

## Rights and Responsibilities of Employees

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 Code<sup>1</sup> in this province, there is the Canadian Human Rights Act<sup>2</sup> 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 document. 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.

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

### 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.
- Although disclosure is not required, telling the employer that they are wrong to fire you on the basis of your substandard disability-related performance when you didn't disclose, won't get you far. They can't accommodate that for which they were unaware.

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

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

## Rights and Responsibilities of Employees *continued*

- If, during the course of your employment, you have a significant medical event, an employer can ask for:
  - Information about your medical condition
  - Your prognosis for recovery
  - Your ability to perform either your essential job duties or modified duties
  - Information they might need for a similar incident in the future
  - They may place you on leave or give you alternate duties (preferred) while determining whether you can safely perform/return to your duties

### ACCOMMODATION

- For a new job, don't expect an employer to rewrite the essential duties to provide accommodation. If a job posting says that shift work is involved and the job entails working 90% of the time at heights, then that is what they are entitled to in a new hire.
- With accommodation, you can be expected to do the essential duties of the job. Reducing performance standards does not qualify as an accommodation.
- To get accommodation, you must inform the employer of your needs. Ask for accommodation if you need it.
- Participate in discussions of accommodation issues and solutions as needed.
- Document your request for accommodation.
- Cooperate with your employer's request for information if you request accommodation,

including the collection of medical reports and expert opinions. Don't sign a blanket release for access to your doctor. Your employer should cover the cost of accommodation including medical or workplace assessments, doctor's notes, etc.

- Your employer should only request information relevant to an accommodation need. For example, during an 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. The Duty to Accommodate supersedes all other regulations, including collective agreements.
- Employers have a Duty to Enquire. Even if you do not disclose having epilepsy, if there is enough evidence to suggest that it exists and is a factor in your job performance, your employer should gather more information and work towards accommodation.
- If your request for accommodation is denied, seek advice from your local epilepsy organization or a law practitioner.
- You have every right to expect your condition and accommodation request to be shared only with necessary coworkers and managers. If this expectation is not met, you may seek union or legal advice.

If a union is present they should:

- Accept accommodation requests in good faith and in a timely fashion

## Rights and Responsibilities of Employees *continued*

- Participate in discussion of accommodation issues and solutions as needed
- Support accommodation measures regardless of the collective agreement

### ADDRESSING DISCRIMINATION

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

### Recommendations

- If you think you are being discriminated against, take detailed notes of any incidents including date and times and who may have been responsible or been a witness.
- If you do experience discrimination, stay calm. Seek assistance early on from your local epilepsy organization (1 866 EPILEPSY), your union, a lawyer, or the Ontario Human Rights Commission.

- Beware of constructive dismissal or signs your employer is trying to get you to quit. These include:
  - A reduction in salary
  - A reduction in title or status
  - A significant change in your work location without reasonable notice
  - A change in employee benefits
  - An unjustified reduction in work hours
  - Humiliation or bullying
- If you are terminated and you believe it is in part related to your disability:
  - Seek professional advice
  - If you are offered a package in exchange for signing a release, think about it for a few days and consider talking to a lawyer first
  - There is no simple answer as to whether you choose to pursue action against an employer through Human Rights or a lawyer. The Human Rights Tribunal of Ontario has a toll-free enquiry line (1-866-598-0322) where typically, a quick call to a representative will help you determine if they are the preferred route to go. Typically, lawyers offer an initial phone conversation to test the merits of your 'case', at no cost.

## Rights and Responsibilities of Employees *continued*

### ■ AODA

The Accessibility for Ontarians with Disabilities Act<sup>3</sup> (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.

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

*Created by Tim Nourse, epilepsy and employment specialist.*

Version Date: September 2017