



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

March 10, 2016

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Canadian Nuclear Safety Commission
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Dear Dr. Churchill:

The Canadian Human Rights Commission (CHRC) would like to thank you for the opportunity to comment on the draft regulations, REGDOC-2.2.4, *Human Performance Management, Fitness for Duty (Fitness for Duty)*.

As a general comment, we recommend that *Fitness for Duty* be revised in light of an employer's obligations under the *Canadian Human Rights Act* (the Act). The Act protects people employed by the federal government, First Nations governments, and businesses that are regulated by the federal government from discrimination. Disability is one of the 11 grounds of discrimination prohibited by the Act. Section 25 of the Act defines disability as inclusive of both physical and mental disabilities, as well as any previous or existing dependence on alcohol or a drug. The Act requires employers to provide reasonable accommodation to employees with disabilities.

In light of the foregoing, we offer the following specific comments for your consideration:

1. We recommend that *Fitness to Duty* specifically identify the Act in Section 1.3 as relevant legislation. We recommend that *Fitness for Duty* explicitly state that the regulations will be applied in accordance with the licensee's responsibilities under the Act.

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2. We recommend that *Fitness for Duty* be revised to address employers' responsibilities to accommodate an applicant or employee on the ground of disability to the point of undue hardship. We advise you to seek independent legal advice on appropriate related revisions.
3. We suggest that *Fitness for Duty* include a recommendation that employers consult their accommodation policy when applying *Fitness for Duty*. A link to a template workplace accommodation policy is provided below as a reference. It could be included with the regulations as a reference document for those employers who do not currently have such a policy.
4. The CHRC recommends that an employer's duty to accommodate be reflected in the guidance and processes outlined in relation to all fitness for work assessments identified in the regulations, including medical assessments, occupational fitness assessments, and alcohol and drug testing processes. This may include a duty to inquire whether an individual requires accommodation short of undue hardship as a result of a disability.

The CHRC will be releasing a guide on accommodating substance dependence in the workplace in the spring of 2016 which will provide further guidance on the above concepts. We would be pleased to provide you with a copy upon release and, should you wish, to have a further conversation about how best to incorporate the concepts therein into your regulations.

We would also like to direct you to several CHRC resources which will provide employers with further guidance on the duty to accommodate, developing an accommodation policy, and step-by-step guidance on the accommodation process:

- **Webinars:** The CHRC has numerous free webinars on topics including the duty to accommodate and managing the return to work:
<http://www.chrc-ccdp.gc.ca/eng/content/webinars>



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- **Accommodation Policy Template:** As noted above, the CHRC has produced a template for developing a workplace accommodation policy:

<http://www.chrc-ccdp.gc.ca/eng/content/template-developing-workplace-accommodation-policy>

- **Accommodation Works! A user-friendly guide to working together on health issues in the workplace:** The CHRC has developed a tool that provides step-by-step guidance on the accommodation process.

<http://www.chrc-ccdp.gc.ca/fitness2work/index.html>

Once again, thank you for the opportunity to comment on your discussion paper. We remain available to assist you in any way we can.

Sincerely,

Keith W. Smith

Keith Smith
A/ Director General, Promotion Branch