



## (13) Reasonable Accommodation and Unjustifiable Hardship

### *What is reasonable accommodation?*

Reasonable accommodation is an important element in the Disability Discrimination Ordinance (DDO) for non-discrimination in employment. It refers to any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy equal employment opportunity.

### *Why is reasonable accommodation important for non-discrimination?*

Many people with a disability can perform jobs without any need for accommodation. But there are others who are excluded from jobs which they are capable of doing simply because of unnecessary barriers in the workplace.

Some people with a disability face physical barriers that make it difficult for them to move around in a workplace or to use certain equipment at work. Some are limited by the way people communicate with each other. Others are not given equal opportunity because of rigid work schedules which do not allow flexibility for people with special needs. Some barriers exist in people's minds such as unfounded fears, stereotypes and misconceptions about job performance, safety, costs or acceptance by co-workers.

For this reason, the DDO imposes reasonable accommodation as a means of overcoming such unnecessary barriers that restrict employment opportunities for people with a disability.

### *When should reasonable accommodation be provided?*

An employer should provide reasonable accommodation to a job applicant or an employee with a disability, unless the job in question requires absence of disability as a Genuine Occupational Qualification (GOQ). An employer is not obliged to employ a person with a disability if the latter cannot perform the inherent requirements<sup>15</sup> of the job. However, the employer should not draw such a conclusion unless he or she has duly considered

reasonable accommodation.

### *Some examples of reasonable accommodation*

Reasonable accommodation may be made at any stage of employment including the recruitment stage. Here are some examples of adjustments which can be made to enable people with a disability to perform the inherent requirements of a job.

- During the recruitment and selection stage, adopt appropriate measures to maintain parity among applicants with or without a disability. For example, the manner of oral tests may be modified to allow hearing-impaired applicants to have hearing aids or visually-impaired applicants to take an oral test rather than a written test.
- Modify work premises to make them more accessible to applicants or employees with a disability, including installing such fixtures as may be necessary. For example, steps in a walkway may be changed to a ramp to facilitate wheelchair users.
- Change job designs, work schedules or other work practices to meet the special needs of employees with a disability. For example, regular sick leave is granted for an employee with a mental illness to attend outpatient clinics for regular medication.
- Offer an alternative post to an employee who has sustained a disability during employment. For example, if an employee whose job requires driving loses his or her sight, reassignment to a vacant position that does not require driving would be a reasonable accommodation.
- Provide or modify equipment to enable employees with a disability to perform certain tasks. For example, a machine which is designed for right-hand users might not be usable by employees who have lost their right hands. If the machine was modified to suit a left-hand user the employees, after suitable training, would be able to use it and hence could continue with their employment.
- Employers should keep themselves informed of advancements in technology which can assist employees with a disability to perform their



duties.

- Provide training and other assistance to employees with a disability. Using the example of the employees who have lost their right hands, training them up for operating the modified machine would also be a reasonable accommodation.

***Must the employer always provide accommodation to an employee with a disability?***

No, where the provision of accommodation imposes an unjustifiable hardship on the employer, the employer is not obliged to provide it. The DDO provides exemptions for employers in this respect.

***What constitutes unjustifiable hardship on the employer?***

All the relevant circumstances in each case should be assessed and taken into account to determine what constitutes unjustifiable hardship under the DDO. Such circumstances include:

- the reasonableness of any accommodation sought. This includes considerations of the nature and cost of the accommodation. For example, an employer generally would not be required to provide personal items such as spectacles. However, the employer might be required to provide a person with visual impairment with special glasses for using a particular computer monitor.
- the nature of the benefit or detriment to all persons concerned. For example, a ramp to accommodate an employee using a wheelchair would also benefit customers who are wheelchair users or parents carrying baby trolleys. This should be taken into account in considering the extent of unjustifiable hardship on the employer.
- On the other hand, if an employee with a particular illness requested the thermostat in the workplace be raised to a certain level to accommodate his or her disability, and this level would make it uncomfortably hot for other employees, the employer might raise unjustifiable hardship as a defence for not providing the requested accommodation. However, the employer should

consider if alternative ways of accommodation exist which would not cause an unjustifiable hardship.

- the effect of the disability of a person concerned. Only those adjustments which the person needs are required; assumptions should not be made about the needs of a person with a disability. For example, a person with hearing impairment who has hearing aids and who can lip-read might be able to communicate with colleagues without difficulty. The employer would not need to employ someone who knows sign language to facilitate communication.
- the financial circumstances of and the estimated amount of expenditure required to be made by the employer claiming unjustifiable hardship. For example, a small company might find it too costly to provide an interpreter to enable a hearing-impaired employee to participate in weekly staff meetings, but a large organisation might find it affordable.

***Who has the burden of proof?***

Where the employer claims unjustifiable hardship as a defence for not providing reasonable accommodation to a person with a disability, the burden of proof is with the employer.

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<sup>15</sup> Please also read "Absence of Disability as a Genuine Occupational Qualification" in this publication.