

APPENDIX A

ACCOMMODATION: CAUTIONARY TIPS

- ✓ The duty to accommodate is owed to both current employees and job applicants.
- ✓ There are no hierarchies of different forms of accommodation. Therefore, family, religious, disability and other forms of accommodation should each be assessed on a case-by-case basis.
- ✓ Initial accommodation analysis should focus on the employee's current job.
Accommodation is not about avoiding barriers (by transferring an employee to another job) it's about dealing with barriers!
- ✓ Accommodation obligations do not give additional rights to the employer with respect to employee information and employee privacy.
- ✓ Accommodation must be achieved in a way that most respects the dignity of the worker who requires accommodation. Dignity is best respected when the worker participates in the accommodation process and its outcomes.
- ✓ Accommodation of an individual may not be “obvious”, but the employee, union and employer have to be open, diligent and creative to find possible accommodations.
- ✓ Do not make assumptions about the ground for accommodation (e.g. religion, family, disability, etc.). In particular, assumptions that a non-visible disability does not require meaningful accommodation can lead to inadequate accommodation.
- ✓ There is no requirement to provide a diagnosis of a disability.
- ✓ Medical practitioners have expertise in diagnosis and in treatment. They do not automatically have expertise on workplace assessments or assessments of functional limitations.
- ✓ In cases of mental health disabilities or substance use disorders, where an issue in the workplace arises but the worker denies they have a disability, there is a higher onus on the employer and the union. Employers and unions are expected to take some steps to inquire about the possibility of a mental health disability to meet their accommodation obligations. Claiming that one “did not know about the disability” in these types of situations does not relieve employers or unions of their responsibilities. However, once the issue has been raised, workers in these circumstances do have a responsibility to seek or accept help to assist the accommodation process.

- ✓ Religious accommodation must allow individuals who have sincere religious beliefs to have their religious needs accommodated. Universally recognized lists of “accepted” religions don’t exist. The entitlement to religious observance is not limited to the dominant group (e.g. Christmas and Good Friday). A case-by-case assessment is important to ensure that religious beliefs and values are accommodated to the point of undue hardship. Religious accommodation may include prayer breaks, accommodation of religious dress, or leave entitlement for religious observance.
- ✓ Unions can be held liable for discriminatory collective agreement provisions and for blocking employer accommodation attempts.