires an accommodation?
    - What are the worker's restrictions or limitations in relation to the performance of their job? Are the restrictions or limitations permanent?
    - What accommodations will the worker need?
    - If the worker is off work, are there specific recommendations that will facilitate a safe and successful return to work? For example, a specific schedule for a graduated return to work?
    - What is the worker's prognosis in relation to return to work date and/or return to full duties (if relevant)?

- If the worker is in a safety sensitive position, are they medically fit to perform their job safely? For example, does the worker require medication with side effects that may prevent them from working in this safety sensitive position?

- In turn, the employer should provide the health care provider with the following helpful information:
  - a description of the worker's job function and responsibilities;
  - the worker's work schedule;
  - whether the worker is in a safety-sensitive position; and
  - any other relevant information that is particular to the workplace.

Important note: Employers are very rarely entitled to the worker's diagnosis or treatment plan.

Generally, employers may be entitled to know this information in circumstances where the worker presents a threat to other workers and themselves.

Medical information may come in various formats, from hand-written notes to formal reports. Employers should be flexible with their requirements regarding acceptable medical information.

Based on the information provided, the employer should be able to determine whether the worker:

- is able to perform the essential duties of their position with appropriate accommodation;
- needs to move to a different position due to their accommodation requirements; or
- needs to be off work, and if so, for approximately how long.

Once the medical information has been provided, the employer has the primary responsibility for implementing the required accommodation measures.

Independent Medical Evaluations (IME)

If after all of the other options discussed in Step 2 have been exhausted, and an employer still lacks sufficient or clear medical information, an employer may at that point consider requesting an independent medical evaluation (IME). Requesting an IME to seek additional medical information cannot generally be a condition for returning to work.

Note: Employers should exercise caution and seek legal advice before seeking an IME because requesting a worker to undergo one infringes on their privacy rights. As with any other medical assessment, the employer is entitled only to the medical information they need to accommodate the worker.

There are specific, very limited circumstances when an employer can request that a worker be evaluated by an independent health care provider who is not their family doctor or their own specialist. Those limited circumstances are:

1. When an employer has been unable to receive clear medical information from the worker's health care provider despite having taken steps to get this information from that provider. In such cases, an employer may consider requesting an IME.
2. When there is contractual right to request a worker to undergo an IME provided, for example, in a collective agreement.
3. When there is a legislative requirement in certain industries.
4. When a worker requests the assistance of a specialist to which they may not have access otherwise.

Key human rights principles for employers to keep in mind before requesting an IME:

- Workers have a right to privacy, which includes respecting their bodily integrity and autonomy.[3]
- An employer cannot order a worker to submit to an IME by a physician of its own choosing, unless there is some express contractual obligation or legislative requirement.
- If the medical information provided by the worker's health care provider lacks sufficient or clear medical information, clarification should be sought from the health care provider, identifying what issues are unclear and what further information is needed.

If after all of these important considerations, an employer decides to request an IME, here are some good practices to follow:

- Exercise caution and seek legal advice before asking a worker to undergo an IME.
- Allow the worker to select the IME physician from a list of mutually acceptable specialists.
- Agree in advance, along with the worker, that both parties will accept the medical results of an IME.
- Facilitate the IME by providing time off work and paying for the cost of the IME.
- Provide the same information and ask the same questions it did of the worker's own health care provider.
- Do not ask for more medical information from an IME than can be asked of the worker's own family doctor or specialist.

[3] "Bodily integrity" refers to the right to not have one's body physically interfered with, without one's consent. "Bodily autonomy" refers to the right to make decisions about one's own body.

Step 3 – Accommodate

Guiding principles

Once an accommodation need has been identified and assessed, the employer has a legal duty to accommodate the worker up to the point of undue hardship, a legal concept that is discussed in greater detail below.

Employers should address each accommodation request on a case-by-case basis. Accommodation involves customizing working conditions to meet an individual's specific needs, considering what is possible within the organization and the workplace. Employers are responsible for developing the accommodation plan in collaboration with the worker. The worker may wish to involve their union or representative in these discussions.

A worker must be willing to participate in the process; otherwise, accommodation may not be possible, and the duty to accommodate may end. Participation often means providing relevant information requested by the employer.

Throughout the accommodation process, the goal should be to keep the worker at work (where appropriate) or to support the worker in returning to work as soon as possible. It is true that, in most cases, the employer is in the best position to know what accommodation options are possible in their particular work environment. However, they should remain open-minded to all the available options.

In some situations, temporary accommodations may be appropriate until the employer has finalized their decision around accommodating the worker's needs. Delays in the process should be limited. Employers may be found to have failed to meet their duty to accommodate if there are excessive delays in the process.

Creating an accommodation plan

It is important to develop a plan for each worker who needs an accommodation. Accommodation plans should:

- be in writing and signed by all the parties;
- identify the specific accommodation measures or solutions that have been agreed to, including details such as, timelines/dates, work schedules, duties and restrictions/limitations, etc.;
- include training on the use of any adjusted equipment or systems;
- designate who the worker should approach with concerns or questions about the accommodation plan;
- be flexible and subject to change based on the worker's needs and updated information;
- where applicable, allow for urgent or ongoing medical treatment the worker may require; and
- where applicable, include a detailed return to work agreement, specifying the conditions the worker agrees to meet when returning to work.

Examples of employment accommodation:

- Short- or long-term changes in the worker's schedule or hours of work
- Adjustments in performance requirements or a modification of duties
- Training
- Specialized equipment
- Workstation adjustments
- Leaves of absence
- Temporary or permanent reassignment
- Alternate work locations and/or telework

Preferences vs. needs

An employer has a legal duty to accommodate a worker's needs, not the worker's preferences. Workers are expected to accept reasonable accommodations[4] even if it is not the worker's preferred option. If a worker rejects a reasonable solution that meets their accommodation needs, the employer may be found to have met their duty to accommodate. That said, employers should make an effort to implement the worker's preferred accommodation if it falls within a list of reasonable solutions.

Third parties and the accommodation process

In addition to employers and workers, sometimes third parties are also involved in the accommodation processes. Workers and employers may have access to internal human resources or labour relations specialists. Some employers hire external organizations to manage disability-related accommodations and workers' medical leave. Third-party disability management providers and insurance companies may also be involved in an accommodation process.

However, employers are ultimately responsible for the accommodation process even if they contract out some accommodation-related services. Employers are also responsible for resolving disputes that may arise with a worker during an accommodation process and cannot offload this responsibility to a third party.

Limits to the accommodation process

There are specific circumstances in which an employer can refuse to accommodate a worker. For example, the duty to accommodate ends when the worker refuses to participate in the accommodation process, yet still cannot fulfil their professional duties. This may include refusing to accept reasonable accommodation that meets their unique need.

The duty to accommodate also ends when the employer reaches undue hardship. There is no standard formula or precise legal definition of undue hardship. Each situation must be assessed individually. The point of undue hardship will vary in each situation.

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[4] "Reasonable accommodation" is a legal concept that refers to accommodation measures that address the worker's limitations up to the point of undue hardship. It is not based on an employer's subjective perspective of what is reasonable in the circumstances but from the perspective and needs of the individual requiring the accommodation.

But, overall, an employer will have reached undue hardship when reasonable measures of accommodation have been exhausted and only unreasonable or impracticable options remain.

Employers can only claim undue hardship based on three factors:

1) **Cost:** The financial impact of the accommodation is so great that it would either change the essential nature of the organization's operation, or substantially impact the employer's financial viability.
2) **Health:** Adjusting working conditions to accommodate a worker poses too great a risk to the health of the worker, colleagues, or the public.
3) **Safety:** Adjusting working conditions to accommodate a worker poses too great a risk to the safety of the worker, colleagues, or to the public. Employers must first consider whose safety is at risk and the magnitude of the risk. Workers are permitted to assume some personal risk. To be undue, the safety risk must be unmanageable within the context of the employer's operations. They must also consider whether moving the worker to a non-safety sensitive position may meet the accommodation need.

Employers must support any claim of undue hardship with facts and evidence. They cannot rely on assumptions or opinions. Employers must be able to show that they have exhausted all reasonable means of accommodation. When considering accommodation options, employers should be both innovative and practical. Larger organizations are more likely to have a range of options available to accommodate a worker.

The employer should provide the worker with clear, written reasons for why their accommodation request is being refused, including an explanation of how they reached their decision and which options they explored and rejected. Workers need this information to ensure they have a fair opportunity to appeal the decision. Most disputes around accommodations involve a disagreement between the employer and the worker about what measures could reasonably have been put in place to meet the worker's needs.

What if a worker is unsatisfied with the employer's proposed accommodation?

Employers should have an appeal process in place to address disputes about accommodation matters. Disputes may arise if an employer refuses a worker's request for an accommodation or if the worker disagrees with the employer's proposed accommodation. These disputes can lead to complaints (grievances) under a collective agreement or an equivalent process. The worker may also choose to file a complaint with the CHRC within one year of the last alleged act of discriminatory treatment.

Return to work agreements

Like the accommodation process, managing a worker's return to work is often a complex responsibility. It can present challenges that involve the careful balancing of an employer's right to manage a productive workplace with a worker's fundamental right to equality, dignity, and privacy. A good accommodation plan should include a clear and well-structured return to work agreement to help this transition go smoothly.

A good return to work agreement should:

- Be developed by the employer and worker together.
- Specify the conditions the worker agrees to meet when returning to work.
- Include the frequency and method of communication while the worker is on leave to ensure that all outreach to the worker is done in a respectful way.
- Outline the expectations of both the employer and the worker.
- Set out any temporary and/or ongoing accommodations.
- Be signed by both the employer and the worker.

It's important for an employer to realize that workers may have additional accommodation needs when they return to work after an absence. They might need to return to work gradually. They may need additional training. They may need assistance with human resources issues, such as pension-related issues. They may need support to take care for their mental health as a result of the transition. For this reason, continuing to have open, respectful lines of communication between the worker and the employer is essential.

Good practices for employers

- When deciding on the appropriate amount of contact with the worker, consider the worker's preferences along with the employer's needs. Establish parameters with the worker about the preferred frequency of communication regarding changes to their situation and keeping them connected to the workplace.
- Do not apply undue pressure on the worker to return to work before they are ready and/or able to do so.
- Reach out to the worker for updates when the worker has not been in contact leading up to an established return date.
- Initiate a discussion with the worker about a plan for returning to work.
- Allocate sufficient time for the worker to be able to prepare for the return.
- Re-assess the worker's accommodation need(s) based on any new information.
- Discuss existing accommodation measures with the worker and any new requirements.
- Be ready to adjust or update the accommodation plan based on new information.
- Ensure appropriate accommodation measures are in place prior to the worker's return.
- Keep a record of the accommodation plan to ensure that both parties are following procedures.
- Keep all documentation relating to costs, health assessments, meetings, correspondence and phone conversations together for easy reference. This information should be kept separate from the worker's personnel file and any changes to the accommodation plan should be noted in the accommodation file.

Step 4 – Review

The last step in the accommodation process is an ongoing one. Employers should check in with the worker on a regular basis to confirm that the accommodation plan continues to meet their needs. Where an employee's needs have changed, accommodation plans may require adjustment. It can be helpful to build pre-scheduled follow-up meetings into the accommodation plan, as it is not always possible to foresee how the accommodation process will unfold. Flexibility and ongoing communication are essential to this process.

With the worker's consent, an employer should communicate changes to the worker's accommodation arrangements on a need-to-know basis to other managers, supervisors, and staff, as well as union or worker representatives.

ANNEX A: Key terms

Accessibility – designing places, programs, services and products to be inclusive and usable by everyone from the start. This means preventing problems by addressing barriers early on so that people are not excluded.

Accommodation – taking steps to adjust rules, policies, practices or physical spaces that have a negative impact on individuals—or groups of individuals—based on prohibited grounds of discrimination in the Canadian Human Rights Act.

Barrier-free Workplace– is one in which all workers have the opportunity to contribute and participate to their full potential.

Bona Fide Occupational Requirement (BFOR) – is a defence to discrimination within the meaning of paragraph 15(1)(a) and subsection15(2) of the CHRA where a rule or standard is integral to the functions of a workplace. For a standard or rule to be considered a BFOR, an employer must demonstrate that:

i) the standard or rule is rationally connected to the performance of the job,
ii) it imposed the standard with an honest and good faith belief in its necessity, and
iii) any changes to the standard to accommodate workers who do not meet the standard would create undue hardship, considering health, safety, and cost.

An example of a BFOR would be a standard of visual acuity for pilots.

Disability – the CHRA defines "disability" as "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug." Since the CHRA was created, domestic and international human rights law has evolved to interpret "disability" broadly to be inclusive of disability in its various forms. Disability results from the interaction between an individual living with any type of physical, psychosocial, intellectual, cognitive, learning, communication, sensory, medical, or other functional difference – whether apparent or non-apparent, and whether chronic or fluctuating – and an environment that is inaccessible (i.e., that has barriers).

Discrimination – any action, behaviour, decision or omission that results in the unfair or negative treatment of a person or group related to one, or any combination of prohibited grounds, outlined in the CHRA. Discrimination may be intentional or unintentional. Even rules, practices and procedures that appear to be neutral can be discriminatory if they have the effect of disadvantaging certain groups of people.

Duty to accommodate – the legal obligation to adjust the working conditions for an individual (or group) to ensure that those individuals who are otherwise fit to work are not unfairly excluded, and to do so in a timely manner. The duty to accommodate is engaged when working conditions, such as rules, standards, or aspects of the physical environment have a negative impact on a worker based on a prohibited ground of discrimination and the worker requires accommodation to do their work. The employer must arrange the worker's duties or workplace to enable the worker to do his or her work if it can do so without undue hardship.

Duty to inquire – when an employer is aware, or ought to be aware, that there may be something affecting a worker's job performance, the employer has a legal obligation (duty) to initiate a discussion (inquire) about the worker's possible need for accommodation. The duty to inquire most often arises in situations involving disability, particularly mental health disabilities or substance use disorders, but could arise based on any ground.

Inclusive workplace – is one in which all workers are treated with dignity and have the opportunity to contribute and participate in the workplace in a barrier free environment to the full extent of their abilities, where the skills, capabilities and potential contributions of each individual is respected.

Intersectionality – a concept coined by Kimberlé Crenshaw[5] that recognizes that different kinds of discrimination reinforce and influence each other. The different social categories a person belongs to, such as their religion, race, class, gender, physical or mental ability, or sexual orientation, can shape the nature of the discrimination they face in their lives. The combined effects of multiple grounds of discrimination can have a greater impact than discrimination based on a single ground.

Undue Hardship – occurs when required accommodation measures would be prohibitively expensive, or create undue risks to health or safety. This is where the duty to accommodate ends. There is no precise legal definition of undue hardship or standard formula for determining it. Each situation is unique and must be assessed individually. Some degree of hardship is reasonable; however, an employer will have reached undue hardship when reasonable measures of accommodation have been exhausted and only unreasonable or impracticable options remain. A claim of undue hardship must be supported with facts and a detailed analysis of options.

Worker – includes all full-time, part-time, casual, contract, permanent and temporary employees, including service employees in military and other public safety roles, as well as suppliers, trainees/cadets, student interns, volunteers, job applicants and candidates, and those on approved leave.

[5] Crenshaw, Kimberlé. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," online at: https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf.

ANNEX B: Helpful resources

International Law

- United Nations Convention on the Rights of Persons with Disabilities, online: https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf
- United Nations Declaration on the Rights of Indigenous People, online: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Federal Legislation

- Canadian Human Rights Act, online: https://laws-lois.justice.gc.ca/eng/acts/h-6/
- Accessible Canada Act, online: https://laws-lois.justice.gc.ca/eng/acts/A-0.6/
- Employment Equity Act, online: https://laws-lois.justice.gc.ca/eng/acts/e-5.401/
- Pay Equity Act, online: https://laws-lois.justice.gc.ca/eng/acts/P-4.2/page-1.html
- Canada Labour Code, online: https://laws-lois.justice.gc.ca/eng/ACTS/L-2/index.html

Federal Government Directives

- Treasury Board Secretariat's Directive on the Duty to Accommodate, online: https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32634§ion=html