

Employer's Duty to Accommodate Disabled, Including Chronically Ill, Employees

Knowledgeable and experienced employees are valuable assets to local governments. When an employee becomes chronically ill, including suffering from mental or psychological conditions on either a permanent or temporary basis, it can create tremendous challenges and hardship for both the employer and the employee. Extended absences and inability to perform certain job functions, including ones that are necessary to the smooth functioning of local government, can result in frustration for managers, even when caring about the well being of their employee.

Section 13 of the BC Human Rights Code, R.S.B.C. 1996, c. 210, states, amongst other prohibited grounds for discrimination, that a person must not refuse to employ or refuse to continue to employ a person or discriminate against a person regarding employment or any term or condition of employment because of physical or mental disability. Canadian human rights law interprets the term "disability" broadly, and includes many types of common chronic illnesses or health conditions.

Managers who have not previously faced the requirement to accommodate a disabled employee, including one who is chronically ill, may be surprised to learn that the duty for an employer to accommodate is great and goes beyond simply accepting that an employee is disabled. The law requires an employer to be proactive in creatively enabling such an employee to continue to work. As a first step, this may require an employer to, on its own volition, take steps to better inform itself about the nature of an employee's disability or chronic illness, and then based upon that knowledge make suitable adjustments to the employee's job requirements.

A question that often arises in the mind of a local government manager, faced with a disabled employee, is how far they must go to accommodate the employee. The short answer is that an employer must take steps to accommodate such a disabled employee up to the point of "undue hardship" to the employer. While the term "undue hardship" is not defined, it implies that an employer is required to suffer some degree of hardship in its efforts to accommodate an employee. This is a high standard and it is critical for an employer to understand that accommodation is its duty, meaning that if the matter escalates into legal proceedings, the law requires the employer, not the employee, to establish that it has accommodated an employee up to the point of undue hardship.

Once an employer has accommodated up to the point of undue hardship, there are other legal tests to determine whether discrimination on the basis of disability is lawful. Discussion of those tests is beyond the scope of this article. The bottom line is that undue hardship is a very high standard for an employer to prove. Accordingly, no employer should give short shrift to an employee's disability or chronic illness, because of a lack or understanding or appreciation for it. Employers should document accommodation efforts carefully. It is advisable that employers obtain appropriate legal advice before taking any steps in the relationship with the employee that may expose the employer to discrimination claims.

Beyond compliance with the law, there could be public relations consequences for a local government that fails to fully appreciate its duty to accommodate. A local government must not only be aware of its legal duties, but that failure to carry them out could be viewed by the public as harsh and heavy-handed.

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Editor's note: see cases discussed at <http://www.sms.bc.ca/labour/2002/november2002-2.html> and <http://www.sms.bc.ca/labour/2003/september2003-1.html>