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NAVIGATING THE WORKPLACE FOR INDIVIDUALS WITH PARKINSON'S DISEASE

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THE ONTARIO HUMAN RIGHTS CODE

1. Introduction to Ontario's *Human Rights Code*¹

In Ontario, the *Human Rights Code* (the "*Code*") serves as a fundamental framework to protect individuals from discrimination and ensure equal treatment in various aspects of life, including employment. Section 5 of the *Code* specifically addresses the right to equal treatment concerning employment and safeguarding individuals from discrimination based on various personal characteristics, including disability.

The *Code* applies to public and private organizations in Ontario but does not apply to the federal government or federally regulated organizations, which are instead governed by the *Canadian Human Rights Act*.

This educational resource aims to inform individuals with Parkinson's disease, who live in Ontario and whose employers are provincially regulated, by providing essential information about their rights. This resource provides legal information and does not provide legal advice. Readers should contact a lawyer to obtain advice with respect to any legal matter.

1.1 Section 5 of the *Code*: Equal Treatment in Employment

Section 5 of the *Code* enshrines the principle that every person has a right to equal treatment in employment without discrimination. This means that all individuals, regardless of their personal characteristics enumerated and protected by the *Code*, are entitled to fair and equal opportunities in the workplace. Discrimination based on citizenship, race, ancestry, place of origin, colour, ethnic origin, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, record of offences (in employment), or disability is strictly prohibited. These employment protections under the *Code* apply during the application and interview process, while employed, and if the employee is terminated.

¹ *Human Rights Code*, RSO 1990, c H.19, s 5 [OHRC].

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1.2 Parkinson's Disease as a Protected Disability

The *Code* defines disability broadly, encompassing both visible and invisible characteristics that limit a person's abilities.²

Parkinson's disease, a neurodegenerative condition affecting movement and other functions, falls within the scope of the definition of disability under the *Code*. Job applicants and employees are protected under the *Code*, to the extent that the disability impacts their ability to participate in the job application process and/or their performance of their job duties. Individuals living with Parkinson's disease face unique challenges, and the law acknowledges their right to not be discriminated against in relation to this disability in the employment context.

Key Takeaways from the *Code*

- Section 5 of the *Code*, prohibits discrimination based on disability in employment. The employment protections apply during the application and interview process, while employed and if the employee is terminated.
- Parkinson's disease is a disability under the *Code*, providing both job applicants and employees protection to the extent that their disability impacts their ability to participate in the job application process and/or their performance of job duties.

DUTY TO ACCOMMODATE

2. Duty to Accommodate

Under the *Code*, employers and unions have a legal duty to accommodate the needs of people with disabilities who are negatively affected by a work-related rule, requirement, or standard, and where people who are otherwise fit to work require working conditions to be adjusted to perform their work. However, employers are only required to accommodate up to the point of "undue hardship," which is discussed in further detail in section 3 of this resource. Please note that undue hardship is a very high threshold.

2.1 What is an Appropriate Accommodation?³

The Ontario Human Rights Commission (the "Commission") provides guidance that any accommodation provided by employers must be appropriate. An appropriate accommodation, according to the Commission, is one that gives the employee an equal opportunity to enjoy the same level of benefits and privileges experienced by others. The most appropriate accommodation is one that respects employees'

² OHRC (footnote 1), s 10.

³ Ontario Human Rights Commission, "Policy on ableism and discrimination based on disability" (27 June 2016) at p 33, online (pdf): [Ontario Human Rights Commission <https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf>](https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf) [Policy on ableism].

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dignity, responds to their individualized needs, and allows for their full participation and integration in the workplace.

Furthermore, there is no set formula for accommodating people under the *Code*. Each person's needs are unique and must be properly considered when an accommodation request is made. What might work for one person may not work for another, and accommodations may need to be revisited over time to make sure that they continue to appropriately meet a person's needs.

If an employer is not able to provide the most appropriate form of accommodation immediately but will be able to in the future, the employee is still entitled to receive an alternative or the "next-best" accommodation in the meantime. Furthermore, if the most appropriate accommodation would cause the employer undue hardship, the next-best accommodation must be provided. The employer must provide reasonable accommodation, which is not necessarily the form of accommodation the employee will be seeking.

2.2 Forms of Accommodation⁴

Forms of accommodations will depend on the employee's specific needs and what could be considered undue hardship for their employer. Some examples of accommodations are:

- Allowing a flexible work schedule
- Modifying job duties or workstations
- Providing assistive devices for computers or accessible technology
- Alternative means of communication with an employee
- Training
- Job bundling
- Alternative work

2.3 Accommodation Process

The accommodation process is meant to be a collaborative one. Both the employee and the employer have responsibilities. Also, maintaining documentation of communications with an employer regarding an employee's disability may serve as a future resource.

The employee is responsible for:⁵

- Making their accommodation needs known to the best of their ability.
- Providing information about their restrictions and limitations which includes information from health care providers.
- Providing their input in discussions about accommodation solutions and working with their employer to manage the accommodation process.

⁴ *Policy on ableism* (footnote 3), at p 39.

⁵ *Policy on ableism*, (footnote 3) at p 41.

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- Meeting agreed-upon performance standards after receiving accommodation.

The employer is responsible for:⁶

- Accepting accommodation requests in good faith.
- Providing accommodation, in a timely manner, to the point of undue hardship.⁷
- Maintaining confidentiality and consulting with the employee throughout the process.
- Incurring costs associated with the provision of accommodation.

Note: During the job application process, disclosure of a medical diagnosis is not required. If an accommodation is required, communicating limitations or restrictions is required so employers can provide accommodation.

2.4 What Type of Medical Information Should an Employee Be Prepared to Provide in the Accommodation Process?⁸

To support an accommodation request, employees should be prepared to provide documentation outlining:

- That the employee has a disability and the associated limitations and restrictions they have.
- Whether or not the employee can perform the essential duties of the job with or without accommodation, please refer to section 2.5 of this resource to read more about essential duties.
- The types of accommodation the employee might need.
- If the employee is on leave, regular updates on the employee's prognosis and when the employee can be expected to return to work.

Employers cannot substitute their own opinions with respect to employees' limitations and restrictions in place of the medical documentation provided by doctors. Employers also cannot ask for more confidential medical information than necessary. Any additional information requests must be the least intrusive on the employee's privacy, while still giving the employer enough information to provide accommodation. It is common for employers to request further information to clarify employees' limitations and restrictions, and it is part of the employees' responsibilities to participate in providing such information. Furthermore, it is not the role of doctors to determine the form of accommodation, but rather it is their role to advise on the employee's limitations and restrictions.

2.5 Limits on the Duty to Accommodate⁹

Employers are only required to accommodate needs and not preferences.¹⁰ This means that if there is a choice between two accommodations that both equally respond to the employee's needs, the employer is entitled to select the one that is less expensive or less disruptive to the organization.¹¹

⁶ *Policy on ableism* (footnote 3), at p 41.

⁷ *Turnbull v. Famous Players Inc.*, [2001] OHRBID No. 20, 2001 CanLII 26228 at para 216.

⁸ *Policy on ableism* (footnote 3), at p 45.

⁹ *Policy on ableism* (footnote 3), at p 56.

¹⁰ *Graham v Underground Miata Network*, 2013 HRTO 1457 (CanLII) at para 31; *Seguin v. Xstrata Nickel*, 2012 HRTO 15 (CanLII) at para 11.

¹¹ *Policy on ableism* (footnote 3), at p 33.

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Under section 17 of the *Code*, employers are not required to accommodate employees if their disability prevents them from “performing or fulfilling the essential duties or requirements” of the job.¹² The “essential duties” of the job are the “vital” or “indispensable” aspects of the job.

Employers are not required to fundamentally change the working conditions of the job, assign the “essential duties” of the job to other employees, or change the “essential duties” and requirements of a position. In these cases, a next-best solution, such as alternative work, may need to be found.¹³

Employers must allow employees to show their ability before concluding that they are unable to perform the essential duties of their job.¹⁴ If the employee is no longer able to perform the essential duties of their job, the employer should consider permanent alternative work.¹⁵

2.6 Termination of Employment re: Medical Leave

If employment is terminated while an employee is seeking accommodation, or while the employee is on or returning from a medical leave, this may be considered discrimination. The employee can file a human rights application against their employer and must link the termination to their disability. The employer must then prove that the reason for the termination was not discriminatory.¹⁶ If the employee has been on a medical leave of absence for an extended period of time and cannot return to work in the foreseeable future, their employment may be frustrated, which may also result in the termination of their employment.

Key Takeaways from the Duty to Accommodate

- Employers and unions have a legal duty to accommodate individuals who are harmed by work-related regulations or standards, as well as for those who are capable of working but need adjustments to their working conditions.
- Employers are required to accommodate up to the point of "undue hardship," focusing on needs rather than preferences, and are not obligated to accommodate if a disability prevents an employee from the performance of essential job duties. However, employees should be given an opportunity to showcase their abilities before their employer concludes that they are unable to perform the job's essential duties, provided they are medically cleared to work.
- An appropriate accommodation provides employees the chance to enjoy the level of benefits and privileges experienced by others. Accommodations will depend on an employee's specific needs.

¹² *Policy on ableism* (footnote 3), at p 35; *Pourasadi v. Bentley Leathers Inc.*, 2015 HRTO 138 (interim decision) (CanLII) [*Pourasadi*]; *Brown v. Children's Aid Society of Toronto*, 2012 HRTO 1025 (CanLII) [*Brown*]; *Briffa v. Costco Wholesale Canada Ltd.* 2012 HRTO 1970 (CanLII) [*Briffa*]; *Yeats v. Commissionaires Great Lakes*, 2010 HRTO 906 (CanLII) [*Yeats*]; *Perron v. Revera Long Term Care Inc.*, 2014 HRTO 766 (CanLII) [*Perron*].

¹³ *Yeats; Perron; Brown* (footnote 12); *Briffa* (footnote 12), at paras 52-54 and 60; *Arumugam v. Venture Industrial Supplies Inc.*, 2013 HRTO 1776; See also: *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000* (SCFP-FTQ), 2008 SCC 43 (CanLII); CHRR Doc. 13-2276, 2013 HRTO 1776.

¹⁴ *Policy on ableism* (footnote 3), at p 34.

¹⁵ *Policy on ableism* (footnote 3), at p 36.

¹⁶ *Ilevbare v. Domain Registry Group*, 2010 HRTO 2173 (CanLII) at para 52.

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- Employees should be prepared to provide medical documentation outlining the employee's limitations and restrictions. Where the employee is on disability-related medical leave, documentation with updates on their prognosis and expected return to work are required.

UNDUE HARDSHIP

3. Undue Hardship

Employers are required by law to assess whether they can provide accommodation, even if no forms of accommodation can be reasonably provided without resulting in undue hardship. If an employer fails to make an effort to take steps to accommodate an employee's disability, this may be a failure to perform their duty to accommodate and violate the *Code*.¹⁷

3.1 What factors constitute "undue hardship"?

According to the *Code* and Ontario legislation, the evaluation of whether an accommodation would impose "undue hardship" on an employer should be based solely on the following three considerations:

1. Cost
2. Outside sources of funding
3. Health and safety requirements

Factors such as employee morale, business inconvenience, and customer and third-party preferences are not valid considerations for assessing whether an accommodation would cause undue hardship. As well, "inconvenience" by itself is not a factor in assessing undue hardship. Employers cannot simply say, without evidence, that the organization would go out of business if they were required to undertake the accommodation. Rather, employers must attempt to assess the impact of reasonable accommodation on the organization according to the factors outlined above.

Key Takeaways from Undue Hardship

- Employers are legally required to determine if they can provide accommodation without resulting in undue hardship. Undue hardship is a high threshold.

ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ("AODA")

4. What is the AODA?

The AODA is meant to develop, implement, and enforce accessibility standards to remove barriers for Ontarians with disabilities.¹⁸ The AODA applies to public and private sectors in Ontario but does not include the federal government or federally regulated organizations, which are instead governed by the *Accessible*

¹⁷ *Gourley v. Hamilton Health Sciences*, 2010 HRTO 2168 (CanLII); *ADGA Group Consultants Inc. v. Lane*, 295 DLR (4th) 425, 2008 CanLII 39605 at para 107.

¹⁸ *Accessibility for Ontarians with Disabilities Act*, SO 2005, c. 11, s 1 [AODA].

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*Canada Act.*¹⁹ Similarly to the *Code*, Parkinson's disease and its associated symptoms fall within the AODA's definition of disability.

Complaints **cannot** be filed under the AODA. It is meant to complement the *Code*.

4.1 What Rights Do You Have Under the AODA?

The *Integrated Accessibility Standards Regulation* ("IASR") under the AODA provides specific employment-related rights. Subject to limited exceptions, the IASR applies to any public sector organization and to any private sector organization that provides goods, services, or facilities to the public or other third parties and has at least one employee in Ontario²⁰

In the recruitment process, the IASR entitles employees and applicants to the following²¹:

- Employers must notify their employees and the public about the availability of accommodations during the recruitment process. This also applies to any sort of assessment or selection process that individuals are invited to participate in.
- If an applicant requests an accommodation, the employer must consult with the applicant and provide a suitable accommodation for the disability.

On the job, the IASR entitles employees to the following²²:

- Employers must notify successful applicants and new employees of its policies for accommodating employees with disabilities.
- Employers, other than employers considered small organizations by the IASR, must have a written process in place for the development of documented individual accommodation plans for employees with disabilities. This includes steps to facilitate a return to work if the employee is absent because of their disability.
- If the employer provides career development and advancement to its employees, it must take into account employees' disabilities and any accommodations.
- Redeployment and performance management should also take into account employees' disabilities.

Key Takeaways from the AODA

- Parkinson's disease and its symptoms fall under AODA's definition of a disability, but complaints cannot be filed under the AODA.
- The IASR entitles job applicants and employees to accessibility related rights throughout the recruitment process and on the job.

¹⁹ AODA, (footnote 18), s 4.

²⁰ *Integrated Accessibility Standards*, O Reg 191/11, s 1(3).

²¹ *Integrated Accessibility Standards* (footnote 20), s 20-23.

²² *Integrated Accessibility Standards* (footnote 20), s 25-32.

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FILING WITH THE HUMAN RIGHTS TRIBUNAL OF ONTARIO

5. How to File an Application with the Human Rights Tribunal of Ontario (“HRTO”)?²³

Note: For more information, consider consulting a lawyer and/or visiting the HRTO’s website [here](#).

Step 1: File an application through the HRTO website

The application is directly on the HRTO’s website [here](#). An application must be filed within one year of the alleged discrimination. Applicants can choose to file on their own or get help from legal clinics, lawyers or paralegals.

The following information must be included in the application form:

- The applicant’s contact information.
- The respondent’s contact information (the organization which the claim is against).
- A description of the discrimination, including the date and location.
- The grounds of discrimination.
- Remedies sought.

There are three types of remedies the HRTO may order:

1. Monetary compensation can be provided for things such as lost wages or injury to dignity and self-respect.
2. Non-monetary compensation can require an accommodation or a change in the respondent’s policy.
3. Public interest remedies can be provided for future compliance with the *Code* and include things such as human rights training.

After filing an application, the HRTO provides a file number and outlines the next steps.

Step 2: Respondent Files a Response

The respondent typically must file a response, responding to the allegations set out in the application.

Step 3: Voluntary Mediation

²³ Tribunals Ontario, “HRTO: Application & Hearing Process”, online: *Tribunals Ontario* < <https://tribunalsontario.ca/hrto/application-and-hearing-process/> >.

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Where both parties agree, there is an opportunity to take part in voluntary mediation. At mediation, the HRTO provides a trained professional to help the applicant and the respondent try to resolve the claim. If an agreeable resolution is not reached, the parties will continue to a hearing, and the mediator will not be the adjudicator.

Step 4: Summary and/or Preliminary Hearings

The HRTO can schedule preliminary hearings to decide on certain issues. A summary hearing can be ordered where the respondent alleges there is no reasonable prospect of the application or part of the application succeeding.

Step 5: Merits Hearings and Decision Issued

A hearing on the merits is a legal proceeding, where an adjudicator will hear the case and, based on the hearing, issue a decision. Before the hearing, the parties must exchange any relevant documents, a witness list, and witness statements.

Key Takeaways from Filing an Application with the HRTO

- For violations of the *Code*, an application can be filed with the HRTO. Applications must be filed within one year of the alleged discrimination.
- Applicants should be prepared to provide their contact information, the respondent's contact information, a description of the discrimination, ground(s) of discrimination and remedies sought.

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RESOURCES

Relevant Statutes or Policies

- Ontario Human Rights Code: <https://www.ontario.ca/laws/statute/90h19>
- Ontario Human Rights Commission Policy on Ableism and Discrimination Based on Disability: https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf
- Accessibility for Ontarians with Disabilities Act: <https://www.ontario.ca/laws/statute/05a11>
- Integrated Accessibility Standards: <https://www.ontario.ca/laws/regulation/110191#BK21>

Legal Supports and Resources

- The Human Rights Legal Support Centre offers free services throughout the province. An accommodation can also be requested before meeting with the Human Rights Legal Support Centre. Learn more here: <https://hrlsc.on.ca/contact-hrlsc/>
- For those who identify as a member of the Indigenous community, the Human Rights Legal Support Centre's Indigenous Services Team offers culturally sensitive legal support. Learn more here: <https://hrlsc.on.ca/indigenous-services/>
- Tribunals Ontario provides a general list of ways to get legal help here: <https://tribunalsontario.ca/en/getting-legal-help/>
- How-to Guides published by the Human Resources Legal Support Centre about the process of filing an application with the Ontario Human Rights Tribunal can be found here: <https://hrlsc.on.ca/how-to-guides/>
- CanLII, the Canadian Legal Information Institute, is a non-profit organization offering free and open online access to court decisions from all Canadian courts, tribunal decisions, and legislative documents. You can access their website here: <https://www.canlii.org/en/>

Non-Legal Supports

- Learn more about the Ontario Disability Support Program (ODSP) here: <https://www.ontario.ca/page/ontario-disability-support-program>
- Learn more about Ontario's social assistance programs: <http://www.officelocator.mcass.gov.on.ca/>
- Learn more about the Ontario Disability Employment Network (ODEN) here: <https://www.odenetnetwork.com/>
- Learn more about the Accessibility for Ontarians with Disabilities Act Alliance (AODA Alliance) here: <https://www.aodaalliance.org/>

Legal Clinics

- Western Law Community Legal Services: https://law.uwo.ca/legal_clinics/community_legal_services/index.html
- Legal Aid Ontario: <https://www.legalaid.on.ca/legal-clinics-list/#south>

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