

## DISPELLING THE MYTHS: HIRING PERSONS WITH DISABILITIES

### BASICS

**What is a disability?** = includes physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. (Ontario Human Rights Commission)

**What is accommodation?** = adaptations to the workplace to remove barriers preventing an otherwise qualified individual from performing **the essential duties** of his/her job

**Who has responsibility to accommodate?** = employer, employee, and in the unionized sector – the union

**Standard employers must meet in discharging duty to accommodate?** = undue hardship

### JURISPRUDENCE

*Renaud v. Central Okanagan School District* [1992] 2 S.C.R. 970

- The search for accommodation is **a multi-party inquiry**
  - *Employer's obligation:* accommodate persons with disabilities to the point of undue hardship
  - *Employee's obligation:* communicate need for accommodation, provide timely and useful information to employer regarding functional abilities/limitations; cooperate and act reasonably
  - *Union's obligations:* advocate on behalf of employee; help to facilitate reasonable accommodations; facilitate communication and sharing of information; balance competing needs

***McGill University Health Centre 2007 SCC 4***

- Undue hardship may, in part, be defined by the parties themselves through agreement of what level of absenteeism will frustrate the contract of employment

***Hydro Quebec 2008 SCC 43***

- Purpose of the duty to accommodate is not to completely alter the essence of the contract of employment, that is, the employee's duty to perform work in exchange for remuneration
- Undue hardship arises where, despite reasonable accommodation, the employee will not be able to perform the essential duties of the position for the foreseeable future

***Toronto District School Board v. ETFO (Mootilal Grievance) [2007] O.L.A.A. No. 341***

- There is a critical distinction between "external assistive devices" such as ramps, elevators, special bathrooms, specialized furniture etc. and "personal assistive devices" such as crutches, canes, hearing aids or eye glasses
- Employer's duty is to provide accommodation to the workplace and/or employee duties; the scope of the duty does not extend to the employee's person

***Keays v. Honda Canada Inc. 2008 SCC 39***

- Requiring doctor's notes from an employee who has requested accommodation, in order to justify absences, does not constitute harassment or discrimination
- Monitoring employee absences as part of a disability management program, to ensure that such absences relates to a disability, does not offend the *Human Rights Code*. On the contrary it is consistent with the employer's duty to accommodate.