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THE DUTY TO ACCOMMODATE IN EMPLOYMENT

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Comprehensive, understandable and relevant across Canada, this work helps legal practitioners and human resources professionals grapple with a complicated array of accommodation issues in this rapidly developing area of law. This work pinpoints areas of concern and provides a thorough examination of all the information on accommodation you need in human rights and workers' compensation law including: the concept of "undue hardship"; the responsibilities of employers, employees and trade unions in the process of fashioning accommodations; and the impact of the duty to accommodate on historical workplace rules. As well, this work includes extensive reference to case law from both the unionized and non-unionized sectors.

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What's New in this Update:

This release features updates to Chapters 6, 8, 13, 14, 16, 17, 19, 20, 26 and Appendix ND (New Developments).

Highlights:

Canadian Union of Public Employees, Local 8920 v Nova Scotia Health Authority, 2025 CanLII 11974 (NS LA -- Augustus M. Richardson, KC, C.Arb) determined that anxiety and depression on their own are not be prohibited grounds of discrimination unless they are so debilitating that they prevent or hinder an employee from performing their assigned duties.

In *ATU Local 1587 and Ontario (Metrolinx), Re*, 2025 CarswellOnt 1995 (ON G.S.B.) a series of grievances challenged an employer's application of its Fitness for Duty Policy, particularly regarding the accommodation of employees authorized to use medical cannabis in safety-sensitive positions. The arbitrator found that the employer failed to properly accommodate employees with disabilities by imposing a de facto ban on medical cannabis use, removing affected employees from their positions without individualized assessment, and treating disclosures as policy violations rather than medical issues. The decision emphasized the employer's duty to conduct individualized accommodation assessments and to distinguish between recreational and medical cannabis use.

An Ontario tribunal dismissed an application against a hospital's mandatory vaccination policy alleging discrimination and reprisal based on religious beliefs. The tribunal found that the applicant's opposition to vaccination was rooted in personal beliefs and health concerns rather than a protected creed under the Human Rights Code. See: *Loder v. Huron Perth Health Care Alliance*, 2025 HRTO 1995 (O.H.R.T.).

The Ontario Labour Relations Board, in a construction industry grievance, found that an employer was not estopped from discontinuing a longstanding accommodation solely on the basis of having written at one point that it would continue to accommodate the employee after given construction projects had ended and the fact that a past accommodation had lasted for more than a decade. However, it also found that the employer breached its duty to accommodate when it eliminated the employee's accommodated position without proper process or timely investigation during his medical leave. The employee

had been accommodated with bundled and sedentary, but productive, duties for many years. During his medical leave, the employer distributed those duties to others. The Board found that the employee's job functions were singled out for review because of the medical leave and were not part of a broader or periodic review of the efficiency of the employer's operations. Further, the Board held that the evidence did not show any meaningful analysis of where the employee's job functions were distributed, or problems that the employer had encountered with the past accommodation. That, and the absence of any efforts to discuss the situation with the employee and union to explore accommodation solutions was fatal to the employer's defence. See: *CUSW v. Hydro One Inc.*, 2025 CanLII 12553; 2025 CarswellOnt 1895 (O.L.R.B.).

In *McDonald v. His Majesty the King in Right of Alberta (Alberta Environment and Protected Areas)*, 2025 AHRC 82 (Alta. H.R.T.) an Alberta employee requested accommodation in the nature of working in British Columbia. Included in the medical evidence provided to her employer was a psychiatrist's letter expressing an opinion that the employee experienced significant improvements in her mental and physical health by residing in BC. The Alberta tribunal ultimately found that this was just a statement of preference, not evidence of a true medical need requiring accommodation.

In *Syndicat des professionnelles et professionnels en milieu scolaire du Nord-Ouest (SPPMSNO) c Commission scolaire Crie*, 2025 CanLII 658 (QC SAT) a Québec arbitrator upheld the employer's refusal to allow indefinite remote work for a guidance counselor, finding that in-person presence was rationally connected to the essential duties of serving students in remote northern communities. The arbitrator emphasized that feasibility alone does not determine the appropriateness of accommodation; rather, the requirement must be rationally related to the job's core functions and the needs of the clientele. The decision also highlighted that the employee's lack of cooperation—specifically, failing to disclose her eligibility for adapted transportation—undermined the accommodation process and supported the employer's position.