

SECTION: Legislation

Effective date: February 6, 2002

SUBJECT: REASONABLE ACCOMMODATION: DISABILITY

This policy is intended to assist in the understanding and application of *The Human Rights Code*. Where there is any conflict between this policy and the *Code*, the *Code* prevails.

In determining whether reasonable accommodation of an individual's disability has occurred, the Commission will consider the circumstances of each case.

Factors for consideration will include:

1. The **procedure** employed by the respondent to assess the issue of accommodation. In particular, the Commission will examine what steps were taken by the respondent to search for and consider options for accommodation. Some of the questions that the Commission will consider are as follows:
 - a. have alternative approaches to accommodation that do not have a discriminatory effect been investigated?
 - b. if alternative approaches were investigated and found capable of being implemented without undue hardship why were they not implemented?
 - c. was the Complainant provided the opportunity to participate in the process of assessing the issue of accommodation?
 - d. have all parties who are obliged to assist in the search for possible accommodation, including the complainant, fulfilled their roles?

2. The **substance** of the accommodation offered to an individual. Some examples of reasonable accommodation of disability are (these examples are not exhaustive):
 - a. making buildings, facilities, workstations and services accessible to persons with physical disabilities through, for example, structural changes, or the provision of and modification to equipment and other devices;
 - b. making employment and services available to persons with disabilities by altering existing practices or procedures, or adopting new practices or procedures;
 - c. the provision of protective clothing or equipment where a person's physical condition creates a risk to self or others;
 - d. re-assigning an employee who is unable to perform the essential duties of his or her job to an alternate work assignment suited to that employee's qualifications and abilities;
 - e. allowing for flexible work and leave schedules;
 - f. reasonable consideration of physician-directed absences for clinical depression or related conditions;
 - g. consideration of how clinical depression or related conditions might have affected the employee's performance before the employer became advised of the condition(s).

3. The duty to reasonably accommodate does not extend so far as to cause **undue hardship** to the person responsible for the activity or undertaking at issue. The burden of proving that undue hardship renders the accommodation required to meet the needs of a Complainant unreasonable rests with the Respondent. To meet that burden, the Respondent must provide actual evidence that undue hardship exists rather than relying on anecdotal or impressionistic assumptions.

APPROVED BY:

Original Signed By

"Janet Baldwin"

Chairperson

16 April 2002

Date