

Keep in mind: Inconsistent adherence to a creed belief or practice in the past or present does not necessarily indicate insincerity. For example, a sincere believer may lapse, a person's beliefs may change over time or permit exceptions, and circumstances may sometimes force someone to sacrifice or compromise a creed belief.

Bona fide requirements

In some cases, a rule, requirement or qualification that negatively affects people based on their creed may not be discriminatory, or trigger the duty to accommodate, because it is reasonable and *bona fide* (legitimate) in the circumstances. Some of the factors to consider include whether the standard, requirement or rule:

- ❑ Was adopted for a purpose that is rationally connected to the function being performed.
- ❑ Was adopted in good faith, in the belief that it is necessary to fulfill the purpose or goal.
- ❑ Is necessary to accomplish its purpose:
 - ◆ Can the organization meet its legitimate objectives in a less discriminatory way that does not create undue hardship?
 - ◆ Were alternative approaches that do not have a discriminatory effect investigated?

Undue hardship

The duty to accommodate may also be limited or not exist where it creates undue hardship, considering factors of cost (including outside funding) and health and safety. Undue hardship is a high standard. For example, an accommodation may cause undue hardship where it significantly interferes with the financial viability of an organization.

To rely on this defence, an organization will have to show evidence of undue hardship that is objective, real, direct, and in the case of cost, quantifiable.

Where an accommodation creates undue hardship, next best solutions must still be explored and provided.

Unacceptable reasons for denying accommodation

It is not appropriate to limit or deny an accommodation because of:

- ❑ The potential negative reaction of other employees, tenants or service users, or impact on morale
- ❑ Third-party preferences (such as customer preferences)
- ❑ Business inconvenience (unless undue hardship results)
- ❑ Collective agreements or contracts
- ❑ The perceived unreasonableness of a belief or practice
- ❑ The fact that the organization is secular and operates in the public sphere.

Keep in mind: The Supreme Court of Canada has said: "The pursuit of secular values means respecting the right to hold and manifest different religious beliefs. ... A secular state respects religious differences, it does not seek to extinguish them."

Balancing competing rights

Sometimes a creed accommodation request might interfere with another person's or group's human rights or other legally recognized right.

Organizations have a legal duty to deal with competing rights and take steps to seek out constructive compromises that minimize the infringement and maximize the fulfillment of each party's rights.

Keep in mind:

- ◆ No right is absolute. All rights may be limited where they interfere with other rights, including rights based on creed. There is no hierarchy of rights – which means that no one right is more important than another.
- ◆ Human rights protections do not extend to creed practices and observances that are hateful, incite hatred or violence against other individuals or groups, or contravene criminal law.

For more information

For more information on the duty to accommodate based on creed, see the OHRC's *Policy on preventing discrimination based on creed*, and other online resources at www.ohrc.on.ca.

To make a human rights complaint – called an application – contact the Human Rights Tribunal of Ontario at:
Toll Free: 1-866-598-0322
TTY Toll Free: 1-866-607-1240
Website: www.hrto.ca

To talk about your rights or if you need legal help, contact the Human Rights Legal Support Centre at:
Toll Free: 1-866-625-5179
TTY Toll Free: 1-866-612-8627
Website: www.hrlsc.on.ca

Aussi disponible en français

© 2015, Queen's Printer for Ontario

ISBN: 978-1-4606-6657-9 (Print)

ISBN: 978-1-4606-6658-6 (HTML)

ISBN: 978-1-4606-6659-3 (PDF)

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Creed

AND the duty to accommodate

A checklist for accommodation providers



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Before you receive an accommodation request

Minimize the need for accommodation up front by inclusively designing policies, rules, procedures, practices and spaces with everyone in mind (including people of diverse creed faiths).

Create an open, inclusive and safe environment free of discrimination and harassment so that people feel safe and welcome to express or observe their creed and ask for creed-related accommodations, without fear of reprisal or stigma. For example, you could:

- ❑ Develop a creed accommodation policy, procedure and training to address and prevent discrimination and remove barriers.
- ❑ Increase awareness and competency in dealing with creed diversity.
- ❑ Have your leaders speak about the goal and importance of respecting and upholding creed human rights.

Keep in mind: The goal of accommodation is to allow people with different creed beliefs (including no creed belief) to equally benefit from and take part in the workplace, services or housing. No one should have to choose between following their creed and taking part in society.

If you receive an accommodation request

- ❑ Treat accommodation requests as sincere. Accept the person's request in good faith, unless there is clear evidence to believe otherwise.

- ❑ Deal with accommodation requests as quickly as possible, even if it means creating a temporary solution while you develop a long-term one.
- ❑ Take an active role in making sure that alternative approaches and possible accommodation solutions are investigated.
- ❑ Always look for and provide the most appropriate accommodation in the situation, unless it would cause undue hardship. The most appropriate accommodation is the one that most:
 - ◆ Respects dignity (including autonomy, comfort and confidentiality)
 - ◆ Responds to a person's individual needs
 - ◆ Allows for integration and full participation.
- ❑ Cover any appropriate costs related to the accommodation.
- ❑ Keep a record of the accommodation request and action taken.

Keep in mind: People seeking accommodation must disclose their needs and co-operate with appropriate requests for information, and accommodation providers must explore accommodation options, where appropriate, in dialogue with accommodation seekers. However, accommodation providers are ultimately responsible for leading the process and finding solutions.

An organization fails its "procedural" duty to accommodate if it does not give any thought or consideration to an accommodation issue or request, including what steps if any could be taken.

Where an organization contracts with a third party (for example, to provide a service or handle employment issues), it should make sure the third party fulfills its obligations under the *Code*, including the duty to accommodate.

Unions and professional associations must support accommodation measures. If an accommodation request would interfere with a collective agreement, a change or exception to a provision of the agreement might be necessary. It will depend on whether the provision is a *bona fide* requirement (is legitimate and necessary) and whether the accommodation would create undue hardship.

Keep in mind: People should not be treated differently, harassed, denied benefits or opportunities or penalized in any way because they ask for accommodation. This would be reprisal and is against the *Code*.

If organizational requirements negatively affect a creed accommodation request

- ❑ Look into whether the requirement is legitimate and necessary in the first place, (for example, rigid work hours that do not allow flexibility for prayer time).
- ❑ Ask – can the requirement be dropped or changed so it doesn't cause a barrier for anyone?

If requirements are legitimate, you may need to make an exception and accommodate the person's creed unless you can show it would cause undue hardship.

If you are unsure whether you have a duty to accommodate, consider whether the person seeking accommodation has been negatively affected by an organizational policy, rule, standard, qualification or practice, based on their sincerely held creed belief.

A rule or requirement that negatively affects people based on their creed may be discrimination even if it does so only by accident or unintentionally (this is known as constructive or adverse effect discrimination).

Not every negative impact on a person's creed belief or practice may be discrimination. Interference with creed practices or beliefs that are less important or connected to a person's creed (such as attending a church bake sale, accessing satellite religious programs, etc.) may not necessarily receive protection.

The accommodation seeker must show a negative impact based on creed (this is called *prima facie* discrimination, or discrimination on its face). While this is usually easy to show, sometimes more information will be needed.

Asking about someone's creed and related needs

- ❑ Limit requests for information to only what is reasonably necessary to identify the nature and extent of accommodation needs and potential solutions.
- ❑ In most cases you will not need to probe further into the sincerity or nature of someone's creed. Accept it as genuine, unless you have a legitimate reason to ask for more information to establish that a person has a creed-based need.

- ❑ If there is a legitimate need to inquire into whether the belief or practice is sincerely held, keep the inquiry as limited as possible, and focus on evidence of the accommodation-seeker's *current* beliefs and practices.
- ❑ Is the belief or practice connected to a creed?
 - ◆ The belief or practice must be connected to a creed for the *Code's* duty to accommodate to apply. It does not need to be required by the creed, or to be consistent with the beliefs or practices of others of the same creed (including creed officials)
 - ◆ Sometimes objective information, and not simply a person's claim, may be required to show the existence of a creed.
- ❑ Avoid imposing your own personal views of what a creed is.
- ❑ It is not appropriate to insist on an expert opinion (for example, from a creed authority) to show that a creed practice or belief is "legitimate." Creed beliefs or practices need only to be sincerely held.
- ❑ If an accommodation seeker refuses to provide legitimately requested information, the accommodation provider may be relieved of further responsibility.
- ❑ Respect and protect the privacy and confidentiality of the person asking for accommodation.
- ❑ Share information only with people who need the information to make the accommodation.
- ❑ Do not disclose information that may directly or indirectly identify a person's creed or creed related beliefs and practices.