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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 Chapter 16, Chapter 17, Chapter 18, Chapter 19, Chapter 20, Chapter 21, Chapter 22, Chapter 23, Chapter 26 and Chapter 27.

Highlights:

In *Molyneaux v. National Arts Centre Corporation*, **2025 CHRT 84 (Can. Human Rights Trib.)**, one federal tribunal found that, assuming that requiring the complainant to work five days per week could adversely affect his disability, the employer had met its duty to accommodate by granting and maintaining a four-day workweek, and this, despite the fact that it mistakenly scheduled the complainant once for a five-day schedule over approximately two and a half years and the complainant's pay records reflected the hours associated with a four-day schedule for the relevant pay period. The tribunal also rejected the claim that the employer's refusal to allow all breaks to be consolidated at the end of the shift was discriminatory, because the medical evidence did not sufficiently connect that request to a disability-related functional limitation.

In *Peterson v. Treasury Board (Statistics Canada)*, **2026 FPSLRB 4 (Can. F.P.S.L.R.E.B.)**, the adjudicator upheld the termination of a federal public servant with anxiety who falsified 41 call-monitoring reports over approximately four months. The adjudicator accepted that the employee had established a disability, despite the absence of a formal medical diagnosis and sparse medical evidence, because the contextual evidence included his symptoms, disability-related absences and prescription medication. However, the employee failed to establish any nexus between his anxiety and the falsified reports: he did not identify a functional limitation linked to the misconduct, did not testify that anxiety caused the falsifications, and raised anxiety only belatedly in relation to one entry after other explanations had failed. Although the disability was treated as a mitigating factor, termination was upheld because the misconduct involved repeated, self-interested dishonesty and the employee's dishonesty during the investigation and hearing, together with his lack of insight, meant that the trust necessary to the employment relationship could not be restored.

In ***Pham v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2025 FPSLRB 175 (Can. F.P.S.L.R.E.B.)**, a tribunal treated the cancellation of a presumptive overseas assignment as an adverse impact on an employment opportunity where the assignment would have placed the employee in a higher-level acting position for two years and allowed him to be accompanied by his family. The posting was cancelled after the employee's dependent child was not medically cleared for the particular post, and the tribunal held that the employee's family status, characterized by being the parent of a child with a disability, was a factor in the loss of the opportunity. The tribunal ordered partial wage-loss compensation, limited to 50% of the difference between the employee's substantive salary and the acting-position salary for the two-year posting, because the evidence did not establish that the child necessarily would have been cleared if the employer had properly pursued the available medical-assessment process.

In ***Minkarious v. 1788795 Ontario Inc.*, 2025 ONSC 7245 (Ont. Div. Ct.)**, a court upheld an award of Human Rights Code damages arising from an employer's conduct toward an employee while she was on a medically supported leave. After the employee provided a doctor's note stating that she was absent for medical reasons, the employer insisted that she attend a work meeting, sent adversarial work-related texts, attended unannounced at the employee's home to retrieve a work phone, viewed personal information on the phone, and repeatedly pressed the employee for information about what tests showed and what was wrong with her. The court emphasized that the dispute was not properly characterized as a failure to accommodate, since the employee had not yet been medically cleared to perform work; rather, the question was whether disability was one of the causes of the employer conduct that constituted the constructive dismissal. On that basis, the employer's frustration with the medical leave, pursuit of private medical information, and skepticism about the genuineness of the leave supported a human rights damages award.

In ***Tompkins v. Peninsula Grill*, 2025 HRTO 2783 (Ont. Human Rights Trib.)**, a tribunal held that a small restaurant failed to implement a reduced-hours accommodation for a part-time server with cerebral palsy. The employee disclosed at hiring that she could work no more than 25 to 30 hours biweekly, and the employer initially scheduled her within that limitation. The employee was later scheduled above her limitation in two pay periods, including one period of 56.5 hours and another of

38.75 hours, and the tribunal found a substantive failure to accommodate even though the employer had later reduced her hours when reminded of the restriction.

In ***Cillis v. Hamilton-Wentworth District School Board*, 2025 HRTO 1717 (Ont. Human Rights Trib.)**, a tribunal dismissed a disability discrimination complaint arising from accommodations provided during an interview for a permanent teaching position. The applicant, who was on disability leave for anxiety and depression but was medically cleared to attend the interview, requested a private space before the interview, additional preparation time, and the exclusion of a particular vice-principal from the interview panel. The employer provided a private space, gave the applicant 30 minutes to review the interview questions rather than the 20 minutes provided to other candidates, used a smaller interview panel that did not include the excluded vice-principal, and the applicant was ultimately successful in obtaining and accepting a permanent position. The applicant identified the adverse impact as the panic, stress, feeling sick to the stomach, and loss of dignity allegedly caused by the accommodation process, including receiving less preparation time than expected and seeing excluded individuals in the hallway. The tribunal found that these negative feelings and the applicant's dissatisfaction with the process did not amount to adverse treatment or a substantive disadvantage sufficient to establish disability discrimination, particularly where the applicant received reasonable, though not perfect or preferred, accommodation and suffered no adverse employment outcome.

In ***Grubisic-Paoletta v. Kinark Child and Family Services*, 2026 HRTO 264 (Ont. Human Rights Trib.)**, a tribunal dismissed the application of a long-service child and youth worker who was the primary caregiver for a non-verbal son with severe autism and an intellectual disability requiring 24-hour care. After her accommodated transitional support worker assignment ended, the employer temporarily placed her in a volunteer coordinator role with flexible daytime hours and then returned her to her home child and youth worker position under a modified schedule that converted afternoon shifts to day shifts, allowed 9:00 a.m. starts, permitted the use of credits or entitlements to maintain pay, and gave her access to the part-time/relief pool to supplement her hours. The tribunal found no breach of the procedural duty because the employer responded promptly to successive accommodation requests and engaged in timely discussions leading to multiple accommodation plans. The tribunal also found no breach of the

substantive duty because the accommodations addressed the employee's need for flexibility, caused no actual income loss, and the additional effort required to obtain relief shifts did not make the accommodation unreasonable. The tribunal rejected the employee's preference for a 40-hour transitional support worker position, noting that the position was unavailable because of the incumbent's return and another employee's seniority rights, and that reasonable accommodation did not require displacing another employee where the employee had otherwise been accommodated.