

MORE



We Get Together . . .

**Disability Rights
and Collective Bargaining Manual**



Canadian Labour Congress

Congrès du travail du Canada

Acknowledgments

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Marie Clarke Walker
Executive Vice-President

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Terminology Policy

The terminology used in this publication respects the plurality of identities of people with disabilities and associated social change movements. People are not conditions. We use the term "people with disabilities" to reflect the person first.

References

For ease of reading, we cite references by authors and dates but include the full references at the end of the text instead of using footnotes.

“We need to negotiate, educate, organise, lobby, use the grievance and arbitration process, and fight in the courts. We need to be there on every front pushing an equality rights agenda for workers with disabilities. We need to be there fighting every act of discrimination. We need to be in the forefront.” CLC, Conference Recommendations from Workshops, CLC 1st National Disability Rights Conference. Ottawa: CLC, 2000.

Introduction

The CLC has a long history of supporting social justice and equality for all members of society. Part of that support is demonstrated in assisting union members with disabilities or who become disabled during the course of their working lives.

We formalised our commitment to disability rights in 1980 through our Policy Statement on the Disabled. We called and continue to call on the labour movement to support people with disabilities in the workplace and the community.

The CLC established a Disability Rights Working Group in 1994 with a clear 'disability rights' focus. The Disability Rights Working Group assists the Congress and its affiliates to better integrate workers with disabilities and their issues into all aspects of the Canadian labour movement.

One of the significant changes, as a result of constitutional changes to the CLC in 1999, was the election of a CLC Vice-President (Persons with Disabilities) to sit as a full participating member of the CLC's Executive Council. The individual elected to this position must be a person with a disability and has the role and responsibility to advance disability rights, articulate and promote issues.

In November 2000, the CLC extended its work in advancing the disability rights agenda by organising its first National Disability Rights Conference. It brought together for the first time, workers with various disabilities, along with other union activists, staff, and community partners. The conference provided the foundation to

move forward on disability issues. In 2001 we launched the ongoing MORE Campaign. The MORE Campaign covers four critical areas of regular, ongoing union work, Mobilise, Organise, Represent and Educate around disability rights issues. The campaign continues to build greater awareness amongst union members about disability rights issues.

The CLC is committed to strengthening the voices of those who live with disabilities including workers, family members and job seekers. The manual, **The MORE We Get Together** is a resource to further the understanding of issues that impact on lives of people with disabilities - most importantly, the duty to accommodate.

The duty to accommodate falls upon employers, unions and workers to work together to accommodate the worker to the point of undue hardship. Employers and unions must be proactive and inclusive. Unions can now have more input in the workplace as a result of court decisions and collective bargaining.

How to use this manual

This manual is a tool for union organisers and negotiators, disabled activists and their organisations, individuals with disabilities and their allies to advance issues of people with disabilities. It provides union and community activists working with people with disabilities, a comprehensive review of disability rights and collective bargaining provisions that impact on conditions of workers with disabilities. While some advancement is evident, most people with disabilities continue to face numerous obstacles to their full participation in the paid labour force. This manual is a resource for change.

The manual discusses key disability issues in the workplace. General information is in the body of the manual and more detailed information is in the

Appendices. Readers will be directed on where to get additional information, resources and assistance relevant to them locally and through the Internet.

The manual has a number of objectives in mind:

- ✓ advancing rights of people with disabilities;
- ✓ moving forward in collective bargaining by advancing the protections of workers with disabilities;
- ✓ informing unions and their members about the duty to accommodate including obligations and impact on members;
- ✓ raising awareness of union executive officers, staff, local union activists and members on disability rights;
- ✓ providing the tools to take action in solidarity with persons with disabilities.

The MORE We Get Together recognises organised labour's responsibility to be accountable to Canadians with disabilities and the need to support union activists who fight to improve the work environment for all workers. It sets out a framework to advance the disability rights agenda in four major areas:

- ✓ Legislative and Political
- ✓ Collective Bargaining
- ✓ Duty to Accommodate
- ✓ the Role of the Union and Union Activists

This Manual will help shape the future practices of union activists and disabled advocates within the labour movement as they work together for the benefit of

all Canadians with disabilities. It is a tool for deepening the dialogue between workers, advocates, and employer representatives, in order to achieve greater participation and equality for workers with disabilities and people with disabilities in general. It will help community organisations working with people with disabilities to better understand the role of unions in advancing disability rights.

We define what we mean by disability in this manual. A brief demographic profile of disability in Canada and issues of employment and disability are included.

We discuss the legislative and political agenda unions need to be inclusive of workers with disabilities, whether the worker was injured at work, became disabled while working or had a disability when hired.

We look at the duty to accommodate and its application in the workplace.

We examine bargaining strategies that have created a difference, look at contract language, and provide a checklist for collective agreements.

We provide references such as contacts of organisations working on disability issues, union resources related to advancing disability rights, and web sites of interest.

The manual has three appendices providing summaries of arbitration decisions related to duty to accommodate, human rights decisions, and a bibliography.

2. The Basics

- ✓ The political analysis of disability has evolved over time from a primarily medical model to a social-political model. The labour movement supports the social-political model.

Who are People with Disabilities?

People with disabilities have one thing in common - their differences. They may have a physical disability, a sensory disability, an intellectual disability or mental disability. Their disability may have been from birth, or developed in their childhood, teenage years or later in life. It could become apparent while in school or at work. Their disability may have minimal effect on their ability to work and take part in society, or it may have a strong effect, requiring significant support and assistance.

We are using an inclusive definition of disability for this manual. It includes, for example:

- ! People using wheelchairs
- ! Visually impaired and blind people
- ! Hard of hearing and deaf people
- ! People with medical conditions such as HIV/AIDS, diabetes and cancer
- ! Mental health disabilities
- ! People with developmental and intellectual disabilities
- ! Heart condition and hypertension
- ! Alcoholism and drug addiction

- ! Learning disabilities such as dyslexia
- ! Chronic fatigue syndrome and fibromyalgia
- ! Chronic pain including back pain, repetitive strain injury

The disability can be temporary, permanent, or recurring. The definition of disability also includes perceived disability because the impact on a person, whether or not they have a condition that limits them in their capacity to do work, can be great if there is a perception they have a disability. It includes all workers whether they are new workers, casual, temporary or permanent.

People with disabilities are participating and contributing in the world of work at all levels. However, many persons with disabilities who want to work do not have the opportunity to do so due to barriers. The barriers can be attitudinal, systemic, architectural and political. People with disabilities prefer employment to being on income security. Frequently, however, un-accommodating work environments, lack of community supports and discrimination makes working difficult.

The labour force participation rate for all working-age persons with disabilities is much lower than that of the general population. Unemployment among people with disabilities of working age is significantly greater than for working age individuals without disabilities. Over 1.1 million working-age Canadians with disabilities are unemployed or remain out of the labour force. This is 58.5% of the working age population of people with disabilities. The impact is greater if you are a member of other marginalised groups and have a disability. Having a disability and being a woman, Aboriginal person and/or a person of colour means you are significantly more likely to be unemployed. (PALS, 2001)

The Medical Model of Disability

It is important to look at how we have come to understand disability and how we have traditionally seen persons with disabilities. Most people who see people with disabilities don't see people with disabilities as a unified force or minority group, not unlike women or people of colour. Instead, under the medical model, people with disabilities are seen as a group to be controlled and treated as patients.

In Canada many programs and services for people with disabilities are designed based on medical diagnosis of disability. Using a medical model of disability approach to disability focuses on the individual impairment as the problem and does not address external or systemic concerns to people with disabilities.

Examples of the application of the medical model include:

- ✓ Provincial income assistance programs
- ✓ Supplementary health benefit plans
- ✓ Workers' Compensation
- ✓ Short and long term disability plans
- ✓ Canadian Pension Plan Disability Benefits and
- ✓ The disability tax credit under the Income Tax Act

The medical model assumes there is a direct correlation between pathological and/or psychological problems and disability. It often leads to an adversarial approach where the focus is on the condition rather than the person and is too

"[D]isability is not the resulting limitations caused by chronic illness, impairment or trauma, but the way such matters are responded to and categorised by the wider society. Disability is the product of definitions and practices that seek to exclude individuals who might be seen to deviate from the socially constructed norms of the able bodied. Disability should not be conceptualised as an individual attribute, but as the result of exclusionary practices." Bury, Mike, 1996.

"Defining and researching disability: Challenges and responses." In Exploring the Divide: Illness and Disability. Edited by Colin Barnes and Geof Mercer. Leeds, UK: The Disability Press.

narrow in scope. Focusing on individual limitations stigmatises persons with disabilities and averts attention from the structural and attitudinal obstacles in the environment that create barriers for people with disabilities.

The Social-Political Model of Disability

The social-political model of disability focuses on the ways in which social factors cause people with certain physical or mental disabilities to be disadvantaged or treated unequally. Many people with disabilities reject the medical model of disability and see disability as a social construct. The social-political model of disability understands disability as a problem created and imposed by society. People with disabilities live in a world designed to suit non-disabled people. Non-disabled voices have assumed authority to declare what disability is and what people with disabilities need. Many people with disabilities reject this approach.

The social-political model of disability recognises that people with disabilities face systematic discrimination in the way society and its institutions are organised, by the way the environment is constructed and by the attitudes, values and beliefs that develop as a result of the systematic exclusion of people with disabilities from mainstream society. Disability is a human rights issue.

“To understand the full operation of discrimination on disabled people’s lives, we need to extend our understanding of that process to include the socio-economic and political forces which shape not only our attitudes towards disability, but also the very meaning of that term. In a very real sense our society disables individuals by constructing a disabled identity into which individuals are fitted.” C. Gooding, *Disabling Laws, Enabling Acts: Disability Rights in Britain and America* (Boulder, Colo.: Pluto Press, 1994) at 9.

People with disabilities have been frustrated and rendered voiceless by existing service providing organisations and parental organisations FOR persons with disabilities who did not adequately and appropriately represent their issues. As

a result people with disabilities established their own organisations based on the social-political model of disability. In the 1980's, Canadians with disabilities, including union members with disabilities and injured workers lead the fight to get people with disabilities included in human rights legislation and working towards full participation and equality in society.

Over time, unions and organisations of people with disabilities have met together, developed joint ventures and shared expediencies. The result is, at times, a closer, more co-operative process to expand opportunities for people with disabilities and injured workers. It has not always been smooth; misunderstandings have resulted, as is often the case, in coalition work.

In March, 2001 the Ottawa Carleton Para Transpo drivers went on strike. The union worked closely with the passengers who required the accessible parallel transportation system. While the strike dragged on for months, the passengers with disabilities supported the drivers and advocated for increased benefits and wages. In 2003 when a similar dispute arose but the union did not work as closely with the community of people with disabilities so there was less public support from the users. The lesson learned is – support must be nourished.

Organisations of people with disabilities mistakenly see unions as the gate keepers to employment and unions, at times, neglect to consult with disability organisations thus increasing the tension.

Stereotypes, Stigma and Prejudice

How we look at biological difference or biological inferiority in our society is important. When non-disabled people think about persons with disabilities, they have to deal with issues of ability. As with issues around race and racism or sexism or heterosexism, able bodied people need to think about ableism and their attitudes towards persons with disabilities.

Canadians with disabilities face discrimination. The type of discrimination is much more than individual prejudice. It is institutionalised within the very fabric of our society. People with disabilities experience extreme economic and social hardship every day of their lives. People with disabilities are marginalised and oppressed. The eugenics movement, the proposed improvement of the human species by encouraging or permitting reproduction of only those individuals with genetic characteristics judged desirable, of the late 19th century and early 20th century led to the sterilisation of large number of people with disabilities and was used as the basis for the extermination of tens of thousands of people with disabilities by Nazi Germany. Today we see remnants of these atrocities in the call for reduced convictions when a child with a disability is murdered and the sanctioning of abortions solely based on the suspicion the foetus has a disability.

When the policies and actions result in inequality between people with disabilities and non-disabled people, it is oppression. This oppression has been accepted and is promoted throughout society. Too often persons with disabilities are pre-judged and denied the right to make a contribution in the areas of their interest and expertise. The overwhelming majority of people with disabilities experience social, economic and political inequality as a result of stereotypes, stigma and prejudice.

When we talk about oppression of people with disabilities, remember that people with disabilities are women, are Aboriginal, are people of colour, are gay men, lesbians, bisexual and transgendered, are from different class backgrounds, from different cultures, and ages. People with disabilities may also be affected by racism, heterosexism, sexism and other forms of oppression that will conspire and compound to ensure disabled people remain on the fringes of society.

"While many white people have embraced the cause of people of color, and while many straight people have taken up the cause of gay, lesbian, bisexual and transgendered people, few 'normals' have resonated with people with disabilities. The reasons for this are telling. No whites will become black; few straights will become gay; but every normal person can become disabled.... Although identity politics is popular these days, what people fear is that disability is the identity one may become part of but didn't want. This is the silent threat that makes folks avoid the subject, act awkwardly around people with disabilities, and consequently avoid paying attention to the current backlash against disability rights." Bending over Backwards. Disability, Discrimination, Dismodernism & Other Difficult Positions, Lennard J. Davis (2002: 3-4)

What are the Demographic Profiles of Persons with Disabilities?

According to Statistics Canada 2001, one out of every eight Canadians - an estimated 3.6 million people of all ages, including children - reported some level of disability in 2001.

The 2001 Statistics Canada Participation and Activity Limitation Survey (PALS) covered persons living in households in the ten provinces. It did not include statistics for persons living with disabilities in the Territories, on First Nations reserves, or in institutions. While it included a gender breakdown, it did not report availability data on racialised or Aboriginal people with disabilities. We know from the 1991 Health and Activity Limitation Survey (HALS) that over 30 percent of Aboriginal persons reported a disability.

Statistics Canada data confirms unemployment and poverty for persons with disabilities have increased in the last decade.

! Only 41.5% of working-age adult Canadians with disabilities have jobs. That means 68.5% are not working;
! Working-age disabled Canadians report average household income of \$21,308 vs. \$29,556 for the non-disabled population, a 28% gap;
! More than 55% of adults with disabilities live below the low income cut-off compared to 19% of adults without disabilities.

There is a strong circular link between poverty and disability. People with disabilities are among the poorest and most vulnerable of society. Without adequate community supports and programs, including income and education; families with disabled members of any age often face considerable financial burdens. And poverty puts children and adults at risk for disability - for basic reasons such as lack of adequate food, clothing, shelter, health care and workplace safety.

Working Aged Adults with Disabilities

According to Statistics Canada

Approximately 10 per cent (two million) of working aged adult Canadians (15 to 64) live with a disability:

- ✓ The three most common types of self reported disabilities were mobility, pain, and agility;
- ✓ The majority of people over 15 reported more than one disability;
- ✓ The rate of disability increases with age;
- ✓ Women with disabilities are less likely to work than men with disabilities.

Women with disabilities continue to trail men with disabilities.

- ✓ 60 per cent of women with disabilities have high school or less as their top educational achievement;

- ✓ 81.8 per cent reported income less than \$30,000;
- ✓ Only 38.5% of women with disabilities are working; for men with disabilities it is 44.9%;
- ✓ The income gap between men with disabilities and women with disabilities was an overwhelming 39.4%.

We know Aboriginal persons with disabilities are only half as likely to be employed as Aboriginal persons without disabilities. We know Aboriginal persons with disabilities earn just above 50% of what Aboriginal persons without disabilities earns. We know information about Aboriginal people with disabilities is very limited.

We know persons with disabilities are one of the most excluded groups from the workforce. Young people with disabilities have greater difficulty entering the work force than youth without disabilities. Adults with disabilities are subject to long periods of unemployment and are more likely not to be in the labour force at all. Many have sporadic, precarious low-paying work. Their rate of full-year employment is less than half of Canadians without disabilities.

The Survey of Labour and Income Dynamics confirmed people with disabilities needed more time to find work than those without disabilities and had longer spells of unemployment. (In Unison, 2000) People with disabilities who have young children have an even harder time finding paid work because of their child-care responsibilities. (G. Fawcett, 1996)

We know throughout the 1990's workers with disabilities had lower wages than workers without disabilities. Workers with disabilities lost ground in their wages in the mid-1990's and never fully recovered during the survey period. In

fact, the wage gap increased slightly, with the hourly wage of workers with disabilities moving from \$14.30 (93.1%) of the median wage of those without disabilities- in 1993 to \$14.25 (91.2%) of the median wage of those without disabilities- in 1998. (Survey of Labour Income Dynamics, 1993-1998)

Workers injured on the job or who become disabled while employed face extreme hardship if they lose their jobs and their ability to work. Given the choice of retaining their job, finding a new one or giving up - most workers with disabilities want to continue to work. Unions are increasingly important at helping workers get back to their work. While unions, employers, government, vocational and rehabilitation representatives and men and women with disabilities may have different perspectives, they all want a healthy and productive workplace where workers with disabilities continue to work.

Reporting Employment

We know one of the few reporting mechanisms measuring progress in employing people with disabilities is the audits conducted by the Canadian Human Rights Commission for public and private employers covered by the federal Employment Equity Act. This covers about 10% of workers in Canada.

While representation of women, visible minorities and aboriginal workers increased steadily since the Act went into effect, people with disabilities have benefited least. Only 2.3% of the private sector workforce has identified as having a disability, a small increase from 1987 when the representation was 1.6%. Again, Statistics Canada has identified that 10% of the working age population has a disability.

Public sector employers have supported employment equity but progress is slow. Employment of workers with disabilities in the public sector was reported at 5.3% in 2002, still short of the reported 6.5% availability in the labour market. The increase in representation was a result of increased self-identification, not new hires. In fact more workers with disabilities left the public service than were hired. Why? Many reasons are self-evident. People with disabilities are often hired on short term, temporary contracts; as the workforce ages, workers get age related disabilities that impact on their ability to work and many workers with disabilities do not have the education and work history to be screened into the interview process let alone be hired. (2002 Employment Equity: A Year-end Review)

We know people with disabilities file the majority of human rights complaints and labour market figures confirm that persons with disabilities continue to encounter discrimination and inequities. While discriminating against persons on the basis of disability, including perceived disability, has been prohibited by law in Canada for more than 25 years, the human rights situation of persons with disabilities has seen little progress.

Federal Programs

People with disabilities continue to face significant barriers to full participation in Canadian society despite government policies and programs.

“I think it’s unforgivable that we’ve not developed a comprehensive program and level playing field for disabled Canadians. If there’s anything a wealthy country like Canada should do, it’s that.” Paul Martin, Ottawa, November 7, 2002.

Some Federal programs help people with disabilities to enter the workplace. We know there are limited federal programs to assist people with disabilities to enter the workplace. The Opportunities Fund is designed to help persons with disabilities that do not qualify for Employment Insurance benefits to prepare for, find and maintain employment. The Employability Assistance for People with Disabilities (EAPD) is a joint federal-provincial initiative that funds provincial programs and services that help working age adults with disabilities prepare for, obtain, and retain employment. (In Unison, 2000)

Employment Supports

We know employers planning to or already employing persons with disabilities, say having employment supports positively impact their decision to employ workers with disabilities. It also contributes to the subsequent success of a work arrangement.

Employment supports for an employee with disabilities can include:

- ! Changing the work schedule (modified or reduced hours);
- ! Restructuring or redesigning the job;
- ! Job coaching;
- ! Modified work process; and

! Physical changes to the workplace like accessible washrooms.

It is estimated that 80% of job-related accommodations for persons with disabilities cost less than \$500. (Job Accommodation Network)

Without the assistance of employment supports, persons with disabilities will continue to be under-represented in the workforce, earn less income than their non-disabled peers, and require ongoing government assistance for funding basic and disability supports required for daily living.

3. What Are Unions Doing?

Unions in Canada have done more than fight for fair wages and optimal working conditions. They have fought to improve the quality of life and to maximise opportunities for all workers, including those with disabilities. Their influence reaches beyond negotiated labour agreements.

The labour movement has played a central role in shaping social policies such as Medicare, unemployment insurance, employment standards, human rights legislation and parental benefits. As well, unions have achieved many changes in the workplace including hours of work, health and safety requirements and recognition of seniority.

Unions now advocate for equality measures including anti-discrimination clauses, policies prohibiting harassment at work, policies on AIDS and the workplace, employment equity programs and job accommodation for workers experiencing employment barriers. Organised labour has affected the larger social environment positively.

The Canadian Labour Congress launched an HIV/AIDS Labour Fund to address the impact of HIV/AIDS on workers and their families, as well as on the workplace and on the economy of developing countries. It reflects the CLC commitment to development, equality, social justice and poverty alleviation.

Labour's understanding of the challenges facing people with disabilities comes from a number of perspectives:

- ✓ Union members who are out of the workplace after being injured in the workplace and the problems they face in trying to reenter their workplaces;
- ✓ Union members who find themselves with a disability that will require some modification to their working and/or community environment;
- ✓ Persons with disabilities who have not been in the paid workforce because of a lack of accommodation and/or prejudice about hiring persons with disabilities;
- ✓ Awareness of the increase incidence of disabilities as our population ages;
- ✓ Members who are injured on the job or become disabled not having adequate protection, benefits or ability to access benefits;
- ✓ Employers efforts to roll back on duty to accommodate and return to work provisions in contracts;
- ✓ Increased lobbying from activists with disabilities.

Unions can play a key role in improving the lives of people with disabilities.

Unions have some valuable experience in reintegrating employees who become

disabled on the job. Some unions have made great strides in negotiating workplace accommodations for their members. We know it is better for the worker in most cases than using long-term disability programs. Work needs to be done to develop creative and pro-active measures to get people with disabilities hired.

Saskatchewan Government and General Employees Union (SGEU) partnership agreement with the Saskatchewan Association for Community Living provides meaningful employment opportunities for persons with intellectual disabilities in the Department of Highways.

While the employer has control of the hiring process in most cases (building trades are partial exception), it is the union's responsibility, morally and under law, to challenge and change the existing inequitable system of hiring.

CUPE has a partnership agreement with the Saskatchewan Government Relations and Aboriginal Affairs and the Saskatchewan Association of Health Organisations (SAHO). The agreement commits the parties to develop strategies for the creation of a targeted representative workforce for Aboriginal people.

A real tension is the issue of seniority and discrimination because of disability. Unions must often balance the competing interests of disability accommodation and seniority rights under a collective agreement. This is a difficult balancing act unions have taken on - promoting the equality rights of workers with disabilities and, at the same time, addressing the concerns of co-workers who may have their seniority rights threatened.

Human Rights: City Ordered to Rehire Worker

The City of Regina, which was found guilty of discriminating against a former city truck driver by a human rights tribunal earlier this month, was ordered to rehire the man.

The city must also pay Gary Kivela his wages until a permanent trucking job is available and \$10,000 in damages for hurt feelings and loss of dignity.

Kivela, who was born with cerebral palsy, filed a human rights complaint in 1999 claiming that during the 16 years he worked as a casual trucker for the city from July 1982 to Nov. 12, 1998, the Canadian Union of Public Employees (CUPE) Local 21 and his employer discriminated against him on the basis of his disability.

The 53-year-old Regina man argued that the seniority system for casual workers embedded in his union's collective agreement was discriminatory and worked to his disadvantage because he was restricted to driving trucks, thereby limiting the hours he worked.

As a result, by 1996 Kivela had already been bypassed on the seniority list by six junior employees, which impeded his opportunities to obtain work and bid on a permanent position if he had the required hours. He lost out on those opportunities.

"The discrimination was ongoing. Even in the last years of his employment, the City and CUPE made no attempt to modify the seniority standard in the collective agreement to take into account the negative impact it had upon workers with disabilities, and did not seek to address the cumulative effect of the discrimination Mr. Kivela suffered," tribunal chairman Roger Lepage wrote.

The city and union by agreement bypassed the entry-level employee requirements that Kivela worked as a casual labourer before being hired as a truck driver to accommodate his disability and made accommodation in 1996 to ensure he wouldn't fall further behind on the seniority list.

But, according to Lepage, their efforts of accommodation were "too little, too late" to reverse the systemic discrimination. Kivela was systemically disadvantaged while he worked for the city.

Lepage also found that Kivela experienced overt discrimination and harassment in the workplace because of his disability. Regina Leader Post, October 28, 2003.

The labour movement in Canada has made some progress in using human rights legislation and collective bargaining to advance issues of people with disabilities and other equality seeking groups. Labour unions are active in:

- ✓ Creating space for workers with disabilities to self organise within unions and the community;
- ✓ Organising and advocating for the rights of workers with disabilities;
- ✓ Ensuring and protecting rights by including them in negotiated collective agreements;
- ✓ Educating union members and employers on disability issues and rights and responsibilities related to disability management and duty to accommodate;
- ✓ Providing services to workers with disabilities to assist them in becoming integrated or more integrated into the workforce;
- ✓ Resolving or litigating disputes, and fighting for legislative changes to protect rights;
- ✓ Supporting disability rights organisations and building coalitions to get positive legislative and policy change;
- ✓ Court interventions.

Organised labour work with employers, governments, non-governmental organisations, and companies to develop programs that increase recruitment and hiring of people with disabilities. Members sit on boards and give their expertise to community-based organisations working with people with disabilities. They promote awareness among union members, and, in their role

as employers, labour unions set an example of fair and equitable hiring practices.

The International Association of Machinists and Aerospace Workers in partnership with the Steelworkers union sponsor IAM CARES (International Association of Machinists Centre for Administering Rehabilitation and Employment Services). It is the only union-sponsored employment placement program in Canada. They work co-operatively with many community agencies exchanging referrals, job leads and information. They also participate in a number of committees, which allows IAM CARES to continually advocate for employment opportunities for people using their service. IAM CARES has strong working relationships with community agencies in Vancouver and Montreal.

Health, Safety and Disability Prevention

Unions represent their members in health, safety and disability prevention. Securing safe working conditions is a hallmark of labour union activity. Health, safety and prevention research involves the worker in job design and redesign, policy formulation and implementation of programs on health, safety and

disability prevention.

Unions are in a unique position to use their leverage as representatives of workers to make possible health, safety, disability prevention and ergonomics programs in the workplace. Labour unions play a key role in establishing labour-management health, safety and ergonomics committees, organising for and promoting legislation on workplace safety, educating members about safety and disability prevention on and off the job, negotiating labour agreements to include health and safety committees, developing policy statements and labour agreements on disability prevention measures, supporting worker's right to accommodations, tools or reassignment thus preventing increased exposure to stress or hazardous conditions, and making it a political priority with the union through education/awareness, organising, lobbying and working with the community of people with disabilities.

The National Institute of Disability Management and Research was founded by the Disabled Workers Foundation of Canada. It is a labour-management initiative aiming to reduce the human and economic cost of disability to workers, employers, and society, through education, training, and research. It focuses on workplace-based reintegration, believed to be the most effective and economic way of restoring and maintaining a worker's abilities and is funded by employers, unions, and federal and provincial governments.

Workers Who Become Disabled

Unions have fought for workers' compensation, disability and other benefits related to on-the-job injury and workers whose disabilities are not work-related. Labour unions support workers' rights to job protection, early intervention in

rehabilitation services and sound disability management programs. Good programs should return the worker to his or her job and provide accommodations when necessary. When a worker cannot do their job, alternatives such as reassignment and retraining should be provided. As a last resort, long-term compensation and wage replacement should be guaranteed.

The Ontario Federation of Labour's Occupational Disability Response Team (ODRT) is a not-for-profit project set up in 1990 to provide workers and their representatives with workplace insurance training and support. The ODRT mission is to ensure the well-being of Ontario workers and their entitlement to workplace insurance benefits. The ODRT offers multi-level training on Workplace Safety Insurance Board (WSIB) Rights & Obligations (Level I), Benefits & Representation (Level II), and Appeals & Dispute Resolution (Level III), Return to Work, Medical Orientation and Occupational Disease. It also offers ongoing information updates through its website and its quarterly publication, The Advocate.

Within the workplace, unions should help organise joint labour-management committees to develop workers accommodation and return to work programs, advocate accommodations, educate co-workers, and support and advocate for the injured or disabled worker. As well, unions need to bargain with employers on duty to accommodate and employment equity provisions, engage in research of workers' needs, and educate workers on their rights and responsibilities and

The Canadian Auto Workers adopted a policy that election committees must make every effort to accommodate so that all members can exercise their democratic rights. They recognised they must accommodate for members with a disability including full access to the voting area or hall, including for those using a wheelchair. Signs should indicate clearly from the parking area where the wheelchair accessible entrance is located. Other measures such as providing signing for the hearing impaired depend on the needs of the membership.

actions needed in relation to injury and disability.

Inclusion of People with Disabilities in the Community and Work

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Unions have provided support and partnerships for the Canadian Injured Workers Alliance (CIWA). They are a national network of injured workers' groups supporting and strengthening the work of local, provincial, and territorial injured workers' groups by providing a forum for exchanging information and sharing experiences. They believe that injured workers, as individuals, should be in control of their own destinies and injured workers' groups must be democratically controlled by injured workers.

rtation, information, education and training opportunities and support services, in order to be at work. People with disabilities are not able to participate in the workplace if they are excluded from full participation in community life. Also, once employed, people with disabilities may need support services and accommodations to be fully integrated or to maintain job performance. Equality in community life is a precursor to employment equity, and to fully address the issue of disability and work, the broader issue of human rights must be considered.

Unions can be direct agents of change in their communities. Advocating for employment equity legislation, encouraging integration of people with disabilities in the workplace and community plus reaching out to workers with disabilities and the organisations that represent them, and collaborating to take positive action will make a difference. Also, unions are using political leverage to influence legislative change, providing model services, programs and representation within the labour union structure to include, accommodate and engage members with disabilities in all aspects of the organisation. Raising

funds and serving as volunteers in the community will make an impact.

The Canadian Union of Postal Workers supports members who have children with disabilities. The Special Needs Project provides parents with resources to help with their child's disability - from child care, respite or recreation program fees, to specialised training for child care workers, transportation and uninsured health care expenses. Participating families are also supported in other ways including a regular newsletter, personal assistance by phone and educational and resource materials. The program is funded by the CUPW Child Care Fund, which the union negotiated into its collective agreement with Canada Post in the 1990's. The fund helps CUPW members who have the most difficulty finding or affording high quality childcare. The Special Needs Project is the union's biggest and most important program under the fund.

Disability Rights Working Groups

Unions have established disability rights committees and groups made up of workers with disabilities, to ensure that the rights and needs of members with disabilities are fully represented within the union structure and are a voice in the community. Some are:

- ✓ Ontario Federation of Labour's Members with Disabilities Committee;
- ✓ Canadian Union of Public Employees' National Disability Working Group;
- ✓ Public Service Alliance of Canada's Access Committee, representing workers with disabilities;
- ✓ Canadian Union of Postal Workers Differently - Abled Workers Group as part of its National Human Rights Committee;

- ✓ Hospital Employees' Union CUPE's People with disAbilities Committee;
- ✓ Canadian Labour Congress' Disability Rights Working Group.

The Hospital Employees' Union (HEU) developed a handbook for members with disabilities that outlines the HEU People with Disabilities Committee and its work, includes a guide to being an activist and disability issues including members' experiences, duty to accommodate and benefits for injured or ill workers.
One Union, Many Abilities.

What Unions Activists Can Do Now

1. Participate in an accessibility audit at your workplace and in your community. Be sure spaces at work, union and social functions are accessible to people with disabilities. Use the Ontario Federation of Labour's Accessible Facilities Guide as a start.
2. Become more aware of disability issues in general. Work with community groups of people with disabilities including participating on boards and sharing resources.
3. Be aware of the language you use and take care not to label people.
4. Support your co-workers who are entering return to work programs. Let other co-workers and your employer know that you are committed to accommodating and supporting a worker's safe return to work.
5. Lobby and promote legislative changes that impact on lives of disabled people including employment equity legislation, inclusive building codes, improvements to tax provisions, health care and occupational health and safety.
6. Develop and give union education programs that address bargaining, leadership, and accommodation issues.
7. Pressure political parties to take up disability issues.

8. Host union conferences focussing on disability issues and include disability issues in all conferences, build workers with disabilities caucuses at all levels.
9. Survey your members with disabilities and find out their needs and issues.
10. Better incorporate disability rights provisions into collective bargaining strategies.

Supporting a disability rights agenda within the Canadian union movement is essential. The agenda can move forward through political mobilisation and legal advocacy. Political mobilisation through union policy, conferences, education, legislative campaigns and strategies is needed to get greater inclusion within the labour movement. Legal challenges through grievances, arbitrations, and human rights cases further define disability rights in relation to work. Surely unions can do this.

The Public Service Alliance of Canada (PSAC) elects two Equity Representatives (Disability), on the basis of gender parity, to sit on the Equal Opportunities Committee, a national standing committee of the National Board of Directors.

4. What is the Duty to Accommodate?

The duty to accommodate is a broad equality concept that applies to all grounds of discrimination that are covered under federal, provincial and territorial human rights legislation and the equality rights provisions of the Canadian Charter of Rights and Freedoms. The principles apply to unions looking for ways to accommodate members based on all the grounds under human rights legislation. The duty to accommodate requires employers with the union playing an active role, to take reasonable steps to accommodate a worker to the point of undue hardship. The only reason not to accommodate is when it is impossible to do so without encountering undue hardship.

While employers have the principal duty to accommodate workers, unions also have a duty to accommodate. Unions must assist in the accommodation process wherever possible and can be held liable if they impede the accommodation process. This duty may impose certain costs on the union. The duty to accommodate may sometimes override the collective agreement and may even go against seniority, unless doing so creates an undue hardship for the union. The union must demonstrate the extent to which it undertook reasonable and significant efforts to reach a compromise or agreement to accommodate the individual's needs. Documentation of these efforts is important.

Where the union has negotiated an arrangement that has a discriminatory impact, it has a joint responsibility with the employer to proactively eliminate that discrimination. Even if the union was not involved in implementing a discriminatory provision, it must cooperate with the efforts of the employer to accommodate the worker. If the employer does not take this responsibility seriously, the union should insist that the employer take the necessary action.

One of the reasons persons with disabilities are excluded from work is that employers have not looked at ways of changing workplaces to accommodate their needs. Unions can help change this by working to ensure the employer is meeting their obligations to accommodate workers with disabilities.

The duty to accommodate has become a fundamental principle of employment law, in part, through the collective leadership of union members in coalition with equality seeking groups challenging the status quo.

A New Approach

In 1999, the Supreme Court of Canada brought down a landmark ruling that makes an employer justify any work requirement that appears discriminatory. Their ruling - called the Meiorin case - set out a new unified approach to discrimination where:

- ✓ It no longer matters if discrimination is in the form of “direct: discrimination {for example, a rule that says no disabled people need to be hired) or “indirect” or “adverse effect” discrimination (eg, a rule that requires, in effect, that a person be able-bodied and excludes those who are disabled).
- ✓ The Court set out that at the “heart of the equality question” is the “goal of transformation”. The Court said it is not enough to make some concessions to those who are “different” but we must abandon the idea of “normal and work for genuine inclusiveness”.
- ✓ The Court set out a new three-part test for determining whether a standard that on its face appears to be discriminatory is a “Bona Fide Occupational Requirement”.

The Three-Part Test

An employer may justify a job standard by establishing, on a balance of probabilities, the following:

1. That the standard is “necessary”, i.e. rationally connected to the performance of the job;
2. That the particular standard was adopted in an honest and good faith belief that it was necessary to the fill legitimate work-related purpose; and
3. That the standard accommodates individuals and groups to the point of undue hardship.

The Court also suggested the following questions need to be asked in relation to Step 3:

- Has the employer investigated alternative approaches that do not have a discriminatory effect, such as individual testing against a more individually sensitive standard?
- If alternative standards were investigated and found to be capable of fulfilling the employer’s purpose, why were they not implemented?
- Is it necessary to have all employees meet the single standard for the employer to accomplish its legitimate purpose or could a standard reflective of group or individual differences and capabilities be established?
- Is there a way to do the job that is less discriminatory while still accomplishing the employer’s legitimate purpose?
- Is the standard properly designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?
- Have other parties (i.e., the Union) who are obliged to assist in the search for possible accommodation, fulfilled their roles?

What is a Bona Fide Occupational Requirement (BFOR)?

Bona Fide Occupational Requirements (BFORs) are the essential tasks required to perform a job. Where an employer can establish a particular BFOR, they can exclude certain workers, under certain circumstances, from a job. BFORs are not preferences. They are essential to the job. For example, an employer may prefer workers to have a high school diploma for certain jobs, it is not a BFOR unless the employer can demonstrate that the job cannot be done without that qualification. Preferences such as this may have the effect of screening out certain groups of applicants unnecessarily.

What is Undue Hardship?

Undue hardship is generally considered to be an unbearable financial cost or disruption to business. It could include an interference with the rights of others. The courts have said the following can be taken into account in assessing undue hardship: financial costs of accommodating, disruption to a Collective Agreement, problems of morale of other employees, interchangeability of workforce and facilities and the size of the employer's operation or labour pool. An accommodation that requires a minor inconvenience or operational upset is not enough to satisfy the undue hardship test.

The only excuse not to accommodate is if there is a significant undue hardship for the employer. This means that the employer must be willing to look beyond its current practices and way of doing things in order to accommodate.

Employers must look for all reasonable alternatives. Accommodations may include:

- ✓ Granting a leave of absence;
- ✓ Altering work conditions;
- ✓ Permitting a gradual return to work;

- ✓ Re-arranging shifts;
- ✓ Re-bundling job duties that are necessary;
- ✓ Providing specialised equipment;
- ✓ Changing positions.

The courts have said the possibilities are endless and vary according to circumstances.

5. Bargaining Strategies and Contract Language

"The significant problems we face cannot be solved by the same level of thinking we were at when we created them."
Albert Einstein

Unions represent all members, including members with disabilities. We need to review all parts of our collective agreements (particularly our non-discrimination, accommodation, benefits, return to work and leave clauses) to ensure that we meet our legal requirements under duty of fair representation and human rights law and fully represent our members.

Collective agreements are the key to making the pro-active changes in recruiting, retaining and representing workers with disabilities. Collective Agreements are a powerful tool (or not, depending on its language) to win workplace rights for persons with disabilities.

In 2000 the Canadian Labour Congress published a study that examined provisions in collective agreements negotiated specifically for persons with disabilities. The paper, *Disability Provisions in Collective Agreements in Canada* provides some interesting statistics on the 1,070 agreements reviewed:

- ✓ 54% of contracts covering 63.1% of workers have collective agreements containing an anti-discrimination clause;
- ✓ Only 6.6% of the agreements have a provision giving workers the right to transfer to or be trained for another job if they become disabled as a result of work;
- ✓ Almost 63% of collective agreements had no provision for training or transferring a worker who became disabled as a result of work;
- ✓ 55% of the collective agreements have no provision for employer contribution to LTD plans. Those that do vary in the percentage of earnings payable as benefit and many have caps on the amount payable;
- ✓ Slightly more than 50% of workers covered by collective agreements have no drug plan in their agreements;
- ✓ 3/4 of agreements have no language regarding work environment factors such as counseling services, job rotation and work environment committees;
- ✓ 69% of agreements have no provision for Health & Safety committees.

There are gaps in the contracts reviewed, but it is important to note that a number of unions and employers have negotiated a variety of language around workers with disabilities.

Contract Language and Checklists

Union contracts vary. Some are expansive – recognising the need for duty to accommodate, employment equity, anti discrimination including harassment, extended health benefits, long term disability plans, protocols for return to work, etc... Some agreements are stingy only recognising workers covered by Workers' Compensation legislation and employment standards legislation.

The following section highlights examples of existing contract language. It is not intended to be a comprehensive and thorough review but a small sample to illustrate the underlying concepts in:

✓

- ✓ duty to accommodate
- ✓ return to work
- ✓ job rights/seniority
- ✓ human rights
- ✓ employment equity

- ✓ privacy
- ✓ medical certificates and

- ✓ training
- ✓ termination

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Duty to Accommodate

The parties acknowledge their duty to accommodate persons with disabilities in the manner and to the extent required by the Ontario Human Rights Code. The parties agree that this means accommodating disabled employees to the point of undue hardship if such accommodation will enable the employee to perform the essential duties of his or her position. An employee with whom an accommodation is being discussed shall be informed of his or her option to have a union representative present during any such discussions.

York University Faculty Association and York University Board of Governors.

Consistent with the seniority provisions of Articles 7 and 27 of the current collective agreement, the re-employment of employees who become disabled as a result of illness or injury, the Company will provide work that they are capable of performing by obeying the reasonable accommodation guidelines and provisions of the Ontario Human Rights Code and the provisions of the Ontario Workers' Compensation Act.

National Automobile, Aerospace Transportation and Peterson Spring Kingsville, Ontario.

The Company and the Union recognise the need to achieve equality in the workplace and to provide disabled employees with reasonable accommodation, without undue hardship, whenever possible, so that no person shall be denied employment opportunities for reasons unrelated to ability.

The Communications, Energy and Paper Workers Union of Canada (CEP) and Entourage Technology Solutions.

The Employer and the Union recognise the duty to accommodate a disabled employee and will take reasonable steps to fulfill the commitment.

PEI International Union of Operating Engineers, Local 942 and Regional Health Authorities of PEI.

Where the duty of the Company and the Union to accommodate an employee under human rights legislation conflicts with the Collective Agreement, the Company and the Union may modify the Collective Agreement to reasonably accommodate the employee, provided this does not result in undue hardship to the parties, to the Agreement.

United Food and Commercial Workers, International Local 1518 and Fletcher's Fine Foods 8385.

The parties recognise that the Manitoba Human Rights Code establishes a Reasonable Accommodation requirement to the point of undue hardship, in order to accommodate the special needs of any person or group where those needs are based on the protected characteristics as set out in the Manitoba Human Rights Code. The Employer and the Union are committed to Reasonable Accommodation in a manner that respects the dignity of the employee. Reasonable accommodation is the shared responsibility of the

employee(s), the Employer and the Union. Where a need has been identified, the parties will meet to investigate and identify the feasibility of accommodation that is substantial, meaningful and reasonable to the point of undue hardship. Where necessary, relevant provisions of the Collective Agreement may, by mutual agreement between the Union and the Employer be waived. When an accommodation is being implemented, the Employer and the Union agree to provide an orientation to affected employees concerning the principles of Reasonable Accommodation and the nature of the accommodation being implemented. In the event the accommodation results in the employee being moved to a higher classified position, her new salary shall be determined in accordance with Article 22W. In the event the accommodation results in the employee being moved to a lower classified position, her salary shall be determined in accordance with Article 2205.

Service Employees' International Union, Local 600 and Norman Regional Health Authority.

The employer, union and employee shall first determine whether reasonable modifications of duties, methods or the work environment will enable the disabled employee to perform the essential functions of his or her current position. Where no reasonable modifications are available, the employee may request to be transferred to a position within the same department for which he or she is qualified, where the duties are within his or her capabilities. Where a suitable transfer is not available in the same department, the employee may request to be transferred to a position in another department, for which he or she qualifies and where the duties are within his or her capabilities. The employee will be given preference for such transfers over new employees and over employees who have not been affected by disability, layoff, or technological change. Where a suitable transfer is not available in the same department, the employee may request to be transferred to a position in another department, for which he or she qualifies and where the duties are within his or her capabilities. The employee will be given preference for such transfers over new employees and over employees who have not been affected by disability, layoff, or technological change. If the accommodated employee transfers to a lower paid position, his or her salary will be protected at the rate paid immediately before the transfer, until the lower paid position's rate equals or exceeds the pre-disability rate.

PEI Union of Public Sector Employees, Government of PEI, Workers' Compensation Board of PEI, and Island Regulatory and Appeals Commission.

CUPE Local One and Toronto Hydro are jointly committed to reintegrating employees back into the workplace who have suffered a work-related injury or illness accepted and paid for by the Workers' Compensation Board. The Union and Management will work together through an Accommodation Committee.

CUPE Local 1 and The Toronto Hydro-Electric System.

Checklist

Duty to Accommodate

- G Does the collective agreement define disability broadly (e.g., includes temporary disabilities, permanent disabilities, and both workplace and non-workplace related disabilities)?
- G Is the collective agreement clear workers with disabilities have the right to be accommodated?
- G Does the accommodation procedure acknowledge that accommodation may be permanent?
- G Does the procedure guarantee every member's right to the grievance and arbitration process?
- G Does the collective agreement say if the union and worker agree that reduced working hours are best for the worker:

 ___ the employer will accommodate reduced work hours

 ___ wage replacements for the time not worked will be paid by workers' compensation or by insurance

 ___ the worker will not receive less income than they are entitled to under their benefit level
- G Does the collective agreement refer to and include relevant legislation such as the human rights code, the occupational health and safety act, and the workers' compensation legislation?

Return to Work

The parties agree to establish a Provincial Disability & Reintegration Committee consisting of two (2) Union representatives (one from Local 1518 and one from Local 2000) and two (2) Employer representatives (one from Overwaitea/Save-On foods and one from Safeway). The Committee shall meet monthly to:

(a) Review and recommend rules and guidelines for temporary modified duty programs.

(b) Discuss a light or modified duties job inventory.

(c) Establish and develop policies regarding permanent accommodations.

(d) Discuss and resolve issues concerning unresolved modified return to work programs (i.e. a worker has failed in multiple attempts at returning on a gradual or modified program).

(e) Keep abreast of continuing jurisprudence on "Duty to Accommodate". It is acknowledged that the Employer, the Union and the employees all have a responsibility to accommodate disabled employees who return to work, but must rely on objective, not subjective, medical information concerning the specific needs of each individual.

United Food & Commercial Workers Union Local 1518 and 2000 and Canada Safeway Limited.

Disabled Employees

If an employee becomes disabled with the result that she/he is unable to carry out the regular functions of her/his position, the Hospital may establish a special classification and salary with the hope of providing an opportunity of continued employment.

Modified Work

The Hospital and the Union, realising the benefits to be derived from an injured or ill employee being returned to gainful employment as soon as possible, agree that they and all employees and supervisors at all levels, will cooperate to the fullest extent to promote the Modified Work Program.

To facilitate these programs, it is understood and agreed that provisions of the Collective Agreement may, where agreed, be altered. The specific terms of the program will be signed by the Hospital and the Union.

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 1120 Service Unit and Sault Area – Hospitals.

The Employer and the Union agree to establish through the Union Management Committee a rehabilitation and retraining program for regular employees who are permanently partially disabled through illness, injury or handicap and are unable to carry-out their pre-disability duties. The purpose of this program is to assist a disabled employee in returning to their former position or to another position with the Employer. The program may augment other programs established by statute or this collective agreement such as the Workers' Compensation Board and the Long Term Disability Plan. The Union and the Employer recognise that, subject to bona fide operational considerations, rehabilitation and retraining programs require the parties to assess their "duty to accommodate". It is understood and agreed by the parties that in determining a program.

The Employer and the Union may mutually agree to waive the posting procedures to place a disabled regular employee into a vacant position.

An employee who is disabled may, through mutual agreement of the parties on an individual case by case basis, be permitted to bump into any position provided such disabled employee has the qualifications, experience, skill and ability to perform the work, and provided such position is occupied by a junior employee and provided further that no upward bumping shall be permitted. Once work has been found for a disabled employee, a more senior disabled employee may not subsequently bump that employee, because the more senior employee is also seeking placement under the provisions of this Letter of Understanding.

This letter of Understanding shall operate for the duration of this collective agreement from the date of signing and may be cancelled thereafter at any time by the Union or the Employer upon thirty (30) days written notice.

CUPE Local 5070, 2001-2004 Collective Agreement and City of Victoria.

Checklist

Return to Work

- Does the collective agreement (or any other policy referred to in the collective agreement) outline a joint procedure for working out workplace accommodation issues and:
 - ___ Fully explains the accommodation that is needed
 - ___ Provides training for accommodated positions
 - ___ Identifies all the positions in which accommodations can be made
 - ___ Provides severance pay, if it is physically, technically, or financially impossible to modify the job or place the worker in another modified job
 - ___ Have a dispute resolution process or refers to the grievance procedure

- Does the collective agreement make it clear that the employer will first work to modify the workers' job to accommodate their disability?

- Is the collective agreement clear that the employer will offer the worker another job or a modified job within the bargaining unit (agreed to by the union and the worker) if it is not in the best interest of the worker, to modify the worker's job?

- Does the collective agreement say workers with disabilities are entitled to work outside the bargaining unit?

Job Rights/Seniority

The parties hereto agree that an employee transferring from one CUPE bargaining unit to another under "Duty to Accommodate" shall carry with her or him full credit for seniority and service earned while in the former CUPE bargaining unit(s). The Board will consult with the Local President and the bargaining unit committee regarding permanent placements within that bargaining unit under "Duty to Accommodate".

CUPE Local No. 218 Educational Assistants and the Durham District School Board.

As part of their respective legal obligations in relation to the "duty to accommodate", the parties agree that employees requiring modified duties will be given a preference in filling security monitor vacancies, subject to qualifications, ability and experience. As a result, modified duties employees in this job classification will not be subject to bumping from other classifications in the case of lay-off, unless they are the most junior employee(s) in the system and would otherwise have been subject to lay-off.

CUPE Local No. 218 (Custodial) and the Durham District School Board.

An employee who suffers from an illness, a non-occupational injury or an injury sustained at work or one who becomes affected by an occupational disease during the course of his employment and is unable to perform his job as a result thereof will be given preference on a posting for a new job or a vacancy for which he is qualified and willing to perform.

IAM and Stanley Hardware.

An employee who has become incapacitated by injury or illness will be employed in other work which he can do. Such an employee may not displace an employee with more seniority.

CUPE and Town of Dalhousie.

An Employee who has been incapacitated at work by injury or compensable occupational disease, or who, through advancing years or temporary disablement is unable to perform their regular duties, will be employed in other work which the Employee can do, if such work is available given reasonable accommodation, without regard to other seniority provisions of this Agreement, except that such Employee may not displace an Employee with more seniority.

CUPE Local 152 and Ottawa Carleton Association for Persons with Developmental Disabilities.

Checklist

Seniority

- Is the collective agreement clear that seniority provisions - such as the job posting procedures - are changed to accommodate disabled workers when the union agrees and layoff and recall provisions are not affected?
- Is the collective agreement clear on benefit accrual while workers are on workers' compensation and/or short and long-term disability (i.e. seniority, service, statutory holiday pay, vacations, sick leave days, and other rights that accrue over time)?
- Does the collective agreement make it clear that seniority is the fundamental principle underlying benefits and provisions of the agreement?
- Is seniority applied across the bargaining unit to allow for transfer and promotion and to prevent job ghettos?
- Does the collective agreement make it clear that seniority continues to accrue during the following leaves:
 - illness or bereavement
 - injury
 - maternity change of residence
 - paternity family responsibility
 - parental marriage ceremony
 - adoption
 - child care

Human Rights

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The Employer and the Union agree that there shall be no discrimination, interference, restriction, harassment or coercion, including no mandatory blood or urine tests, including but not limited to, as these relate to Acquired Immune Deficiency Syndrome (AIDS), AIDS related illness, AIDS-Related-Complex, or positive immune deficiency test, and including no genetic screening for specific medical disabilities or pregnancy, exercised or practised with respect to any member of the bargaining unit in any matter concerning the application of the provisions of this Agreement by reason of race, creed, colour, age, sex, marital status, parental status, number of dependents, nationality, ancestry, place of origin, native language disability or disabilities, Acquired Immune Deficiency Syndrome (AIDS), or AIDS-related illness, or AIDS-Related-Complex, or positive immune deficiency test (virus HIV) political or religious affiliations or orientations, academic affiliations or orientations (subject to the exercise of academic freedom as set out in Article 14.01), record of offences (except where such a record is a reasonable and bona fide ground for discrimination because of the nature of the employment), sexual orientation, transsexual transition status, gender expression, and gender identity, nor by reason of her membership or non-membership or lawful activity or lack of activity in the Union, or the exercise of any of the rights under this Agreement. The Employer undertakes that no York University student who is or has been employed in Unit 2 shall be penalised in her student status for the exercise of any of her rights under this Collective Agreement or by reason of her membership or non-membership or lawful activity or lack of activity in the Union.

CUPE 3903 and York University.

No Discrimination: The provisions of the Canadian Human Rights shall be adhered to. There shall be no discrimination on the grounds of race, creed, national or ethnic origin, colour, religion, religious affiliation, age, sex, marital status, sexual orientation, family status, mental or physical disability, conviction for an offence for which a pardon has been received or membership or activity in the Alliance. There is a duty to accommodate in relation to employment up to the point of undue hardship.

The Public Service Alliance of Canada and Canada Post Corporation.

The Employer and the Union agree that all Employees will be protected against discrimination respecting their human rights and employment in all matters including age, race, colour, religion, creed, sex, sexual orientation, pregnancy, physical disability, mental disability, illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity, membership in a professional association, business or trade association, employers' organisation or employees' organisation, physical appearance, residence, or the association with others similarly protected, or any other prohibition of the Human Rights Act of Nova Scotia.

CUPE 4150 and the Nova Scotia Health Organisations.

The Corporation will endeavour to provide a work environment in which all employees are treated equally and respectfully and are not subjected to discrimination, harassment, or any other conduct which undermines a person's dignity and worth.

The Corporation will not knowingly exercise, practice or condone any discrimination, harassment, reprisal, restriction, interference, or coercion of or by its employees based upon characteristics that include: ancestry, including colour and perceived race; nationality or national origin; ethnic background or origin; religion or creed, or religious belief, religious association or religious activity; age; sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy; gender-determined characteristics; sexual orientation, marital or family status; source of income; political belief, political association or political activity; membership or activity in a Union or the exercise of the employee's lawful rights; physical or mental disability or related characteristics or circumstances; unless the action is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.

The Corporation will make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to above.

In the application of this Article, the Corporation will not be restricted with respect to the implementation of employment equity initiatives or any other special programs permitted by the Manitoba Human Rights Code.

Local Union 2034 of the International Brotherhood of Electrical Workers and The Manitoba Hydro-electric Board.

Checklist

Human Rights

- Does the agreement have a no-discrimination clause that covers race/colour, religion/creed, age, sex, marital /family status, disability, national or ethnic origin, sexual orientation and gender identity, political affiliation, union activity, and pardoned conviction?
- Is the agreement clear that the employer is obliged to maintain a no discrimination workplace?
- Does the no-discrimination clause cover:
 - __ discrimination by supervisors and managers
 - __ discrimination by co-workers
- Does the no-discrimination clause cover:
 - __ hiring
 - __ promotions and transfers
 - __ training
- Does the collective agreement say that job requirements must be bona fide occupational requirements?
- Is it clear the union can use the grievance and arbitration procedures to enforce the no-discrimination clause?

Employment Equity

Notwithstanding the provision in the Collective Agreement, the parties agree that the following initiatives supersede the specified provisions of the agreement, and are provided in order to improve the participation of employment equity designated members (Aboriginal people, persons with disabilities, visible minorities, and women) in all types of employment at the University of Regina.

(1) The Personnel Department may deem certain postings for positions as "Employment Equity Designated Positions" in order to pursue the University's employment equity goals.

A position will be considered for designation only if it cannot be filled by an employee who has received notice of layoff or an employee with recall rights.

(2) The number of such positions shall not exceed four at any given time.

(3) Such designations may include permanent, seasonal, term, full-time and part-time positions.

(4) The university will undertake to fill the designated position from among the current employees who are members of the employment equity designated groups. Selection from among these candidates will be made on the basis of possessing the greatest seniority, required qualifications, and efficiency demonstrated in the applicant's current or previous position with the University.

If there is not a qualified applicant, the University will consider on the same basis outlined above, the applications of employees who are close to possessing the required qualifications before considering any external candidate. If appointment is made of an applicant who does not possess the required qualification(s) for the position the University may, as a condition of appointment, require the applicant to obtain the qualification(s) within a specified time limit.

If no suitable candidate is available internally, the University may appoint an external candidate from members of the designated employment equity groups.

If no suitable external candidate from these groups is available, the position shall be re-posted and filled in accordance with Article 8.

(5) The University may advertise at any time for appropriate employment equity candidates. Designated equity positions will not be advertised until the close of internal posting.

(6) A candidate appointed to a designated equity position will be granted, on date of appointment to the position, enough seniority to bring the total up to three years. If the employee has three years or more of seniority at the time of assuming the position, seniority will continue to accrue in the normal fashion. If the employee is granted seniority to bring it up to three years at the time of the appointment, it will be held until the amount of seniority the employee would have earned under normal circumstances reaches three years, and then it will continue to accrue in the normal fashion. Any extraordinary seniority which may have been added to the total of a candidate in a designated position may be exercised in the event the employee is affected by Article 12: Layoff and Recall. Such extraordinary seniority may not be used for bidding purposes.

(7) Equity employees in designated positions may be provided with special training as the Personnel Department deems necessary.

(8) The University may conduct training for management and employees in the unit with one or more employees in designated equity positions, in cross-cultural awareness and related fields.

(9) Without disrupting the normal working conditions of other employees, the University may undertake measures to assist equity candidates to fit into the work situation, such as designating the hours of work at different times of the day or week, granting leaves of absence, etc.

(10) When a designated position with an equity member as incumbent is vacated, it may or may not be posted as one of the designated employment equity positions.

CUPE and University of Regina.

(a) The Company and the Union recognise the need to achieve equality in the workplace and to provide disabled employees with reasonable accommodation, without undue hardship, whenever possible, so that no person shall be denied employment opportunities for reasons unrelated to ability.

(b) The Company and the Union agree that this article shall be applied in a manner consistent with their respective obligations as set out in this Collective Agreement. To give effect to the principle that equal opportunity in employment for women, aboriginal people, people with disabilities and visible minority people, means more than treating persons in the same way but also requires special measures and the accommodation of differences, the parties agree that:

(a) Notwithstanding the provisions of Article 11.12, the Company may, effective January 1 of each year, in each (12) month period, fill up to two (2) job openings in the Company, for the purpose of Employment Equity.

(b) The Company shall inform the local President and the National Representative of any job opening so filled.

This article will not prejudice a member's layoff or recall rights contained within this agreement.

CEP and Northern Telephone Limited.

Checklist

- Does the collective agreement say there must be programs in place to correct systemic discrimination such as employment equity?
- Does the collective agreement include a commitment from management to hire people with disabilities?
- Does the collective agreement set goals and timetables for achievement of a representative workforce?

Privacy

The confidentiality of health and medical information of employees is recognised by the Company and the Union. Therefore, Company and Union representatives who have access to this information will ensure its confidentiality.

The Company also agrees that medical information of an employee will not be divulged to a third party without his consent or as otherwise required by law.
CAW and Air Canada.

The signatories to this Memorandum hereby agree that the Employer will store employee health information separately and that access thereto shall be given only to those persons directly involved in administering that information.
NSGEU and the Government of Nova Scotia.

Checklist

Privacy

- Does the collective agreement have a clause protecting the workers' right to personal privacy?
- Does the collective agreement say employee health information is kept confidential and stored separately and securely from other employee information?
- Is access to confidential health information restricted to the employee and the employers designated person?
- Does the collective agreement say a worker has the right to access their health information, and the right to ask that corrections be made to their file or have a note that states their objections on the file?

Medical Certificates and Examinations

An employee may be required to produce a certificate from a medical practitioner for any illness in excess of three (3) working days, certifying that he was unable to carry out his duties due to illness. The cost of such a certificate will be paid by the Town.

CUPE and the Town of Gander.

The Head of the Department and/or Director of Human Resources may require a doctor's report regarding an employee's sickness at any time. In any case, an employee who is absent from work for more than three (3) consecutive working days shall provide his/her Department Head with an Employee Work Limitation Form from his/her personal physician within seven (7) consecutive days from the commencement of his/her sickness. This form shall be submitted every subsequent twenty four (24) consecutive calendar days of absence because of illness, reporting the probable duration of the sickness. Prior to an employee returning to work after any period of illness exceeding four (4) weeks, the head of the Department may require a certificate stating the employee is fit for duty as outlined in the appropriate job description or to assist the Department in modified work. At the Corporation's option, this certificate may be completed by the employee's personal physician and/or a specialist in occupational health or other relevant medical discipline. Where the opinion of a specialist is requested, the employee will be referred to a specialist in the appropriate field selected by his/her personal physician.

The cost of any reports, certificates or referrals pursuant to this provision shall be borne by the Corporation.

Oakville's Professional Firefighter's Association and City of Oakville.

Should the University require an employee to submit to a medical examination as a condition of employment, the employee may have the examination done by her/his own doctor. The medical examination shall be at the University's expense and the employee shall receive a written copy of the doctor's report.

CUPE and Simon Fraser University.

Checklist

Medical Certificates and Examinations

- Does the collective agreement make it clear that if a worker is required to undergo a medical examination:
 - the worker chooses the doctor
 - the employer only receives information on whether or not the worker is fit for the job
 - limitations are stated without giving the reasons for the limitations (e.g., unable to lift loads above 10 kilograms) as disclosure of a condition is not needed, what is needed is an understanding of what the accommodation is:
 - the employer provides a job description to the doctor and worker
 - the worker is given a copy of the doctor's record of examination
 - if the doctor recommends that the worker is not fit for the job, the reasons are given to the worker
 - the employer will not reveal any health information of present or former employees to a third party, unless required by law, without the informed consent of the worker
- Does the collective agreement say the union will receive copies of all employer reports (including functional abilities forms) to the Workers' Compensation Board, Canadian Pension Plan Disability, Long Term Disability, etc.?
- Does the collective agreement provide a joint confidential Employee and Family Assistance Program (EFAP)?

T r a i n i n g

Where a member of the 113 Unit is injured and disabled while engaged in active fire-fighting duties or support division duties in the course of employment with the City, the member shall be given the opportunity to participate in the following employment options:

- (i) Temporary assignment to a non fire-fighting position, with the Fire Department;
- (ii) Participation in a rehabilitation program designed to assist the employee to return to active fire-fighting duties or support division duties;
- (iii) Enter a re-training program designed to qualify the employee for a non fire-fighting position in one of the Fire Department Support Divisions.

Where an employee is participating in a rehabilitation program under (i) and (ii), the employee will continue to receive the same rate of salary, in accordance with the employee's rank or classification as provided by Article 6.

IAFF, Local 113 and City of Toronto.

Checklist

Training

- Is there a training and vocational program for employees with a disability?

Deemed Termination Clause

- Has the collective agreement removed any deemed termination clauses for absences from work due to disability. (Note: the employer cannot pick an arbitrary date such as 24 months, or 36 months and say that after that time, the worker is terminated.)

Collective agreements are the key to making the pro active changes in recruiting, retaining and representing workers with disabilities. The bargaining and grievance procedures create faster and timelier changes for workers with disabilities.

NEXT STEPS

This manual is a beginning step. It does not resolve all issues being faced by disabled people in the workplace but provides, for the first time, a shared information base to allow union activists, negotiators and educators to provide a more coherent picture of contract language on disability and a better understanding of duty to accommodate. It highlights the needs of workers with disabilities to be part of political agenda of unions and to continue a dialogue with all stakeholders.

This manual is a challenge to the labour movement to build on our progress so far and to continue the struggle to build a truly inclusive labour movement.

6. REFERENCES, LINKS AND RESOURCES

References

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Organisations

Canadian Association for Community Living (CACL) (<http://www.cacl.ca>)

The Canadian Association for Community Living is Canada's national association dedicated to promoting the participation of people with intellectual disabilities in all aspects community life.

Kinsmen Building, York University

4700 Keele Street

Toronto, Ontario M3J 1P3

Telephone: (416) 661-9611

Fax: (416) 661-5701

TTY: (416) 661-2023

e-mail: info@cacl.ca

Canadian Association of Independent Living Centres (<http://www.cailc.ca>)

The Canadian Association of Independent Living Centres (CAILC) is the national umbrella organisation, representing and coordinating the network of Independent Living Resource Centres (ILRCs) at the national level.

#1104 - 107 Laurier Avenue West

Ottawa, Ontario, K1P 5V5

(Voice)(613) 563-2581

TTY: (613) 563-4215

Fax: (613) 563-3861

e-mail: cailc@cailc.ca

Canadian Association of the Deaf (CAD)

The CAD mandate is to protect and promote the rights, needs and concerns of Deaf Canadians.

Suite 203, 251 Bank Street

Ottawa ON K2P 1X3

(Voice)(613) 565-2882

TTY: (613) 565-8882

Fax: (613) 565-1207

e-mail: cad@cad.ca

Canadian Council on Rehabilitation & Work (WORKInk)

(<http://www.ccrw.org/en/wink.htm>)

The Canadian Council on Rehabilitation and Work is a Canada-wide network of organisations and individuals. The Council offers information, education, training and Internet-based services which support the employment of people with disabilities.

302-500 University Avenue
Toronto, ON M5G 1V7
Telephone: (416) 260-3060
Fax: (416) 260-3093

Canadian Hard of Hearing Association (CHHA)

(http://

CHHA is Canada's only nation-wide non-profit consumer organisation run by and for hard of hearing people.

2435 Holly Lane, Suite 205
Ottawa, Ontario, K1V 7P2
(Voice)(613) 526-1584
TTY: (613) 526-2692
Fax: (613) 526-4718
1-800-263-8068 (In Canada Only)e-mail: chhanational@chha.ca

Canadian Injured Workers Alliance

(<http://www.ciwa.ca>)

The Canadian Injured Workers Alliance (CIWA) is a national network of injured workers' groups and organisations providing a forum for exchanging of information and sharing experiences. They believe that injured workers, as individuals, should be in control of their own destinies. They work in partnership with the trade union movement.

Mailing Address
CP/P.O. Box 10098
Thunder Bay, Ontario, P7B 6T6
Street Address
1201 Jasper Drive

Thunder Bay, Ontario P7B 6R2
Telephone: (807) 345-3429
1-877-787-7010
Fax: (807) 344-8683
E-mail: ciwa@vianet.ca

Canadian Mental Health Association of Canada (CMHA)

(<http://www.cmha.ca>)

The Canadian Mental Health Association (CMHA) exists to promote the mental health of all people and to serve mental health consumers, their families and friends.

8 King Street East, Suite 810
Toronto ON M5C 1B5
Telephone: (416) 484-7750
Fax: (416) 484-4617
Email: national@cmha.ca

Canadian National Institute for the Blind (CNIB)

(<http://www.cnib.ca>)

The Canadian National Institute for the Blind (CNIB) is a national voluntary agency providing services to individuals across Canada to whom loss of vision is a central problem in personal and social adjustments. The CNIB also acts as a consultant and resource agency to the helping professions, government departments and private industry.

National Office
1929 Bayview Avenue
Toronto, ON M4G 3E8
Telephone: (416) 486-2500
Fax: (416) 480-7677

Canadian Paraplegic Association (CPA)

(<http://www.canparaplegic.org>)

The CPA assists persons with spinal cord injuries and other physical disabilities to achieve independence, self-reliance and full community participation.

1101 Prince of Wales Dr., Suite 230
Ottawa, Ontario, K2C 3W7
Telephone: (613) 723-1033
Fax: (613) 723-1060
email: info@canparaplegic.org

Council of Canadians with Disabilities (CCD) (<http://www.ccdonline.ca>)

Council of Canadians with Disabilities (CCD) is a council of organisations, representing cross-disability and geographically based consumer groups and organisations representing national consumer-controlled advocacy groups. They are deeply committed to the principles of self-help and consumer advocacy. CCD works for the personal empowerment of all people with disabilities both in Canada and around the globe.

926-294 Portage Avenue
Winnipeg, MB R3C 0B9
Voice/TTY: (204) 947-0303
E-mail: ccd@ccdonline.ca

DisAbled Women's Network (DAWN) (<http://www.dawncanada.net/>)

DAWN Canada is a national organisation controlled by and comprised of women who self-identify as Women with disAbilities. They are from all backgrounds and all disAbilities. DAWN is a feminist organisation working to achieve control over their lives and to end the stereotype that labels them dependent burdens on society.

Box 1138
North Bay, ON P1B 8K4
Telephone: (705) 474-4242
TTY: (705) 474-7435
Fax: (705) 474-9622
email: admin@dawncanada.net

Learning Disabilities Association of Canada (LDAC) (<http://www.ldac-taac.ca/>)

The organisation's mission is to be the national voice for persons with learning disabilities and those who support them. LDAC is dedicated to a level playing field for individuals with learning disabilities to enable them to function as citizens with equitable opportunities and to develop to their chosen potential.

323 Chapel Street, Suite 200
Ottawa, Ontario, K1N 7Z2
Telephone: (613) 238-5721
Fax: (613) 235-5391
email: information@ldac-taac.ca

National Education Association of Disabled Students (NEADS)

(<http://www.neads.ca/>)

The National Educational Association of Disabled Students is a consumer organisation, with a mandate to encourage the self-empowerment of post-secondary students with disabilities. NEADS advocates for increased accessibility at all levels so that disabled students may gain equal access to college or university education, which is their right.

4th Level Unicentre

Carleton University

Ottawa, Ontario, K1S 5B6

(Voice and TTY) (613) 526-8008

Fax: (613) 520-3704

email: info@neads.ca

National Federation of the Blind: Advocates for Equality (NFB:AE)

(<http://www.nfbae.ca/>)

The National Federation of the Blind: Advocates for Equality (NFB:AE) is a consumer group of blind, partially sighted and deaf-blind adults, parents of blind, partially sighted and deaf-blind children, and other interested individuals who have joined together for the purposes of preserving and enhancing the rights of blind, partially sighted and deaf-blind people in Canada through public education, advocacy, and other initiatives.

Suite 6-1638 Pandosy Street

Kelowna, BC V1Y 1P8

1-800-561-4774

Fax: (250) 862-3966

Email: info@nfbae.ca

**National Institute of Disability Management and Research
(NIDMAR)**

(<http://www.nidmar.ca>)

NIDMAR is committed to reducing the human, social and economic cost of disability to workers, employers and society by providing education, research, policy development and implementation resources to promote workplace-based reintegration programs.

830 Shamrock Street, Suite 202

Victoria, BC V8X 2V1

Telephone: (250) 386-4388

Fax: (250) 386-4398
email: nidmar@nidmar.ca

National Network on Mental Health (NNMH)

(<http://www.nnmh.ca/about.html>)

The purpose of the National Network for Mental Health, which is run by and for mental health consumer/survivors, is to advocate, educate and provide expertise and resources that benefit the Canadian consumer/survivor community.

Suite 604 - 55 King Street
St. Catharines, ON L2R 3H5
Telephone: (905) 682-2423
1 888-406-4663
Fax: (905) 682-7469
Email: info@nnmh.ca

Neil Squire Foundation

(<http://www.neilsquire.ca>)

The Neil Squire Foundation is a Canadian national non-profit organisation committed to providing education, technology and career development for people with physical disabilities.

Suite 220 - 2250 Boundary Road
Burnaby, BC V5M 3Z3
Telephone: (604) 473-9363
Fax: (604) 473-9364
E-mail: info@neilsquire.ca

Internet Resources

Canadian Centre on Disability Studies

<http://www.disabilitystudies.ca>

Canadian Council on Social Development (CCSD)

<http://www.ccsd.ca>

Canadian Policy Research Networks

<http://www.cprn.org>

Disability Resources, inc

<http://www.disabilityresources.org>

Disability Social History Project

<http://www.disabilityhistory.org>

Disabled Peoples' International (DPI)

<http://www.dpi.org>

Caledon Institute of Social Policy

<http://www.caledoninst.org>

Roeher Institute

<http://www.roeher.ca>

International Classification of Functioning, Disability and Health (ICIDH)

<http://www.who.int/icidh>

Paths to equal opportunity

<http://www.equalopportunity.on.ca>

APPENDIX 1

ARBITRATIONS

Absenteeism

CUPW v. Canada Post Corp. (February 14, 2001)

What is an appropriate accommodation for excessive absenteeism due to depression?

The British Columbia Court of Appeal ruled that an arbitrator's order reinstating an employee provided that she maintained an average level of attendance constituted reasonable accommodation of the employee's disability due to depression.

(BC Court of Appeal – courts.gov.bc.ca/jdb-txt/ca/2001/02/2001/bccao203.htm)

United Steelworkers of America, Local 9197 v. Grand & Toy Ltd. (November 2, 2002)

Is there an obligation to accommodate if the employee doesn't ask for help?

A disabled person who does not respond to an employer's general offers to accommodate with specific indications of how to help nor makes requests for accommodation may result in dismissal. The obligation to accommodate the employee did not arise because neither the employee nor the union made the request until post discharge. (Lancaster's Equity, Disability and Accommodation Reporter-November/December 2002)

Accommodation

Greater Victoria Teachers' Association v. Greater Victoria School District No. 61 (1998)

Does a teacher with a disability have a right to an exemption from certain assignments?

It is discriminatory to require a physical education teacher with learning disabilities who has only taught physical education for 20 years, to teach an academic class. Offering additional training but not taking into account the nature of the teacher's disability does not satisfy the employer's duty to accommodate under human rights legislation. Accommodation must reflect what the employee can and cannot do. (Lancaster's Equity, Disability and Accommodation Reporter - March/April 1999)

UFCW, Local 401 v. Canada Safeway (June 2000)

Is an employer required to explore bundling of productive duties as permanent accommodation?

Applying the framework set out by the Supreme Court of Canada in the Meiorin case, an Alberta arbitrator ruled that an employer failed to satisfy its duty to accommodate when it did not consider “bundling” productive tasks or modifying positions as permanent accommodation for an employee unable to do the core duties of her regular position (Lancaster’s Equity, Disability and Accommodation Reporter - September/October 2000)

USWA Local 834 v. Goodyear Canada Inc.

Can an employer refuse accommodation until medical information is provided? No, a disabled employee who had been placed on sick leave was not allowed to return to work until the employer was completely satisfied with the medical evidence. The employer was in breach of its duty to accommodate. (Lancaster’s Equity, Disability and Accommodation Reporter - November/December 2002)

UFCW Local 1518 v. Overwaitea Food Group (March 31, 2003)

Must an employee work at an assigned location without consideration of the commute to work and its impact on a disability?

No, the Arbitrator found the duty to accommodate includes a consideration of workplace location, commute, the impact on the disability and the resultant ability of the Grievor to perform the assigned work tasks. (Unpublished)

Canpar and USWA Local 1976 v. (November 20, 2000)

Does an employer have an obligation to provide the accommodation the grievor prefers?

No, it is incumbent on the employee to contribute positively to process of accommodation and to accept reasonable, not necessarily preferred, accommodation. (93 LAC (4th) 208)

Queen’s Regional Authority and IUOE, Local 942 (April 5, 1999)

Can the duty to accommodate stretch across bargaining units?

The duty to accommodate across bargaining units lines overrides collective agreement rights only where, first, the need to accommodate is clear, in that the claim of the person to be accommodated obviously outweighs the claims of those whose rights are displaced and, second, where there is no other reasonable way to fulfill it. The employer must very seriously seek a less intrusive way to accommodate an employee under the Human Rights Code. (78 LAC (4th) 269)

Benefits

Canada Safeway v. Alberta Human Rights Commission (December 5, 2000)

Is an employee buyout plan discriminatory if it excludes employees on disability leave?

Court ruled employer and union are both liable for the discriminatory buyout plan. The buyout plan's sole purpose was to reduce Safeway's labour costs.

Are the union and the employer equally liable for the discriminatory effects of such a plan, even if the union sought accommodation for the excluded employees during contract negotiations?

The union must protect employees to the point of undue hardship. They should have canvassed the membership for possible accommodation including proposing a reduction in employee wage levels in order to accommodate employees on disability leave.

(Lancaster's Labour Law News - January/February, 2001)

Ontario Public Service Employee's Union v. George Brown College (August 3, 2000)

Are employees entitled to professional development days while on sick leave?

No, an arbitrator ruled that entitlement to professional development days is not a benefit that employees receive simply because there is an employment relationship. It is dependent on the employee being at work to get professional development days. The grievor was treated the same as all other employees away from work for comparable periods. (Lancaster's Pension and Benefit Law Reporter - September/October, 2000)

United Steelworkers of America, Local 7155 v. Waterloo Furniture Components (March 24, 2000)

Is refusal to "top up" wages during disability, in calculating vacation pay, discrimination?

The duty to accommodate does not require an employer to modify vacation pay formula by topping up wages of employees who are unable to work because of disability. Annual vacation pay can be calculated based on annual earnings excluding workers' compensation payments.

(Lancaster's Pension and Benefit Law Reporter - May/June, 2000)

UFCW, Local 401 v. Canada Safeway (January 7, 2000)

Does a reduction in vacation pay due to disability leave constitute discrimination?

An Alberta arbitrator said that prorating vacation pay for employees absent due to a non occupational disability is not discriminatory. The principle followed is, if vacation pay is linked to performance of work, and the employee cannot work because of disability, it is not discriminatory to treat those employees differently in respect to vacation pay because they are not earning the leave. (Lancaster's Equity, Disability and Accommodation Reporter - March/April 2000)

Last Chance Agreement

Sloca Group - Mackenzie Operations and PPWC Local 18 (Pavelko) (November 20, 2000)

Does an employer have to accommodate a relapse if there is a last chance agreement in place?

It is reasonable to require the employer to accommodate an employee's brief relapse. (97 LAC (4th)387)

Toronto District School Board and CUPE (G.P) (March 1, 1999)

Can an employee be terminated for breach of a last chance agreement?

Yes, providing every reasonable accommodation is given prior to termination. Level of required accommodation is to point of undue hardship. Last chance agreement is a form of accommodation. (79 LAC (4th)365)

Mental Disability

CAW, Local 80 v. Honeywell Ltd.

Does refusal to take medications warrant discharge?

When an employee with paranoid schizophrenia became physically aggressive, she was discharged. The employer had tried for years to accommodate her delusional episodes, which occurred when the grievor stopped taking her medications, but the escalation from verbal yelling to physical assault persuaded it that the risk to others was too great. The arbitrator agreed. (Lancaster's Equity, Disability and Accommodation Reporter July/August 2002)

K.H. v. Communications Energy and Paperworkers Union Local 1-S and SaskTel (July 9, 1997)

Is the duty to accommodate part of the duty of fair representation?

In meeting the duty to accommodate, is a union required to adopt a different approach in representing a disabled employee?

The Saskatchewan Labour Relations Board ruled the duty to accommodate is a relevant consideration in assessing if the union met its duty of fair

representation. Unions must meet a higher standard in representing an employee with a mental illness in order not to discriminate against them. Unions must question the traditional approach of progressive discipline when an employee has a mental disability. (Lancaster's Equity, Disability and Accommodation - May/June, 1998)

Onus of Proof

Lakehead District School Board and CUPE Local 2486 (April 30, 2001)

Who must establish evidence of discrimination based on disability?

The Union is required to first establish breach of Human Rights Code and/ or collective agreement then the onus switches to the employer to prove reasonable accommodation once a prima facie case of discrimination has been made.

(96 LAC (4th) 315)

Return to Work

UFCW, Local 15 v. Maple Leaf Meats (November 23, 2000)

Does the calculation of probationary period include periods of injury-related absences?

No, the Arbitrator found a probationary period is intended to provide the employer with a reasonable period of time in which to assess a new employee's working ability. Time spent away from work is not assessable work.

(Lancaster's Equity, Disability and Accommodation Reporter - March/April 2001)

BC Institute of Technology and BCGEU (March 13, 1997)

Can an employer fill a position permanently when the incumbent is on long term disability?

No, an employee on long term disability is entitled to return to former position and the policy of permanently posting the absent employee's position after six months is a violation of the collective agreement and Human Rights Code. (62

LAC (4th) 168)

Seniority

ONA v. Orilla Soldiers Memorial Hospital (1999), 42 OR (3rd) 692 (Ontario Court of Appeal)

Are disabled workers entitled to accrual of seniority and benefits?

Employees on unpaid disability leave who do not accrue seniority and service-based benefit entitlements are discriminated against, in part. The Ontario Court of Appeal distinguished between “seniority” and “service” in determining if collective agreements are discriminatory. Restricting service accrual for those absent from work due to disability is not discriminatory. (Lancaster’s Equity, Disability and Accommodation Reporter - May/June 2002)

BCGEU v. Government of BC (June 21, 2002)

Does denial of seniority accrual to workers on long term disability or who participate in a rehabilitative back-to-work program violate their rights? The denial of seniority accrual to workers on long term disability does not violate their human rights, but the denial of such rights to those who participate in a rehabilitative back-to-work program does. Employees in rehabilitative employment are entitled to accumulate service and classification seniority for the actual hours worked. (Lancaster’s Pension and Benefit Law – May/June 2002)

SEIU, Local 204 v. Welland County General Hospital (2000)

Does the duty to accommodate trump seniority rights? An employer’s bona fide desire to accommodate a disabled employee by offering the employee a newly created position does not excuse a violation of the collective agreement’s seniority provisions. The employer and the union must investigate other forms of accommodation before the seniority rights of other workers can be affected. (Lancaster’s Equity, Disability and Accommodation Reporter -May/June 2000)

Termination

USWA, local 8233 v. Canada Pipe Company Ltd (1998)

Is denial of severance and termination pay to employees laid off while on sick leave discriminatory? Employees who are laid off while on sick leave are entitled under Ontario’s Employment Standards Act to the same statutory severance pay and termination pay as employees who are at work and any deprivation of these benefits amounts to discrimination on the basis of disability. (Lancaster’s Equity, Disability and Accommodation Reporter - November/December 1998)

CAW-Canada, Local 3018 v. Boliden Westmin Resources Ltd. (2000)

Can an employer lay off employees on disability leave with no loss of employment-dependent benefits?

An employer may lay off employees on disability leave where the employees were not deprived of any benefit that was dependent on their employment status.

(Lancaster's Equity, Disability and Accommodation Reporter - July/August 2000)

UFCW, Local 1518 v. Masterfeeds (2000)

Can a disabled employee be dismissed for refusing to release medical information?

An employer was not entitled to dismiss an employee with a drug and alcohol addiction just because the employee would not permit the employer access to his medical information. (Lancaster's Equity, Disability and Accommodation Reporter - January/February 2001)

Undue Hardship

Sault Area Hospitals and SEIU Local 204 (April 13, 2001)

How far must an employer go to discharge its obligation to accommodate after the onset of disability?

An employer took reasonable steps to accommodate griever to the point of undue hardship. Termination for innocent absenteeism is not contrary to Human Rights Code. (96 LAC (4th) 168)

UFCW, Local 617P v. Colonial Cookies (1999)

Which takes priority - balancing the duty to accommodate or seniority rights?

The duty to accommodate does not require an employer to award a vacant position to a disabled employee if there is a better qualified candidate who has greater seniority. The interest of the disabled employee and the rights of other employees must be balanced. Waiving of a job posting and would amount to an undue hardship. (82 LAC (4th) 101)

Other

Huppie v. Fording Coal Limited (2003)

When should a human rights tribunal defer to arbitration?

The British Columbia Human Rights Tribunal concluded that the arbitration proceedings could provide adequate remedies and deal appropriately with the

David Huppie's complaint. The tribunal ruled that the complaint should be deferred until the completion of the arbitration proceedings.

David Huppie worked as a haulage truck driver by Fording Coal in British Columbia. Fording Coal and Huppie had a difference of opinion on if he was disabled. Fording Coal said that Huppie was not disabled and dismissed him for failing to report to work. Huppie grieved his dismissal under the collective agreement. At the same time, he filed a complaint with the British Columbia Human Rights Commission alleging that Fording Coal had discriminated against him. (Indexed as: Huppie v. Fording Coal Ltd. Cited: (2003), CHRR Doc. 03-156, 2003 BCHRT 29)

Sex Discrimination

Health Sciences Association v. Carewest (2001)

Is failing to accommodate an employee who is breastfeeding discrimination based on sex?

An employer's duty to accommodate extends to employees who choose to breastfeed their children beyond the standard maternity leave period. An employer has a duty to be flexible and innovative, as well as take the lead in proposing solutions to accommodate the employee. (Lancaster's Equity, Disability and Accommodation Reporter - March/April 2001)

Canadian Union of Public Employees, Local 4400 v. Toronto District School Board (September 12, 2003)

Does strength requirements discriminate against women?

An arbitrator ordered the Toronto District School Board to stop demanding that female applicants for the job of part-time cleaner demonstrate the ability to lift fifty pounds from floor to shoulder. In the arbitrator's view, the requirement discriminates against women because the average woman has only 50 to 55 percent of the upper body strength of the average man.

The Board showed the standard was adopted for a purpose "rationally connected to the function being performed." The reason for the standard was

safety and efficiency. The Board did not demonstrate that it could not accommodate female cleaners who did not meet the strength test without incurring undue hardship. The arbitrator noted that accommodations could be made by allowing the female cleaners to carry half a box of photocopying paper at a time, ordering supplies in smaller containers, reducing the stacking height of boxes and pails, and/or arranging for heavier lifting and carrying to be done by another member of the care taking staff. The Board did not provide any evidence regarding the cost associated with any of these options.

APPENDIX 2

HUMAN RIGHTS CASES

Thorne v Emerson Electric Cited: (1993)

Does the provision in the collective agreement allow for reducing the seniority of persons who are absent from work for more than a year have a discriminatory impact on an employee because of her disability?

Yes, she was penalised by the contract for having a disability. The Board of Inquiry found that Muriel Thorne was discriminated against because of a disability when, pursuant to the terms of her collective agreement, her seniority was adjusted by deducting six months of service, because she was absent from work due to a disability for one year and a half. (18 CHRR D/510 (Ont. Bd.Inq.)

Conte v. Rogers Cablesystems Ltd. (1999)

Is it the employer's responsibility to initiate the process of accommodation?

It is the employer's responsibility to initiate the process of accommodation. The employer must engage in an examination of the employee's current medical condition, the prognosis for recovery, and the employee's capabilities for alternative work. (36 CHRR D/403 (C.H.R.T.)

L'Archeveque v. City of Calgary Cited: (2003)

How far must an employer go in accommodating disabled employees?

The Court of Queen's Bench of Alberta upheld the decision of an Alberta Human Rights Panel that the City of Calgary had not done enough to accommodate an employee who wanted full-time hours or a second part-time job. The Panel said that the City had the obligation to determine whether the employee was capable of returning to full-time hours, to explore the availability of alternative positions, and to consider measures, such as job training, which would make it easier for the employee to return to full employment. (46 CHRR D/93, 2003 ABQB 220)

Hooper v. Victoria (City) Cited: (2001)

Is there a limit to how far an employer must go in accommodating disabled employees?

The BC Human Rights Tribunal found that the City of Victoria had not failed to reasonably accommodate John Hooper's disability. Mr. Hooper was hired in 1989 as a labourer. He fractured his right elbow in April 1991 and between 1992 and 1995, the City accommodated him by reducing the number of hours of jack hammering he was to perform, modifying his job duties and graduating his

hours of work, according to his doctor's recommendations. He alleged the City failed to accommodate him after December 1995 by offering him suitable positions and permanently removing jack hammering duties from his job description.

The City's duty to accommodate was more difficult because Mr. Hooper's injury evolved. The City's attempts at finding a suitable position for Mr. Hooper failed, in part because Mr. Hooper's condition grew continually worse and in part because the Union local, on occasion, did not facilitate the accommodation process. The City continues its search for suitable positions, and the City's obligation is an ongoing one. (40 CHRR D/136, 2001 BCHRT 22)

Francine Desormeaux v. Ottawa-Carleton Regional Transit Commission (2003)

Can an employer terminate employment because of chronic absenteeism? Taking disability-related absences into account in deciding to terminate an individual's employment for excessive absenteeism is discriminatory. OC Transpo did not show that it could not accommodate Ms. Desormeaux without incurring undue hardship. The Tribunal found that, with the exception of the headache-related absences, she was no more likely to suffer from health problems than any other employee. Her headache-related absences were likely to be well below the absenteeism rate for 25 percent of OC Transpo employees. (46 CHRR D/1, 2003 CHRT 2 CHRR Doc. 03-007)

British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U. (Meiorin Decision)

Is it necessary to demonstrate adverse effect discrimination to show that a complainant could not be accommodated without undue hardship? The Supreme Court of Canada held that the Government of British Columbia's aerobic test for the fitness of forest firefighters discriminated on the basis of sex. The Government did not show that the test was justified as a bona fide occupational requirement ("BFOR").

The arbitrator found that the aerobic standard constituted adverse effect discrimination based on sex because men as a group have a higher aerobic capacity than women, and consequently are more able to meet the standard. The arbitrator also concluded that the Government did not show that it had accommodated Ms. Meiorin to the point of undue hardship. The arbitrator ordered that Ms. Meiorin be reinstated and compensated for lost wages and benefits. This arbitral ruling was overturned by the British Columbia Court of Appeal.

The Supreme Court held that the Court of Appeal was mistaken. Ms. Meiorin did not pose a serious safety risk to herself, her colleagues, or the general public. The arbitrator did not find that meeting the aerobic standard was necessary to safe and efficient job performance.

The Court agreed with the arbitrator that the Government failed to show that it had accommodated to the point of undue hardship. However, the Court revisited the conventional analysis distinguishing between direct discrimination and adverse effect discrimination and took the opportunity to articulate a new "unified" approach which does not make a distinction between direct and adverse effect discrimination.

Under the unified approach there is a three-step test for determining whether a discriminatory standard is a BFOR. The employer must establish:

1. the standard was adopted for a purpose that is rationally connected to job performance;
2. the particular standard was adopted in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose;
3. the standard is reasonably necessary to the accomplishment of that legitimate purpose. This includes a requirement to demonstrate that it is impossible to accommodate without undue hardship.

The Court held that Ms. Meiorin established a prima facie case that the test discriminated against women, and the Government did not shown that the standard was reasonably necessary. The Government did not show that it would experience undue hardship if a different standard were used.

The Court disagreed with the Court of Appeal that accommodating women by permitting them to meet a different aerobic standard necessarily discriminates against men. The Court also found that individual testing, without more, does not negate discrimination.

The appeal was allowed, and the order of the arbitrator was restored.
(September 9, 1999, 35 CHRR D/257 (S.C.C.) (1999))

British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), (the "Grismer case")

What is the test for undue hardship in light of the Meiorin case?

Be careful in putting too low a value on accommodating a person with a disability. It is too easy to cite increased cost as a reason for refusing to grant a person with a disability equal treatment. The Grismer case confirmed that the threshold for accommodation is high. The Supreme Court of Canada ruled that the B.C. Superintendent of Motor Vehicles discriminated against Terry Grismer by refusing him a driver's licence because he had homonymous hemianopsia ("H.H.") which eliminated most of his left side peripheral vision in both eyes.

The Superintendent of Motor Vehicles needed to show that the standard was rationally connected to the regulation of driving; that the standard was adopted in good faith; and that the standard was reasonably necessary because the Superintendent could not accommodate persons such as Mr. Grismer without undue hardship, whether that hardship took the form of impossibility, serious risk or excessive cost. The Superintendent had not demonstrated that persons with H.H. could not drive safely. There was evidence that some people with H.H. may be able to drive safely and that Terry Grismer may have been among them. The Superintendent also failed to show that individual assessment was impossible without incurring undue hardship.

The Court also said that while in some circumstances excessive cost may justify a refusal, it is too easy to cite increased cost as a reason for refusing disabled persons equal treatment and impressionistic evidence of increased expense will not generally suffice. (36 CHRR D/129)

Nancy Green v. Public Service Commission of Canada, Treasury Board and Human Resources Development Canada

Can a job evaluation process that determines suitability for language training discriminate on the basis of disability?

Yes, the Tribunal found that Nancy Green was discriminated against by three federal government departments because she has a learning disability. The federal government's tests to assess an employee's ability to learn a second language discriminate against an employee who has auditory dyslexia.

The Tribunal found that Ms. Green was discriminated against because of her learning disability and that the discrimination was systemic in nature. The Public Service Commission adopted a method of testing aptitude to learn a second language that had a discriminatory impact on persons with learning disabilities, namely those with auditory dyslexia problems. Also, the Public Service Commission's procedures provided no possibility of accommodating

persons with these learning disabilities unless the disability was known in advance. (34 CHRR D/166)

Parisien v. Ottawa-Carleton Regional Transit Commission

Can an employer terminate an employee on the assumption that he would likely suffer a recurrence of his disability (post-traumatic stress disorder)?

A Canadian Human Rights Tribunal ruled Alain Parisien was discriminated against by the Ottawa-Carleton Regional Transit Commission (OC Transpo) when the Respondent refused to accommodate his disability and terminated his employment due to "chronic absenteeism."

Mr. Parisien was hired in 1977. He was absent from work for periods between 1977 and 1990. In 1991, he was diagnosed with "post-traumatic stress disorder of longstanding with anxiety, depressive, somatic manifestations." He tried to return to work three times in 1992, 1993 and 1994. In February 1996, the Health Unit at OC Transpo was told Mr. Parisien was ready to return to work. The Health Unit was not convinced that he would be able to perform his regular duties as a bus operator and terminated his employment.

The Tribunal found that the decision to dismiss Mr. Parisien was based on the assumption that he would likely suffer a recurrence of his illnesses, which could result in additional absenteeism. The Tribunal said it was discriminatory to dismiss him on an actual or perceived possibility that he may be disabled in the future.

OC Transpo did not show that accommodating Mr. Parisien's disability had caused it, or would cause it, undue hardship, was ordered to reinstate Mr. Parisien in his job, provide full compensation for lost wages and benefits, and to pay Mr. Parisien \$3,500 in special damages for loss of dignity. (CHRR Doc. 03-044, 2003 CHRT 10)

Morris v. BC Rail 2003 BCHRT 14 (May 1, 2003)

If there is evidence that an employee's job performance is affected by mental illness does the employer has an obligation to accommodate?

Yes, the employer has an obligation to accommodate if an employee's job performance is affected by mental illness, unless undue hardship results. The employer was aware the employee was still suffering from depression, in part due to his job assignment. No effort was made to find him another job. No attempt was made by the employer to show that alternative jobs were not available.

The Tribunal concluded that the complainant's depression played a role in BC Rail's decision to downsize his position in at least three ways: it affected his performance, which led to the new manager's decision that she did not want him on her team; it played a role in his refusal of the computer assignment; and finally, the fact that his disability might recur and require him to make a future disability claim, thereby exposing BC Rail to future liability, was a factor in BC Rail's decision to terminate his employment. Since the employer had not argued that it had sought to accommodate him, the complainant was awarded lost salary up to his 55th birthday, reduced by 20 percent to take into account that his position might have been downsized in the interim. (CHRR Doc. 03-095, 2003 BCHRT 14(2003))

Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur

Can administrative tribunals apply the Charter of Rights and Freedoms? The appellants, L and M, both have the disability of chronic pain because of a work-related injury. Both received temporary Workers' Compensation disability benefits but benefits were discontinued. M and L appealed the Board's decisions to the Workers' Compensation Appeals Tribunal on the ground that the Functional Restoration (Multi-Faceted Pain Services) Program Regulations and portions of the Workers' Compensation Act infringed s. 15(1) of the Canadian Charter of Rights and Freedoms. Those provisions excluded chronic pain from the regular workers' compensation system and provided instead a four-week Functional Restoration Program beyond which no further benefits were available.

The Supreme Court ruled that workers' compensation legislation that excludes workers with chronic pain from regular workers' compensation system and provides a four-week functional restoration program beyond which no further benefits are available infringes s. 15(1) of Canadian Charter of Rights and Freedoms and is not justifiable under s. 1 of Charter.

APPENDIX 3

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Advancing the Inclusion of Persons with Disabilities - A Government of Canada Disability Report

This first comprehensive report on disability in Canada describes where our country has made progress, how the Government of Canada has contributed, and where work remains to be done. - (2002)

<http://www.hrhc-drhc.gc.ca/hrib/sdd-dds/odi/content/odipub.shtml>

Accommodating Disabilities in the Workplace by Michael Lynk.

Particular emphasis should be placed on the case law that address duty to accommodate. This document is available on the Internet at:

www.workink.com/workink/national/Lynk/lynk.htm

Duty to Accommodate: a PSAC Guide for the Local Representative.

This booklet provides an overview of the duty to accommodate in a handy Question & Answer format. This document is available on the Internet at:

www.psa.com click on search; type in duty to accommodate; click on duty to accommodate.

A Place For All: A Guide to Creating an Inclusive Workplace

Canadian Human Rights Commission, 2001. This document is available on the Internet at: www.chrc-ccdp.ca

Disability rights in the workplace Understanding the duty to accommodate

Canadian Union of Public Employees, September 2002. This guide is to be used by union advocates working with injured workers, workers with a disability returning to work after being on long-term disability or sick leave, and workers who have a disability whether or not they have been off the job. The guide provides an overview of disability and the duty to accommodate, a procedure to deal with the employer on the issues, and samples of existing collective agreement language.

Resources for further reading and information are also provided. To order copies of this guide, contact: Equality Branch, Canadian Union of Public Employees,
21 Florence Street, Ottawa, ON, K2P 0W6
Telephone (613) 237-1590 Fax (613) 237-5508 Email: equality@cupe.ca
<http://www.cupe.ca/updir/dutyaccom.pdf>

A Constitution for the Disabled or a Disabled Constitution? Toward a New Approach to Disability for the Purposes of Section 15(1) by Jonathan Penney, Journal of Law & Equality, Vol 1, No. 1, Spring 2002.

Examines disability in a substantive equality analysis. The paper outlines a new constitutional approach to disability that would allow the Charter to play an instrumental role in the normative struggle of Canadians with disabilities. It advances a step beyond accommodating persons with disabilities into existing societal norms and structures and moving to the right to participate in an inclusive society. It is not just the right to participate in a mainstream society through the adoption of non-disabled norms.

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Minority Rights or Universal Participation: The Politics of Disablement J. Bickenbach, in M. Jones & L.A. Basser Marks, eds., *International Studies in Human Rights: Disability, Divers-ability and Legal Change*, vol. 56 (The Hague: Kluwer Law International, (1999).

Tapping the Talents of People with Disabilities: Guide to Employers

Conference Board of Canada, 2001. A summary of this document is available on the internet at: www.conferenceboard.ca

Policy and Guidelines on Disability and the Duty to Accommodate
Ontario Human Rights Commission, 2000.

These Guidelines contain the Commission's policy position on disability, accommodation, and undue hardship, as well as practical guidance on compliance with the Ontario Human Rights Code. Available in various formats: IBM compatible computer disk, audio tape, large print Also available on

Internet: www.ohrc.on.ca

Primer, Duty to Accommodate, National Union of Public and General Employees (NUPGE) November 2002.

Duty to Accommodate places a positive obligation on both employers and unions to design the workplace so that equality and accommodation are built into all policies and practices. This primer is a guide for union advocates in how best to represent members with respect to our obligations around the Duty to Accommodate. www.nupge.ca/publications/Duty%20to%20Accommodate.pdf

Code of Practice on Managing Disability in the Workplace Tripartite Meeting of Experts on the Management of Disability at the Workplace, International Labour Organisation, Geneva, October 2001.

This code provides a practical guidance on the management of disability issues in the workplace. It looks at ensuring that employers benefit from the contribution disabled persons can make at work; improving employment opportunities for disabled job seekers in the open labour market; ensuring that people with disabilities are treated equally and have equal opportunities in the workplace; promoting a safe and healthy workplace; assuring that employer costs associated with disability among employees are minimised - including health care and insurance payments; facilitating job retention by people who acquire a disability while employed; and encouraging the introduction of return-to-work measures aimed at those who have left employment due to disability.

<http://www.ilo.org/public/english/standards/relm/gb/docs/gb282/pdf/tmemdw-2.pdf>

Work Trends. Restricted Access: A Survey of Employers About People with Disabilities and Lowering Barriers to Work By K.A. Dixon with Doug Kruse, Ph.D. and Carl E. Van Horn, Ph.D. John J. Heldrich Center for Workforce Development; Rutgers, The State University of New Jersey, March 2003.

This report surveys US employers regarding their views on people with disabilities in the workplace, the accommodation of these workers, and policy strategies needed to increase workplace accessibility for all workers and job seekers. Despite the significant number of people with disabilities who can and want to work, employers describe a workplace in which people with disabilities are woefully underrepresented. While employers express varying degrees of reluctance and concern regarding hiring and accommodating people with

disabilities, they recognise the need for equal treatment in the workplace.
www.heldrich.rutgers.edu/Resources/Publication/89/WorkTrendsXIVRestrictedAccessFinalReport.pdf

The Right to Decent Work for People with Disabilities ILO Working Paper No. 14 International Labour Organisation 2003.

The ILO commissioned this paper as a contribution to the deliberations taking place in preparation for the development of a United Nations Convention on the Rights of Persons with Disabilities. The paper is intended to be of specific relevance to those involved in drafting the provisions concerning employment and work in the proposed Convention. By examining the development over time of the 'right to work' of disabled persons, the way in which this matter has been dealt with in international instruments and national legislation to date, and the experience in implementing employment and work opportunities, the paper will enable those involved in the preparation of the proposed UN Convention to build on achievements so far.

www.ilo.org/public/english/region/ampro/cinterfor/news/rightto.htm

Roadmap on Learning Disabilities for Employers

Provides employers with the most current general knowledge and information about learning disabilities, and the challenges that employees with learning disabilities face in the workplace. Built on best practices, approaches and strategies, the Road Map addresses important issues such as disclosure, accommodations and assessment. It is supplemented by strategies and actions that researchers, practitioners and professionals who work with adults with learning disabilities report as being the most successful.

2003, 80 pages; <http://www.ldac-taac.ca/english/bookmore/orderform.pdf>
information@ldac-taac.ca; www.ldac-taac.ca

Illness, disability and social inclusion (report) - Author: Grammenos, Stefanos

The study examines how to drive forward the social inclusion of people with illnesses, a broad reference to chronic (physical or mental) illness and disability. The project addresses the values and concepts underlying the issue of inclusion and examines how those concepts are being implemented. It reviews the nature and scale of the problems facing different groups. It identifies policy initiatives in employment, education, housing, transport and other areas which facilitate social and economic integration, particularly where there are efforts towards more integrated policies or more comprehensive services. The report concludes with concrete proposals for future action.

<http://www.eurofound.eu.int/publications/files/EF0335EN.pdf> (full-text, 168 pages)

Working Benefits: Continuation of Non-Cash Benefits Support for Single Mothers and Disabled Women - by Tanis Doe and Doris Rajan with Claire Abbott (Status of Women Canada).

People with disabilities are eligible for social assistance including both monetary support for living costs and non-cash benefits to cover additional expenses related to being disabled. Single mothers who qualify are also eligible for an income support allowance and additional benefits, such as child-care or transportation subsidies. This research project proposed that, for many women on welfare, the cost of working was too expensive given the loss of all the non-cash benefits. Women with disabilities and single mothers were asked about the importance of non-cash benefits and what would help them to return to the work force.

<http://dsp-psd.communication.gc.ca/Collection/SW21-102-2002E.pdf> (PDF)

Reference: EF0335 ISBN: 92-897-0221-4 Published: 2003

Workplace Accommodation Toolkit, Industry Canada, 2003

Industry Canada prepared a resource toolkit for employers on workplace accessibility. It is a useful resource for anyone including an employee who has (or acquires) a disability that prevents, or interferes with, access to the office or the use of mainstream office technology or services. The toolkit assists with questions concerning accommodations, technologies or services are available to help reduce or overcome the barriers raised by standard technologies.

<http://www.appt.gc.ca/WATindexE.asp?Action=&Id=W>

Participation and Activity Limitation Survey, 2001 Education, employment and income of adults with and without disabilities - Tables

<http://www.statcan.ca/english/freepub/89-587-XIE/free.htm>