

New OHRC Policy: Accommodation and Medical Documentation

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It is well known that under Ontario's *Human Rights Code* (the "Code"), employers have a legal duty to accommodate the needs of people with disabilities. The duty to accommodate has both a procedural and a substantive component. To meet the procedural aspect of the duty to accommodate, an employer must take adequate steps to explore what accommodation is needed, and to assess accommodation options that may assist the employee to participate in the workplace. The substantive duty requires the employer to make the modifications or provide the accommodation necessary to permit the employee's participation in the workplace, such as by modifying duties or hours, as the case may be, up to the point of undue hardship.

Part of the accommodation obligation also lies with the employee. The employee has the obligation to participate in the process of accommodation by providing the employer with the "appropriate" medical documentation. In early February 2017, the Ontario Human Rights Commission released a [policy statement](#) that provides guidance on the type and scope of the medical information that employees need to provide to their employers to support disability-related requests for accommodation.

The policy clarifies that the employees should provide documentation that includes the following information:

- that the person has a disability;
- the limitations or needs associated with the disability;
- whether the person can perform the essential duties or requirements of the job, with or without accommodation;
- the type of accommodation(s) that may be needed to allow the person to fulfill the essential duties or requirements of the job; and
- regular updates about when the person expects to come back to work, if they are on leave.

The Commission identified that, sometimes, employers request personal medical information that goes beyond what is required to support an accommodation request, which can have an adverse effect on employee's dignity and privacy. An employer does not have the right to know

a person's confidential medical information, such as the cause of the disability, diagnosis, symptoms or treatment, unless these clearly relate to the accommodation being sought, or the person's needs are complex, challenging or unclear and more information is needed.

The Commission stated that where more information about a person's disability is needed, the information requested must be the least intrusive of the person's privacy while still giving the organization enough information to make an informed decision about the accommodation. The policy recommends that employers be mindful when requesting such information from an employee and ensure such requests specifically focus on the functional limitations associated with the disability.

In light of the Commission's policy, employers should review their disability-related policies and practices to confirm compliance.