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Business Bulletin, March 2006
Ontario Human Rights Code: The Duty of Accommodation
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Human Rights legislation restricts the rights of employers to freely negotiate or terminate an employment contract and to manage the workplace environment in accordance with legitimate business interests. Employers must provide a work environment that is free from harassment and discrimination and must deal quickly, fairly and effectively with human rights issues in the workplace.

The Ontario *Human Rights Code* sets out public policy in Ontario recognizing the inherent dignity and worth of every person. The employer has a positive duty to accommodate the workplace to provide every employee with an equal opportunity to perform a job for which he/she is qualified.

Before accommodating a disability, the employer must have proper information. Medical details are critical to determine the nature of the disability, the likelihood of regular attendance in the future and what kind of accommodation, if any, is necessary. The employee (and the union, in a unionized workplace) must participate in the process of accommodation. The main responsibility of the employee is to provide timely notice as to both the existence and the nature of the need for the accommodation.

When faced with an accommodation issue, the employer should thoroughly investigate and document its actions, keep a written record of all meetings, proposals, information collected, cost estimates, etc., pertaining to the efforts undertaken to find acceptable accommodation solutions. Above all, keep an open mind, listen, look for help and treat the matter with the utmost sensitivity.

The following practical approach is recommended:

1. **Adopt a pro-active stance.** Involving employees in considering a solution is a must.
2. **Involve all workplace parties at the outset.** Employer, Union and Employee.
3. **Understand the employee's restrictions and limitations.**
4. **Be creative and flexible.**
5. **Consult the appropriate experts –** Legal and medical.
6. **Invest in the accommodation.**
7. **Involve and educate management that will be affected by the accommodation.**
8. **Involve and educate workers that will be affected by the accommodation.**

In the past, human rights issues were typically a small part of employment/labour law matters. Now, such issues re-define the rights and obligations traditionally ingrained within the employment relationship.

The law is complex and can seem confusing due to continued developments and varying interpretations. An understanding of the law, a flexible and proactive approach, along with the willingness to listen and communicate, will help employers avoid the costly expense of a human rights investigation and resulting litigation.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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