

ACCOMMODATING DISABILITIES AT WORK

The New Brunswick *Human Rights Act (Act)* prohibits **discriminatory** treatment in employment based on a **person's physical or mental disabilities**.



PHYSICAL AND MENTAL DISABILITIES IN HUMAN RIGHTS

Section 2 of the *Act* defines **physical disability** as any **medical condition** caused by an injury, illness, or birth defect. The condition **does not have to be permanent**. It can include short-term illnesses, but not common conditions like a cold, flu, or strep throat.

Examples of physical disabilities:

- Back problems
- Diabetes
- Cancer
- Multiple Sclerosis
- Heart conditions
- Colour blindness

The *Act* defines **mental disability** as **intellectual or development disabilities** (ex: Down Syndrome), **learning disabilities** (ex: ADHD, Dyslexia, etc.), and **mental health conditions**.

Examples of mental disabilities:

- Anxiety
- Depression
- ADHD
- PTSD
- Bipolar Disorder
- Autism

If an employee does not have a disability, but their employer thinks they have a disability and treats them differently as a result, such treatment would be discriminatory under the *Act*. **This is discrimination based on perceived disability.**

Example:

You tell your employer that **you had a disability in the past** which has now been cured. However, the employer assumes that you still have a disability and will not be able to work full-time hours because of your condition. The employer reduces your work hours – this is discrimination based on perceived disability.

DISABILITIES AND EMPLOYMENT UNDER THE ACT:

Under human rights law, an **employer cannot discriminate against employees because they have a mental or physical disability**. Discrimination is prohibited in all types of jobs, including full-time, part-time, permanent, or casual positions. The *Act* also protects against discrimination during the hiring process

DUTY OF EMPLOYERS TO ACCOMMODATE PERSONS WITH DISABILITIES



If you require support related to a **physical or mental disability**, your employer must **accommodate your reasonable request** for that support. This is called the **duty to accommodate, and it is the law.**

The duty to accommodate means that an employer must **change their rules or policies to support an employee with a disability**. This ensures that all employees are treated equally and can fully participate and contribute to their workplaces. **The duty to accommodate is also collaborative**. This means that the employee must cooperate with the employer, so both of them can together explore how best to support the employee in their job. For example, the employee should provide **any relevant medical or other documents** to the employer.

If it becomes **too difficult for an employer to accommodate your need** (for example due to health and safety reasons), then **they can deny your accommodation request**. Such denial must be based on careful assessment – it cannot be automatic. This is called **undue hardship**.

DUTIES OF EMPLOYERS



Gathering information

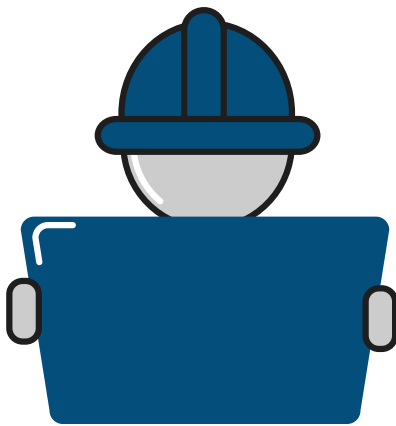
Employers must work with healthcare providers to **evaluate the employee's specific needs and limitations**. Each accommodation request must be reviewed to assess the specific needs of an employee. Employers **must not use a "one-size fits all" approach** in the accommodation process.

Employers should have regular check-ins with employees to ensure that an accommodation is working well. If an accommodation is not working, employers should explore other solutions.



Providing suitable accommodation

After evaluating an employee's needs, the employer must provide **reasonable accommodations** for them. This could mean assigning different tasks or finding a new role to fit an employee's limitations.



DUTIES OF EMPLOYEES

- **Tell your employer if you need accommodations** for your disability. In most cases, if an employer does not know that you have a disability, they are not required to provide an accommodation.
- You may also need to **provide documents like a doctor's note** that explains your limitations, how long the accommodation may be needed, and if you can do alternative work. **You do not need to tell your employer your specific diagnosis** or the medication you may be taking.
- Talk to your employer about potential solutions for accommodations and **work together to implement them**. You **must accept reasonable accommodations**, even if they are not your preferred options.
- Work with your employer to make sure that the accommodation you need is still in place and working well.

EXAMPLES OF ACCOMMODATIONS RELATED TO PHYSICAL OR MENTAL DISABILITIES

- Reducing an employee's workload and/or assigning them a new position that fits their current needs and capabilities.
- Having flexible work schedules for employees who need to attend doctor's appointments.
- Allowing an employee to bring their service animal to work.
 - **Note: Service and emotional support animals are protected under the Act if they are part of the treatment for a mental or physical disability.**
- Providing support tools, like text reading software, for an employee with visual impairment.
- Ensuring workspaces are accessible for employees with mobility restrictions.

Learn more about accommodating disabilities in the workplace by consulting our "Guideline on Accommodating Physical and Mental Disabilities at Work"! <https://bit.ly/3y23U3e>




DO YOU HAVE QUESTIONS? CONTACT THE COMMISSION

The **New Brunswick Human Rights Commission** is a government agency that ensures the human rights of all New Brunswickers are protected under the Act. If you want to learn more about your rights and responsibilities related to disabilities in the workplace, contact the Commission. The Commission **provides free information about your rights and will help you if you face discrimination**.

If you think you have experienced discrimination, **you can file a complaint with the Commission**.

YOU CAN REACH US AT:

 (506) 453-2301

 hrc.cdpegnb.ca

 www.gnb.ca/hrc-cdp