

Confronting Episodic Disability in the Workplace: The Canadian Experience

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Abstract

This chapter considers the applicability of Canadian human rights law in protecting and promoting the rights of persons with episodic disabilities in the employment context. While the general legal principles described in this chapter apply to all persons with disabilities the focus is on episodic disabilities because of the unique challenges they present to both employees and employers when aiming to ensure effective workplace accommodation. The first part of this chapter provides readers with an overview of Canadian human rights laws, concepts and protections which are aimed at promoting and protecting the rights of persons with disabilities from discrimination in the employment context, and which provide for a duty to accommodate persons with disabilities subject to undue hardship. The second part of this chapter discusses and illustrates the specific and unique circumstances and challenges of persons with episodic disabilities who seek accommodation in the employment setting. This chapter assesses some of the common arguments that employers make when claiming that accommodating an employee with an episodic disability results in undue hardship. It examines some of the key responses to these arguments that have been accepted by courts and tribunals when considering the duty to accommodate under Canadian human rights law.