

Member's Quarterly

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Feature

Inquiring Minds Want to Know

Don't overlook the duty to inquire

Employees are generally expected to inform their employers if they have a disability and/or need accommodation, including providing enough information for the employer to make appropriate work-related adjustments. However, employees do not always proactively request accommodations or share relevant information. Accordingly, when an employee's conduct reasonably indicates they might have a disability or require accommodation, the employer must take the initiative to ask about the situation. This is known as the employer's "duty to inquire".



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The duty to inquire includes seeking necessary medical information to understand the employee's needs before subjecting the employee to adverse treatment, such as disciplinary action or termination of employment. This duty to inquire exists to ensure employers do not overlook or ignore potential needs for accommodation when they are aware, or ought to have been aware, of them. If an employer takes adverse action against an employee without discharging a duty to inquire that exists in the circumstances, the employer will be liable for breach of the employee's human rights. Whether or not a duty to inquire exists in a given situation is highly contextual.

To illustrate, here is a simplified case comparison of two Alberta Human Rights Tribunal decisions rendered within a month of one another:

In *Greidanus v Inter Pipeline*, 2023 AHRC 31, the Human Rights Tribunal of Alberta dealt with a complaint by JG, a job applicant who alleged discrimination based on physical disability. JG had applied for a business continuity and emergency management advisor position with Inter Pipeline, which was classified as safety-sensitive and required passing a pre-employment drug test. JG tested positive for cannabis, leading Inter Pipeline to revoke the job offer. JG argued that his use of cannabis was medically necessary due to his physical disabilities, including Hashimoto's disease, and as such that revoking the job offer was discriminatory. The Tribunal determined that JG's complaint had no merit.

JG did not disclose his disability or cannabis use to Inter Pipeline or the drug testing company before the job offer was rescinded, despite being notified that he would be tested for cannabis. The Tribunal found that since the employer had no prior knowledge of JG's disability, they could not have discriminated against him. The duty to inquire into an employee's need for accommodation only arises when an employer is aware or should reasonably be aware of a potential disability.

The Tribunal concluded that JG's disability had no connection to the revocation of the job offer and that the employer acted within its rights, as there were no signs triggering a duty to inquire into JG's disability.

Calkins v Broadview Homes, 2023 AHRC 45 involved an employee, JC, who filed a complaint with the Alberta Human Rights Commission alleging discrimination on the grounds of physical and mental disability. JC was terminated by Broadview Homes on July 27, 2017 for performance issues. He contended that the performance issues were linked to his chronic traumatic encephalopathy (CTE), a brain condition impacting

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cognitive abilities, and as such that his termination of employment was discriminatory. The Tribunal found merit in JC's complaint.

The Tribunal ruled that Broadview Homes should have known or inquired about JC's disability and its impact on his job performance before terminating him. JC had displayed symptoms of CTE that were evident to those around him, including his spouse and colleagues. It was established that, although Broadview Homes was not explicitly aware of JC's CTE at the time of his termination, the company had received multiple complaints about his performance from customers starting in 2016. Despite these complaints, no formal records or specifics were provided, and there were no documented issues before 2016.

The Tribunal emphasized that an employer's duty to inquire about an employee's health issues is triggered when there is a reasonable suspicion that a medical condition could be affecting work performance. In this case, Broadview Homes failed to fulfill this duty. As a result of this finding, the Tribunal ordered Broadview Homes to pay JC \$20,000 in general damages for injury to dignity and feelings. Additionally, the company was directed to provide human rights training on the duty to accommodate disabilities to its supervisors, managers and salespersons.

Employers must be vigilant in recognizing potential indicators of an employee's need for accommodation and must fulfill their duty to inquire before taking any adverse actions. By doing so, not only will they minimize the risk of legal repercussions, but also foster a more inclusive and supportive workplace environment.

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