

Legal Rights and Obligations for Employees and Employers Around Workplace Accommodation for Psoriasis and Psoriatic Arthritis

Canadian
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Association canadienne des patients atteints de psoriasis



Legal Rights and Obligations for Employees Around Workplace Accommodation for Psoriasis and Psoriatic Arthritis

One of the key challenges for patients with psoriasis and psoriatic arthritis is how to navigate these unique medical conditions within the workplace. Psoriasis can be visible within the work setting and some employees are excluded from certain types of work because of their visible symptoms. Misconceptions about psoriasis lesions create additional challenges given that the condition can be either dismissed as a rash (when in fact it is itchy and uncomfortable) or, on the other end of the spectrum, improperly thought to be contagious. In addition to visible symptoms, there are non-visible symptoms associated with both psoriasis and psoriatic arthritis such as underlying inflammation, joint pain, stiffness, and impacts on mental health. When an employee is absent from work for medical reasons or requires modifications within the workplace to accommodate a medical condition it is up to the employee to communicate these needs to the employer. Many employees are nervous about approaching these topics, as they wish to keep this information private. The legal landscape for employment in Canada, however, specifies that employers have a legal obligation to accommodate an employee who requires medical accommodation within the workplace. Similarly, employers cannot discriminate against, discipline, or terminate an employee because of a medical condition.

Workplace absence

With respect to workplace absences, an employee is required to report the reason for absence to the employer in a timely manner. If requested by the employer, or if it is a requirement under a workplace policy, employees must also provide medical notes to support absences from scheduled work. In the event of an extended absence, a **medical note** must be provided to the employer so that the employer can make any necessary arrangements to temporarily address the employee's absence.

Asking for accommodations at work

If an employee is returning to work after a medical absence, or in instances where an employee can still work, but only under modified circumstances, an employee must take steps to seek accommodation from the employer. As mentioned above, it is up to the employee to communicate his, her or their limitations, based on the medical recommendations of his, her or their physician. What type of accommodations are required and whether the request for accommodation is reasonable will depend on the specifics of the situation, the type and size of employer, and the type of work the employee is responsible for. Employers are legally required to provide any reasonable accommodations up to "the point of undue hardship". Whether something creates an undue hardship varies according to the employer's size, availability of resources, type of work, and other factors specific to the employer. Any accommodation requests should be made in writing, to the human resources department or the company's management team.

Once an employee has notified the employer that their situation requires accommodation, it is important for the employee to understand that they must continue to work with the employer to reach a resolution. The case law in this area makes clear that the accommodation process is a "two-way street" requiring ongoing dialogue between the employee and the employer to come up with an accommodation plan that is appropriate in the circumstances. An employee should provide information on whether the medical condition is permanent or episodic, what physical restrictions or limitations the employee has, and whether treatment, including medication, will impact the employee's ability to complete their job duties.

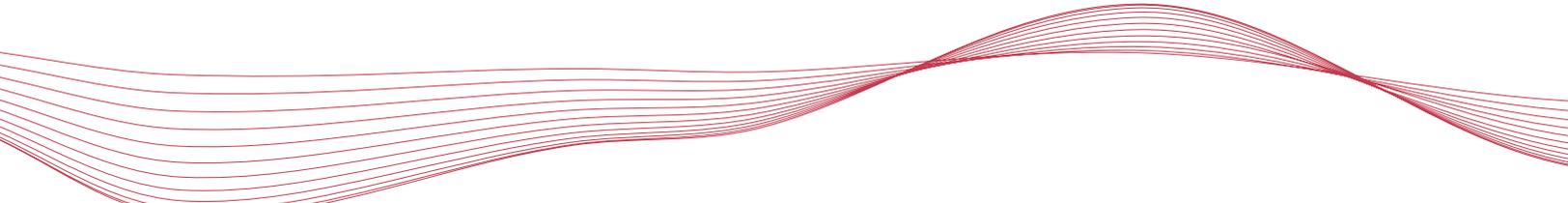
While in most cases, employees and employers are able to successfully work together to implement an accommodation plan, not all employers understand their obligations to accommodate an employee. If an

Examples of Accommodations that may be required for Employees with Psoriasis and Psoriatic Arthritis

- Granting unpaid time off for the employee to attend medical appointments
- Providing the employee with additional protective equipment for handling chemicals or materials that may cause a flare or worsen their disease
- Reducing an employee's hours of work during a flare
- Allowing the employee to utilize a UV light source within the workplace
- Increasing the frequency of breaks for an employee
- Permitting the employee to use a humidifier within the workplace
- Allowing the employee to have time off from work for recovery
- Exempting an employee from having to perform specific workplace tasks
- Allowing the employee to work remotely during a flare
- Allowing the employee to work part-time in the office and part-time remotely

employee is unsuccessful in obtaining a workplace accommodation, it is recommended that they keep records and a timeline of their attempts to discuss the request with management and the human resources department (e.g., note down discussions in a diary or by emailing themselves updates).

In some cases, an employer's refusal to accommodate or an employer's mismanagement of an employee's medical leave may be grounds for an employee to file a claim against the employer on the basis of constructive dismissal or wrongful dismissal. An employee may also be required to file a human rights complaint against the employer to seek a resolution in the event that the employer refuses to comply with the employee's reasonable requests for accommodation. It is strongly recommended that an employee first attempt to mediate the situation with the employer and to seek guidance from an employment lawyer prior to taking legal action.



Legal Rights and Obligations for Employers in the Context of Workplace Accommodation for Employees with Psoriasis and Psoriatic Arthritis

An employer has several duties and obligations to its employees that arise when an employee makes a request for medical accommodation within the workplace. Accommodation means granting exceptions to, or making changes to, certain rules or policies within the workplace so that an employee is not negatively impacted by the rules because of their medical condition. The obligation for the employer to accommodate the employee arises from federal and provincial human rights legislation which mandate that workplace rules, standards, cultures, and physical environments do not negatively impact an employee based on an employee's physical or mental medical condition (or other protected grounds such as age, religion, or ethnicity).

Within the context of an employee who has been diagnosed with psoriasis and / or psoriatic arthritis, which can have both physical and mental impacts, an employer has the obligation to work with the employee to make reasonable changes or exceptions to enable the employee to perform his or her work duties without having to endure detrimental consequences or conditions, because of his, her or their physical or mental medical condition. The employee themselves, through the guidance of their medical physician, is best positioned to know which workplace accommodations are most appropriate to address the limitations of the employee's medical condition. When an employee becomes aware of the need for accommodation or experiences an adverse impact resulting from a medical condition, the employee should notify the employer and begin a confidential discussion about their limitations and how they can be addressed.

The employer should make employees aware of any processes or procedures that are in place within the workplace for an employee to submit requests for accommodation and time off requests due to physical and mental health related to medical conditions. If your employer does not have policies and procedures in place for this, it is recommended that

you submit requests in writing, via e-mail or text message, to management and to maintain records of the request as well as the employer's response to the request. Keeping proper documentation is important for both the employer as well as the employee. Employers should keep this information on the employee's personnel file and should ensure that the information is only accessed by the human resources representative assigned to the file, management, and the employee. Accommodation requests and requirements should not be shared with other employees, unless the employee provides permission to do so.

Accommodation matters and medical leaves are typically within the scope of the human resources representative to address. If your employer does not have a designated human resources contact person, this information should be brought to the attention of a manager or a person with decision-making authority. In some circumstances, such as situations requiring modified work hours or requests for time off, an employee should consult with his, her or their physician to obtain a medical note before approaching the employer, as most employers require medical notes to justify an employee's absence from the workplace during scheduled hours of work.

Summary of the employer's obligations, rights, and limitations relating to workplace accommodations:

- The employer has the duty to cooperate in the accommodation process and to work with the employee and his or her medical physician to establish what is needed for accommodation.
- The employer has the obligation to keep the employee's personal medical information confidential.
- The employer has the right to obtain medical information that is necessary to understand the employee's limitations and to provide the necessary accommodations.
- The employer is not permitted to contact the employee's doctor via phone, unless the employee provides consent.
- The employer must take steps so that the information is not shared with other employees.
- The employer is not permitted to request medical information that is not employment-related.
- The employer does not have a right to know the employee's diagnosis, except in very limited circumstances.
- The employer is not allowed to terminate the employee (e.g., fire the employee) on the basis of a medical condition.
- The employer is required to ensure that other employees do not harass, demean, or otherwise act disrespectfully towards an employee due to his or her medical condition.
- The employer has an obligation to communicate relevant information related to the medical benefit plan to the employee.

It is in the best interest for both the employer and the employee to work together to ensure that adequate accommodations are provided within the workplace. If an employer ignores or disregards an employee's reasonable request for accommodation, they could be liable under human rights law or civil common law¹. An employer's failure to accommodate an employee could also make them a target of negative treatment in the media and social media sources, which could be damaging to the employer's reputation, revenues, and public image.

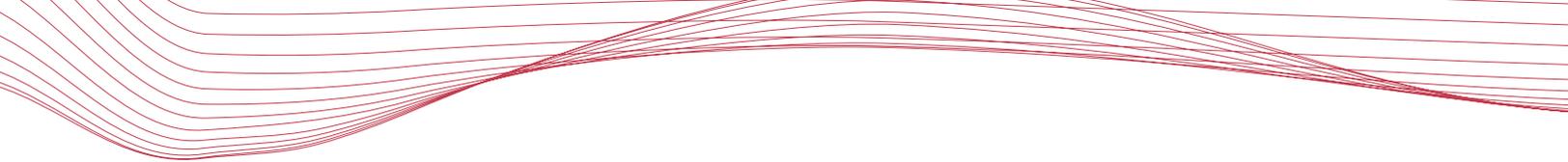
Privacy Considerations for Workplace Accommodation

Within the work setting, the federal and provincial governments put limits on employers regarding the type of information that an employer is permitted to collect from its employees. Information such as the employee's address, phone number, and social insurance number are within the employer's right to request as this information is necessary for the employer to properly fulfill its duties to administer payroll, pay taxes, maintain personnel files, communicate with the employee, and other tasks that are incidental to workplace operations. However, employers do not have a broad scope of access to an employee's personal information – the information that they are permitted to collect from an employee is limited.

The provinces of British Columbia, Alberta, and Quebec each have comprehensive legislation that provide specifics on information that can be collected within the private sector². Other provinces and territories, including Ontario, Manitoba, and Saskatchewan, are governed by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), which outlines the rules for the collection of information in commercial activities, or "for profit" activities, that most employers must abide by. In addition to PIPEDA, Ontario and the Atlantic provinces each have health-specific privacy laws that apply to accessing and sharing an individual's medical information.

¹ In Canada, there is provincial and federal human rights legislation. The *Canadian Human Rights Act* applies to employees who work within a federally regulated industry (for example, banking, airports, etc.). Provincial human rights legislation applies to employees who work in non-federally regulated workplaces (for example, hospitals, schools, etc.).

² British Columbia and Alberta each have legislation called the *Personal Information Protection Act*. In Quebec, it is the *Quebec Private Sector Act*.



Suffice it to say, privacy laws in Canada are confusing—which specific rules apply to an employee depends on where the employee resides, whether the employee’s personal information crosses provincial or national boundaries, and the type of information collected.

There are, however, some common rules regarding personal information and an individual’s right to privacy within the workplace which are summarized below:

- Only certain types of information can be collected from an employee by the employer.
- Generally, an employer can only collect an employee’s personal information that is necessary for completing its duties (for example, information necessary to administer payroll).
- An employer should tell the employee the reason and purpose of collecting his, her or their personal information and must get consent from the employee to release that information to anyone else (unless they are required by law to share it).
- The personal information collected by an employer, including medical information disclosed by an employee, must be kept confidential and safe.
- In very limited circumstances, an employer may be entitled to an employee’s personal medical information if it relates to the discharge of its duties. For instance, to comply with its duties under health and safety legislation, the employer may require an employee to disclose his, her, or their vaccination status to minimize the risk of virus transmission in the workplace.
- An employer’s right to an employee’s medical information is very limited (for example, collecting vaccination status in order to implement a Health and Safety plan).
- Employers do not have a right to request information about an employee’s medical diagnosis, except in very limited circumstances (for example, if an employee is ill with COVID-19 and attended work while ill).
- An employer has an obligation to keep an employee’s medical diagnosis confidential, if it is disclosed by the employee to the employer.
- Employers do not have the right to access or request an employee’s medical record.
- An employer is required to provide information (description of duties, pay rate, number of hours worked per week, and length of employment) to the worker’s compensation board and disability benefits insurers to support an employee’s claims for compensation.

This resource was developed by Kimberley Holland, Employment Law Associate at Bow River Law LLP.