

Your Legal Entitlements

Where do eating disorders fit in for requests for accommodations?

Eating disorders are categorized as mental illnesses. The current DSM, edition 5, recognizes 8 categories of feeding and eating disorders. Therefore, any accommodations relating to mental illness in the contract with the employer applies to eating disorders.

Know your Rights

To know your rights with respect to your employment, the Employment Standards Act includes all information, including, but not limited to, your rights as they pertain to sick leave, termination and severance of employment, benefit plans, critical illness leave, and family caregiver leave.

Information regarding Short-term disability insurance (from Government of Canada website)

- Short-term disability coverage typically provides benefits for up to 6 months while you're sick or injured.
- If your employer has a short-term disability plan, you must make your claims through that disability plan. Speak with your employer for details on your disability plan. Some employers may also offer paid sick leave.
- You may be eligible for Employment Insurance (EI) sickness benefits. For example, if you don't have short-term disability coverage or sick leave through your employer.

Information regarding Long-term disability insurance (from Government of Canada website)

Long-term disability insurance generally begins when the following benefits end:

- short-term disability insurance
- sick leave from your employer
- EI sickness benefits
- Most long-term disability plans will replace 60% to 70% of your normal income.
- Each disability plan is different. Some may provide disability benefits for up to 2 years if you're unable to return to your job. After 2 years, you may continue to receive benefits if you're unable to perform any job.

Legislation & Case Law

Ontario Human Rights Commission - 8. Duty to Accommodate

The following sections are included under section 8:

- 8.1 Principles of accommodation
 - 8.1.1 Respect for dignity
 - 8.1.2 Individualization
- 8.2 Inclusive design
- 8.3 Appropriate accommodation
 - 8.3.1 Essential duties and requirements
 - 8.3.2 Employment-specific accommodation issues
 - 8.3.2.1 Alternative work
 - 8.3.2.2 Return to work
- 8.4 The legal test
- 8.5 Forms of accommodation
- 8.6 Duties and responsibilities in the accommodation process
 - 8.6.1 Duty to inquire about accommodation needs

8.7 Medical information to be provided

8.8 Confidentiality

Under the *Code*, employers and unions, housing providers and service providers have a legal duty to accommodate the needs of people with disabilities who are adversely affected by a requirement, rule or standard. Accommodation is necessary to ensure that people with disabilities have equal opportunities, access, and benefits. Employment, housing, services and facilities should be designed inclusively and must be adapted to accommodate the needs of a person with a disability in a way that promotes integration and full participation.

(*Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000* (SCFP-FTQ), 2008 SCC 43 (CanLII) [*Hydro-Québec*] at paras. 14 and 16.)

In the context of employment, the Supreme Court of Canada has described the goals and purposes of accommodation:

... the goal of accommodation is to ensure that an employee who is able to work can do so. In practice, this means that the employer must accommodate the employee in a way that, while not causing the employer undue hardship, will ensure that the employee can work. The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.

...

The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

Convention of Rights of Persons with Disabilities

States that in Canada, the requirement is that steps must be taken to ensure that people with disabilities are provided with accommodation (ex. To ensure equal access to justice, education, and employment)

The duty to accommodate has both a substantive and procedural component. With respect to accommodation of mental health disabilities in the workplace, the court said:

"A failure to give any thought or consideration to the issue of accommodation, including what, if any, steps could be taken constitutes a failure to satisfy the 'procedural' duty to accommodate." (*Lane v. ADGA Group Consultants Inc.*, at para. 107.)

Organizations will not be able to argue persuasively that providing accommodation would cause undue hardship if it has not taken steps to explore accommodation solutions, and otherwise fulfill the procedural component of the duty to accommodate (*Gaisiner v. Method Integration Inc.*, 2014 HRTO 1718 (CanLII) [*Gaisiner*] at para.