



# Navigating Employment: Legal Rights, Disclosure, and Accommodation



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# Acknowledgement

This presentation is broadcast from the traditional, ancestral, and unceded territories of the x<sup>w</sup>məθk<sup>w</sup>əy̓əm (Musqueam), Sk̓wx̓wú7mesh (Squamish), and səlilwətał (Tseil-Waututh) Nations.

# Presentation Outline

1. Disability Alliance BC and the Disability Law Clinic
2. Human rights laws in Canada:
  - a) Important concepts: disability, discrimination, accommodation, and “undue hardship”
  - b) The duties and responsibilities of employers and employees
3. What kind of accommodations can I ask for?
4. What if my employer refuses to accommodate me?
5. Accessibility laws and accessibility standards
6. Questions?

Our mission is to support people, with all disabilities, to live with dignity, independence and as equal and full participants in the community.



# Disability Law Clinic

We help with...

- Understanding accessibility laws
- Disability-related human rights cases
- Access to services, including post-secondary education and public transportation
- Accommodation in housing and in the workplace
- Decision-making rights, especially in cases involving the Public Guardian and Trustee
- Legal issues related to disability insurance benefits





# Human Rights Laws in Canada

Human rights laws protect against discrimination based on disability in the workplace.

- Human rights laws define “disability” very broadly. Disability includes:
  - Mental and physical disabilities
  - Visible and invisible disabilities
  - Temporary and permanent disabilities

# What is discrimination?



- Discrimination means any action or decision that causes a negative impact on a person based on their disability. Examples:
  - Firing someone
  - Reducing someone's salary or benefits
  - Assault or harassment in the workplace
  - Failing to offer reasonable accommodation (see next slide)
- This definition also applies to actions or decisions related to other "protected grounds", such as race, religion, sex, sexual orientation, and gender expression.



In order to avoid discrimination, every employer has a duty to provide reasonable accommodation, up to the point of “undue hardship”.

- Sometimes, treating people fairly means treating them differently from others. That’s why the law includes a duty to accommodate.
- The duty to accommodate is a responsibility to take **reasonable steps** to provide accommodations that an employee needs to do their job.

# What are examples of undue hardship? How do I know if an accommodation request is reasonable?

The law weighs several factors together to decide what counts as “undue hardship”:

- The financial cost of the accommodation.
- Health and safety risks associated with the accommodation.
- The size of the employer and the resources available to them.
- The impact on the rights and interests of other workers.



# What are the employer's responsibilities?

If an employee says they have a disability and asks for accommodation, the employer should...



- Consider what accommodations they can reasonably offer.
- Request only the information they need in order to determine how to accommodate the employee.
- If there is no accommodation possible for the position, consider whether another position could be made available.
- Maintain confidentiality about the request and the employee's disability.
- Respond to the request in a timely manner.

# The “duty to inquire”

- If the employer notices an employee is struggling at work, and there is reason to believe it could be connected to a disability, the employer should talk to the employee about whether they need accommodation.
- If an employee is fired for a reason related to their disability, that may be discrimination, even if the employer did not know about the disability.



# The employee's responsibilities

The employee should...

- Tell the employer if they need accommodation.
- Explain how their disability affects them, so the employer understands what accommodation might be reasonable.
- Consider the employer's accommodation offers in good faith. This means giving the offer a fair chance, and only rejecting it if there is a good reason.



# Do I have to disclose my disability?

- You are not required to disclose anything, unless you want accommodation.
- But it may be a good idea to disclose, if you believe your disability may affect your work.
- If you decide to disclose, consider getting a doctor's note to describe any effects the disability may have on your work.

# The employee's responsibilities



The employee must participate in the accommodation process, by providing reasonable information that:

- Proves they have a disability, and
- Explains how it affects their ability to work.

The employer can ask for medical information (like a note from a doctor or other healthcare worker) about:

1. How the employee's disability affects their ability to do the job.
2. The employee's compliance with their treatment plan (but the employer cannot ask for details of the treatment plan).

# Examples of workplace accommodations



## **Modifying duties**

- More breaks throughout the day
- More frequent check-ins with a supervisor
- Changing how information is shared, for example, by putting it in writing instead of giving it verbally



## **Modifying the work area**

- Assessing the employee's work area for ergonomic barriers/challenges
- Changing the lighting in your workspace
- Moving a work area to be closer to required equipment



# Examples of workplace accommodations



## **Providing special equipment**

- Examples could include screen reader software, earphones/microphones for people with hearing loss, hands-free telephone.



## **Giving time off to access treatment**

- This could be a few days here and there for appointments, or a longer leave of absence.

# When something goes wrong

Sometimes it is necessary to  
take legal action to enforce  
human rights laws.



# Submitting a human rights complaint

Most employers are regulated by the provincial government, so complaints go to the BC Human Rights Tribunal.  
([www.bchrt.bc.ca](http://www.bchrt.bc.ca))

For employers who are regulated by the federal government, complaints go to the **Canadian Human Rights Commission**.  
([www.chrc-ccdp.gc.ca](http://www.chrc-ccdp.gc.ca))

Employees who are members of a union may be able to enforce human rights laws through the grievance arbitration process, if their union supports them.

# Enforcing the right to accommodation: seek legal advice

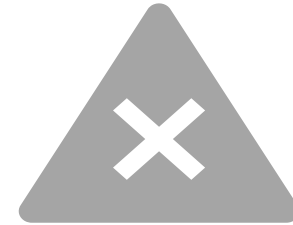


## Human rights complaints

Deadline is generally one year from the date of discrimination, but determining the date of discrimination can be tricky.

The process is complex and cases can be dismissed for technical reasons.

The employer may hire a lawyer to try to prove they did not discriminate.



## Grievance

A unionised employee who believes they were discriminated against should talk to their union.

The process and deadlines are set out in the collective agreement.



# Accessibility Laws in Canada: Preventing discrimination by removing barriers

# How Accessibility Laws Work



- Canadian accessibility laws do not contain specific rules about accessibility.
- Instead, they set out a process that governments must follow to make those rules, called accessibility standards.
- Accessibility standards are specific rules to ensure people with disabilities do not face barriers.

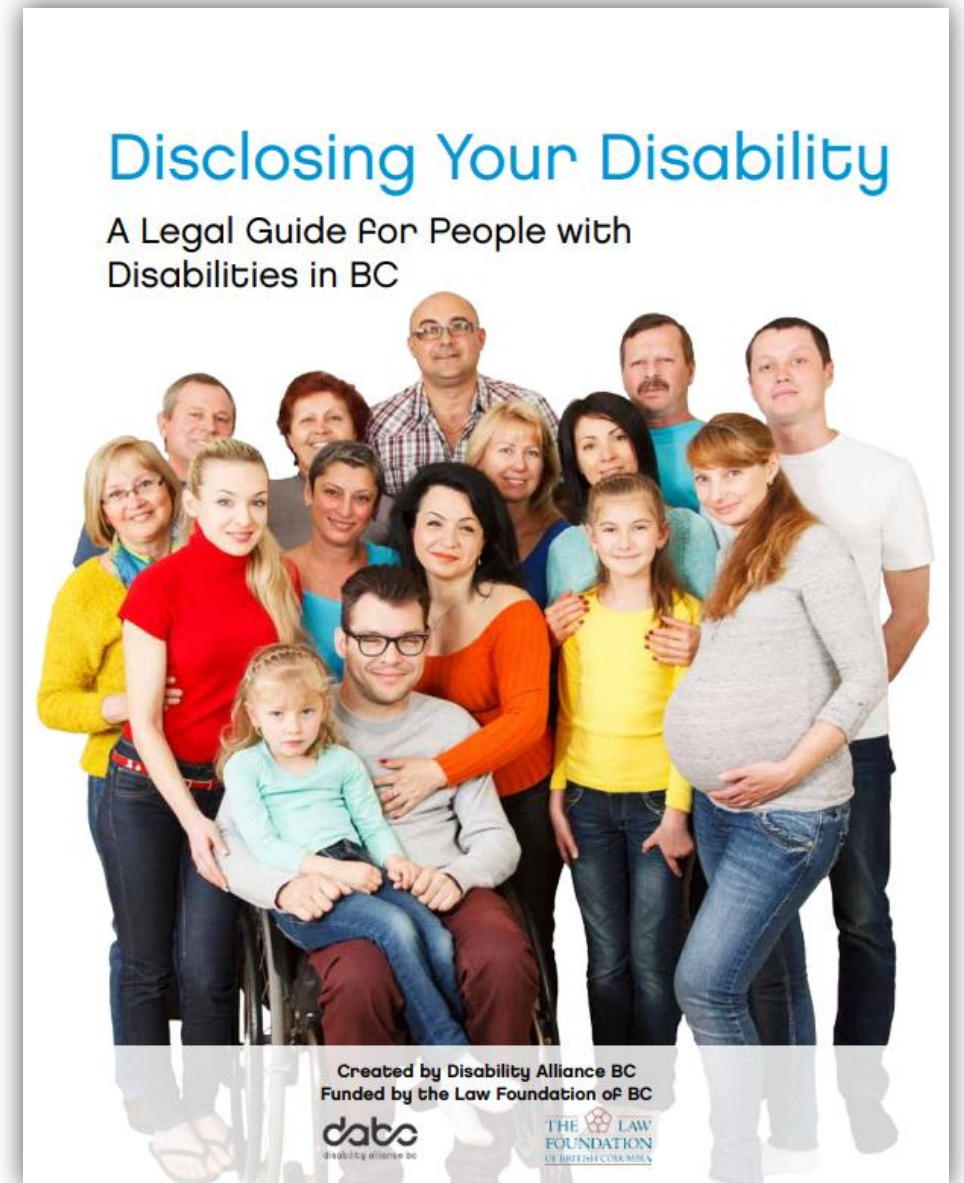
# Accessibility standards

- The goal is to make society more accessible for people with disabilities by removing barriers to accessibility proactively instead of waiting for people to complain about specific cases of discrimination.
- Accessibility standards generally apply to:
  - Transportation
  - The built environment
  - Government services
  - Employment
- Unfortunately, compliance and enforcement is inconsistent.

# To learn more about workplace accommodation...

Disclosing Your Disability: A Legal Guide for  
People with Disabilities in BC  
([https://disabilityalliancebc.org/disclosure  
guide/](https://disabilityalliancebc.org/disclosureguide/))

The People's Law School webpage on The  
Employer's Duty to Accommodate  
([https://www.peopleslawschool.ca/emplo  
yer-duty-to-accommodate/](https://www.peopleslawschool.ca/employer-duty-to-accommodate/))







Questions/Thank you!

