



Bargaining disability rights



The accommodation of workers with disabilities is a duty shared by the employer, the union, and the individual seeking the accommodation. It's an important right that helps keep workers in the workforce, even if they have a disability.



Your local union has a key role to play in supporting disability rights, including the right to be accommodated at work. Your union can take a number of steps to ensure that all members understand their workplace rights and employers' obligations relating to a disability.



Preparing for bargaining

Consider: do the individuals on the bargaining committee reflect the makeup of the local membership? Is there someone on the bargaining committee with a disability that will be aware of, and able to bring forward disability-related concerns?

If no one on your committee has a disability, seek outside input or better yet, ask a member with a disability to join the committee.

Regarding contract language, consider:

- (a) Existing disability-related rights contained in human rights legislation;
- (b) Existing collective agreement benefits relative to ill health or disability;
- (c) Potential disability-related bargaining proposals to improve collective agreement protections.

Workers with disabilities are protected under human rights legislation

Every jurisdiction in Canada has human rights legislation protecting workers from disability-related discrimination and providing them with the right to be accommodated.

Check out CUPE's factsheet
What is the duty to accommodate?
cupe.ca/disability-rights

Even though the right to accommodation exists independent of any specific language in a collective agreement, it is important to have this right set out in a contract because it reminds employers of their duties under the law.

The contract is also where most union members look to understand their workplace rights, and including this right in the contract gives members access to grievance and arbitration procedures, which can be a quicker way of settling disputes.

Examples of rights that you already have, but that should be spelled out in the collective agreement include:

- (a) A comprehensive anti-discrimination clause stating that the employer intends to comply with their legal obligations under applicable human rights legislation;
- (b) Affirmation that a worker with a disability has the right to be free from disability-related discrimination at work, including the right to have his or her disability accommodated;
- (c) Affirmation that the union also has a legal obligation to accommodate and, if there is no viable alternative, may agree to waive or suspend a collective agreement provision in order to ensure that a member is accommodated;
- (d) Affirmation that the individual accommodation-seeker also has a legal obligation to bring his or her need for accommodation to the employer's attention, and to provide the employer with information regarding limitations imposed by the disability;

- (e) Affirmation that the duty to accommodate applies to all workers within the bargaining unit regardless of employee status or seniority.

Basic collective agreement benefits

CUPE locals have bargained a range of basic rights and benefits related to disability for decades. They include:

- (a) Provisions for extended health benefits including drugs, medical aides, vision and dental care, hospital coverage, professional services and nursing home care;
- (b) Short-term sick leave provisions and long-term disability programs;
- (c) Seniority protection for members absent from work on sick leave, long-term disability, or for any disability-related reason;
- (d) Top ups on workers' compensation benefits.

These kinds of provisions benefit all CUPE members.

Further disability-related contract language

In the event that a collective agreement already contains strong language in the areas highlighted above, there are other principles that could be negotiated to

ensure the protection of disability-related rights.

Examples include:

- (a) A clear procedure for all accommodation requests, with the union and the accommodation-seeking worker involved in all discussions and arrangements;
- (b) Duty to accommodate training for employers and members;
- (c) A statement affirming that the employers' duty to accommodate is ongoing over the course of a worker's work life;
- (d) A statement outlining the specific obligations on all three parties involved in the duty to accommodate and a statement of some of the principles relevant to that duty;
- (e) An expedited grievance process that would allow "failure to accommodate" grievances to proceed quickly, in order to reduce the negative impact on a worker who is away from work while the employer attempts to find an appropriate accommodation;

- (f) A statement affirming that there is a very broad scope of arrangements and accommodations that an employer might be expected to facilitate, with examples.

While employers and members are generally familiar with some accommodations, like returning workers to work following a disability-related leave in a graduated way, or rearranging certain tasks, they are often not aware of the broad range of possible accommodations.

Representing our members fairly

Bargaining language to enhance disability rights is a great way to make gains at the table that benefit all members, particularly when monetary gains may not be a viable option.

Disabilities can happen to anyone at any time. This is an equality-seeking group that you might become a member of tomorrow!

CUPE offers training on the duty to accommodate to help members understand their rights and responsibilities, and to support other members seeking accommodations. Find out more about training at cupe.ca/union-education.

Showing our mettle



For more information
[**cupe.ca/disability-rights**](http://cupe.ca/disability-rights)