

Client Services Policy Manual

Policy Number: **RE-07**
Subject: **Undue Hardship**
Chapter: **Return to Work and Rehabilitation**

Policy Statement

An employer shall accommodate the work, or the workplace for the worker, to the extent that the accommodation does not cause the employer undue hardship. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances with respect to a specific accommodation.

When claiming undue hardship, the employer who is required to accommodate is responsible for proving that the accommodation will cause the employer undue hardship. It is not the responsibility of the injured worker or WorkplaceNL to prove that the accommodation can be accomplished without undue hardship.

When referencing any of the return to work policies (RE-01 to RE-11 and RE-18), it is important to recognize the responsibilities of the workplace parties, within the context of the complete return to work process. These policies represent the return to work model. Therefore, all policies must be considered, not only the specific guidelines under an individual policy.

Deciding Whether Undue Hardship Exists

WorkplaceNL will investigate a claim of undue hardship. This includes gathering the necessary information and conducting interviews with the workplace parties.

Factors to Consider

The factors that may be considered when determining undue hardship include, but are not limited to:

- The health and safety of the worker or co-workers;
- The nature and cost of the accommodation needed;
- The overall financial resources of the employer making the reasonable accommodation;
- The number of persons employed by the employer;
- The effect on expenses and resources of the employer;
- The overall financial resources, size, number of employees, type and location of the employer facilities (if the facility involved in the reasonable accommodation is part of a larger entity);
- The type of operation of the employer, including the structure and functions of the employer's workforce;

Client Services Policy Manual

Policy Number: **RE-07**
Subject: **Undue Hardship**
Chapter: **Return to Work and Rehabilitation**

- The geographic relationship between the worker's current employment and that of the proposed accommodation offered by the employer;
- The impact of the accommodation on the employer's operations;
- The rights of other employees are significantly impacted by the accommodation for an injured worker; and
- Other relevant factors.

The employer may be required to bundle duties to create a suitable accommodation for the worker if the worker is able to perform the majority of the essential duties of an existing position. However, the duty to accommodate does not require the employer to create a new position for the worker or to hire a second person to assist the worker to perform the essential duties of a position.

This policy recognizes that different businesses have different financial and operational circumstances. What may be an "undue cost" for one business, may not be an undue cost for another.

Business inconvenience, customer or employee preferences, or the operation of collective agreements will not be considered relevant reasons to claim undue hardship.

Business Inconvenience

Business inconvenience in and of itself is not accepted as a reason to support a claim of undue hardship for the accommodation obligation. However, demonstrable costs attributable to decreased productivity, efficiency or effectiveness, can be considered in assessing undue hardship under the cost standard, providing they are quantifiable and clearly related to the proposed accommodation.

Excluded Factors

Customer or Employee Preferences

An employer cannot claim undue hardship based on customer or employee preferences, fears or prejudices toward an individual's disability.

Collective Agreements or Contracts

Collective agreements or other contractual arrangements cannot act as a barrier to accommodation. The Courts have determined that collective agreements and contracts must give way to the requirements of human rights law.

Client Services Policy Manual

Policy Number: **RE-07**
Subject: **Undue Hardship**
Chapter: **Return to Work and Rehabilitation**

Merits and Justice

Where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would cause an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice as outlined by Policy EN-22 Merits and Justice. Such a decision will be considered for that specific case only and will not be precedent setting.

Reference: Workplace Health, Safety and Compensation Act, 2022, Sections 100 and 101, Canadian Human Rights Act, Human Rights Act, 2010
Policies: RE-01 through RE-11
RE-18 Hierarchy of Return to Work and Accommodation
EN-22 Merits and Justice

Amendment History

Original Effective Date	2002 01 01
Revision # 1	2004 07 22
Revision #2	2022 06 30

Next Review Date 2027 06 30