



a workplace for all

**Bargaining Equality**

**D**

**Duty to  
Accommodate**

**We are all temporarily able-bodied.** As we grow older, the likelihood increases that we will develop some form of disability from hearing loss, poor eyesight and back problems to the more debilitating forms of disability such as asthma, heart disease and cancer. Persons with disabilities, and women with disabilities especially, are far more likely than the able-bodied to be unemployed and under-employed. Of the more than 1.9-million women with disabilities in Canada, three-quarters or 75 per cent are unemployed. For many women and men with disabilities the tragic result is often a life of poverty.

But it doesn't have to be that way. People with disabilities want to work – all they want is the opportunity to do so. Often, we have preconceived notions about what a person with a disability can and cannot do. It is not the disability itself but rather societal misperceptions, negative attitudes and discriminatory treatment of persons with disabilities that contribute to their economic marginalization.

Discrimination on the basis of disability is against the law. It is illegal for an employer or local union to discriminate against someone because she or he has some form of disability. What this means is that employers and unions have a legal obligation or duty to ensure that persons with disabilities are accommodated at work. This principle is known as the “duty to accommodate” and it should be part of the collective agreement.

Accommodating a worker with a disability calls for creative solutions that can be simple or complex. The accommodation adopted will depend on the nature of the disability in question. Consider including these accommodation solutions in your next round of bargaining:

- Installation of devices that help workers with back problems to do heavy lifting.
- Production of materials in Braille, on audio-cassette, or voice recognition computer software for workers with visual impairments.
- Availability of sign language interpreters for workers with hearing impairments.
- Redesign of workstations and ergonomic assessments for workers with mobility challenges and strain injuries.

You should know that the duty to accommodate applies to all grounds of discrimination covered under human rights legislation and the Canadian Charter of Rights and Freedoms. This means that the principles behind the duty to accommodate a person with a disability apply when a local union is demanding accommodation for members for other reasons. Here are a few examples you might want to include on your bargaining agenda:

- Members may need accommodation in order to practice their religion. Work shifts and holidays can be adjusted to accommodate their needs.
- Working mothers may need work hours adjusted in order to breastfeed.
- Working parents may require adjusted work hours for child care and elder care responsibilities.
- A worker with HIV/AIDS or diabetes might require the use of refrigerated storage facilities to house medications and adjusted work hours to take medications. (Important because to be effective, many medications have to be taken the same time every day.)
- Workers with diabetes might need work hours adjusted to accommodate snack breaks outside of the usual lunch break times.

Whatever the accommodation being sought, it is the responsibility of the employer, the local union and the member needing accommodation to work together to ensure an appropriate accommodation is implemented, monitored, and evaluated. A new accommodation should be sought if necessary. All of this should be clearly spelled out in the collective agreement. The agreement should also include the accommodation procedure along with the employer's obligation to modify the workplace, adapt equipment, obtain equipment, and restructure jobs.

Take aim at discrimination at work! Make your worksite a place where everyone has an equal opportunity to participate and succeed. Make sure your collective agreement has a strong duty to accommodate clause.

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**Resources:**

*Disability Rights in the Workplace: Understanding "Duty to Accommodate",* CUPE, booklet.

*Advancing the Equality Rights of Persons with Disabilities: CUPE Responds to CLC Survey on Disability Rights,* CUPE.

*Disability Provisions in Collective Agreements in Canada,* CLC publication, 2000.

## Duty to Accommodate

- Does your collective agreement prohibit discrimination on the basis of mental and physical disability regardless of when or where the disability occurred?
- Does the definition of disability include disabilities that are temporary, episodic or permanent? Does it include disabilities evident at birth or acquired later in life, as well as disabilities acquired at work and outside the work environment?
- Does your agreement contain a comprehensive procedure on the duty to accommodate that clearly lays out the responsibility of the employer, union and worker seeking accommodation?
- Does it state that workers with disabilities are entitled to perform available work in the bargaining unit and are to be accommodated in the workplace?
- Is there a procedure requiring the employer to modify the workplace and workstations, modify shifts, adapt equipment, restructure jobs, and provide retraining to accommodate persons with disabilities?
- Is training provided for members who are accommodated in new and reassigned positions?
- Does your agreement provide for continual monitoring and evaluation of the accommodation?
- If the accommodation is found to be unsuitable, does the agreement allow for additional accommodation?
- Does your agreement respect the right to privacy of the worker seeking accommodation?
- Does it respect the privacy and confidentiality of members' health information including prohibiting the sale of such information to insurance companies and other employers?

CON'T...

## Duty to Accommodate

- Can work hours and shifts be adjusted to accommodate all religious observances and holidays, breastfeeding, and child and elder care responsibilities?
- Is there accommodation for members with diabetes, HIV/AIDS and other illnesses to allow for the proper storage and taking of medications?
- Is there accommodation for transgender members seeking the right to: access washroom facilities of their choice, time off for medical reasons, and dress in accordance with their gender identity?

## LANGUAGE

### ***CUPE Local 728 and the Board of School Trustees of School District No. 36 (Surrey, BC)***

#### Letter of Understanding Protocol – Duty to Accommodate

1. In circumstances where a member of the CUPE bargaining unit may be unable to perform the regular duties of her position due to a mental or physical disability, the Employer and the Union, together with the affected employee, shall meet to discuss and to consider the available evidence regarding the existence and nature of the disability and, if necessary, options with respect to the accommodation of the employee. The parties agree to work together to consider how the employee's disability can best be accommodated without causing undue hardship to the Employer, the employee, or the Union. The affected employee shall participate and cooperate fully in this process.
2. The parties to this protocol, and the affected employee, shall share with each other all information relevant to the accommodation of the affected employee, including medical information pertaining to the employee's disability, and information regarding the requirements / duties of the employee's position.
3. The parties agree that they will attempt to accommodate employees as follows, in order of preference:
  - in her current position;
  - in her current classification;
  - in another classification with equivalent hours/rate of pay, but for which the employee possesses the requisite knowledge, skills, and abilities;
  - in another classification which does not have equivalent hours/rate of pay, but for which the employee possesses the requisite knowledge, skills, and abilities.
4. In considering the feasibility of the options set out in (3) above, the parties shall consider, without limitation, such options as the modification of duties, shifts, equipment, and/or the retraining of the employee.

5. It is understood and agreed that nothing in this protocol will require the Employer, the Union or the affected employee to agree to an accommodation, which would impose undue hardship on the Employer, Union or affected employee. The Employer agrees that it will not impose an accommodation, which has the effect of abridging or infringing collective agreement rights of other bargaining unit members unless there is no other reasonable alternative.
6. Agreements between the parties regarding the accommodation of employees shall be reduced to writing. These agreements shall contain provisions regarding the process, which will be followed by the parties in the event that there is a change in the accommodated employee's circumstances, including a lessening or worsening of the employee's disability.

#### Other Accommodation

#### ***CUPE Local 951 and the University of Victoria***

##### Requests To Vary Work Schedules for Equity or Medical Reasons

- 18.10 The University and the Union will make every reasonable effort to accommodate the requests of regular employees in the Child Care Centre to vary their existing work schedules for bona fide equity or medical reasons (e.g. child care, elder care, diabetes). Where these requests can not be met for bona fide operational reasons, the University will make every effort to accommodate those employees in appropriate vacant positions elsewhere in the bargaining unit and backfill the Child Care position on a temporary basis.

#### ***CUPE Local 3963 and Prince Albert Cooperative Health Centre***

##### Article 33 – Breastfeeding in the Workplace

The employer and the Union recognize the benefits of breastfeeding to the health and well-being of mother and child and support employees in the decision to breastfeed beyond maternity leave. The Employer shall, wherever reasonably possible, provide working conditions conducive to continuance of breastfeeding for employees on return from maternity leave.

The breastfeeding employee shall inform her Department Head of the accommodations needed, if any, in order to breastfeed. Accommodations may include a quiet, private place to utilize and a flexible work schedule. Such accommodations shall be mutually agreed to by the Department Head and the Employee.

## ***CUPE Local 2073 and the Canadian Hearing Society***

### Letter of Intent – Accessible Collective Agreement

The Employer and the Union agree on the importance of a Collective Agreement being accessible to all Employees. The parties recognize and mutually agree to investigate and find the most feasible manner of reproducing the Collective Agreement in a format that provides equal access. The primary goal of the Committee will be to produce a document in a visual format (ASL), the cost of which shall be borne equally by the two parties. Within ninety (90) days of ratification, the Union and the Employer shall appoint two (2) representatives from each group. This Committee will complete its work within three (3) months of ratification and submit their report jointly to the Labour Management Committee. It is understood that this Letter of Intent forms part of this Agreement.

## ***CUPE Local 188 and Town of Dalhousie, NS***

### Article 16 – Promotions and Changes

#### 16.08 Job Rights

An employee who has become incapacitated by injury or illness will be employed in other work which he can do. Such employee may not displace an employee with more seniority.

## ***CUPE Local 503 and the Regional Municipality of Ottawa-Carleton***

### Article 7 – Workers' Compensation

7.5 In the event that an employee is able to return to light or modified duties as determined by the Workers' Compensation Board of Ontario, the Employer shall attempt to provide such work and the employee shall continue to receive the hourly rate of pay or bi-weekly salary he/she was receiving prior to the date of his/her accident.

7.6 Any employee who returns to modified or light duties shall be assessed on an on-going basis by the Workers' Compensation Board of Ontario. In the event such assessments determine that the employee is able to return to full and regular duties, 7.3 (c) shall apply. In the event the employee's condition is assessed as deteriorating, the Employer shall provide rehabilitation as recommended by the Workers' Compensation Board of Ontario for employment with the Employer or other employers. In this case, the Employer will make a reasonable effort to offer

the employee on-going alternate employment. In any case, when the employee returns to light or modified duties, the Employer shall be guided by the assessment of the Workers' Compensation Board of Ontario.

- 7.7 The Union recognizes that reassignment of a permanently partially disabled employee to alternate employment may necessitate a change of classification and pay.
- 7.8 It is recognized that where the employee has been reassigned or offered, and accepts alternate employment with the Employer, the employee shall be entitled to any lump sum payment or permanent award payable as determined by the Workers' Compensation Board of Ontario, and such payments will not reduce the wage or salary the employee will be receiving.
- 7.9 No employee shall have his/her employment terminated until all benefits, which are standing to the employee's credit at the time the assessment is made, are paid to the employee.
- 7.10 In the event that Workers' Compensation should become taxed as normal income, the Employer and the Union agree that the employee receiving Workers' Compensation shall not receive less than this normal salary or wage. The details of such rearrangement shall be negotiated between the Union and the Employer at the time of such change in the legislation.

### ***CUPE Local 1 (Outside Workers) and Toronto Hydro***

#### **Article 27 – Accommodation**

CUPE Local One and the Employer are jointly committed to re-integrating employees back into the workplace who have suffered an occupational or non-occupational injury or illness. The Union and Management will work together through an Accommodation Committee, which will operate on a consultation basis.

#### **Accommodation Committee**

The Accommodation Committee will consist of three (3) Union Representatives and three (3) Management Representatives who will meet bi-monthly to discuss both permanent and temporary accommodations.

The Accommodation Committee shall:

27.01

- (1) Recommend to Toronto Hydro Management procedures and practices to ensure safe, consistent, and fair administration of the Return To Work Program.
- (2) Review and recommend to Toronto Hydro Management modified work assignment for employees who have been injured on the job on both a temporary and a permanent basis.
- (3) Meet regularly to monitor each modified work assignment and the overall performance of the Return To Work Program.
- (4) Recommend to Toronto Hydro Management changes to the Return To Work Program as appropriate.

The Union Committee members shall be allowed not less than two (2) hours between the termination of the meeting and return to normal duties for meals, clothing change and travel.

Time absent from work will be at the Employer's expense. Preparation time will be subject to approval by the Employer.

#### Reimbursement for Additional Medical Documentation

The Employer shall bear the cost of any additional required medical information or documentation beyond the initial medical request setting out non-occupational accommodation needs.

#### Permanent Placement

Employees who have suffered a permanent work-related injury/illness accepted and paid for by the WSIB, and who are medically fit to perform work may be placed as follows:

27.02

- (1) In the employee's existing job, if the employee is medically fit to perform the job duties.
- (2) In the employee's existing job, with modified duties, if the employee is medically fit to perform the job as modified, and the modifications permit the performance of the essential duties of the job.

- (3) In another classification within the employee's Bargaining Unit with approval of the Accommodation Committee.
- (4) In another classification within the 'other' Bargaining Unit with approval of the Accommodation Committee.
- (5) In a classification created specifically to accommodate the employee with approval of the Accommodation Committee. An employee returning to work will receive the current annual rate of pay for her/his pre-injury/illness position or the minimum annual rate of the new classification, whichever is greater, plus any future negotiated increases for that classification.

As a condition of this continued wage protection, an employee who has been placed in a position other than the employee's previous position, will apply for all posted vacancies for which they are qualified and which have an annual rate greater than their new classification and equal to the employee's current annual rate.

#### Temporary Placement

Employees who have suffered a temporary work-related injury or illness, and who have submitted a claim to the WSIB, and who are medically fit to perform work may be placed as follows:

27.03

- (1) In the employee's existing job, if the employee is medically fit to perform the job duties.
- (2) In the employee's existing job, with modified duties, if the employee is medically fit to perform the job as modified, and the modifications permit the performance of the essential duties of the job.
- (3) In a classification within either Bargaining Unit with approval of the Accommodation Committee.

The wage of the employee who is placed under this program will be protected at the pre-injury/illness level or the minimum of the new classification, whichever is greater, plus any future negotiated increases for that classification.

Where a scheduled increase or progression occurs during a temporary placement of not less than three (3) months, the employee will receive such increase or progression upon satisfactory demonstration of competency during a trial period of thirty (30) days.