

## DUTY TO ACCOMMODATE & DISABILITY INSURANCE

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*This helpsheet is derived from a summary of the Legal Aid for Duty to Accommodate & Disability Insurance webinar. It is not intended to serve as legal advice. If you are seeking legal advice, please contact a lawyer.*

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### Duty to Accommodate

The “duty to accommodate” is a legal requirement arising from human rights legislation and case law in Canada. Although the “duty to accommodate” is not expressly referred to in the BC Human Rights Code, a series of Supreme Court of Canada and BC Human Rights Tribunal decisions confirm the duty exists and applies to all employers.

The goal of the “duty to accommodate” is to enable full and equitable participation of all members in society (BC Human Rights Clinic, 2016). What constitutes a reasonable accommodation will depend on the facts of a particular case. Generally, an employer must be willing to modify or relax any aspect of the job or workplace that is necessary to alleviate or eliminate harsh impact on an employee. The employer must do everything that is ‘reasonable’ in the circumstances, even if it means incurring some ‘hardship’ such as additional expenses, negotiating with unions, and affecting other employees’ roles. The law requires the employer to do everything it can to accommodate the needs of the employee to the point of undue hardship (BC Public Service Agency, 2008).

### Disclosing a Disability

Just as the courts have provided guidelines for employers in the accommodation process, so too have they commented on corresponding roles and responsibilities of those seeking accommodation. Many of these roles are outlined below by the BC Human Rights Clinic (2016):

- Where possible, advise or inform your employer of your need for an accommodation.
- Provide support and assistance in facilitating the process by providing sufficient information as to:
  - why the accommodation is required (a religious requirement, a physical or mental disability, because of pregnancy or family status, etc.)
  - support your request by providing evidence and/or information (i.e., medical or doctors’ reports that speak to limitations/restrictions or information that explains specific religious requirements)
  - make suggestions that would work for you (i.e., a specific adaptive software or hardware device, extra sick days allow for increased illness during pregnancy, etc.)
  - how long the accommodation is required
- Generally, you are only obligated to discuss your requirements with management, although you should cooperate with experts whose assistance may be required.
- Allow a reasonable amount of time for your employer to reply or respond to your request.
- Always participate and cooperate in efforts to make the accommodation work.
- Be flexible. Reasonable accommodation may be less than a perfect solution. Be prepared to consider retraining or relocating in order to take on different job-related duties.
- If your requirements change, ensure that you let management know.
- If a solution is offered, and you accept it, get it in writing.

- If the process loses momentum, provide additional information that may help re-activate the process.
- If your employer is unable to fulfil your request, ask for written details explaining their decision.

## Disability Assistance

The BC Employment and Assistance Program for Persons with Disabilities (PWD) offers disability assistance and supplements to allow for greater independence of people with disabilities, including security of income, enhanced well-being and participation in the community. To be eligible for disability assistance, a person must meet the criteria for the PWD designation and be designated as such by the Ministry. PWD is not a permanent designation and the Ministry has the authority to rescind an individual's designation in exceptional circumstances (BC Government, 2018).

Obtaining and claiming disability insurance can be a long process for some. Here are things to help you start the process:

- Research your short-term and/or long-term private insurance plans.
- Understand your rights in respect to your short-term and/or long-term private insurance plans.
- Obtain copies of your documents.
- Understand and apply for disability benefits from the BC Government, if needed.

## Disability Benefits

Benefits available to workers vary from one employer to another, but *Here to Help* (2011) has made some broad observations on three types of disability benefits:

- sick days – coverage for three to seven days per year for occasional absences, in addition to other benefits
- short-term disability – coverage begins after an initial waiting period of one to two weeks, and typically lasts for 17-52 weeks
- long-term disability – coverage for periods beyond the short-term disability period, typically until an individual returns to work, reaches age 65, or no longer meets the definition of disability, as per the benefit plan

Disability benefit payments are based on regular pay and are ordinarily reduced over time. The actual amount of disability payment received may also vary due to whether or not the benefits are taxable. When an employee pays for 100% of the disability plan's premiums, the benefit payments would not be taxed. On the other hand, if the employer pays for any portion of the disability premiums, then the payments would be taxed.

## Additional Resources

Disability Tax Credit Helpsheet | Parkinson Society BC | [bit.ly/pddisabilitytax](http://bit.ly/pddisabilitytax)

Legal Aid Helpsheets | Parkinson Society BC | [www.parkinson.bc.ca/resources/#legal](http://www.parkinson.bc.ca/resources/#legal)

Tax Credits & Deductions for PWD | Government of Canada | [bit.ly/2Qlf51k](http://bit.ly/2Qlf51k)

## Sources

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