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From Post-hoc Accommodation to Inclusive Design: Bargaining for Policies That Truly Include Workers With Disabilities

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Abstract

Efforts to improve inclusion of workers with disabilities have often focused on providing accommodations. While this is useful and necessary, the need for an accommodation signals that a barrier exists. What if fewer barriers existed in the first place? The inclusive design movement seeks to create tools, policies, and practices that are inherently barrier-free. This paper reviews how to apply inclusive design principles to HR policies and procedures, enabling the creation of more inherently equitable practices. Bargaining teams have an important role to play in ensuring that collective agreement clauses related to HR comply with inclusive design principles. Specific recommendations are made, with particular attention to recruitment, selection, tenure and promotion, attendance management, scheduling, and enforcement of respectful communication policies.

Keywords inclusive design, disability, collective agreements, HR policy, equity, diversity

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Des aménagements post hoc à la conception inclusive : négocier des politiques qui intègrent réellement les travailleuses et travailleurs ayant une incapacité

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Résumé

Les efforts visant à améliorer l'intégration des travailleuses et travailleurs ayant une incapacité se sont souvent concentrés sur la mise en place d'aménagements. Bien que cela soit utile et nécessaire, la nécessité d'un aménagement signale l'existence d'un obstacle. Et s'il y avait moins d'obstacles au départ? Le mouvement de la conception inclusive cherche à créer des outils, des politiques et des pratiques qui sont intrinsèquement exempts d'obstacles. Cet article examine comment appliquer les principes de la conception inclusive aux politiques et procédures de ressources humaines, permettant ainsi la création de pratiques plus équitables en soi. Les équipes de négociation ont un rôle important à jouer en veillant à ce que les clauses des conventions collectives relatives aux ressources humaines soient conformes aux principes de la conception inclusive. Des recommandations spécifiques sont formulées, notamment en ce qui concerne le recrutement, la sélection, la titularisation et la promotion, la gestion des présences, les horaires et l'application des politiques de communication respectueuse.

Mots-clés conception inclusive, incapacité, conventions collectives, politique de ressources humaines, équité, diversité.

Introduction

Workers with disabilities have a great deal to offer, yet they are consistently under-utilized in many workplaces. Canadian statistics continue to demonstrate disproportionately high levels of unemployment and under-employment within this population, although the degree to which that is true varies based on the nature of the disability (Statistics Canada, 2023). Subjective reports also highlight experiences of exclusion, discounting, discrimination, inadequate accommodation, and practical barriers — both deliberate and inadvertent (Bonnacio et al., 2020). Furthermore, first person interviews with workers with disabilities have consistently surfaced concerns about social and professional consequences associated with the need to seek help from peers, even when that help is minor and momentary. Many workers with disabilities report making do with suboptimal tools or supports just to avoid being perceived as an inconvenience. "Not wanting to bother colleagues" is frequently cited as a source of stress that suppresses requesting needed accommodations (Breward, 2024).

All of these findings highlight the reality that, despite legislative efforts to improve equity for workers with disabilities, many people still experience physical, process-related, and attitudinal barriers that result in sub-optimal workplace outcomes. (Readers seeking introductory information on the relevant legislative requirements, which appear in all federal, provincial, and territorial Human Rights Acts, are directed to Appendix A. This appendix includes the legal definitions of disability, reasonable accommodation, and undue hardship.) This lack of equity should concern all of us. Social justice matters in principle, and fully using the labour force improves the economy. Equally importantly, any one of us can acquire a new disability at any time, either temporarily or permanently, through accident or disease. The next worker to experience a disability-related barrier may be you or one of your loved ones.

There are many complex, interrelated reasons for the barriers experienced, including unreflective adherence to traditional policies and practices, inertia, non-conscious forms of bias, and lack of awareness. One significant root cause is that well-intended organizations continue to approach disability accommodation in a reactive manner, seeking accommodation strategies after a barrier is identified rather than focusing on removal of barriers through inclusive design. That is not ideal since it means barriers are still encountered, even if temporarily. Their resolution therefore demands help-seeking behaviours from the worker. Since expressing vulnerability and help-seeking are often perceived as career risks (see, for example, Britt et al., 2020; Westburg et al., 2022), this creates an additional

psychological barrier. Inclusive design practices seek to rectify that problem by creating environments in which barriers are not experienced in the first place.

Inclusive design first emerged in architecture and engineering. It is built around five key principles (Fletcher, 2006). The first principle places people at the heart of the design process. This is both a philosophical approach as well as a practical, concrete strategy. Diverse end users are directly involved in design from the earliest stages, consulting extensively with professionals such as engineers, architects, and the administrators who design policies and procedures. This sends a clear signal of inclusiveness, while allowing for the identification of varied needs that might otherwise be overlooked. Examples include having workers with vision and hearing impairments involved in the design and testing of software applications (including learning management systems), or consulting workers with sensory sensitivities before finalizing uniform requirements. In a post-secondary educational setting, this approach may include extensive faculty consultations about policies and procedures related to tenure and promotion, scheduling, research resource allocation, and respectful workplaces. (These policies will be discussed in more detail shortly.) These consultations would ideally be held in small groups, with separate consultations for disability groups with varied needs, such as people with physical, sensory, and psychiatric disabilities; intermittent conditions; or neurodiversity. That allows unique issues to emerge that might not otherwise be discussed in a broader group.

The second principle of inclusive design is to acknowledge diversity and differences. Inclusive design strives to include all, which means thinking through a wide variety of physical, sensory, and cognitive limitations as well as situational needs. For example, curb cuts in sidewalks help wheelchair users but also parents with strollers and people pulling carts or bulky luggage. The latter two would be considered "situational needs." The international Web Content Accessibility Guidelines (WCAG) standards for web content accessibility are an excellent application of this principle since compliance with the standard makes web-based content accessible to people with a broad range of disabilities. In an educational setting, policies requiring that all digital data repositories used for teaching and research purposes be WCAG compliant would eliminate barriers, dramatically lessening the need for one-off accommodations.

This brings us to the third principle of inclusive design: choice should always be offered when a single design solution cannot accommodate all users. For example, security systems that rely on biometrics should proactively embed technical or procedural alternatives for people who are amputees (fingerprints) or who have aniridia (a condition in which the iris is lacking), rather than waiting until such an

individual presents themselves and then trying to figure it out post-hoc. In an academic setting, this may mean having established alternatives to the traditionally rigid timelines for achieving tenure (which generally assume all individuals will have several years of uninterrupted full-time work hours). This will be further explored later in the paper.

Providing for flexibility and adaptability in usage of policies or resources is the fourth inclusive design principle. Flexibility and adaptability can be difficult to embed in traditional collective agreements, which tend to focus on consistency, eliminating ambiguity, and clearly defining solution parameters. There is inherent tension in the conflicting imperatives for consistency and flexibility. Acknowledging that tension can encourage negotiators to adjust collective agreement language to allow for reasonable exceptions without abuse of process. For example, some collective agreements specify that professors must have one term (out of three) free from teaching responsibilities to allow focused time for research. While the goal of enabling research time is laudable, such a clause may inadvertently disadvantage professors with fatigue issues, who might prefer to spread their teaching load over all three semesters to manage energy demands in any given term. Adding that "the requirement to have one semester free from teaching may be waived, but only as a result of a formal written request from the faculty member" would resolve the issue while retaining the intent and impact of the original clause.

The final principle of inclusive design is that environments, buildings, tools, and processes should be convenient and enjoyable for everyone to use. In an academic setting, this might involve policies that require all classrooms to have podium chairs so that professors have the option to seat themselves when speaking to the class, and ensuring that all classrooms have seating spaces that are suitable for students who use wheelchairs without having to make a special request.

Table 1.0: The Five Principles of Inclusive Design

Principle	Example
Keep people at the heart of the design process.	Run focus groups with employees with disabilities when developing a new policy or procedure to help identify and address unrecognized needs or barriers. Make needed amendments before implementation.
Acknowledge diversity and difference.	Provide promotion paths for all, including people who require reduced working hours.
Offer choice when a single design solution cannot accommodate all.	Avoid overly prescriptive travel policies. For example, limiting the vendor choices eligible for reimbursement (especially hotels and airlines) to a pre-set list may prevent people from selecting disability-friendly suppliers or options.
Provide for flexibility and adaptability in usage of policies and resources.	Neurodiverse people often have different communication styles and norms. Are respectful workplace policies capable of addressing non-culpable perceived incivility?
Environments, buildings, tools, and processes should be convenient and enjoyable for everyone to use.	Ensure seating options accommodate all types of bodies and varied types of furnishings (such as podium chairs) are readily available.

While these five principles are most commonly applied to buildings, public spaces, and physical tools, we have already seen that they are also relevant to the creation of HR policies and procedures. Many standard HR policies and related collective agreement clauses inadvertently create unnecessary barriers when recruiting, managing, and retaining employees with disabilities. This paper explores best practices in inclusive HR policy design, with a particular focus on processes that are generally included in collective agreements, such as recruitment and promotion, scheduling, attendance management, and disciplinary processes. The main focus will be on faculty with disabilities in post-secondary education settings, however other workplace context will also be briefly explored to highlight the universal applicability of these principles.

Recruitment and Promotions

Collective agreements typically outline both recruitment and promotion practices in detail. Clauses often specify under which situations recruitment will be conducted internally versus externally, how selection will occur, and who will decide (for example, will the decision be made by committee or a supervisory decision-maker). Some agreements also outline how, where, and how long recruitment ads are to be distributed. There may be equity-related clauses that encourage or mandate inclusive hiring practices (although exactly what those practices should consist of is seldom spelled out). Promotion-related clauses typically outline how promotions will occur, how decisions will be made, and, in some cases, the specific requirements for promotion. In academic settings the criteria for promotion that are outlined in the collective agreement often include specific timelines (for example, you must earn tenure within 6 years or your employment contract is negated).

Policies and procedures that tend to result in disadvantage for workers with disabilities, and that are also frequently outlined in collective agreements, arise at several stages in the hiring and promotion process. Firstly, recruitment, selection, and promotion decisions should not rely on a lone decision-maker. Committee-based decisions are an established evidence-based best practice to reduce non-conscious stereotyping and prejudice, and can be mandated in the collective agreement. While committee-based hiring is already a well-established practice in academe, members should receive formal training in mitigating bias and ableism. The requirement for this training should therefore also be documented within the collective agreement to ensure consistent compliance. It is important that the training be completed by qualified experts. HR generalists, even those with formal professional designations, may not have the requisite expertise.

Many institutions go further when it comes to monitoring hiring and promotion decisions, especially when those organizations have had poor equity outcomes in the past. They do this by combining employment equity or affirmative action programs with concrete accountability for decisions by identifiable individuals (by job title or committee membership, not name). For example, a collective agreement for faculty at Trent University mandates that when a male is hired into a unit in which women are significantly under-represented, the hiring committee has to provide a report explaining why that individual was the best candidate. The dean can also choose to reopen the competition if fewer than 40% of qualified candidates are female (clauses 1.2.7.3. and 1.2.7.4). At Toronto Metropolitan University (formerly Ryerson University), the collective agreement requires the department chair to explicitly explain how all new hires help serve inclusion goals. The York

University faculty agreement requires each academic unit to develop their own affirmative action plan. Holding designated individuals responsible for these decisions, preferably with direct impacts on their own performance appraisals, creates accountability that increases focus on equity priorities. Collective agreements should also explicitly name workers with disabilities as a relevant group when creating such clauses and associated equity programs.

While still less common in academe, the use of online tests for selection purposes (for example, personality tests) has increased dramatically in recent years. Artificial intelligence-based pre-screening interviews are also becoming more common. These tests can pose barriers for three reasons. Basic accessibility problems often impact people with visual or hearing impairments, or even limb differences. The time allotted to complete the test can disadvantage those with dyslexia or ADHD. Finally, the way artificial intelligence (AI) interprets individual body positioning and facial expression during video-based oral tests or interviews disadvantages anyone with unconventional body language (for example, slumping or frequent shifting due to multiple sclerosis, or lack of direct eye contact due to autism). It is helpful if collective agreements specify the following: any online selection tests must be clearly and directly related to bona fide occupational requirements, they must be WCAG compliant (preferably to the AA standard rather than merely the A standard), there must be clearly and proactively communicated accommodation pathways for candidates that require them, and AI use in hiring is prohibited until such time as bias control can be reasonably empirically proven.

Travel is often difficult and stressful for many people with disabilities. If the job itself does not require travel, it is not appropriate to require travel to participate in selection processes. For example, a worker who hopes to work on a small satellite campus near their home should not be required to fly to a distant main campus for their interview. This may require amendments to the collective agreement, particularly to allow for remote interviews. When there is a compelling reason to require or request travel, collective agreements should explicitly permit an extra night at the hotel to allow for recovery from travel before participating in selection processes. This minor expense (minor compared to both the overall cost of hiring and the opportunity cost of failing to hire a good candidate) significantly improves equity by mitigating travel-related, performance-impacting fatigue that disproportionately impacts those with disabilities. Having this extra day available to all as the default standard also eliminates the need to make premature disability disclosures that may unfairly impact the committee due to non-conscious biases, which is in keeping with inclusive design principles.

Similarly, orientation and training should not require travel that wouldn't be required for the job. This may require some thoughtful inclusive design to realize. For example, trainers might have to have their formal job description amended to include remote and asynchronous training, which may (or may not) involve changes to the collective agreement. Universities with multiple campuses may choose to move away from centralizing training at one location, instead making simulators and other training technology more broadly available on satellite campuses. Training should also be available in multiple formats that accommodate different methods of learning. Finally, group-based training should consider physical and sensory overwhelm and allow reasonable breaks from sitting or standing in one place and from social interaction. It is not appropriate, for example, to expect people to arrive at 7 a.m., actively participate in orientation until 4 p.m., then also spend their evening at a bar or restaurant with the rest of the group. If this inclusive standard cannot be met, then accommodation strategies need to be considered and proactively offered.

Finally, use of overly rigid and inflexible criteria for promotion poses significant barriers for some workers with disabilities. This is especially true when full-time work is part of the requirements to be considered for promotion since some workers with disabilities need to work part-time to manage symptoms. Academe is an excellent example. Tenure is a highly desirable promotion that provides exceptional job security and prestige. In most Canadian colleges and universities, it is nearly impossible for part-time workers to become eligible for tenure regardless of their teaching, service, and research achievements. Many collective agreements actually specify that full-time work is required to be eligible for tenure. (Some, but not all, offer the flexibility to move to part-time only after achieving tenure.) The net effect of this is that talented academics with disabilities who need to work part-time are relegated to insecure, term-to-term contract work in perpetuity. This is a vicious cycle since contract workers receive dramatically less institutional support for their research, making them less attractive candidates over time. Equity goals would be better served by bargaining for clauses that embrace the possibility of part-time work and allow a full promotion path for people choosing that path.

Requiring workers to be full-time is not the only form of rigidity associated with promotion paths. Overly detailed, granular, specific criteria for promotion do not belong in the collective agreement since it eliminates the flexibility to fairly address disability-related needs. It is very easy to accidentally create criteria that are unreasonable when applied to an individual. For example, in one unionized call centre, the author interviewed a highly competent technical support worker who had solved many problems others had been unable to figure out (Breward, 2020).

Yet this individual had been stuck at an entry-level job title and wage for 4 years since their "friendliness" score as measured by customer surveys did not meet the threshold required to be eligible for promotion. Ironically these low scores prevented this individual from moving into a second-tier support role that focused on more complex, escalated technical issues (their strength), while requiring dramatically less direct customer contact (their weakness). Since their low friendliness scores were directly related to a social information processing disability (autism), it would have been a more productive outcome for everyone to move them into a non-customer facing technical role, a path that was effectively blocked by overly specific language about promotions in the collective agreement.

In academic settings the most common form of rigidity associated with promotions is timelines. It is commonplace to have clauses that mandate timelines for achieving tenure — often between 4 to 6 years. Failure to achieve tenure in the allotted time results in job loss. There are generally limited options for extending this time period (the most common reason for an extension is maternity or parental leave, which is much less likely to be challenged than other reasons). Each extension is treated as an individual exception, so it often involves an onerous and stressful bureaucratic process, and the outcome is not guaranteed. This creates an obvious barrier to anyone requiring intermittent rest periods, part-time hours, or even just a little more time to complete complex, multi-faceted research and publishing tasks. Inclusive design principles 2 and 4 would be better served by setting suggested guidelines for tenure timelines as opposed to rigid, inflexible requirements, as well as a clear process for getting more time when the request is reasonable.

Equitable Access to Research Inputs

Key research inputs in academe include funding, facilities, access to data, and access to appropriate analysis tools. While most of these issues fall outside the scope of collective agreements, there are some small policy-related contributions that can be made. From a physical perspective, all laboratories should be designed to accommodate at least one wheelchair user. This may mean lowering countertops in a portion of the space, as well as ensuring first aid and emergency aids, such as eye wash stations, are accessible from a seated height. These steps should be taken when labs are first built or renovated; universities should not wait until a researcher who uses a wheelchair appears. Similarly, differing floor textures can help alert people with vision impairments to key lab hazards. For example, bumpy textures can be used to indicate fume hood locations.

As already mentioned, in an educational setting there should be policies requiring that all digital data repositories used for research purposes be WCAG compliant. Sites used to apply for research funding and other related resources should also be WCAG compliant, especially when applications are time-sensitive and competitive. This can be a problem because many funding opportunities require the use of the sponsoring agency's information collection system, meaning the university does not have control over WCAG compliance. Collective agreements can help by having clauses mandating accessible internal resources, and by creating an administrative support role devoted to helping professors complete external applications. That job description would generally be part of a staff rather than faculty collective agreement, requiring cooperation and shared goals between different bargaining teams negotiating with the same employer.

While creation of a new job role to help professors complete funding and resource applications may sound extravagant, it is reasonable to expect that subsequent increases in successful applications would help mitigate those costs. Furthermore, the staff member would also be able to do "double duty" helping submit finished work for review and publication. ScholarOne is a system that is widely used by most academic publishers for submission of journal articles, book chapters, and cases. Unfortunately, it is not always particularly useable by people who require screen readers. As recently as June 2024, this author was required to submit work on behalf of a co-author who was blind after it was discovered that a major North American academic publishing house was using a version of ScholarOne that did not support common screen readers for submissions.

Attendance Management

Practices related to attendance management vary considerably in unionized environments, with some organizations being fairly lax and others maintaining strict oversight of working hours and sick days. Strict attendance management practices, especially ones in which terminations may occur due to excess absenteeism, have been subject to intense legal scrutiny, especially when applied to workers with disabilities. Case precedents have clearly signaled that managers and HR personnel must distinguish between culpable and non-culpable absences (Ontario Human Rights Commission, 2008). Employees cannot be disciplined for medical and disability-related absences. It may also be problematic if employees lose out on rewards, such as attendance bonuses, due directly and solely to medical absences.

For most organizations, compliance with new legal standards requires adjustment in the way attendance management is handled in collective

agreements. Any punitive measures related to excess absenteeism must not be applied to medical absences, and rewards for good attendance must be obtainable for people with intermittent medical conditions. Negotiators should consider centralizing decision-making related to allowable absences within HR rather than leaving it to individual managers, since this lessens the potential for inappropriate or inconsistent decisions. Furthermore, available fields in human resource information systems may need to be adjusted to permit capture and reporting of different types of absenteeism. This latter step is often overlooked and may render the relevant collective agreement clauses non-functional due to data collection and reporting issues. Team-based absenteeism incentives are common in some industries, albeit not academe. These feature a financial bonus paid out based on the attendance record of the entire team, which means the actions of a lone person can impact everyone else's take-home pay. These incentive systems lead to excessive bullying of those perceived as threatening the team's bonus (Salin, 2003), and as such are not recommended. In fact, collective agreement language specifically prohibiting such schemes is encouraged.

In academe, absenteeism brings with it other, unique challenges. Formal monitoring is rare; most institutions rely on the professionalism of their faculty rather than external pressure to ensure people are present and doing their job. This means that a) it is seldom clear how many absences are required before it is perceived as a problem and b) many faculty pressure themselves to work when they are unwell, perceiving it as part of their professional responsibilities. Also, practically speaking, they usually have few viable options to arrange coverage of classes, especially when a health problem flares unexpectedly. Surprisingly, very few faculty collective agreements even address this issue. As such there is a policy vacuum and many uncertain, unwell professors force themselves through lectures when they are clearly too ill or injured to be there. This is not a positive outcome — forcing oneself to teach while unwell can magnify and extend health problems, leading to poor outcomes such as lowered productivity and even premature retirement. More consideration needs to be put into the creation of inclusive policies around attendance and coverage for absences. Formalizing coverage of another professor's classes as a form of recognized service may be one option.

Any policies about attendance that are developed need to distinguish culpability or lack thereof. The details of proving a non-culpable (medical, disability-related) absence are important since the process itself can easily become a barrier. Many workers have intermittent disabilities that flare up regularly but unpredictably. Examples include migraines, rheumatoid arthritis, irritable bowel syndrome, multiple sclerosis, depression, Lyme disease, and long-haul Covid. It is impractical

and unhelpful to require a medical note for each and every flare-up. This requirement (sometimes embedded in the collective agreement) creates stress that may actually worsen symptoms of many ailments, further delaying recovery. It also strains a healthcare system already under strain. Instead, workers with intermittent ailments should be required to provide documentation only once (assuming a condition is chronic), or, at most, once every 3 to 5 years. After that only absences lengthy enough to require moving onto formal short- or long-term disability leave should require notes unless there is a strong, valid reason to suspect abuse. It is advisable, if the organizational culture permits, to implement similar policies for workers without disabilities who have short absences due to illness. This practice embraces the principles of inclusive design, avoids straining the healthcare system, and avoids a perception that workers with disabilities are privileged, which can have negative social consequences.

More on Doctor's Notes — The "Prove It" Dilemma

One of the reasons inclusive design is desirable is it helps address the "prove it" question. When a workplace barrier is encountered and formal accommodations for a disability are requested, that usually triggers a documentation process. The worker is required to provide evidence of their disability (generally a doctor's note). On the surface this is eminently reasonable, but it creates a barrier since the worker or candidate now has to source that documentation, and often has to pay fees to obtain it. An environment that uses inclusive design would create fewer instances that require accommodations, mitigating this problem. That said, even with careful attention it is impossible to fully eliminate the need for post-hoc accommodations. As such, the HR process to document a disability for accommodation purposes should itself be accessible and inclusive.

Collective agreements can help with the "prove it" dilemma by clearly outlining under what circumstances documentation is required for accommodations and what the process is to get them. For example, most of the time it makes legal and practical sense to just believe job candidates about identified disabilities and not seek documentation for needed accommodations until post-hire. It also makes sense not to require documentation for accommodations that can be provided easily, without disruption or cost. Accommodations in which the need is immediately obvious to the casual observer, such as a faculty member who is a wheelchair user needing wheelchair accessible classroom assignments, should also be provided without requiring formal documentation. Finally, clarity about when supervisory personnel need permission to provide accommodations and when they

can just approve them increases department chairs', managers', and other leaders' confidence that they can make quick decisions without being censured later.

In Canada not all disabilities are diagnosed and treated by physicians. For example, psychologists, rather than psychiatrists, generally diagnose autism and ADHD. In some regions it can be difficult or impossible to obtain an appointment with a psychiatrist for these diagnostic and care services (Lewis, 2017). This creates a problem because many people who grew up in the 1960s through the 1990s, especially women, were not correctly diagnosed as children due to systemic gender bias in diagnostic criteria (Gould, 2017). These women are collectively referred to by researchers as the "Lost Girls." Despite a lifetime of struggle, many only realized they were autistic or had ADHD after their children were diagnosed. They do not necessarily have a formal diagnosis, and if they do (if they were one of the lucky ones diagnosed as children), their documents may not be considered recent enough. This creates a problem since psychologist services for adults are not covered under provincial healthcare plans. Getting a new diagnosis (or an update to a previous one) can easily cost between $1,500 and $3,000, which is prohibitive for many workers.

To avoid creating this financial barrier to disability accommodation, collective agreements should explicitly spell out that, for employees, these diagnostic services will be covered by the employer or the union. It is clearly impractical to do this for job candidates though, which is why a relaxed attitude towards accommodation documentation during hiring processes, and an inherently inclusive process, is encouraged. Paying for these diagnostic tests is especially important if behaviours directly related to autism or ADHD trigger disciplinary processes (for example, claims a person is using disrespectful communication styles), which can happen occasionally due to social information processing issues. The collective agreement should also explicitly spell out that diagnostic paperwork from childhood is acceptable for lifelong conditions. A child with autism will always grow into an adult with autism. Additional paperwork may be needed to document specific functional limitations, but the paperwork from childhood should be sufficient to establish the existence of these lifelong conditions.

Even More on Doctor's Notes — Employment Status and Accommodation Policies

In post-secondary education settings, it is commonplace for people to work as contract employees, getting teaching contracts term to term. This arrangement is often involuntary on the part of the faculty member since full-time, permanent, tenure-track positions are generally preferred but difficult to obtain (that is an entirely separate equity issue for a different article). Some academics also voluntarily choose, or are involuntarily driven to, part-time work due to disability-related limitations and/or lack of accommodation. It is not uncommon for academics to work for decades for the same institution, all on a series of 4-month term contracts. Each contract is treated as a separate hire. And that is where the problems begin.

In some institutions, faculty who require any form of disability-related accommodation are being asked to provide new doctor notes each time they are "hired." This technically complies with the letter of their collective agreements, but it creates a frustrating administrative burden for those employees. They understandably do not comprehend how an employer could believe that their chronic and congenital conditions such as autism, deafness, and multiple sclerosis would just "clear up" in the brief time between contracts. Furthermore, many are charged by their doctor each time they request a note, creating a financial burden. It is recommended that collective agreements explicitly include language around medical reporting requirements for chronic disabilities that permits retention of information from one contract to the next when employees can reasonably be expected to return (this would require written permission to retain their records in order to comply with privacy regulations).

Scheduling and the Part-Time Issue

Work shift assignment methods are frequently documented in collective agreements, especially when the work involves night or weekend shifts. Whenever possible, flexible scheduling is desirable. It provides the flexibility to address a wide range of personal needs, including disability-related needs such as medical appointments or fatigue management. It also allows people to choose to be in the workplace during quieter times with fewer distractions. Many jobs, however, cannot accommodate open flexible scheduling due to the need to be present at set times for customers or students, or because of inter-dependencies in the work tasks themselves (for example, an assembly line or scheduled class).

When set shifts are required (generally outside of academe), it is recommended that the collective agreement limit the number of switch overs. For example, switching between the night and day shift every 2 weeks is known to disrupt biorhythms and lead to problems ranging from insomnia and anxiety to compromised immune systems. While these issues would impact all employees, the impact on those with disabilities can be especially pronounced. Negotiators should attempt to get the longest possible amount of time between shift changes (practically speaking, probably 4 to 6 weeks in most workplaces) or avoid changes altogether and have people assigned to one shift permanently.

In academic environments the "shift issue" takes another form. Classes are offered from early morning to late evening on most campuses. That can mean some awkward term schedules — for example a professor may find themselves teaching a night class from 6 to 9 p.m., then needing to be back on campus 11 hours later for an 8 a.m. class. Or they may have a "split shift," teaching at 9 a.m., 2 p.m., and 6 p.m. on the same day. Summer classes may be condensed into intensive courses, requiring more than 6 hours of active instruction each day for 5 or 10 work days in a row. While such schedules would challenge any instructor, they can be particularly difficult for people with disabilities that impact energy levels, biorhythms, or physical and cognitive recovery times. Collective agreements can help by specifying that instructors must have a minimum amount of rest time between daily teaching assignments (for example, 14 hours), and ensuring that instructors are not required to be on campus for more than 8.5 hours in the same day. Teaching intensive courses (in which an entire term's worth of work is covered in 1 or 2 weeks) should be optional.

Whenever possible, collective agreements should formally allow for employee input into their schedule. Since not all department chairs and deans are sympathetic to disability-related needs, an appeal process should exist for people assigned an unworkable "shift." Symptoms associated with some conditions are much worse in the evening than the morning (or vice versa), such that being scheduled at the wrong time may impair a professor's ability to perform their duties. People with disabilities are also more likely to require transportation assistance, which sometimes takes the form of a specialized service that needs to be pre-booked. The operating hours of reliable, safe, public, accessible transportation may also need to be considered when setting work hours — it might not be available during evenings and weekends.

Another aspect of work schedules is the issue of working full-time or part-time. This issue is complex. Ideally working either full- or part-time should be a choice, not something a person is forced into. Injured workers, or workers with short-term

illnesses, may appreciate part-time work as part of a gradual return to work plan. Workers Compensation Boards advocate for such plans since they allow time to heal while simultaneously keeping the worker engaged, increasing the probability of maintaining long-term employment. Meanwhile, permanent part-time work is often a reasonable and valued accommodation for people who experience chronic fatigue or sensory overload. Others feel forced into part-time work when it is undesirable for them. Part-time workers earn less, which may plunge an entire household into poverty. Part-time academics often have their promotion paths blocked (see earlier comments about tenure), and generally have less access to research funding and related resources. For people with deteriorating health who anticipate eventually going on long-term disability, a transition to part-time work would dramatically limit their eventual benefit entitlement. For all these reasons, offering part-time work is not an appropriate solution for all workers experiencing disability and should not be a default solution when accommodation needs arise.

Work From Home

Work from home exploded during the COVID pandemic, prompting frustrated responses from workers with disabilities who had previously been denied work from home accommodations due to a host of ill-defined concerns around performance monitoring, "face-time," employee focus, and "technical issues." The speed at which many of these problems were resolved, or simply evaporated, when the pandemic arrived suggests that these concerns were overblown at best, and a form of (possibly non-conscious) suppression of workers with disabilities at worst (Tsipursky, 2023). Now many companies are trying to "unring the bell" and force a return to the physical workplace for most, if not all workers. Collective agreements must deal clearly with this issue to avoid both barrier creation and future grievances. This is relevant even in academic settings involving classroom instruction (which you generally need to be physically present for) since many academics are able to do their research and authoring work from home and attend committee meetings remotely.

It is recommended that work from home be allowed unless there is a compelling and concrete reason not to. A clause worded to this effect is recommended. Some collective agreements list specific job titles that are eligible for work from home, which creates more certainty but limits flexibility in an undesirable way, violating inclusive design principle number 4. Should you choose this approach, be aware that the list must be defensible — you must be able to clearly explain why those jobs, and only those jobs, are eligible. Valid compelling reasons for a job to be

ineligible for work from home could include being unable to complete primary job tasks (for example, a varsity coach may need to be physically with the team to effectively adjust strategy and call plays real time), and safety needs (for example, a lab chemist may require special ventilation systems that are not feasible to install in private homes). Invalid reasons include the personal preferences of the department chair or dean, unsubstantiated general concerns over motivation and performance while working at home, or nebulous concerns about culture and "face-time."

Respectful Communication and Disciplinary Processes

Disciplinary processes are intended to correct problematic behaviours. But what happens when the worker is literally incapable of perceiving that their behaviour is problematic due to disability-related cognitive or social information processing limitations? In such an instance, usage of one-size-fits-all disciplinary processes could arguably represent disability-based discrimination, creating legal and reputational risk for the employer while failing to effectively address the core issue. This is not to say that problematic disability-related behaviours should be ignored. They do need to be addressed, but in a manner that preserves the rights of all employees.

Many collective agreements include language around respectful communication. This language is accompanied by respectful workplace policies and procedures, which may appear in the collective agreement itself or be external documents referred to in the agreement. These rules generally operate on the assumption that individuals are capable of perceiving when others will find their communication style "disrespectful." That is fine when "disrespect" is obvious, such as name-calling and overt bullying and harassment. There is, however, a lot of grey area and definitions of "respectful" are highly variable and, often, bound to national or organizational culture norms. This creates enormous ambiguity, especially in a society as diverse as Canada, that significantly disadvantages people with certain forms of cognitive or developmental delay, as well as people with social information processing disabilities such as autism.

Many people on the autism spectrum naturally communicate in a very fact-based manner without the use of softening language aimed at preserving the emotional state or ego of the other party (Beardon, 2021). For example, a person on the autism spectrum may tell someone that the process they devised is deeply flawed, explaining in minute detail why, without first expressing any appreciation for the effort put in and without acknowledging the strengths of the process or the

expertise and competence of the designer. Neurotypical people often perceive this type of communication as extremely disrespectful despite the fact that the person with autism had no intent to be disrespectful and, even when told the communication is problematic, is deeply confused about why. Without a detailed and explicit explanation, the person with autism is unlikely to ever figure out what caused offence and therefore is unable to change their behaviour.

This lack of behavioural change is often interpreted as willful disregard, when it is in fact a medically legitimate social information processing disability. This misattribution is especially prevalent in academe, since others expect that people with demonstrated high intelligence should "naturally" be competent in social information processing. The author of this article, who is herself autistic, has experienced these types of communication snafus personally many times in multiple workplaces. When seeking clarification after the fact, she has observed that both colleagues and HR personnel responsible for related disciplinary processes were often unwilling to believe she has caused offence inadvertently, and therefore they were unwilling to even explain why they were upset, assuming she "should just know." This assumption, in addition to being faulty, entirely ignores and dismisses the diagnosis of autism and is akin to getting upset because a person using a wheelchair "willfully refuses" to climb stairs.

The lack of ability to change communication-related behaviours without detailed contextual information and guidance can result in fundamentally unfair disciplinary processes that add significantly to the oft-existing strain of being socially shunned and ostracized at work due to symptoms of autism (or other, related forms of neurodiversity). Even identifying that "rudeness" is a disability-related issue that should be accommodated rather than be a source of disciplinary action is often unhelpful since existing respectful communication policies generally do not address that possibility, leaving confused administrators flailing to figure out what they should do. Furthermore, many formal policies protect complainants (a laudable goal) by refusing to allow the accused to see the details of the problematic communications. This does not allow for any learning to occur, making reoccurrence of the offensive style of communication more likely, resulting in more discipline in a downward spiral that often ends in voluntary or involuntary turnover of an otherwise good worker. This unfortunate phenomenon has been documented in 23 yet-unpublished research interviews with workers with autism conducted by the author over a 2-year period between 2021 and 2023.

Negotiators concerned about equity should be aware that, for the reasons outlined above, the existing standard respectful communication policies commonly included (or referred to) in collective agreements do not comply with inclusive

design priorities. They do not acknowledge diversity (specifically neurodiversity), they do not offer choice when a single design cannot accommodate all (for example, by offering a training and coaching path rather than a disciplinary one if respectful communication standards are violated), and they do not provide for flexibility and adaptability.

So, how do we build a respectful communication policy and related collective agreement clause(s) that are functional and inclusive? One simple solution is to explicitly acknowledge in the policy that perceived disrespect that is directly related to a disability is subject to a training and coaching process rather than a disciplinary one. People on the autism spectrum, and those with other forms of social information processing impairment, are capable of learning to adjust their communication style. (One-on-one coaching is generally most effective.) Mandatory neurodiversity awareness training can also go a long way towards smoothing hurt feelings since it allows neurotypical workers to better understand the emotional intent (or lack thereof) of neurodiverse communication patterns. This leads to reduced attribution errors when the intent of communications is slightly ambiguous, and therefore fewer instances of hurt feelings and fewer misunderstandings triggering disciplinary processes.

Collective Agreements Only Take You So Far

Non-compliance with inclusion-related clauses, especially clauses related to affirmative action or employment equity and hiring, is not unusual. For example, in his public State of the University Address in 2020, interim University of Winnipeg President Dr. James Currie openly discussed the university's failure to implement equity-related clauses that appeared in previous and existing agreements. This situation occurred in part because there were no consequences for non-performance of these duties documented within the agreement, nor was there a clearly identifiable party accountable for overseeing broad implementation of equity policies. Equity programs documented in collective agreements need to be allocated staff and financial resources. Whenever possible, documenting minimum levels of each in the agreement itself can help ensure that those programs become more than just words on a page.

Organizational cultures can also persist long after leaders attempt change. The way workers with disabilities are treated day to day by their peers has a significant impact on job satisfaction and retention. Training, behaviour modelling by leadership, and increasing the number of workers with disabilities in a given workplace can all help combat behaviours that alienate workers with disabilities —

addressing everything from outright, intentional discrimination to inadvertent infantilizing in the form of "helping." While these culture and modelling issues are seldom addressed in collective agreements (and understandably so), they are still part of the toolkit that union leaders need to consider, provide resources for, and support in order to meet equity goals.

Conclusion

In conclusion, improving employment outcomes for workers with disabilities should move beyond the current focus on post-hoc accommodations. While accommodations will always be an important part of equity initiatives, it is time to embrace truly inclusive HR policies and practices. The principles of inclusive design mandate placing people at the centre of the design process, acknowledging diversity and difference, offering choice, being flexible and adaptable, and providing policies that enhance convenience and effectiveness for everyone. Applying these principles to HR policies and procedures through collective agreement language is an important way that unions can contribute to this goal. While all HR-related clauses deserve consideration, those centred around recruitment, selection, promotions, attendance management, scheduling, and respectful communication enforcement are especially ripe for reconsideration through the lens of inclusive design.

Appendix A: Canadian Legislative Requirements Related to Workplace Accommodation

The legislation that is most directly relevant to disability accommodation at work is the Human Rights Act (although the Constitution does also prohibit discrimination and Occupational Health and Safety regulations may help inform which functional limitations are deemed to impair safety). Workers fall under federal, provincial, or territorial versions of the Human Rights Code depending on their employer and jurisdiction; however, the language related to disability, reasonable accommodation, and undue hardship is largely the same across all jurisdictions.

Definition of Disability (Ontario Human Rights Code, section 10.1, 2021)

"In the Human Rights Code, disability means:

- Any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device.
- A condition of mental impairment or a developmental disability.
- A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language.
- A mental disorder.
- An injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act."

Duty to Reasonably Accommodate

The "duty to reasonably accommodate" means that an employer must take all reasonable steps to allow a qualified candidate/employee with a disability to acquire and maintain employment (Canadian Human Rights Code, 2020). In addition to technical devices, assistive software, and physical structures such as wheelchair ramps, employers may be required to amend supervisory practices, communication protocols, and job responsibilities (especially as relates to secondary aspects of the job). Employers are not able to deny anyone a job due to disability without first

proving undue hardship. That would require a verification process, including a formal medical assessment. The employer would need to demonstrate that an individual cannot complete essential, primary requirements of the job.

Criteria for Undue Hardship

The Alberta Dairy Pool versus the Alberta Human Rights Commission case (1990, 2.S.C.R. 489) established the criteria used to determine if an employer faces undue hardship. Since that original decision, criteria number 1, 4, and 5 on the list below have been consistently supported in subsequent cases. Numbers 2 and 3 have received inconsistent support. Number 6 has been recognized as a form of bias and is no longer supported unless truly exceptional circumstances exist, meaning the accommodation interferes very significantly with the rights of other employees.

1. Excessive expenses will be incurred.
2. Disruption of existing collective agreements.
3. Existence of highly interchangeable work force/facilities.
4. Being a very small operation.
5. Safety concerns.
6. Creation of morale problems with other employees.

Recommended Supplementary Readings

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