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THE DUTY TO ACCOMMODATE IN EMPLOYMENT Kevin D. MacNeill Release No. 2, August 2026
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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 Chapter 5, Chapter 6, Chapter 8, Chapter 9, Chapter 13 and Chapter 14.

Highlights:

Carrothers v. Avena Foods Limited, 2026 CHRT 23 (Can. Human Rights Trib.) involved a machine operator with epilepsy whose medical restrictions included no driving, no heights, no night shifts, and no exposure to flashing lights. The federal tribunal dismissed his complaint, accepting that safe operation of equipment, including forklifts, was required at the plant and warehouse and that, without medical clearance, a return to those operations would impose undue hardship due to health and safety. The decision also illustrates that a small employer was not required to create an administrative position, displace an incumbent, or train a machine operator into roles for which he lacked the required skills, experience, or credentials.

In *Air Canada v. IAM, District Lodge 140*, 2025 CanLII 148304 (CA LA), an arbitrator accepted that the employer had legitimate grounds to send an employee home temporarily after new information emerged about medication and her mental state. However, the employer breached its accommodation obligation by keeping her on unpaid medical leave for more than a year where she had previously worked under a no-airside-driving restriction, there was no evidence she could not continue on that basis, and the employer failed to pursue alternatives such as a third-party review. The award apportioned responsibility 75% to the employer and 25% to the employee, ordering 75% of wage and benefit losses and \$10,000 for pain and suffering.

Perren v. Canadian National Railway Company, 2025 CHRT 110 (Can. Human Rights Trib.) addressed religious accommodation in the context of COVID-19 vaccination. A federal tribunal found that refusal to receive a vaccine was protected by religion where the employee established a nexus with religion and sincerity of belief. The tribunal held that the employer failed to respond properly to the religious accommodation request by treating the employee's reference to conscience as secular and refusing to clarify. The decision emphasizes that employers should clarify unclear religious accommodation requests rather than require the employee to

guess what further information is needed.

In *Pham v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2025 FPSLRB 175 (Can. F.P.S.L.R.E.B.), a federal tribunal held that family status discrimination may be broader than childcare obligations and may include an employee's status as the parent of a child with a disability. The employer cancelled a presumptive Nairobi posting after its medical provider declined to clear the employee's child, who had complex pediatric medical needs, for travel. The tribunal found a prima facie case based on family status and disability, and held that the employer did not discharge its accommodation obligations by treating its provider's recommendation as determinative when an independent medical opinion was available to address a significant disagreement with the treating specialist.

Burggraaf v. Convergys CMG Canada ULC, 2025 HRTO 2599 (Ont. Human Rights Trib.), reconsideration / rehearing granted 2026 HRTO 72 (Ont. Human Rights Trib.) found discrimination against a blind applicant for a call-centre sales associate position. The employer internally tested assistive technology but failed to return to the applicant to discuss barriers, allow him to test possible solutions, meaningfully pursue options with the third-party client whose systems were the asserted barrier, or consult external accessibility experts. The Ontario tribunal awarded \$20,000 for injury to dignity, part-time lost wages, and ordered accessibility-related changes to the employer's hiring policies and processes.

In *Dick v. Niagara Prosthetic Orthotics Corp.*, 2025 HRTO 2748 (Ont. Human Rights Trib.), the Ontario tribunal found that a health-and-safety rationale did not establish undue hardship where the employer had not conducted an individualized assessment of alternatives to continuous masking for an employee with facial nerve damage. Although the employee worked in a hospital-based workshop and vulnerable patients were present, the employer had not shown why reduced or modified hours, barriers, a separate workspace, or further hospital discussions would have been impractical or unsafe. The case emphasizes that pandemic seriousness did not eliminate the need to investigate accommodation options and prove undue hardship with evidence.

Neske v. Sobeys Inc. (No. 2), 2026 BCHRT 37 (B.C. Human Rights Trib.) rejected the employer's argument that a pharmacy manager frustrated the accommodation process by refusing a demotion to a staff pharmacist role. The British Columbia tribunal found the employer had known restrictions affecting

repetitive activities, sustained postures, dexterity, bending, standing, and compounding work, and had an obligation to investigate those restrictions and possible accommodations rather than take a “take it or leave it” approach. It also found that the employer had not justified a full-time-hours standard for the managerial role or shown why the employee could not remain in a managerial role on reduced hours.

A Québec arbitrator in *FIQ - (SPS de Montérégie-Centre) et Santé Québec - CISSS de la Montérégie-Centre (Labrie)*, Re, 2025 QCTA 517 (T.A. Qué), annulled a dismissal after more than 36 months of disability absence where the employer knew an immunology opinion was pending and a new medication was being trialed. Post-termination medical evidence showed substantial improvement and a progressive return-to-work plan. The arbitrator held that the employer could have waited for pending specialist information without undue hardship, underscoring the risk of premature termination when medical developments are imminent.