



**Northwest Territories  
Human Rights Commission**

# **Duty to Accommodate: Summary for Employers**

This publication provides a summary of the information in the Commission's  
**"Duty to Accommodate: A Guide for Employers"**.

Visit [www.nwthumanrights.ca](http://www.nwthumanrights.ca) or contact the Commission  
for a full copy of the guidelines.

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## **What is accommodation?**

Accommodation means making changes to certain rules, standards, policies, workplace cultures and physical environments to allow all employees to participate equally in the workplace. The duty to accommodate is based on the principle that we must treat people differently – to accommodate unique needs – in order to achieve equality.

A pregnant employee could ask for an accommodation for medical reasons. The employee could ask for changing the work schedule or reassigning duties to accommodate her condition. Another example is an employee who, because of their religious beliefs, asks to be able to pray at set times during the workday.

Accommodation may cause inconvenience, disruption and expense. However, the costs of accommodation are not always significant. They can be less than hiring and training a new employee.

The NWT *Human Rights Act* (the “*Act*”) prohibits discrimination on the grounds of:

- race, colour, ancestry, place of origin, ethnic origin, nationality;
- sex, sexual orientation, gender identity;
- family or marital status, family affiliation;
- social condition;
- religion, creed;
- political belief or association;
- pardoned criminal conviction;
- disability;
- age.

Employers have a legal duty to accommodate the needs of workers or job candidates who could be at a disadvantage without the protection of the *Act*.

Discrimination is against the law,  
even if an employer does not intend to discriminate.

An employer’s duty to accommodate employees or job candidates is far reaching. It involves both the process used to consider a particular need, as well as any adjustments that need to be made. It can begin when a job is first advertised and finish when the worker requiring accommodation leaves the job.

Accommodation is not a nicety or a courtesy  
— it is required by law.

## ***Who shares this responsibility?***

The duty to accommodate applies to all employers in the Northwest Territories.

**Employees** can ask for an accommodation to overcome a disadvantage caused by a rule or a practice. For example, an employee could ask for a different office chair, computer equipment or software to accommodate his or her disability.

**Employers** must respond to a request for accommodation. Employers must consider all options for accommodation and provide the accommodation that most respects the dignity of the employee without imposing an undue hardship on the employer.

**Employees** are expected to be reasonable in their requests and in considering proposals that address their needs effectively. A human rights complaint may not stand up if an employee has not cooperated.

**Unions** must take an active role in facilitating accommodation up to the point of undue hardship. Unions can become a party to discrimination if they block an employer's efforts to find an accommodation.

## ***When is accommodation required?***

Employers have a legal duty to take reasonable steps to accommodate an employee who requests accommodation when it is based on one of the prohibited grounds of discrimination listed on page 2.

## ***When is accommodation not required?***

Accommodation is not required when there is a bona fide occupational requirement.

## ***What is a bona fide occupational requirement?***

A bona fide occupational requirement is a job standard or rule without which the job could not be carried out, or serious workplace disruption would result. Discrimination is allowed when an employer can show that a job requires a discriminatory standard, policy or rule.

A police force could refuse to hire someone who is colour blind. It is a bona fide occupational requirement for police officers to be able to see colours clearly.

To defend a job requirement as a *bona fide occupational requirement (bfor)*, an employer should be able to answer "yes" to the following three questions:

- Is the job standard reasonably connected to the performance of the job?
- Was the job standard adopted in good faith with the honest belief that it is necessary?
- Would it create an undue hardship for the job standard to be changed or removed to accommodate the employee? The criteria for deciding if an accommodation creates undue hardships are discussed in more detail on page 4.

## ***What is undue hardship?***

Undue hardship occurs when an accommodation creates unmanageable workplace or organizational issues for an employer. Examples might be high financial costs or serious disruption to business. Determining undue hardship depends on the individual circumstances. For example, large corporations with many resources have a greater capacity to absorb the costs of accommodation than a small family-run business.

Employers can consider these factors to decide if an accommodation would result in undue hardship:

- financial costs;
- size and resources of the employer;
- interchangeability of work force;
- disruption of operations;
- morale problems of other employees;
- substantial interference with the rights of other individuals or groups;
- health and safety concerns.

Regular overtime or leave costs and the costs of responding to a grievance or a minor disruption to a collective agreement are not considered undue hardship.

## ***What can I ask about accommodation?***

Employers can ask the worker for information about the following:

- prognosis for full or partial recovery from a disability or illness;
- employee's fitness to return to work;
- employee's fitness to perform specific parts of their job;
- likely length of time for any physical or mental restrictions or limitations.

Employers are not automatically entitled to a diagnosis of an employee's illness or disability. They are also not necessarily entitled to information about an employee's specific medical treatment.

## ***Planning for Workplace Accommodation***

A workplace accommodation policy can help you and your staff know your rights and responsibilities in the accommodation process. For information about developing a workplace accommodation policy, see the Commission's "Duty to Accommodate: A Guide for Employers."

**For resources or more information about the duty to accommodate contact the NWT Human Rights Commission.**

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