

Accommodation Guidelines and Principles for Local Unions

Local union leadership must recognize the right of disabled workers to return to the workplace, with the emphasis on return to the pre-accident job.

Local unions must be proactive in their approach to accommodating disabled workers. The collective agreement should be reviewed to identify and remove barriers. The membership should be involved in the development of any accommodation program and members should be made aware of their right to accommodation, in the event they become disabled. The membership should understand that this is a form of job security.

In order to return a disabled worker to her/his pre-accident job, appropriate accommodation may include re-organization of the work, modifications to the job, provision of technical aids and the retraining of the worker; in order that he/she can perform the essential duties of the pre-accident job.

If return to the pre-accident job is not achievable, another suitable bargaining unit job should be selected which should be accommodated, if necessary, to meet the needs of the disabled worker; being mindful of seniority. The union should grieve any accommodation which it feels is unreasonable, but must also propose a solution which it feels is reasonable.

Work outside the bargaining unit should be considered only if efforts to modify the job or accommodate elsewhere within the bargaining unit are unsuccessful.

A worker must be given the choice as to whether she/he wishes to transfer out of the bargaining unit. If the worker chooses not to take such a transfer outside the bargaining unit, the employer shall not be relieved of the obligation to re-employ the worker.

A worker who exercises the option to transfer outside the bargaining unit shall retain her/his seniority as of the date of departure from the bargaining unit and will maintain a right to return to the bargaining unit in the future.

The union should work toward bargaining appropriate collective agreement language. First line leadership should receive training and the members should know their rights. The union should provide the necessary assistance to achieve the most appropriate accommodation of the disabled worker. The labour movement should be proactive to influence the WCB to enforce the legislation and policies which assist disabled workers in reinstatement to their pre-accident employment.

In point form, local unions should:

PRINCIPLES – What we need to do

- a) the primary responsibility of the employer is to return the disabled worker to the pre-accident job

- b) returning the worker to the pre-accident job means appropriate accommodation of the essential duties of the pre-accident job as necessary, considering:
 - i) modifications to the job
 - ii) provision of technical aids
 - iii) retraining of the worker
 - iv) re-organization of work
- c) “light duty” is acceptable for temporarily disabled workers only when the work being offered is productive and dignified, and the worker and the treating physician agree that return to his work at this time will help with rehabilitation to permanent employment in the long term.
- d) the WCB caseworker must ensure that the employer considers accommodation of the essential duties of the pre-accident or comparable work before accepting the provision of alternative suitable work.
- e) the accommodation being offered must be or lead to permanent employment as long as the disability exists.
- f) where the employer cannot accommodate the work or provide suitable alternate work for the disabled worker, the union may assist the worker to obtain work outside the bargaining unit, provided that the worker has been fully informed of her/his rights under the Act and the consequences of leaving the bargaining unit.

PROCESS – How we do it

- a) establish local union/workplace structure to address the needs of disabled workers
- b) ensure notification and involvement of the membership
- c) review collective agreement to eliminate potential barriers to accommodation and re-employment, including adding non-discrimination clauses to provide a mechanism for a grievance procedure and for local union involvement

STRUCTURE – How we make it work

- a) develop appropriate collective agreement language which takes seniority into consideration and which enables the union to participate fully and effectively in the process of reintegration and accommodation
- b) train first line leadership in the principles, identification of issues and statutory rights and obligations in the duty to accommodate
- c) communicate statutory rights and obligations and local union/workplace structure to membership

- d) develop access to technical assistance and resources
- e) work with the WCB to ensure that case workers and other Board representatives see that employers fulfil their obligations under legislation.

Adopted by the OFL Executive Board
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