

Rights and Responsibilities of Employers

Both employees and employers have a range of rights and responsibilities related to the needs of an employee with epilepsy in the workplace. Many of these workplace rights stem from our human rights codes. Human rights codes exist across the country and are pretty much the same in each province. In addition to the Ontario Human Rights Code¹ in this province, there is the Canadian Human Rights Act² which covers a number of areas under federal jurisdiction. They clearly set out rights and are the basis for a great deal of legislation that prohibit discrimination against people on a *protected ground* in a *protected social area*.

Protected grounds are things like age, sex, marital status, place of origin and **disability**. Protected social areas include housing, contracts, services, facilities and **employment**.

Only Human Rights legislation in the context of employment is discussed in this *Spark* sheet. In addition to Human Rights legislation, workplaces are also covered by Occupational Health and Safety and Employment Standards legislation.

■ Employee Rights

Everyone has a right to equal treatment in the workplace without discrimination because of disability. They also have the right to dignity, privacy and full participation.

■ Employer Rights

An employer has every right to expect that a person with epilepsy will be productive and safe in the work environment. When considering a person with a disability, they are right to ensure that the candidate has the skills and abilities to get the job done, that the candidate fits in and works well with the team and that this individual is motivated and wants to do a good job.

Discrimination in the workplace can look like:

- A refusal to hire someone because of their epilepsy
- A failure to provide reasonable accommodation of their disability
- Harassment or bullying of an individual by any member of a workplace based on disability
- Termination of employment when it is based on disability

¹ <http://www.ohrc.on.ca/en/ontario-human-rights-code>

² <http://www.chrc-ccdp.gc.ca/eng/content/your-guide-understanding-canadian-human-rights-act-page1>

Rights and Responsibilities of Employers *continued*

The following tips relate to your rights and responsibilities throughout the employment cycle.

RECRUITMENT

- When considering hiring a person with a disability, determine what the bona fide occupational requirements are or essential duties. These are really not up for discussion of accommodation if it were to cause undue hardship or issues with safety. For example, a courier driver really needs to be legally licensed.
- It is great to have a policy and state in a posting that you are an equal opportunity employer. This will draw richer and more diverse candidates.
- Some people with epilepsy have employment gaps or may not present well in interviews. Try to draw out transferable skills and basic skill sets as they pertain to the job. Keep an open mind and do what you can to put the candidate at ease. This is more likely to draw out what they can do in this job rather than what they can't. You may get a better sense of what their abilities really are by allowing them to attend an interview with their counselor or job coach (if indicated).
- Questions specifically about the person's epilepsy should not be asked. It is generally okay to ask questions about a candidate's suitability to do the job either with accommodations or some job carving.
- Get the best candidate for the job, but if two are equal, taking the person with epilepsy will likely result in a harder working, more dedicated employee that misses less time from work!

DISCLOSURE

- A person with epilepsy is not required to disclose during the hiring process or even during the period of employment. Disclosure and a request for accommodation typically take place at the same time.
- If, during the course of employment, an employee has a significant medical event, you can ask for:
 - Information about how their medical condition impacts their ability to perform their job duties
 - Their prognosis for recovery
 - Their ability to perform either their essential job duties or modified duties
 - Information you might need for a similar incident in the future
 - You may place an employee on leave or give them alternate duties (preferred) while determining whether they can safely perform/return to their duties.

Rights and Responsibilities of Employers *continued*

ACCOMMODATION

- Take accommodation requests seriously.
 - With accommodation, the employee can be expected to do the essential duties of the job. Reducing performance standards does not qualify as an accommodation, nor would an employee with epilepsy expect this.
 - All information pertaining to the disability is to be kept confidential except as necessary to implement the accommodation.
 - Cover the cost of accommodation including medical or workplace assessments, doctor's notes etc.
 - Accept requests for accommodation in good faith.
 - Deal with accommodation requests in a timely fashion.
 - Only request information relevant to an accommodation need. For example, during the interview, a candidate requests flexible hours due to her epilepsy. The employer cannot ask questions such as what type of seizures or how frequent they are.
 - Accommodation must be provided by the employer up to the point of undue hardship.
 - All workplace activities, including social events and emergency plans, should be planned with inclusion and if necessary, accommodation in mind. After a while, it just becomes second nature.
 - Employers have a Duty to Enquire. Even if the employee does not disclose having epilepsy, if there is enough evidence to suggest that it exists and is a factor in job performance, the employer should gather more information and work towards accommodation.
 - Employers also have a legal obligation to provide reasonable accommodation to employees who provide necessary medical care or supervision of a family member with a disability, such as epilepsy.
 - The Duty to Accommodate supersedes all other regulations, including collective agreements.
- If a union is present they should:
- Accept accommodation requests in good faith and in a timely fashion.
 - Participate in discussion of accommodation issues and solutions as needed.
 - Support accommodation measures regardless of the collective agreement.

Rights and Responsibilities of Employers *continued*

PERFORMANCE MANAGEMENT

- Managers and supervisors have every right to expect optimal performance and quality output from their employees, and that includes persons with epilepsy.
- An employee with a disability, when accommodated properly, should not be working to any different standard than any other employee.
- Provide feedback to the employee with epilepsy as you would any other.
- If there are issues around performance or productivity, address them early on with the employee and union, if present. If the issue seems to be disability related, work collectively on compensatory strategies and document them. Consider getting a representative from a local epilepsy organization involved. (1-866-EPILEPSY)
- If, despite your best efforts and intentions, things just don't seem to be working out, discipline or terminate the person with epilepsy as you would any other employee. For example, implement progressive discipline that involves a verbal warning, written warning, suspension, and termination.

Employers should ensure that managers and supervisors have suitable disability awareness and sensitivity training. Local epilepsy organizations can assist with this (1-866-EPILEPSY) or visit www.epilepsyatwork.com for a toolkit to build workplace awareness, support, and accommodation for people with epilepsy.

Rights and Responsibilities of Employers *continued*

■ AODA

The Accessibility for Ontarians with Disabilities Act³ (AODA) builds upon the requirements of Human Rights legislation and, as of January 2016, applies to all organizations in the province. The AODA is considered to be the most comprehensive and inclusive legislation in Canada for ensuring equal access to goods and services. For that reason, many companies with a national presence have worked these guidelines into their Human Resources Policies.

- The Employment Standard addresses employer practices around recruitment, accommodation and return to work for persons with disabilities.
- The Communication Standard addresses practices around written, verbal and virtual communication.
- The Customer Service Standard is particularly applicable to companies that have any type of interaction with customers i.e. sales and service. It ensures equal access to goods and services.
- The Transportation Standard.
- The Design of Public Spaces Standard compliments the local building code to ensure equal physical access to building environments.

³ <https://www.ontario.ca/page/about-accessibility-laws>

Version Date: September 2017