

“I cannot help you, but return tomorrow and hopefully someone can”

The Human Rights Tribunal of Ontario has recently ruled that an employer was not in breach of the Ontario Human Rights Code for refusing an employee’s “odd” accommodation request. The retail employee had restrictions due to a wrist injury and requested that she be allowed to tell customers (when she was working alone) that they should return to the store at a later time so they could be assisted by another employee who did not share her workplace restrictions. Thankfully, the Tribunal found that the duty to accommodate did not require the employer to allow the employee to turn away customers nor did it require that they hire a second person on the employee’s shift to be able to assist customers. The key takeaway from the case, and something to keep in mind about the duty to accommodate in every jurisdiction, is that an employer is not required, absent exceptional circumstances, to exempt an employee from performing the essential duties of their position as part of the accommodation process. The Tribunal also confirmed that the duty to accommodate does not require the employer to permanently change the essential duties of a position or permanently assign those essential duties to another employee – this principal also applies in all jurisdictions.

While what may constitute an employee’s essential duties will ultimately vary from position to position and jurisdiction to jurisdiction, the Tribunal in this case defined the “essential duty” of a position as a duty that is required to be performed whenever there is a need to perform it. In this case, it was an essential duty of the position that the employee be able to assist customers.

This decision is a welcome reminder that there are limits on the duty to accommodate and that an employer is not required to agree to every accommodation request. That said, it is also imperative to point out that employers are required to review each accommodation request and how it relates to the employee’s duties and whether or not accommodation is possible, short of undue hardship (i.e. an individualized assessment). Employers are not simply permitted to deny accommodation requests as a matter of course or because they may be inconvenient. Since each case of accommodation will be different, we strongly recommend that all cases be discussed with an e2r® Advisor to determine what the best course of action may be for your organization in a particular situation.