

DUTY TO ACCOMMODATE AND ILLNESSES SUCH AS COVID-19

Does an employer have to accommodate a worker that tests positive or become sick because of COVID-19?

- » The *Ontario Human Rights Code's (OHRC)* policy position is that the *Code* ground of disability is engaged in relation to COVID-19, as it covers medical conditions or perceived medical conditions that carry significant social stigma.
- » Employers have a duty to accommodate employees under the *Code* in relation to COVID-19 unless it would amount to undue hardship.
- » Employers should also be sensitive to other factors such as any particular vulnerability an employee may have (for example, if they have a compromised immune system).

Does an employer have to accommodate a worker if they need to stay home with kids or an ill family member?

- » An employer must accommodate an employee who has care-giving responsibilities up to the point of undue hardship.
- » These care-giving responsibilities, which relate to the *Code* ground of family status, could include situations where another family member is ill or in self-isolation or where their child's school is closed due to COVID-19.
- » Potential accommodations can include allowing employees to work from home where feasible, permitting employees to work alternate hours, allowing employees to take leaves from work or other flexible options.

Is a medical note required to support an accommodation request?

- » Consistent with the *OHRC's Policy on ableism and discrimination based on disability* and its *Policy position on medical documentation to be provided when a disability-related accommodation request is made*, employers should take requests for accommodation in good faith.
- » Employers should be flexible and not overburden the health care system with requests for medical notes. Unnecessarily visiting medical offices increases risk of exposure for everyone.

- » On March 19, 2020, Ontario passed Bill 186, *Employment Standards Amendment Act (Infectious Disease Emergencies)*, 2020, which provided that an employee would not be required to provide a medical note if they need to take a leave related to COVID-19. These temporary *ESA* rules are no longer in effect: www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave
- » The last day you could get paid sick days as part of Ontario's Infectious Disease Emergency Leave (IDEL) was March 31, 2023. You can still take as many unpaid sick days as you need through the IDEL. Your employer **can ask** you for a medical note, but they **can't require** one. You have the right to refuse to give them a note. The government has not said when unpaid leave will stop.

FOR MORE INFORMATION:

COVID-19 and Ontario Human Rights Code – Questions and Answers: www.ohrc.on.ca/en/news_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-questions-and-answers-0

Policy on ableism and discrimination based on disability: www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability

OHRC policy position on medical documentation to be provided when a disability-related accommodation request is made: www.ohrc.on.ca/en/ohrc-policy-position-medical-documentation-be-provided-when-disability-related-accommodation-request

