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“No wonder your arm aches. Shackles should be placed at eye level. Man, it’s an ergonomic nightmare down here.”

Duty To Accommodate Workshop for Managers

Introductions And Expectations

Learning Objectives

- Understand, in broad terms, the legal obligation carried by employers with regard to accommodating employees
- Recognize the wide range of situations where the duty to accommodate applies
- Gain an understanding of the benefits to the employer and the employee of a good workplace accommodation program

Learning Objectives

- Understand the principles that underlie the employer's obligations and guide you in the accommodation process.
- Prepare you to provide proactive and informed support to the accommodation of workers

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“Carp tunnel syndrome.”

Duty to Accommodate

Accommodation

Definition:

- **Accommodations**: adapting working conditions, work assignments or workstations to address the needs of an individual where those needs are due to the characteristics protected by *The Human Rights Code (Manitoba)*.
- **Reasonable Accommodation**: often involves a simple change to how something is typically done, which takes in to account the need a person or group has that is based on a protected characteristic.

ORG.1513.PI.002 –

Reasonable Accommodation

Duty to Accommodate

The Objective of Duty to Accommodate:

- Achieve greater equality of opportunity and participation for the employee
- Meet legal and business requirements
- Improve employee and work place efficiency, productivity

Job or Workplace Accommodation

Adaptation of job duties, including adjustment or change to machinery or equipment, job content, work organization, or hours of work to facilitate the employment of individuals with either temporary or permanent limitations on their abilities

Types of Accommodations

1. Environmental:

Improved lighting or ventilation

2. Physical:

Changes to the workstation or workplace

Types of Accommodations

3. Acquisition of, or modification to, equipment or procedures

- Larger monitors
- Magnifier for reading pill boxes

Types of Accommodations

4. Job Restructuring/Task Modification

- Task modification or elimination
- Task re-assignment or re-combination

Types of Accommodations

5. Re-arrangement of hours, work or location

- Flextime/compressed work weeks
- Reduced EFTs
- Accommodation to specific hours of day

Duty to Accommodate

Benefits to the **Employer**

- Provides the employer with productive and meaningful work by staff
- Improves overall staff morale
- Facilitates employee wellness
- Minimizes disruption to the work group

Duty to Accommodate Benefits to the **Employer**

Reduces WCB premiums, sick leave usage and replacement costs

Decreases financial impact of prolonged absences from work, particularly hidden costs

Business Case for Accommodation

Disc Injury at work – RN with BN:

- Injured at work in 1991
- No lifting greater than 10 lbs – not permanent
- “Can’t Accommodate” so WCB retrained
- Full Benefits during 4 years University
- New job obtained 6 years after injury
- New salary lower so WCB “top up” provided
- August 2005 = \$353,000 and still accumulating

Business Case for Accommodation

Disc Injury at Work – RN

- Injured at work – April 2001
- Permanent accommodation required, with multiple restrictions initially, including no lifting over 10 lbs.
- Accommodated on different unit with graduated return to work plan and chair - September 2001
- Alternative permanent job meeting restrictions was identified – trial period with modified duties
- Successful trial = return to payroll in October 2001
- As of August 2005 – no recurrence - \$13,400

Business Case for Accommodation

Insurance Costs

WCB Premiums (2008 figures):

- Healthcare Average = \$1.15 per \$100 payroll (\$1.92-\$5.76)
Premiums based on actual claims record annually:
- Number and frequency of claims
- Severity of claims (time loss)
- Reductions in claims & severity = reduced premiums
- Good disability management & length of claim=reduced premiums
- Annual increases of up to 25% possible if not addressed
- Costs come directly out of facility operating budgets – affect all programs and services

Duty to Accommodate Benefits to the **Employee**

Facilitates employee wellness

Speeds up the recovery process

Diminishes impact on the family

Diminishes financial impact

Duty to Accommodate

The Goal of Duty to Accommodate is to maintain and/or improve:

- a) Opportunities for employees with limitations and/or disabilities
- b) Patient, client or resident care & services
- c) Staff morale and,
- d) Operational efficiency

Duty to Accommodate

Each situation must be assessed on the basis of its own particular facts and circumstances

Accommodation is fact specific and depends on the circumstances of the individual employer and the employee at that point in time

Duty to Accommodate

Accommodation always requires a balancing act between:

Right of employee with a limitation or disability to equal treatment

&

Right of employer to operate a productive workplace safe for employees and patients

Duty to Accommodate

An Employer is required to accommodate the needs of the employee to the point of **undue hardship**

There is no simple definition of undue hardship

Undue Hardship

Case law has established that it is more than minimal hardship and based on actual evidence and not assumptions. Inconvenience or some financial cost will not normally qualify as undue hardship.

Undue Hardship

The following factors contribute to undue hardship:

- health and safety risks
- legitimate operational requirements
- interchangeability of employees and facilities
- disruption to collective agreements
- impact on employees and service users
- impact on other protected rights
- financial costs of accommodation

Undue Hardship

Financial costs of an accommodation will also be considered in the context of the nature, size and scope of a business or organization.

Understanding Duty to Accommodate

The goal should be to

Strive for an equivalent position

Understanding Duty To Accommodate

Employer's obligation is to make a genuine effort to accommodate, consistent with the type of work for which the employee was hired

Understanding Duty To Accommodate

The Employer is not obligated to create a new position

The employer does have an obligation to explore “task modification” of duties for meaningful work

Understanding Duty To Accommodate

Important to distinguish between short and long term accommodation

In a long term accommodation, the employee must be able to perform the core functions or essential job duties of a position

Understanding Duty to Accommodate

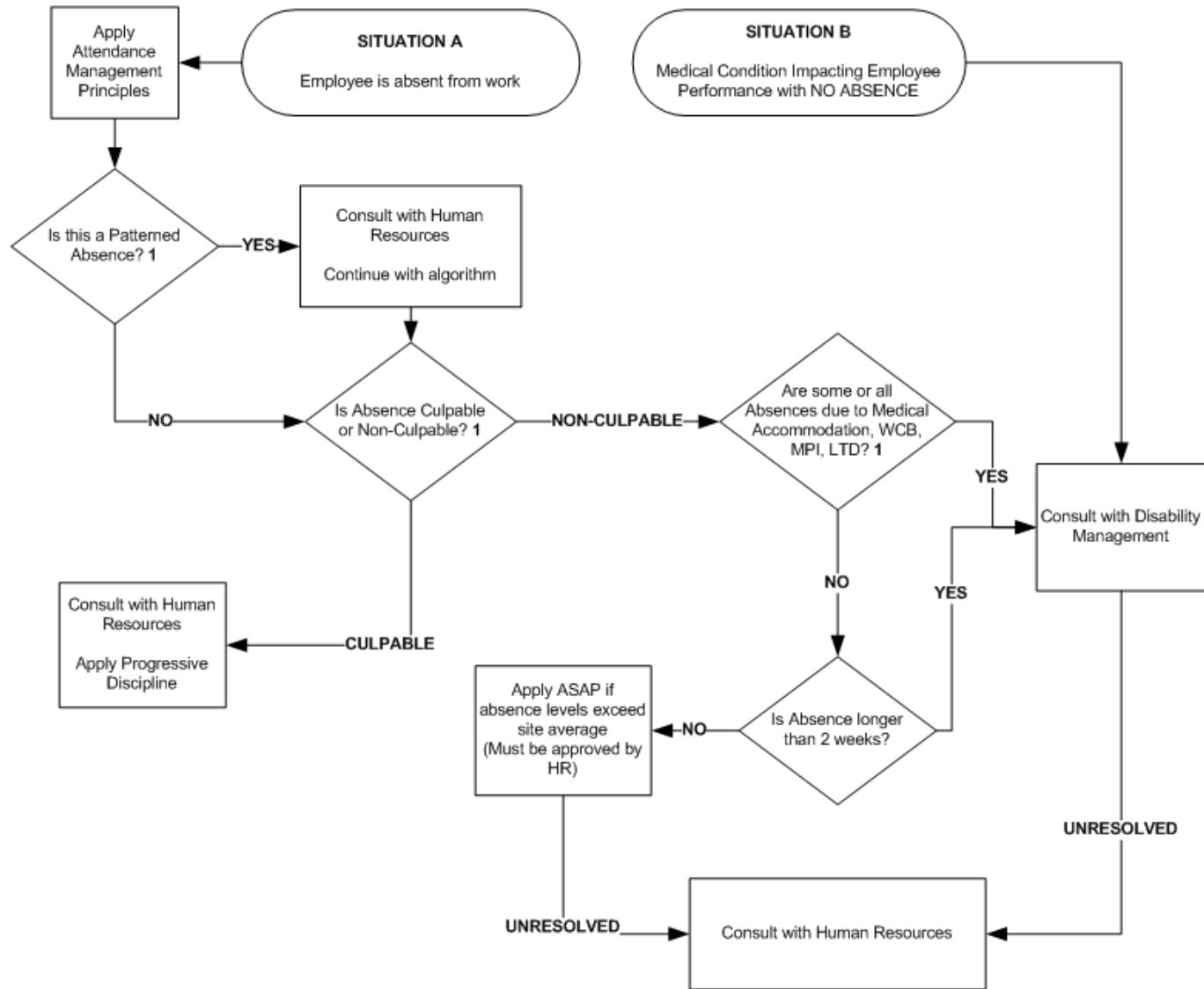
Accommodation may arise in the context of attendance management activities, where absenteeism has been an issue

Approach to Absenteeism

Absenteeism may, or may not, be an indicator of a need for accommodation

- If caused by illness or injury accommodation disability management may be required
- Other circumstances involve the Attendance Support and Assistance Program
- The nature/cause of absenteeism may shift over time, or during investigation

Human Resources & Disability Management Contact Algorithm



Process of Accommodation

Process in considering an employee request for accommodation is **critical**.

This approach best supports active involvement, participation, and accountability by all parties

Process of Accommodation

DOCUMENT !!!!!!!

DOCUMENT !!!!!!!

DOCUMENT !!!!!!!

Process of Accommodation

Should the Human Rights Commission or Arbitrator become involved, they will examine the **process** - and documentation of that process - of responding to the request for accommodation and will evaluate whether or not the measures taken were sufficient.

Process of Accommodation

Responsibility for minimizing the impact of injury, illness or other basis for accommodation is shared between:

- the Employer,
- the Employee, and,
- the Unions.

Process of Accommodation

- 1) Informing the employer of the need requiring accommodation
- 2) Clarify what the need is
- 3) Explore possible accommodation solutions

Sequence of Accommodation

- Same job/ Same employer
- Different job/Same employer
- Same job/Different employer
- Different Job/Different employer

The Employer Shall Always Ensure That:

All requests for accommodation are recorded

Detailed notes are kept of all discussions around the Accommodation Review

The request and all documentation is countersigned by the employee

The Employer Shall Always Ensure That:

The provisions of the Personal Health Information Act (PHIA) and The Freedom of Information and Protection of Privacy Act (FIPPA) are followed at all times

Common Accommodations In Healthcare

Examples of Accommodation

Labour Relations	Disability Mgt
<ul style="list-style-type: none">• Religious Beliefs• Family Status	<ul style="list-style-type: none">• Medical Needs• Persons with Disabilities• Pregnancy• Addictions

Accommodations

The facts of each situation, including the specific needs of the individual requiring accommodation, must be considered on a case-by-case basis.

Accommodations

The accommodation process applies regardless of reason for injury or illness - work related or otherwise.

Anything that effects safety in the workplace no matter the cause.

In Summary

“Duty to Accommodate” applies to all protected characteristics within the Human Rights Code

Within health care, the most frequent basis for accommodation relates to “physical or mental disability or related characteristics or circumstances”

So far, – reviewed the “what” and “why” of our duty to accommodate

Next –look at the “how” of accommodation - will focus on employees experiencing illness or disability

Real Cost Of Injury / Illness

Compensation

Medical Rehabilitation

**\$1.00
Insured
Costs**

Psychosocial Impact

- Self worth
- Identity
- Social networks

**Family
Disruption
& Breakdown**

Back filling / Replacement

Recruitment / Orientation

Management Time

Workplace Stress

**Up to \$50
of Hidden Costs**

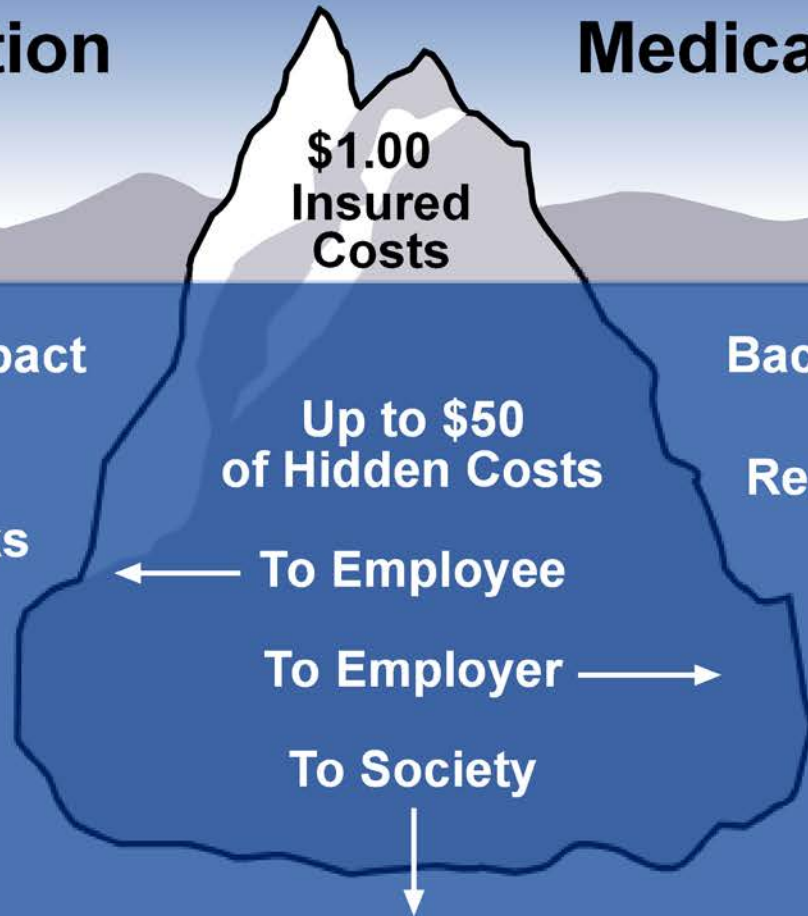
To Employee

To Employer

To Society

Lost Productivity

Increased demand on Social Safety Net



Key Players

Injured/Ill Employee
Health Care Providers
Manager/Supervisor
Union Representatives
Disability Case Coordinator
Insurer Case Manager
Human Resources
External Rehabilitation Consultants

Accommodation of Medical Needs

Outline expectations at the onset:

- clarify what the individual expects
- be clear about what they can expect from you as their employer

Accommodation of Medical Needs

Ensure there is understanding that the employee will be expected to provide sufficient documentation from their care provider outlining their functional abilities.

Accommodation of Medical Needs

Provide them with a Functional Capabilities form to assist their care provider in outlining their requirements and assist in identifying suitable duties for a safe re-entry.

Accommodation of Medical Needs

The employee is required to respond in an agreed upon reasonable time frame to provide updates of their status and medical documentation, that is sufficient to the employer, regarding their ability to safely return to work

Accommodation of Medical Needs

Medical accommodation must be supported by sufficient documentation to ensure the safety needs of employees, clients, and co-workers can be met.

Employer has the right to request and receive information necessary to assess the accommodation required from the health care provider.

Accommodation of Medical Needs

Employer does not have the right to medical history or any information other than that needed to make assessment of needs requiring accommodation.

Accommodation of Medical Needs

Governing principle:

➤ REASONABLE

➤ NEED TO KNOW

- Abilities
- Limitations
- How long accommodation required
 - Temporary
 - Long Term

Accommodation of Medical Needs

Ensure tasks match the health care provider's outlined physical capability;

a direction of “as able” or “as tolerated” can put your employee and clientele at risk.

“Light duties” is unacceptable

Accommodation of Medical Needs

Work towards accommodation within the individual's current work situation first.

Ideally, accommodation should be connected to the job tasks normally required of the worker.

Unrelated job tasks can be considered if no suitable duties are available within the scope of the worker's normal job duties.

Accommodation of Medical Needs

Ensure privacy and confidentiality at all times:

Information is to be gathered and shared on a “need-to-know basis” and can only be used or disclosed as outlined in PHIA and FIPPA.

Accommodation of Medical Needs

Ensure patient/service delivery needs are still being met – accommodation of a need does not mean that the client/patient safety is compromised.

Typical Situations

Case Studies

Typical Situations – Case Studies

1. Is there a Duty to Accommodate in this situation? Why or why not?
2. What is your course of action as a manager?
3. What questions need to be answered?
4. How do we get the information?
5. Who needs to be involved and how?

In Summary...Duty to Accommodate

- ✓ Is a legal requirement
- ✓ Makes good business sense
- ✓ Involves all relevant players
- ✓ Follows a process, with documentation
- ✓ Is aided by flexibility and creativity

It's the right thing to do!

QUESTIONS

