

Health & Safety Learning Symposium

Workplace Accommodation: WorkplaceNL & CCRW

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 www.workplacenl.ca/symposium

WorkplaceNL

WorkplaceNL





Housekeeping

- **Micro-breaks**
- **Questions are encouraged!**
- **Silencing cell phones**
- **Bathrooms and emergency exits**



Learning Objectives

- **Legislative Requirements**
- **Definitions**
- **Case Studies**
- **Resources**



Legislative Requirements

Accommodation

- Every employer has an obligation to **accommodate** and re-employ injured and disabled workers under human rights legislation.
- The employer must accommodate the work or workplace to the extent that the accommodation does not cause the employer undue hardship.



Re-Employment Obligation

An employer is required to re-employ a worker who had a work-related injury in their pre-injury job or suitable work if:

- The employer regularly employs 20 or more workers
- There was an employment relationship for a continuous period of one year immediately prior to the date of the worker's injury
- The worker is medically able to perform the essential duties of the pre-injury employment or to perform suitable work.



Duty to Inquire

The lesser known duty to inquire is clearly stated in Canadian case law:

The duty to inquire exists when an employer is either made aware of or perceives that a worker may need an accommodation, even if they have not outrightly asked for one.



Legal Precedence

The Caron Case (2018)

The Caron Case set a national precedent for how we are to explore accommodation, taking into account the rights and responsibilities of the workplace parties.

Accommodation to the point of undue hardship is **not limited** to employers with a 2-year re-employment obligation.





Definitions

Accommodation

Any change or adaptation to the work, hours of work, work duties or workplace, and includes but is not limited to:

- Provision of equipment or assistive devices
- Modified duties
- Job restructuring
- Job bundling
- Reassignment to open positions
- Retraining for alternate positions
- Facility or workstation changes
- Scheduling changes
- Modifications to work environment

Accommodation

- The employee must be able to perform a useful and productive job for the employer.
- Accommodation requires a balance between the rights of the worker and the right of the employer to operate a productive workplace.



Undue Hardship

Any accommodation that would require significant difficulty or expense.

Considerations include the nature and cost of the accommodation in relation to the size, resources, nature and structure of the employers operation.

Implies that some hardship may be required to meet the obligation to accommodate.

Undue Hardship

- Assessed on a case-by-case basis.
- Employers are expected to exhaust all reasonable possibilities for accommodation before they can claim undue hardship.





Factors to Consider When Reviewing Workplace Accommodations

Ability to Accommodate

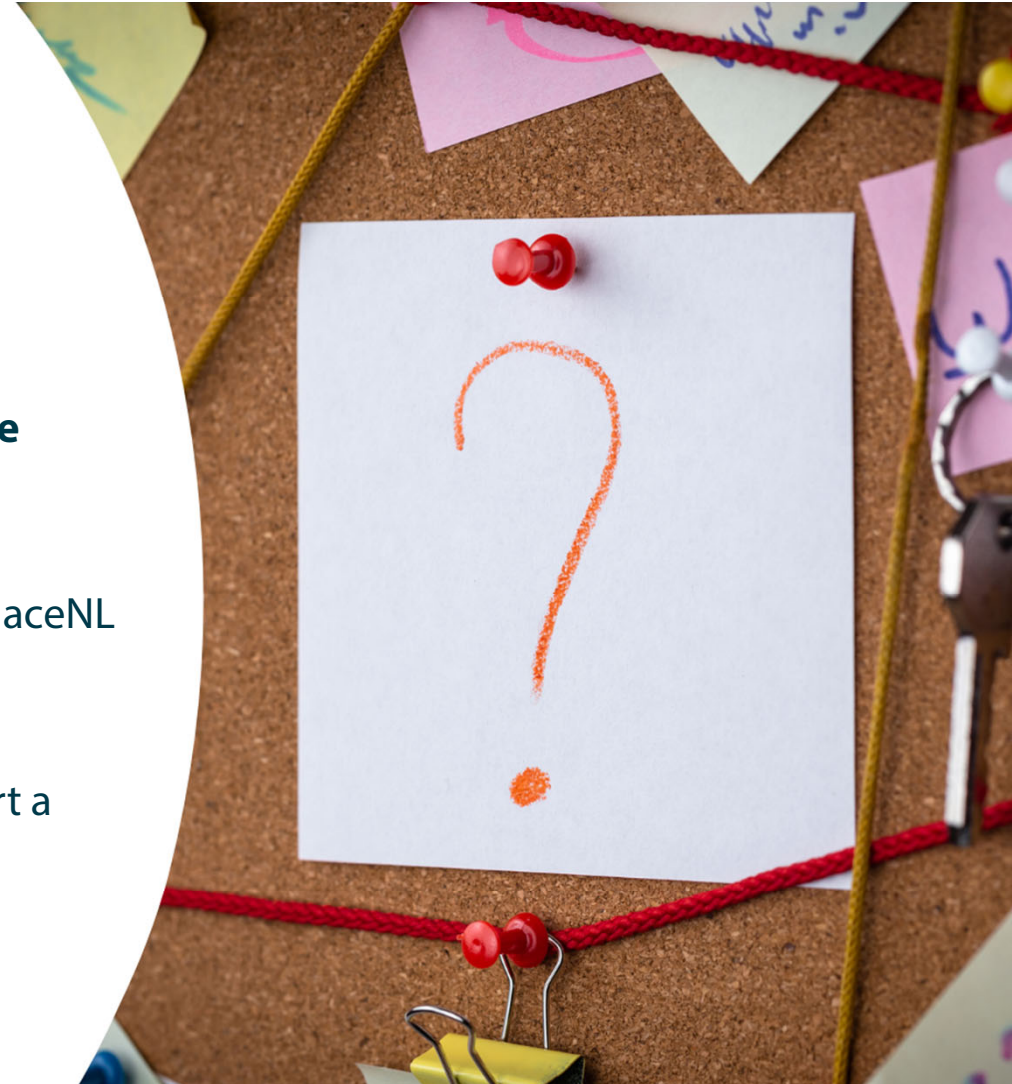
Factors to consider:

- Identify what position the worker “owns” and pre-injury wages
- Review all available alternate work options (same and alternate sites)
- Identify any possible alternate options and identify any gaps between workers function/skills and the alternate option(s)
- Union and collective agreements implications
- Timelines requested from WorkplaceNL



Undue Hardship

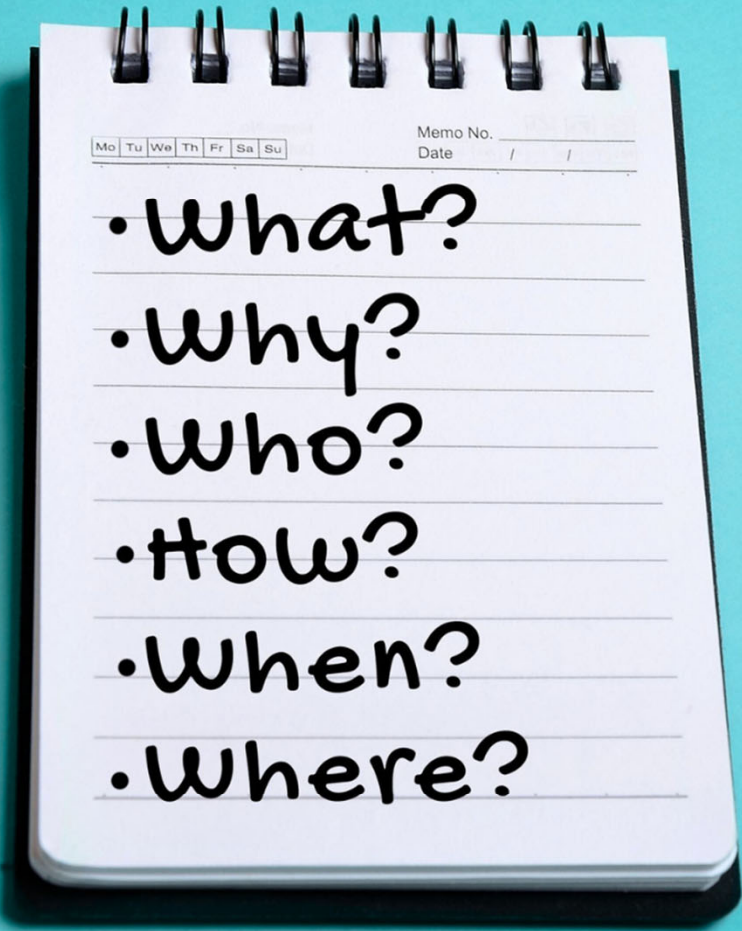
- If claiming undue hardship, **the employer has the onus of providing proof**
- Where a claim of undue hardship is made, WorkplaceNL will conduct an investigation
- Generalized conclusions will not suffice to support a claim of undue hardship



Undue Hardship

Factors to considered when a decision maker makes a determination of undue hardship:

- Health and safety
- Size and type of operation of employer
- Impact
- Employee morale
- Other relevant factors



What Isn't Undue Hardship

Factors that do not constitute undue hardship:

- Business inconvenience
- Customer preferences
- Operation of Unions and collective agreements



Obligation Not Met

What happens if the employer does not meet the requirement of undue hardship?

- Penalty costs are applied directly to the employers assessment account as per the following:
 - *WHSC Act, s.100(8)*
 - *WHSC Act, s.101(13)*

Leading the Way

- Striving for inclusion rather than meeting minimum requirements
- Making proactive adjustments versus reactive accommodations
- Having a “yes” mentality
- Seeking information from experts



Case Studies

Case Study 1

Jamie is a 34 year old cashier at a high traffic tourist shop in downtown St. John's. Jamie's boss noticed that they were frequently forgetting tasks such as taking out the garbage, rotating stock, and others. Jamie has not disclosed a disability.

Case Study 1

What should the employer do?

- a) Write Jamie up for poor performance and implement lists for them to follow.
- b) Tell Jamie each time they miss something and formally acknowledge it in their performance review.
- c) Inquire about performance and explore accommodations.

Case Study 2

Suzie is a warehouse associate in Mount Pearl for a shipping company. Suzie recently experienced a stroke that left her with weakness in her right-side limbs. She can no longer lift heavy things or stand for long periods of time, but wishes to return to work.

Case Study 2

What should the employer do?

- a) Re-employment
- b) Accommodations
- c) AskJAN

Case Study 3

Richard is a heavy equipment operator who works mostly in construction. Unfortunately, there was a major accident at his worksite resulting in Richard witnessing the death of a colleague. Richard was diagnosed with PTSD and took 2 weeks off and was cleared to return to work. Richard attempted to return but was met with a panic when stepping onto the worksite.

Case Study 3

What should the employer do?

- a) Explore accommodations for trauma
- b) Ask the experts
- c) Go above

Resources

WorkplaceNL Resources

Andrew Manuel

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709.778.1589

General Inquiry

www.workplacenl.ca

MyWorkplaceNL

connect

info@workplacenl.ca

How Can WorkplaceNL Assist?

- RTW Facilitator
- Case Manager
- Occupational Therapy (OT) services such as Worksite Occupational Rehab (WSOR)
- Labour Market Re-entry (LMR) Assessment

CCRW Resources

Melanie Wells

Disability advocacy, recruitment, employer and jobseeker supports, training, custom facilitation.

mwells@ccrw.org

709-383-0337

CCRW Disability Confidence Toolkit

<https://toolkit.ccrw.org/>

VR Initiative

Disclosure, skills, interviewing, accommodations.

Contact Us

For more information, please call the **WorkplaceNL** office nearest to you:

Corner Brook

709 637 2700
1 800 563 2772

Grand Falls

709 489 1600
1 800 563 3448

St. John's

709 778 1000
1 800 563 9000



Thank you!



Questions



Your Feedback is Important!

Please complete the evaluation at the end of the day.