

A black and white photograph of a woman in a classroom, wearing a white collared shirt and a dark vest. She is pointing her right hand towards a chalkboard in the background.

a disability  
doesn't

**ACCOMMODATION**

A black and white photograph of a person in a wheelchair in a classroom. The person is wearing a light-colored jacket and is looking towards the camera. A chalkboard is visible in the background.

mean being  
unable

**IN THE WORKPLACE**

A black and white photograph of a teacher writing on a chalkboard. The teacher is wearing a dark jacket and is looking down at the board. A student is visible in the foreground, looking towards the board. The chalkboard has some writing on it, including the word "QUIZ".

to do  
the job --

**IS YOUR RIGHT**



## **YOUR RIGHTS UNDER THE HUMAN RIGHTS CODE**



People with disabilities are entitled to be included in the workforce. They are not asking for preferential treatment, but

they expect to be treated the same as their co-workers, with dignity, respect and consideration. The Supreme Court of Canada and the Ontario Human Rights Code agree. By law, employers and unions are required to facilitate the inclusion of disabled employees in the workplace.

As a guide for OECTA members, this booklet explains that part of the Human Rights Code dealing with disabilities and the rights of teachers with disabilities to be accommodated in the workplace.

## **What is Disability**

Disabilities or handicaps do not fit into one category and not all disabilities are physical. Section 10 (1) of the ***Ontario Human Rights Code*** defines “handicap” as follows:

“because of handicap” means for the reason that the person has or has had, or is believed to have or have had,

- (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, including diabetes mellitus, epilepsy, 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 on a wheelchair or other remedial appliance or device,
- (b) a condition of mental retardation or impairment,
- (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 of which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

*(Reference: [www.ohrc.on.ca:80/english/publications/disability-policy\\_1.shtml](http://www.ohrc.on.ca:80/english/publications/disability-policy_1.shtml))*

(These types of conditions are merely illustrative and not exhaustive.)

Disability should be interpreted in broad terms, including both present and past conditions as well as a subjective component, namely, one based on perception of disability. Even minor illnesses or infirmities can be 'disabilities' if a person can show that he/she was treated unfairly because of a perception of a disability.

### **The Duty to Accommodate**

The duty to accommodate persons with disabilities means accommodation must be provided in a manner that must respect the dignity of the person, if to do so does not create undue hardship for the employer.

Human dignity encompasses individual self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. It is harmed when individuals are marginalized, stigmatized, ignored or devalued. Privacy, confidentiality, comfort, autonomy, individuality and self-esteem are important factors as well as to whether the accommodation maximizes integration and promotes full participation in society.

The issue of accommodating people with disabilities is individualization. There is no set formula for accommodating people with disabilities. Each person's needs are unique and must be considered afresh when an accommodation request is made. A solution may meet one person's requirements but

not another's, although it is also the case that many accommodations will benefit large numbers of persons with disabilities. *(Reference: [www.ohrc.on.ca:80/english/publications/disability-policy\\_3.shtml](http://www.ohrc.on.ca:80/english/publications/disability-policy_3.shtml))*

## **Undue Hardship**

The Code prescribes three considerations in assessing whether an accommodation would cause undue hardship:

- cost
- outside sources of funding, if any
- health and safety requirements, if any

The nature of the evidence required to prove undue hardship must be objective, direct, and, in the case of cost, quantifiable. The person responsible for accommodation must provide facts, figures, and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship. A mere statement, without supporting evidence, that the cost or risk is “too high” based on impressionistic views or stereotypes will not be sufficient.

*(Reference: [www.ohrc.on.ca:80/english/publications/disability-policy\\_4.shtml](http://www.ohrc.on.ca:80/english/publications/disability-policy_4.shtml))*

## **Duties and Responsibilities in the Accommodation**

*The person with a disability is required to:*

- advise the accommodation provider of the disability (although the accommodation provider does not generally have the right to know what the disability is);

- make her or his needs known to the best of his or her ability, preferably in writing, in order that the person responsible for accommodation may effect the requested accommodation;
- answer questions or provide information regarding relevant restrictions and limitations, including information from health care professionals, where appropriate, and as needed;
- participate in discussions regarding possible accommodation solutions;
- cooperate with any experts whose assistance is required to manage the accommodation process or when information is required that is unavailable to the person with a disability;
- meet agreed-upon performance and job standards once accommodation is provided;
- work with the accommodation provider on an ongoing basis to manage the accommodation process; and
- discuss his or her disability only with persons who need to know. This may include the supervisor, an Association representative or human rights staff.

*The employer is required to:*

- accept the employee's request for accommodation in good faith, unless there are legitimate reasons for acting otherwise;
- obtain expert opinion or advice where needed;
- take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated,

and canvass various forums for possible accommodation and alternative solutions, as part of the duty to accommodate;

- keep a record of the accommodation request and action taken;
- maintain confidentiality;
- limit requests for information to those reasonably related to the nature of the limitation or restriction so as to be able to respond to the accommodation request;
- grant accommodation requests in a timely manner, to the point of undue hardship, even when the request for accommodation does not use any specific formal language; and
- bear the cost of any required medical information or documentation. For example, doctor's notes and letters setting out accommodation needs, should be paid for by the employer.

*(Reference: [www.ohrc.on.ca:80/english/publications/disability-policy\\_3.shtml](http://www.ohrc.on.ca:80/english/publications/disability-policy_3.shtml))*

*OECTA is required to:*

- take an active role as partners in the accommodation process;
- share joint responsibility with the employer to facilitate accommodation;
- support accommodation measures irrespective of collective agreements unless to do so would create undue hardship;
- be prepared to support the member through the grievance process, where necessary;
- recognize the possible link of issues with the *Health & Safety Act* and the *Safe Schools Act*.

## HOW YOUR DISABILITY CAN BE ACCOMMODATED



With small adjustments to work schedules, and a good measure of understanding

and sensitivity from administrators, colleagues and students, disabilities can be accommodated. Here are a few examples of what you can request:

**Diabetes** - short breaks to self-medicate several times daily; refrigeration for insulin; use of syringe and sharps to test blood sugar levels; support system of people, including students, knowledgeable about diabetes in the event of an emergency

**Allergies** - scheduled absences for allergy injection appointments, understanding and public awareness among staff and students of the need to avoid certain foods, fragrances/perfumes, etc.

**Arthritis/Muscular Dystrophy** - wheelchair ramps and wide doorways, elevators, cart to carry heavy books, projection equipment, etc.

**Depression** - sick time for counselling and to cope with symptoms of depression; assistance with lesson planning

**Epilepsy** - availability of person(s), including students, knowledgeable in on-call procedures in the event of a seizure; assistance in the classroom



**Migraines** - may require adjustments to classroom lighting and noise levels; sick time; public awareness among staff and students of the disability; assistance with lesson planning

## **KEY POINTS ABOUT ACCOMMODATION:**

- If you are able to do a job or meet the requirements once your needs are met, there is a duty (by the employer) to accommodate those needs unless they are 'unduly' costly or would create real safety or health dangers.
- Your needs are based on your individual or personal needs.
- You do not have to tell your employer the details of your disability, but you must provide enough information to allow your employer to assist you. Provide a letter from a qualified professional, such as your family doctor, confirming that you have a disability and stating the assistance that you need.
- The employer can consider outside sources of funding to accommodate your needs.

## **GETTING HELP**

If you have a disability requiring accommodation at your school, speak with the Principal or Human Resources department.

OECTA can also help you.

To know more about your eligibility to be accommodated in the workplace under the Ontario Human Rights Code, contact:

OECTA, Contract Services

416-925-2493 or 1-800-268-7230



OECTA, 65 St. Clair Avenue East  
Toronto, Ontario M4T 2Y8  
416-925-2493 or 1-800-268-7230

**[www.oecta.on.ca](http://www.oecta.on.ca)**