

WORKING WITH DIVERSE ABILITIES

INCLUSIVENESS IN THE WORKFORCE AND SOCIETY

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Removing barriers and creating an inclusive, accessible workforce and society are an ongoing focus for people with disabilities and those who support them. In British Columbia, these efforts have led to advances in human rights law and improvements to the protections available through collective agreements, but there is still much work to be done.

According to a recent Statistics Canada study, people with disabilities have a substantially lower rate of employment — 49 per cent among working-age Canadians compared with 79 per cent for people without a disability. For those with the most severe disabilities, the rate of employment falls to 26 per cent.

Among professionals, labour-force participation increases in proportion to post-secondary attainment: university graduates with a mild or moderate disability experience no statistically significant reduction in labour market participation. However, university graduates with a disability earn lower wages than workers without a disability and are less likely to hold management positions, demonstrating further inequities within the labour market.

BC HUMAN RIGHTS CODE

Disability was recognized as a prohibited ground for discrimination in the BC Human Rights Code in 1984. The addition of disability to the code extended protection to people with disabilities against discrimination in employment, housing and other spheres. It mandated that a person may not refuse to employ or discriminate against someone because of their disability. The code also prohibited trade unions from excluding from membership, expelling, suspending or otherwise discriminating against a person because of their disability.

The Human Rights Code does not define disability except to distinguish between “physical or mental” forms of disability. Over time the interpretation has evolved to include disabilities that are visible and invisible, temporary and permanent.

Statutory protections contained in the BC Human Rights Code provide a relatively limited remedy from the standpoint of systemic discrimination. The code is oriented to-



People with disabilities have long advocated for improvements to make the workplace and society more inclusive and accessible. The struggle continues.

ward individual cases pursued through a complaint system, while enforcement is impacted by underfunding and by procedural changes that often impede the efforts of individuals seeking justice.

In a report highlighting the negative impact of changes to the BC Human Rights system in 2002, the Canadian Centre for Policy Alternatives stressed the importance of viewing the elimination of discrimination as a benefit to the public interest. The report warned that complaints of discrimination should not be viewed “as simply disputes between private parties, but rather as matters in which the community as a whole has a stake.”

THE DUTY TO ACCOMMODATE

Recognition of disability in the BC Human Rights Code and the evolution of employment law have imposed a legal duty on employers to accommodate the accessibility needs of employees with disabilities. These advances are driven by landmark rulings in the Supreme Court of Canada such as the Meiorin and Grismer decisions in the 1990s. The duty requires employers to accommodate employees with disabilities short of causing undue hardship to the organization. It also imposes a corresponding obligation on employees to co-operate in finding acceptable solutions.

The duty to accommodate can take the form of modified work arrangements, including alterations to the work environment, job functions or scheduled hours; the introduction of technical or mechanical aids; and other accommodations to assist workers in performing the same, similar or alternative work. Modified work arrangements can also take the form of a staged return to work, allowing the employee time to adjust to the circumstances of living and working with a disability.

In the BC public service, where many PEA members work, the duty to accommodate has led to the formation of a joint union–employer Rehabilitation Committee. The committee is mandated by the collective agreement

to identify accommodations for employees who experience a significant illness, injury or disability.

LONG TERM DISABILITY BENEFITS

A major milestone in disability rights is the availability of long-term disability benefits. These benefits are typically negotiated into collective agreements and vary for different sectors and occupational groups. In the PEA's GLP chapter, workers who become disabled are entitled to 70 per cent of the first \$2,300 of monthly earnings and 50 per cent of all monthly earnings above that amount for as long as they remain totally disabled or until the age of 65.

Total disability is defined as "the complete inability because of an accident or sickness of a covered employee to perform all the duties of the employee's own occupation." If an employee can be accommodated in their own occupation or another suitable occupation at a rate of pay of at least 75 per cent of their current rate of pay, they are no longer considered to have a total disability and are no longer eligible for the benefit.

Employees are not eligible for coverage for pre-existing conditions or self-inflicted injuries. They must make themselves reasonably available to the employer and co-operate in a return-to-work process determined by the Rehabilitation Committee. To remain eligible for the benefit, they must actively engage in a treatment program if directed by a physician to do so.

UNIONS AND ACCESSIBILITY

The PEA and other labour organizations have responded to pressure from workers with disabilities by pursuing inclusive work-

place policies through collective bargaining and within their own organizations.


Many PEA collective agreements recognize the right to employment without discrimination or harassment on the basis of physical or mental disability, except where a bona fide occupational requirement exists. Collective agreements also include provisions for rehabilitation, modified employment, occupational health and safety, and short- and long-term illness and injury benefits.

The BC Federation of Labour and several affiliated unions have established workers-with disabilities caucuses to address accessibility issues in the workforce and labour movement.

Sheryl Burns, a disability rights activist who serves as chair of the BC Federation of Labour's Workers with Disabilities Caucus and secretary of the Disability Alliance of BC, describes the evolution of disability rights within her union, CUPE: "We learned that over a quarter of our members identified as having a disability. Moreover, we learned that members with disabilities had little knowledge or understanding of their duty-to-accommodate rights and obligations."

NEXT FRONTIERS FOR INCLUSIVITY AND ACCESSIBILITY

Inequities are not limited to employment practices, but persist in the physical workplace and in the design of public and private buildings and infrastructure. Appeals for designs that accommodate people of diverse abilities have produced improvement, but barriers to mobility persist in the form of obstacles in public transit, parking and sidewalks; in the preference for stairways versus ramps or elevators around and with-


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in buildings; in the width and functionality of doors, hallways and washroom facilities; and in the debilitating effects of noise, lighting, odours and other factors for people with visual, hearing, sensory or cognitive impairments.

In BC, organizations such as Disability Alliance BC, Inclusion BC and the Canadian Association for Community Living's Ready, Willing & Able initiative are raising awareness among employers and employees about the benefits of pursuing inclusive workplace policies and design. The CanAssist laboratory at the University of Victoria is pioneering the development of technologies to assist people with diverse abilities in performing jobs and living independently.

Under the umbrella of the Barrier-Free BC Coalition, advocacy groups and people with disabilities are lobbying for the

enactment of a British Columbian with Disabilities Act—similar to legislation in place in Ontario and Manitoba—and a Canadian with Disabilities Act at the federal level that will honour commitments enshrined in the United Nations' Declaration on the Rights of Persons with Disabilities.

PEA members have a role to play in supporting these initiatives while continuing to strengthen inclusive policies in workplaces, collective agreements and within the union. •