It Takes Two To Tango: Employee Obligations And Workplace Accommodation



Workplace accommodation is a challenging process, often without easy answers. Employers know they have to be proactive when assessing and implementing accommodation plans to ensure compliance with human rights legislation.

What is often overlooked is that accommodation is a *two-way street*, and employees also have their own set of obligations that, if not followed, can be fatal to a human rights complaint.

Employee obligations in the accommodation process include:

- Alerting the employer about the existence of a disability and the requirement for accommodation.[1]
- Providing sufficient medical evidence, permitting the employer to assess the limitations imposed by the disability, and come up with a reasonable accommodation plan in response.
- Accepting reasonable proposals for accommodation made by the employer.

Critically, employees cannot expect perfect accommodation, or insist on their preferred form of accommodation. Employees have an obligation to accept an offer of accommodation made by the employer, provided that the employer's offer is objectively reasonable. Where an employee declines a reasonable offer of accommodation, the employer has discharged its duty to accommodate.[2]

The *Saputo Foods* Decision

Zupcic v Saputo Foods Limited, 2022 AHRC 13 is a recent example where an employee's failure to cooperate in the accommodation process resulted in the dismissal of a human rights complaint.

In this case, the complainant employee was diagnosed with a shoulder injury that impacted her ability to perform certain duties associated with her position. All parties agreed that the injury amounted to a disability under the *Alberta Human Rights Act*.

In response, the respondent employer implemented an accommodation plan that involved the assignment of modified duties, based on the available medical evidence. At several times throughout the accommodation process, the complainant said the modified

duties were problematic for one reason or another. The employer addressed those concerns each time, adjusting her duties accordingly.

Six-months into the accommodation process, the employer provided the complainant with a formalized return to work plan (the "**RTW Plan**"), designed to return the complainant to her regular duties (with reasonable modifications in place). The complainant was asked to accept and sign-off on the RTW Plan, but she refused to do so. The Complainant also failed to provide updated medical information supporting her refusal. Shortly thereafter, the Employer terminated the Complainant's employment, and the Complainant brought a human rights complaint against the Employer alleging discrimination on the basis of a physical disability (the "Complaint").

Unsurprisingly, the Tribunal Chair found that the Complainant's disability was *a factor* in her dismissal since the Complainant's employment was terminated after she refused to sign-off on the RTW Plan. However, the Tribunal Chair went on to conclude that the RTW Plan was reasonable based on the available medical evidence, and that the Complainant failed to cooperate in the implementation of the proposed accommodation.

The Complainant argued that the accommodations in the RTW Plan exceeded her medical restrictions and were unreasonable, but the Tribunal Chair found that the evidence did not support the Complainant's assertions in this regard. Rather, the Tribunal Chair found that the RTW Plan was supported by the evidence, noting that it included mechanisms for re-assessment if the Complainant had trouble with the accommodated work.

The Complaint was dismissed because the Complainant failed to participate in the accommodation process.

Lessons for Employers

Workplace accommodation is a highly fact specific exercise. Employers must be vigilant and proactive when it comes to assessing and implementing workplace accommodations

This case is a powerful reminder that where an employer proposes *objectively reasonable* accommodations, and the employee either does not accept such accommodations, or refuses to participate in the process, the employer will not have failed in its duty to accommodate.

Source: Fasken

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