



## Making Changes in the Workplace to Adapt to Parkinson's: The Process of Accommodation

Accommodating a disability means removing barriers, standards, requirements, practices, policies and rules that have a negative impact on individuals with a disability. While the process can seem challenging, accommodation is your legal right that brings with it a corresponding legal duty such that it is in the best interest of both you and your employer to develop a workable solution. The process has the best chance for success when you and your employer work together.

The goal of this help sheet is to provide you with a basic understanding of the duty to accommodate and to encourage collaboration between you and your employer to develop positive solutions.

**It is important to note that this help sheet is not designed to provide legal advice and cannot be used as any definitive statement of the law of accommodation. Workplace accommodation can be a complex issue such that, in many circumstances, it is appropriate for both you and your employer to obtain legal advice.**

### The Duty to Accommodate

#### Employers

A policy or practice is discriminatory where it results in an individual being treated less favourably because of their disability. Parkinson's is considered a disability at law. Even if a policy or practice applies equally to every employee, if it has an unfair effect on you due to your disability, that policy or practice is still discriminatory. Employers have a duty to modify discriminatory policies for you if your Parkinson's results in you being unable to comply with certain policies or perform certain tasks.

Once you have made it known to your employer that you require an accommodation (changes), it is your employer's responsibility to develop reasonable modifications that will meet the employee's needs. Though you should be involved in the process, it is not your responsibility to originate a solution although practically speaking, the types of accommodations that you will need in the workplace will originate with you based on advice you are receiving from medical professionals.

#### Your Duties

1. To obtain an accommodation, you should make your employer aware that you require one.
2. If you do not make your needs known you may not be entitled to modifications until you ask for accommodation.
3. Having made a request, you must work with your employer to develop a solution and disclose the information required to assist your employer in developing an appropriate accommodation. This usually involves getting your medical professionals to provide information to your employer (doctor's note, letter from treating professional, etc.).
4. While it is your employer's responsibility to make a *reasonable* accommodation, you must also recognize that the resulting accommodation may just be an adequate – not perfect – solution. For example, you and your doctor might discuss that it is better for your productivity to work four days a week and you propose to your employer that you work Monday to Thursday, giving you three days in a row off to recharge. The employer's business needs require them to provide an accommodation where you get Wednesday off instead. Unless your doctor objects for a medical reason, this type of accommodation will be adequate even though it is not perfect.

### Developing an Accommodation

Upon being approached with a request for accommodation, an employer is expected to:

- determine what barriers might affect the person requesting accommodation;
- explore options for removing those barriers; and,
- accommodate you to the point of undue hardship.

Throughout the accommodation process, it is important that both you and your employer communicate openly. The accommodation process works best when you and your employers work together to find the best solutions.

Consider whether the following accommodations would help:

- modification of physical and/or ergonomic conditions in the workplace;
- modified terms and conditions of employment, including job duties or hours of work;
- temporary assignment to different duties; and,
- leaves of absence.

From the time you approach your employer with a request for accommodation, your employer must seek to:

- maximize your dignity, autonomy, privacy and integration into the workplace;
- minimize your discomfort or inconvenience; and,
- quickly address your needs.

**Throughout the process of accommodation, you should ensure that any changes to your work will not result in unexpected changes to future income and/or benefits. For example, individuals who propose working less than full time should ensure that this will not impact the amount of disability insurance they are eligible for later on. For this reason, you may consider seeking legal advice prior to agreeing to an accommodation.**

## Limits on the Duty to Accommodate

There are certain limits on an employer's duty to accommodate. If a standard is discriminatory, but is a bona fide occupational requirement ("BFOR") adopted by the employer, then the employer is not required to accommodate.

In order to qualify as a BFOR, a standard must be rationally connected to the performance of the specific job.

- If the standard is not connected to the performance of the job, the employer is expected to alter the standard;
- Next, it must be determined whether the employer adopted the standard in an honest and good faith belief that it was necessary to the fulfillment of a legitimate work-related purpose and not simply in order to hinder individuals who require an accommodation;
- For example, if the employer has simply adopted a standard because they would prefer not to have a person with Parkinson's working with them, then the policy will not be considered a BFOR and therefore the employer will be required to accommodate.

Finally, the employer must establish that the standard is reasonably necessary to the accomplishment of a legitimate work-related purpose. In making such a determination, consideration is given to:

- whether alternatives to the standard or rule were considered;
- whether all employees must meet a single standard or whether different standards could be adopted;
- whether the standard treats some more harshly than others;
- whether the standard was designed to minimize such differential treatment;
- the steps taken to find accommodations; and,
- if there is evidence of undue hardship where accommodations were provided.

If an accommodation creates an undue hardship for the employer, then the employer is not required to accommodate you further. However, the employer must go to great lengths to accommodate you before they can claim that they have experienced undue hardship. It is not enough for your employer to make a subjective assumption that an accommodation costs too much.

Factors to consider in whether an accommodation would present an undue hardship include the:

- health and safety of you and your work colleagues;
- cost of the accommodation;
- type of work performed;
- size of the workforce;
- interchangeability of job duties;
- employer's financial ability to accommodate;
- impact on a collective agreement; and,
- impact on employee morale.

Not all factors will be relevant to each assessment and each factor will be of differing importance depending on each individual situation. In the vast majority of cases, simple accommodations (like simple modifications to hours of work or job duties) will not amount to undue hardship and will need to be accommodated by the employer.

## Conclusion

While the accommodation process may seem challenging to both you and your employer, it is important to keep in mind that in addition to being a legal requirement, the process will also permit employers to retain valuable members of their team despite their Parkinson's.

Many employers have become accustomed to including accommodations as part of normal business operations. In some cases, however, the employer struggles with how to accommodate or actually discriminates against a disabled employee. If this happens to you, you should seek legal advice as you may have a human rights or other claim arising under the law. The process of accommodation is not always clear and it can become necessary to seek legal advice in order to understand legal rights and options.

Parkinson Society British Columbia has partnered with the law firm of Blake, Cassels & Graydon LLP in order to provide its members access to free legal advice in appropriate cases when dealing with issues such as workplace accommodation.

If you are a member of PSBC and would like more information on legal advice, please contact [info@parkinson.bc.ca](mailto:info@parkinson.bc.ca)

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