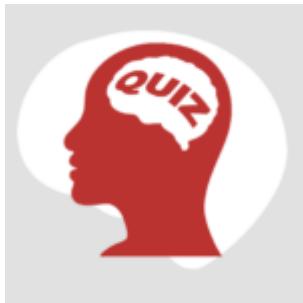


How Far Must Employer Go to Accommodate an Employee's Chemical Sensitivities?



Human rights laws require employers to make reasonable efforts to accommodate employees with disabilities up to the point of undue hardship. This situation, which is based on an actual case from Alberta, illustrates how the accommodations process is supposed to work and how far employers are expected to go before they incur the undue hardship necessary to relieve them of their accommodation duties.

Situation

A legal secretary has multiple chemical sensitivities, including to scents, perfumes, and chemical smells. To accommodate her, the law firm asks staff not to wear perfume or cologne, installs air cleaners near her work station, lets her use a washroom in the office sickroom instead of the public washroom used by other workers, and changes her hours to limit her contact with other people. None of these efforts prove effective. So, following an expert's recommendations, the firm offers her a position that involves even less contact with other people. But she insists the measure won't work and refuses to even try it out. Instead, she goes out on disability and never returns. She then files a discrimination complaint against the firm for failing to accommodate her disability.

Question

Does the secretary have a valid disability discrimination case?

1. Yes, because the firm didn't do everything possible to accommodate her.
2. Yes, because the firm didn't prove that accommodating her would be an undue hardship.
3. No, because multiple chemical sensitivities aren't a disability.
4. No, because the secretary didn't cooperate with the firm's attempts to accommodate her.

Answer

1. The secretary will probably lose her case because she didn't cooperate with the firm's accommodation efforts.

Explanation

The Alberta Court of Appeal that ruled on a case involving this scenario dismissed the secretary's lawsuit. Accommodation is a two-way process in which both sides are expected to work together, reasoned the high court. The law firm had made attempts to accommodate the secretary and was willing to continue working with her. But the secretary wouldn't cooperate. By flat out refusing to try the new position, she effectively pulled the plug on the accommodation process and the firm was free to fire her.

[Brewer v. Fraser Milner Casgrain LLP](#), 2008 ABCA 435 (CanLII)

Why Wrong Answers Are Wrong

A is wrong because the duty to accommodate requires only reasonable accommodations rather than doing everything

possible. At some point, accommodations go from being reasonable to being an undue hardship. When employees don't cooperate with an employer's attempts to accommodate them, that line is crossed.

B is wrong because the law firm did, in fact, prove that it had reached the point of undue hardship. The firm went out of its way to work with the secretary. But in taking leave without even trying out the newly offered position, she failed to see the process through.

C is wrong because multiple chemical sensitivities **may** be considered a disability if it's a diagnosed medical condition. The term "disabilities" includes a wide range of physical, mental, sensory, psychiatric, and learning impairments, such as blindness, loss of a limb, epilepsy, diabetes, schizophrenia, and bipolar disorder. Multiple chemical sensitivity is a chronic medical condition in which an individual suffers adverse effects when exposed to certain chemicals or substances. Thus, an employee diagnosed with multiple chemical sensitivity would be considered disabled.