

The Duty to Accommodate

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Accommodation Principles

- **Respect for dignity**
- **Treat people as individuals**
- **Right to integration and full participation**



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Achieving Integration

- **Inclusive design**
- **Barrier removal**
- **Accommodate remaining needs**



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***Bona Fide* Requirements**

(s. 11)

Standard, rule, requirement or factor:

- **Purpose rationally connected to function?**
- **Adopted in good faith?**
- **Reasonably necessary in the sense that it is impossible to accommodate without undue hardship?**

Examples

- A woman brings her infant to the hearing so she can breastfeed
- A person requests deferral of a hearing date because it falls on a major religious holiday
- A person with a visual disability asks for all written materials in large print
- A person going through a gender transition asks that decisions refer to her by her chosen name (as opposed to the name on her official documents)

Appropriate Accommodation

- **Separate from undue hardship analysis**
- **Continuum**
- **Promotes three principles**
- **Equal opportunity to attain same level of performance or enjoy same level of benefits and privileges**
- **Proposed or adopted for purpose of achieving equal opportunity**



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Accommodation Seeker

- **Inform the accommodation provider of their needs**
- **Co-operate in obtaining necessary information**
- **Participate in discussions about solutions**
- **Work with the other parties on an ongoing basis to manage the process**



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Accommodation Providers

- **Accept accommodation requests in good faith**
- **Request only information required to make accommodation**
- **Obtain expert advice where necessary**
- **Bear the cost of any required medical information or documentation**



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Accommodation Providers

- **Maintain confidentiality of persons seeking accommodation**
- **Take an active role in ensuring possible solutions are examined**
- **Deal with accommodation requests in a timely way**



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Limits of Accommodation

- Accommodation need not be provided if it causes “undue hardship”
- Standard for undue hardship is a high one
- Onus of proof is on the accommodation provider



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Limits of Accommodation

FACTORS CONSIDERED

- **Costs**
- **Outside sources of funding**
- **Health and Safety**

Limits of Accommodation

FACTORS NOT CONSIDERED

- **Business inconvenience**
- **Resentment or hostility from co-workers**
- **Customer “preferences”**



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Costs

- **Quantifiable**
- **Related to the accommodation**
- **Look at whole organization, not just branch/unit**
- **Altering the essential nature or affecting viability of business**

Health and Safety

- Requirements *bona fide* and reasonable
- Look at alternate means of accommodation to avoid risk
- Risk assessed after precautions have been taken to reduce it
- Assess nature/severity/probability/scope of risk
- Does risk remaining after accommodation outweigh benefits of enhancing equality?



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Elements of accommodation policy and procedure

- **Statement of commitment**
- **Objectives of policy and procedure**
- **Application – who is covered**
- **How to request accommodation**
- **Privacy and confidentiality**



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Elements of accommodation policy and procedure

- Undue hardship
- Efforts to do barrier removal & inclusive design
- Examples of appropriate accommodations
- Training



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