

Must Employer Accommodate Part-Time Caretaker Who Can't Perform that Job Anymore?



SITUATION

A part-time caretaker at a school dislocates her shoulder while dusting under a desk, aggravating a pre-existing injury. After two surgeries and physical therapy, her doctor says she can return to work and perform modified duties. To accommodate her in the caretaker job would require another person to work with her to perform the tasks her disability prevents her from doing, such as heavy lifting. But having a co-worker help her is humiliating for the worker and a burden for the school. The worker applies for several available jobs within the school district in other categories, including receptionist. All the jobs are part-time positions, except the receptionist job, which is full-time. The receptionist job involves office work and use of computers, but no heavy lifting. The worker has a high school diploma, familiarity with relevant Microsoft computer programs and previous work experience in customer service.

QUESTION

What is the school district obligated to do as to this worker'

A. Nothing, because she's part-time and so it doesn't have to accommodate her.

B. Accommodate her if possible but only in the position of caretaker.

C. Consider her for any position in the school district that's available and for which she's qualified and able to perform.

D. Create a new position for her that only includes tasks she can handle.

ANSWER

C. The school district must consider the worker's qualifications and disability restrictions, and the available positions for which she's qualified' regardless of whether they're of the same type of work she used to perform.

EXPLANATION

This scenario is based on an Alberta human rights tribunal decision that ruled an employer failed to accommodate a worker who could no longer do her job of caretaker because of a shoulder injury. She was out of work for some time but ultimately was able to return to work with some restrictions, such as not lifting heavy objects. The school district she worked for had other types of jobs that needed to be filled, including receptionists. But although the worker had the education, experience and training necessary to perform receptionist duties, the school district refused to consider her for any non-caretaker jobs. The tribunal explained that the school district wouldn't incur an undue hardship by giving the worker a chance to demonstrate she could perform the receptionist job satisfactorily. By refusing to even consider her for any positions besides caretaker, the tribunal concluded that the district failed to fulfill its obligations to accommodate her.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because accommodation isn't just required for full-

time employees. An employer's duty to accommodate disabled employees to the point of undue hardship extends to *all* employees, both full-time and part-time. And just because a worker *is* part-time doesn't mean she's only eligible for accommodation in other part-time positions. If the worker is willing and able to move to a full-time position, the employer should consider such a position if it's a viable accommodation for her disability. Here, there's no indication that the worker can't handle a full-time position as long as it doesn't involve heavy lifting. And she appears to be qualified for the full-time receptionist job. So the school district should consider her for this full-time position as well as appropriate part-time work.

B is wrong because accommodations for injured workers [returning to work](#) are necessary precisely because they can't perform all or some of the tasks they previously performed. [OHS and human rights laws](#) require employers to cooperate in returning injured workers back to work, which means returning them to their pre-injury jobs if they're able to perform those functions or offering other suitable work for which they're qualified and that's within their functional capabilities. So although the school district should consider whether it can accommodate the worker in her prior position, that alone doesn't satisfy its duty to accommodate her. If there's another position available in a different type of work, for which she's qualified, such as receptionist, it should consider her for that position. Refusing to consider her for anything other than a caretaker job will improperly limit the scope of its accommodation efforts.

D is wrong because the law doesn't require an employer to create a new position that didn't previously exist just to accommodate a disabled worker. Doing so could be deemed an undue hardship. The goal of requiring employers to make reasonable accommodations for injured or disabled workers is to ensure workers who *can* work are permitted to do so. But

there are [limits](#) to the employer's obligation to accommodate. For example, employers aren't required to invent new jobs that don't serve the company's legitimate needs just to keep the worker employed. Here, creating a new job for this worker that didn't exist before would be an undue hardship for the school district and thus isn't necessary to accommodate her.

Insider Says: For examples of the types of accommodations that would be considered undue hardships, see '[Accommodation v. Undue Hardship](#).'

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[Horvath v. Rocky View School Division No. 41](#), [2016] AHRC 19 (CanLII), Oct. 5, 2016