



International
**LONGSHORE & WAREHOUSE
UNION**

LOCAL 500

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The Duty to Accommodate

ILWU Local 500 is committed to ensuring that workplaces are equitable and fair. This means that we view human rights in the workplace as an essential element in our mandate to represent our Members.

The duty to accommodate is an essential principle in our approach to human rights due to Supreme Court of Canada decisions.

What is the Duty to Accommodate?

The fundamental nature of the duty to accommodate requires employers to make every reasonable effort, short of undue economic hardship, to accommodate workers who are disabled.

The employer must look for all other ways to accommodate the worker before expecting the Union to alter or waive application of the collective agreement. However, the Union is always required to cooperate and be flexible in the reasonable accommodation of a disabled worker.

Is the employer the only one who has a duty to accommodate workers in the workplace?

The burden to accommodate rests on the employer because it has ultimate control over the workplace. It must investigate all possible accommodations, and consult the union and the disabled employee. Thus, while the employer has the principal duty to accommodate workers, the Union also has a duty to work with the employer on the accommodation.

In most cases, the Union should support accommodation measures because collective agreement provisions can and should be interpreted and applied in a way that avoids a discriminatory impact. However, the Union does not have to support an employer's accommodation measures if it can demonstrate that there is a substantial interference of collective agreement rights.

What are the responsibilities of the Union as a worker representative?

The responsibilities of the Union representative include:

- to model a problem-solving approach to accommodation;
- to represent the needs of the worker for accommodation;
- to collaborate with the worker and the employer in accommodating the worker;
- respond to employer accommodation proposals;
- to follow-up after the accommodation is implemented to assess whether it is working and to help address any associated issues that may surface.

As well, the Union may play a role in the following ways:

- providing and ensuring the employer provides education about equity issues and the duty to accommodate;
- providing its own educational courses on human rights and the duty to be accommodated;
- balancing the need of the individual worker for accommodation and the interests of the bargaining unit members as a whole.

Who needs to be involved in workplace accommodation other than the worker being accommodated, the Union and the employer?

Co-workers need to be involved to the point that they understand what the duty to accommodate is and why it is valuable for the whole workplace. It is not helpful if other workers feel that a co-worker is receiving “special treatment”. The duty to accommodate must be approached in a problem-solving mode, involving everyone who will be affected.

What is the ideal process for the accommodation of a worker in the workplace?

1. The worker provides the employer with as much information as possible about the required accommodation.
2. The Union is advised that an individual accommodation is necessary.
3. The worker, employer and Union representative meet to determine how best to proceed.
4. The Union and the employer examine accommodation measures that result in no or minimal adverse impact on the co-workers while still implementing reasonable accommodation for the worker who requires accommodation.
5. The workplace and co-workers are prepared in advance for the implementation of the accommodation, including co-worker education.
6. Accommodation is implemented for a trial period.
7. Accommodation is evaluated and appropriate adjustments made.
8. Accommodation is finalized and formalized, as necessary, including, in cases of variable disabilities, the need for ongoing modification.

In Solidarity,
Peter Haines,
Secretary Treasurer
ILWU, Local 500