

Disabled Does Not Mean Unable! Accommodation in the Workplace

Many education workers experience temporary or permanent disabilities that impact their ability to do their job. At times the employer may make it difficult for the worker to continue to work resulting in long periods of absence, loss of sick leave, and financial hardship for the individual. It does not and should not be this way!

Individuals with disabilities are entitled to be included in the workforce. The Supreme Court of Canada and the Ontario Human Rights Code strongly support the right of inclusion. By law, school boards and ETFO as a trade union are required to be active participants in the process of accommodating education workers who are disabled.

What is a Disability?

It is important to remember that disabilities do not fit into a single category. While we all have an idea as to what constitutes a disability, these preconceived ideas are often quite limited. For example, whereas most people would identify that an individual who uses a wheelchair as a result of paralysis has a disability, few would recognize that a French teacher who develops polyps on her vocal cords is also disabled. It is important to remember that not all disabilities are visible.

The Ontario Human Rights Code defines disability as:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*;
(Ontario Human Rights Code, R.S.O. 1990).

ETFO understands that disability is a broad term and that the forms cited in the legislation are meant as examples only and should not be seen as an exhaustive list. Even minor illnesses that have an impact on a member's ability to do a job would fall under the definition of a disability.

How Should Employers Respond?

Employers have an obligation under that Act to accommodate workers who have a disability. This accommodation must be provided in a manner that respects the dignity of the person. Thus, the accommodation must respect the individual's privacy, confidentiality, comfort, and self-esteem. Because accommodation is based upon a specific set of circumstances there are no prescribed formulas for accommodation; every case is unique and should be pursued based upon the individual medical and employment realities.

The employer has an obligation to explore a variety of options until a suitable accommodation is achieved. Supervision schedules may be changed to accommodate a member who is unable to be in direct sunlight for extended periods of time; classrooms and classroom furniture may be modified to accommodate a physical disability; assistance may be provided to support a worker who has difficulty concentrating because of a disability. In certain cases, the employer explores 'bundling' of duties to create new or different positions.

This obligation to accommodate is a significant one up to the point of creating undue hardship for the employer. The Code sets out three considerations regarding undue hardship: cost, outside sources of funding, and health and safety requirements. It is not uncommon for school administrators to resist an accommodation because it may make 'staffing the school more difficult' for them. This is NOT undue hardship. School boards often claim that they are unable to undertake an accommodation because it creates undue hardship, yet they cannot identify why this is the case. ETFO understands that the standard for undue hardship is an extremely high one and holds boards accountable in this regard.

How Does a Worker Seek an Accommodation?

The individual with the disability must advise the employer that they are suffering from a disability that requires accommodation. The employer is NOT entitled to a diagnosis. Because of the potential difficulties regarding providing medical information to the employer it is wise for the member to contact the local office or staff in Professional Relations Services (PRS) at the provincial office to assist in this step.

The employer must be informed of what specifically should be put in place in order to allow the individual seeking accommodation to be successful. Often this includes informing the employer of specific limitations or restrictions that impact the individual's ability to do the job. Again, it is advisable for the individual to work with the local office or the staff in PRS at the provincial office to ensure that this information is conveyed appropriately and expeditiously.

What is ETFO Required to do?

While the onus is on the employer to provide an appropriate accommodation for the employee, as a trade union, ETFO has a legal requirement to act as a partner throughout the accommodation process. ETFO will work with the employer and the employee to provide for an accommodation that is least disruptive to the employee, other workers, and the work environment. In situations where this is not possible, ETFO's legal requirement to facilitate appropriate workplace accommodations exists regardless of specific collective agreement provisions. For example, if an accommodation is required for an individual that involves a specific position (i.e., special education) the requirement for the accommodation could supercede specific seniority provisions existing in the collective agreement thereby requiring the bumping of someone who may already be in that position.

In situations where the employer fails to pursue an accommodation or does not completely fulfill the legal obligations, ETFO would examine the options under the collective agreement for challenging this behaviour.

Your Needs are Important

It is common for workers who are experiencing difficulties in undertaking their jobs because of a disability to remain silent, as they often are fearful of 'rocking the boat'. Education workers, who are so skilled at pursuing the necessary modifications to programs that their students may need, are less skilled at pursuing the workplace modifications that they themselves may require. This failure to seek help doesn't make the problem go away and in many cases exacerbates the medical disability to the point that it becomes debilitating.

Requesting a workplace accommodation is not requesting special treatment. Rather it is your medical caregiver(s), your employer, your union, and you working together to provide you with the best possible work environment to allow you to do your job to the best of your ability.

For further information contact your local ETFO president or Professional Relations Services staff 416-962-3836 or 1-888-838-3836

JDQ:ST:NR:KH