

# UNDERSTANDING THE DUTY TO ACCOMMODATE

This guide provides a general overview of the legal duty to accommodate.

## What does “accommodation” mean?

The Yukon *Human Rights Act* says that all people have the right to be included and to be treated fairly regardless of their disability, sex, race, religion or any other trait protected by the law.

With that in mind, accommodation means making changes to rules, practices, workplace cultures and physical environments to remove barriers that may prevent people from enjoying equality of opportunity and access to services and employment.

## What is the duty to accommodate?

The duty to accommodate is an important component of human rights law that applies to many types of relationships and services. It requires employers, landlords, service providers, businesses, unions and organizations to meet certain needs of their employees, tenants, clients and members.

## What are some examples of accommodation?

Accommodation can be achieved by many different means, depending on a person’s individual needs.

Examples of accommodation in the **workplace** include:

- Assigning an employee to a different job, taking away or substituting duties, or sharing duties between employees.
- Making changes to equipment and/or to the physical work space.
- Offering employees flexible work schedules, allowing them to return to work gradually and/or giving them the opportunity to work part-time.
- Helping to meet the needs of an employee with a disability by giving them special equipment or aids such as an interpreter or rearranging the work space to allow for wheelchair access.

- Adjusting workplace policies that affect people's religious beliefs such as rules about uniforms or protective headgear.

Examples of accommodation in **services** include:

- Allowing people with disabilities to bring their service animals into restaurants, stores, hotels and other buildings.
- Making sure entrances and public washrooms are wheelchair accessible.
- Allowing a student with a learning disability to bring a note taker into class and/or to tape record lectures.

Examples of accommodation in **housing and lodging** include:

- Installing a ramp and widening a doorway to accommodate a tenant or guest in a wheelchair.
- Providing signage in Braille to assist tenants and guests with visual impairments.
- Installing a flashing fire alarm and providing access to TTY telephone service for guests who are hearing impaired.

### **What are the benefits of accommodation?**

Accommodation is good for business and benefits the whole community because it:

- Provides equal opportunity and access to employment for people who might otherwise face barriers. It also increases the ability to hire qualified employees and reduces staff shortages.
- Leads to better working relationships and increased productivity and worker morale. It may also prevent injury or re-injury.
- Provides a workplace or business that is more accessible to customers and the public. For example, automatic doors provide easier access for people in wheelchairs, the elderly and parents with strollers.

Accommodation gives everyone the opportunity to participate and contribute at work and in society.

## What is Undue Hardship?

In most cases accommodation is simple and affordable. However, there may be situations where an employer, service provider, organization or landlord can legally argue that a particular accommodation would cause them “undue hardship”.

Whether or not a case can be made for undue hardship depends on the specific circumstances. The following factors will be considered:

- **Safety** – the extent to which the accommodation would pose a threat to the safety of the individual or others.
- **Disruption of services** – the extent to which services to the public would be affected.
- **Contractual obligations** – the extent to which seniority rights or job opportunities of other employees would be impacted.
- **Financial cost** – the extent to which demonstrated costs would impact on the financial viability of the business or organization. Larger organizations are expected to be more flexible than smaller organizations.
- **Business efficiency** – the extent to which the accommodation would impact on the way the business or organization operates and functions. Larger organizations may have more flexibility to rearrange jobs, change work schedules or handle other disruptions to the usual way of working.

## When can an employer say that a requirement or qualification is reasonable and is not discriminatory?

There are circumstances when an employer can legally argue that a certain requirement or qualification is essential to the job. This is called a “*bona fide occupational requirement*” or a “*reasonable requirement or qualification*”.

One example of a reasonable qualification is requiring a school bus driver to pass a vision test and to hold an appropriate driver’s license.

Similarly, a women's fitness club's policy of hiring only female locker room attendants is a legitimate requirement in order to protect the privacy of female clients.

To say that a requirement is necessary, employers must prove that:

- The policy or standard is clearly connected to the performance of the job.
- The employer honestly believed that the standard is necessary to ensure the safety and efficiency of the workplace.
- There is no other way to do the job and accommodate the employee without causing undue hardship.

(Adapted from materials from the Human Rights Commissions of Alberta, Manitoba, Ontario and NWT.)

**To learn more about accommodation, please refer to our other information sheets:**

#2: Accommodation in the Workplace

#3: How to Write an Accommodation Policy

### **Contact Yukon Human Rights Commission**

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1-800-661-0535

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