Essential Duties, AODA and Employment Contracts



What to consider when modifying employment contracts to accommodate disability

Essential duties. This is an important term to understand when developing job descriptions, recruiting and selecting candidates, and creating employment contracts. Within Ontario the AODA (Accessibility for Ontarians with Disabilities Act) Employment Standard requires employers to focus on essential duties as part of the hiring process. The goal is to ensure that individuals with disabilities who can perform the essential duties of a job are not rejected due to inability to perform non-essential functions of the job. Although the AODA spells this out conceptually, it is relevant across Canada for organizations to conform to human rights legislation.

An example of what essential duties may look like: In hiring a receptionist to provide front line customer services duties at a car dealership, the ability to drive a vehicle is most likely not an essential duty of job (unless it can be demonstrated as an essential function). However, when hiring a mechanic, the ability to drive a vehicle MAY be considered essential. Although, in fact, it could be argued that even the mechanic may not be required to drive a vehicle if there are other mechanics to whom these duties could be shifted.

According a citation on the Ontario Human Rights Commission website the word ‘essential’, as it applies to essential duties, has been interpreted in the following way by an Ontario tribunal decision. Referencing the definition of essential they stated that:

Essential means that which is “needed to make a thing what it is; very important; necessary” -Synonyms are “indispensable, requisite, vital.” Thus, peripheral or incidental, non-core or non-essential aspects of a job are not pertinent to a determination under [s. 17(1)]

The tribunal noted that it is not enough to presume the employee cannot perform the essential duties. Objective testing should be undertaken to confirm that a performance standard couldn’t be met.

Performance, Qualification and Production Standards

‘Productions Standards’ represent the level at which an employee must perform the job functions to be considered a successful performer. A ‘Productivity Standard’ represents the output standard imposed on some or all aspects of the work. “Qualification Standards” identify the skills and abilities necessary to perform job functions at necessary levels.

The challenge in this equation of standards is often determining which of these standards are essential duties (or qualifications) and which, if any, can be modified without any undue hardship incurred by the employer. Ultimately, the employer is entitled to a productive performance from its employees. Each employee must be able to perform the work essential to meet their appropriate need to be successful.

Modifying Employment Contracts for Employees With Disabilities

If your organization has a standard employment contract that outlines expectations including performance and productivity goals you may have to re-examine this contract to ensure that it is not discriminatory of individuals with disabilities. This can apply both to initial hiring of new employees and to modifying employment contracts for employees who become disabled.

In Ontario the employer has an obligation to be proactive in removing barriers to employment for individuals with disabilities. While job descriptions are not a requirement as part of the AODA Employment Standard having well considered ones will be important to demonstrate a commitment to inclusive hiring.

Once you have selected a candidate and are preparing an offer of employment consider the following questions:

4 Questions to Help Build Your Employment Contract Around Essential Duties

- Clarify and clearly spell out for what reasons the position exists
- Determine if there other employees who perform this position who can take on some of the tasks and duties
- Identify if the function of this position are highly specialized such that the incumbent is hired for the specific skill or function (and therefor the function cannot be shifted)
- Assess if the productivity and performance standards previously identified are based on actual performance and productivity data to support their requirements

Note: Remember to consider if accommodations can be put in place to allow the employee to function on an essential duty before assuming that the employee cannot meet the standard.

Once you have determined the answers to those questions you can begin to craft the details of your employment contract to be inclusive of individuals with disabilities.

Resource:

Ontario Human Rights Commission: “Policy and Guidelines Disability and Duty to Accommodate’