Workplace Accommodation: Not Just A One-Way Obligation For Employers



For employers, implementing accommodation measures in the workplace is far from straightforward. This obligation requires them to put in place measures to accommodate an employee who has a disability within the meaning of the *Charter of Human Rights and Freedoms*, up to the point of undue hardship. In this context, does the employer get to choose which accommodation measure to put in place?

It is well established that the duty to accommodate is not about finding the perfect solution but rather about taking steps to accommodate a disabled worker. Thus, the obligation qualified as a "reasonable" accommodation is a matter of **collaboration** between the parties concerned. In this context, a worker who wishes to benefit from accommodation has an obligation to actively participate in the search for a solution, to bring to the attention of the employer or union all relevant facts about their situation, and to demonstrate flexibility in order to reach a compromise.

Recently, in *Syndicat des professionnelles et professionnels en milieu scolaire du Nord-Ouest (SPPMSNO) et Commission scolaire crie (L. O.)*, arbitrator Éric-Jan Zubrzycki rendered an interesting ruling on the employer's duty to accommodate for medical reasons and the worker's duty to cooperate in the process.

In this decision, the worker asked her employer, a school board in Northern Québec, to allow her to perform her work on a fully remote basis, citing medical reasons. The employer refused, arguing that this would constitute undue hardship. The employee challenged her employer's decision to deny her request to return to work on a remote basis and keep her on disability leave.

The parties' positions

The union disputed the obligation to work in person for an employee whose functional limitations do not allow her to travel actively and who performs most of her client-related tasks through telephone calls, videoconferences, email, or other technological means. It claimed that it is entirely possible to carry out the employer's mission without the need for a physical presence.

For its part, the employer acknowledged that the requirement for the employee to work in person may be perceived as *prima facie* discrimination under the *Charter of Human Rights and Freedoms*. Nevertheless, the employer considered the return to in-person work justified and necessary to achieve its goals. In the employer's view, the

accommodation requested by the worker constitutes undue hardship given that its clientele, coming from small communities in Northern Québec where school enrolment rates are low, requires close supervision and has very specific needs. In this sense, the employer argued that allowing the worker to perform her work remotely on an indefinite basis would violate students' rights and become an undue hardship for the employer.

In addition to these arguments, the employer alleged that the worker had closed herself off from any arrangement other than full-time remote work without disclosing that she could reach the employer's offices by paratransit service.

Arbitrator Zubrzycki's decision

The requirement to work in person is justified by the employer's objectives

Arbitrator Zubrzycki accepted the employer's arguments and determined that the requirement to perform the work in person was justified. He based his conclusion on the fact that this requirement is rationally connected to the employer's objectives, particularly in light of its mission, which is to promote higher education through attraction, retention, and success strategies, and considering that the employee's role is to welcome students and offer them direct on-site support, sometimes in times of distress.

In short, the arbitrator ruled that the requirement to offer in-person service is rationally connected to the worker's duties based on the employer's legitimate objectives. However, this conclusion does not absolve the employer of its duty to accommodate since it must demonstrate that it is impossible to accommodate the worker in question without incurring undue hardship.

The duty to cooperate fully

The arbitrator also assessed the parties' participation and cooperation in implementing accommodation measures. He found that **the employee did not fully cooperate** in the accommodation efforts and that, while those efforts were underway, she failed to disclose relevant information, namely her access to paratransit, of which she was fully aware.

In this case, the evidence showed that the parties had met to address the transportation issue. The employee considered the paratransit option too demanding, and she deliberately failed to inform the union and the employer that she was not only eligible for paratransit but had also been approved to use the service. Her decision to withhold this crucial information was based on her personal experience of using the service to get to medical appointments.

By failing to disclose her eligibility for paratransit to the union and the employer, the worker deprived them of a means of arranging an accommodation that would enable her to perform the work. Thus, the arbitrator found that the employee was responsible for the failure of the accommodation process. He pointed out that implementing accommodation measures remains a complex process, requiring **flexibility** and **cooperation** on the part of the worker. The employee had deliberately withheld a perfectly feasible solution that should have been analyzed by the parties.

For these reasons, the arbitrator dismissed the union's grievance.

What can employers learn from this ruling?

- An employer does not have to forego in-person service to its clientele in order to accommodate a disabled worker if this in-person requirement is rationally connected to the employer's needs. The employer's management right authorizes it to determine where work will be performed.
- As part of the accommodation process, the employer must be able to justify that a given job requirement is rationally connected to the tasks to be performed and necessary to achieve the company's legitimate objectives. For this reason, it's important for employers to analyze their needs and service offerings in detail, as well as the tasks performed and the typical responsibilities of the worker concerned.
- It is essential to maintain open, ongoing communication between the employer, the worker, and, where applicable, the union. This allows the parties to clarify expectations, discuss available options, and propose appropriate solutions.
- Workers must cooperate with accommodation efforts and disclose all relevant information about their situation to the employer. Failure to do so could affect the accommodation process.
- It is a good idea for employers to offer their managers regular training on accommodation obligations; this should include raising awareness of the different forms of disability and the specific needs of workers.
- It is in the employer's interest to document every step of the accommodation process, including requests, discussions, decisions taken, measures implemented, and the employer's analysis of its requirements and operations. This will help the employer demonstrate that its requirements are rationally connected to the company's legitimate objectives and, where applicable, that the worker's refusal of the proposed accommodation breaches their duty to cooperate in the process.

This ruling makes it clear that responsibility for workplace accommodation does not lie solely with employers. Indeed, all parties have a duty to cooperate to find a solution that is acceptable to all. Accommodating an employee with a disability can be complex, and each situation is unique. Employers would do well to seek legal advice to ensure they are fully informed of their obligations and rights in such circumstances.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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