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Developing a Workplace Accommodation Policy

Introduction

This document is intended to help federally-regulated employers develop an accommodation policy that is consistent with the requirements of the *Canadian Human Rights Act* (the *Act*) by providing a template accommodation policy that can be adapted to your workplace.

Adopting a workplace accommodation policy helps foster an environment of respect for human rights and lets people in the organization understand their rights and responsibilities. Policies can protect an employer from discrimination complaints. It is also the right thing to do!

The Act

The purpose of the *Act* is to give effect to the following principle: *all individuals should have an equal opportunity to make for themselves the lives that they want **and to have their needs accommodated**, consistent with their duties and obligations as members of society* (see section 2 of the *Act*).

The *Act* protects against discriminatory practices, based on one or more of the prohibited grounds of discrimination, which would hinder this principle. The **grounds of discrimination prohibited** by the *Act* are:

- ❖ Race
- ❖ National or Ethnic Origin
- ❖ Colour
- ❖ Religion
- ❖ Age
- ❖ Sex (includes pregnancy or child-birth)
- ❖ Sexual Orientation
- ❖ Gender identity or expression
- ❖ Marital Status
- ❖ Family Status
- ❖ Genetic Characteristics
- ❖ Disability
- ❖ Conviction for an offence for which a pardon has been granted or a record suspended

The duty to accommodate

Employers have an obligation to take steps to adjust rules, policies or practices that have a negative impact on individuals—or groups of individuals—based on prohibited grounds of discrimination in the Canadian Human Rights Act. This is called the duty to accommodate.

The duty to accommodate means that sometimes it is necessary to treat someone differently in order to prevent discrimination. Employers have a duty to accommodate an employee's needs when they are based on any of the grounds listed in the *Act*. Because the needs of each individual are different, accommodation requires an individualized approach.

Generally, it is the individual employee's responsibility to disclose their accommodation needs to the employer. However, people do not always come forward. Individuals with substance dependence or other mental health disabilities may not recognize or admit that they have a disability. Stigma and fear can also make individuals reluctant to admit there is a problem or request accommodation.

The duty to start a conversation about accommodation may shift to the employer if they know or ought to know from changes in an employee's attendance, behaviour or performance that the employee may need some form of accommodation. This is called the duty to inquire.

Regardless of who initiates the accommodation process, the employer is entitled to relevant information about the employee's needs in order to determine how best to accommodate the employee and the employee is obligated to cooperate. These issues are nuanced and dealt with in the template.

Undue Hardship

The duty to accommodate is not limitless. The duty to accommodate ends when an employer reaches the point of undue hardship. Under the *Act*, an employer can only claim undue hardship when adjustments to an employee's job requirements and/or adjustments to policy, practice, by-law or physical space would be prohibitively expensive or create health or safety risks.

There is no standard formula or precise legal definition of undue hardship. Each situation should be viewed as unique and assessed individually. The point of undue hardship varies for each employer and for each accommodation situation. The larger the organization, the more likely it is to have a range of options to accommodate an employee.

A claim of undue hardship must be supported with facts. It is not enough to claim undue hardship based on an assumption or opinion, or because there is some cost. Employers

must be able to substantiate the nature and extent of the hardship. They should also be able to show that all reasonable means of accommodation have been exhausted. To satisfy a claim of undue hardship on the basis of cost, the financial impact of the accommodation would typically have to be so great that it would either change the essential nature of the organization's operation, or it would substantially impact the employer's financial viability.

Employers should be innovative, practical, and timely when considering accommodation options. If an individual's need for accommodation can be met without imposing undue hardship on the employer, a refusal to accommodate is not justified.

More Information

For more information about the duty to accommodate, please visit the Commission's website at www.chrc-ccdp.gc.ca. For information about accommodating employees dependent on alcohol or drugs, please refer to the Commission's February 2017 guide entitled ***Impaired at Work*** at <http://www.chrc-ccdp.gc.ca/eng/content/impaired-work-guide-accommodating-substance-dependence>.

Directions for using the Accommodation Policy Template

Placeholders can be found throughout the policy template to help you identify where information specific to your organization should be inserted.

STEP 1 – Replace all **[Name of Organization]** placeholders with the name of your organization.

STEP 2 – Determine who in your organization will be responsible for making accommodation decisions. All of the people responsible for accommodation should be familiar with the duty to accommodate and its related concepts. There are three roles identified in the accommodation policy template:

- a. **[Name and/or Position A]** This role should be given to a dedicated human resources employee or another individual who is generally responsible for the hiring process.
- b. **[Name and/or Position B]** This role should be given to a senior manager who is familiar with the workings of the organization.
- c. **[Name and/or Position C]** This role should be given to a senior manager who is familiar with the workings of the organization. It should not be the same individual identified for roles A or B.

STEP 3 – Replace the **[Name and/or Position]** placeholders with the name and/or position title of the person who has been given responsibility for each role throughout the policy template.

STEP 4 – It is also important to have a set of procedures for accommodation to inform supervisors and employees of the steps that will be taken if an employee requires accommodation. A suggested accommodation process has been included in this template. If appropriate, keep this process. You may also replace this section with a set of procedures that would be more suitable for your organization.

STEP 5 – Read the document and add the relevant information into the remaining placeholders so that they fit your organization. Delete any placeholders that are not relevant for your organization.

STEP 6 – Educate supervisors and employees about the duty to accommodate, and their roles and responsibilities according to your organization's accommodation policy.

Template
[Name of Organization]
Accommodation Policy and Procedures

Policy Statement

[Name of Organization] is committed to fostering an inclusive workplace where all employees are treated with respect and dignity.

[Name of Organization] will act in a manner consistent with its obligations under the *Canadian Human Rights Act* [insert; “and the *Employment Equity Act*, and (title of provincial or territorial human rights legislation)” if applicable].

[Name of Organization] will provide a workplace that ensures equal opportunity free from discrimination based on race, colour, national or ethnic origin, religion, age, sex (includes pregnancy or child-birth), sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability (includes mental or physical disability, disfigurement and dependence on alcohol or a drug) or conviction for an offence for which a pardon has been granted or a record suspended.

[Name of Organization] will provide workplace accommodation, to the point of undue hardship. The purpose of accommodation is to ensure that individuals who are otherwise able to work are not discriminated against by being excluded from doing so when working conditions can be adjusted without causing undue hardship to the employer.

Application

This policy applies to all current employees and applicants for employment of **[Name of Organization]**, including full and part-time, casual, contract, permanent, and temporary employees. This policy also applies to employees on approved leave including short and long-term disability leave.

This policy applies to all aspects of employment including, but not limited to recruitment, selection, training, promotion, transfers, work arrangements, compensation and benefits, and termination of employment.

Definitions

An **Inclusive Workplace** means that all employees have the opportunity to contribute and participate in the workplace in a barrier free environment. Critical to the notion of an inclusive workplace is a robust accommodation policy.

Accommodation means taking steps to adjust rules, policies, practices or situations that have a negative impact on an individual or groups, protected under the *Canadian Human Rights Act*.

Undue Hardship occurs when accommodation adjustments to the workplace would be prohibitively expensive, or create undue risks to health or safety. Each situation will be viewed as unique and assessed individually. A claim of undue hardship must be supported with facts and a detailed analysis of options, impressionistic or speculative reasons will not suffice.

The following are examples where accommodation could cause undue hardship:

- an employer cannot accommodate without seriously impacting business operations;
- an employee will not be able to return to work in the foreseeable future or is absent so often that it is no longer possible to accommodate them without causing the employer serious financial hardship;
- the employee's position is safety sensitive and, as a result, accommodation may pose a safety risk to the employee, his or her colleagues, clients and / or the public.

Responsibilities and Expectations

Accommodation is a shared responsibility between employees, supervisors and **[Name of Organization]**, as the employer.

[Name of Organization] is responsible for:

- eliminating barriers that prevent people from accessing, or being included in, the workplace;
- minimizing the need for individual accommodation by regularly reviewing rules, policies, by-laws and practices to ensure that they are not discriminatory;
- ensuring that all employees and job applicants are advised of their right to be accommodated;
- dealing with requests for accommodation in a timely, confidential and sensitive manner;
- providing individual accommodation to the point of undue hardship; and
- ensuring that this policy is effectively implemented.

Supervisors are responsible for:

- fostering an inclusive work environment by treating all employees and job applicants with respect and dignity;
- identifying and eliminating barriers that prevent people from accessing, or being included in, the workplace;
- dealing with requests for accommodation in a timely, confidential and sensitive manner;
- informing individuals requiring accommodation what information they need to provide to be accommodated;
- generating accommodation options based on the information provided about the individual's accommodation need(s)
- involving individuals requiring accommodation in the search for accommodation;
- initiating a discussion about accommodation when they are aware that an employee or job applicant may have a need for accommodation, but is unable, for any reason, to articulate that need.

Employees and job applicants are responsible for:

- making their accommodation needs known. This does not require the disclosure of the specific cause of their needs but only the effects which create the need for accommodation.
- helping to identify potential accommodation options;
- providing documentation in support of their request for accommodation, including information about any restrictions or limitations; and
- accepting an offer of accommodation that meets their needs, even if it is not their preferred accommodation option.

Employees and job applicants can expect:

- to be treated with respect and dignity;
- to have their needs accommodated up to the point of undue hardship; and
- to be informed of the reasons, if their accommodation request is denied.

Procedures for Accommodation

Job Applicants

When contacted for an interview, job applicants will be advised that **[Name of Organization]** has an accommodation policy and asked whether he or she requires accommodation to participate in the hiring process.

[Name and/or Position A] will evaluate the job applicant's request for accommodation and may request more information from the applicant to facilitate the accommodation.

If a request for accommodation is denied, the reasons why will be clearly communicated to the job applicant.

Employees

An employee may request accommodation by notifying his or her supervisor. Alternatively, accommodation needs may be identified through supervisor and employee collaboration in response to concerns raised by the supervisor.

The supervisor will document the request, including the employee's name, position and date of the request, any details provided by the employee and any accommodation options suggested by the employer or employee.

The supervisor may request supporting documentation from the employee in order to identify accommodation needs and options (e.g. details of restrictions or limitations).

When dealing with an accommodation request based on disability, the supervisor should refer to Annex A which provides guidance on asking for medical information to support the accommodation request.

The supervisor will consider accommodation options including, but not limited to: workstation adjustments; reassignment of job tasks; changes to scheduling or hours of work; leaves of absence; and temporary or permanent reassignment.

The supervisor will discuss available accommodation options with the employee. The accommodation preferences of the employee will be taken into account. However, the supervisor may proceed with an option that is less costly or easier to provide, when it meets the employee's accommodation needs. The supervisor will clearly communicate the reasons for his or her decision to the employee.

The supervisor will review the accommodation measures with the employee on a regular basis to confirm they continue to be necessary and effective.

If the available accommodation options raise the likelihood of causing undue hardship, the supervisor will refer the matter to **[Name and/or Position B]** for decision.

[Name and/or Position B] will ensure that all accommodation options short of undue hardship have been considered prior to refusing accommodation. If a request for accommodation is denied, **[Name and/or Position B]** will clearly communicate the reasons why to the employee.

Appeals

If an employee or applicant has been denied accommodation, is not satisfied with the accommodation offered, or believes that his or her request has not been handled in accordance with this policy, he or she may request a second opinion from **[Name and/or Position C]**.

An employee or applicant may also file a discrimination complaint with the Canadian Human Rights Commission **[insert “and (title of other grievance mechanism)” if applicable]**.

Privacy and Confidentiality

All records associated with accommodation requests will be maintained in a secure location, separate from employees' personnel files and will only be shared with persons who need the information.

[Name of Organization] and all individuals involved in the accommodation process will comply with the requirements of the **[insert “(title of applicable privacy legislation)”]** to protect personal information.

Review

[Name and/or Position A] will review this policy and related procedures on an annual basis, or as required, and will make adjustments as necessary to ensure that it continues to meet the needs of all employees.

Enquiries

Enquiries about this policy and related procedures can be made to **[Name and/or Position B]**.

Date: **[Month, day, year]**

Annex A: Requesting Medical Information

Consider whether medical Information is required

Over the course of our lives, many of us will need workplace accommodation at some point.

Healthy workplaces are built on mutual trust. Employers should exercise restraint in requesting medical information to support an accommodation request.

For example, if an employee's accommodation request is obviously required to meet their disability or pregnancy-related need, employers should not ask for a doctor's letter. It is obvious that an employee who uses a wheelchair needs automatic door openers, and elevators to access the workplace. Similarly, a woman in late stage pregnancy will require more washroom breaks.

Good accessible design improves the work environment for everyone. The employee with a broken leg or employees who are carrying something in their arms will also benefit from automatic door openers and elevators.

Gather and consider the relevant medical information

To appropriately accommodate an employee's disability the employer may require information from a medical professional about the employee's accommodation needs.

Employers must keep in mind that requesting medical information for the accommodation process requires the balancing of two competing rights: the employer's right to manage the workplace and the employee's right to privacy.

When asking for medical information to support an accommodation request, employers must use the least intrusive means possible and respect the employee's privacy rights. In most cases the necessary medical information can be provided by the employee's family doctor or specialist. The medical information will allow the employer to make an informed decision about reasonable accommodation options.

Employers need to know:

1. Whether the employee has a disability; and if so
2. What accommodations the employee needs.

Provide relevant information to the medical professional

The employer should provide the medical professional with the following information:

- Description of the employee's job function/responsibilities.
- The employee's work schedule.
- Whether the employee is in a safety-sensitive position.
- Any other relevant information that is particular to the workplace.

Ask the medical professional for information

The employer should ask the following questions:

- Does the employee have a disability that requires accommodation?
- What accommodations does the employee require?
 - For example: are there any restrictions or limitations to the performance of the job?
- What is the employee's prognosis?
- If the employee is off work, are there specific recommendations for accommodation that will facilitate a safe and successful return to work?
- For an employee in a safety sensitive position, is the employee medically fit to safely perform their job?
 - Does the employee require medication where side effects may prevent them from working in their safety sensitive position?

*****Employers are rarely entitled to the employee's diagnosis*****

Medical information may come in various formats—from a hand-written note to a formal report. Based on the information provided, the employer should be able to determine whether the employee:

- Is able to perform the essential duties of their position with appropriate accommodation.
- Needs to move to a different position due to their accommodation requirements.
- Needs to be off work, and if so, for how long.

Once the medical information has been provided, the employer has the primary responsibility for accommodating the employee.

Include the employee in the accommodation process

The employee has a duty to cooperate in the accommodation process. This can include attending appointments as scheduled, providing complete and accurate information to the medical professional, and providing the employer with the relevant medical information obtained (unless it is sent directly to the employer).

The employee has the final say whether their medical information can be released.

The employee has the right to reasonable accommodation – that is accommodation that meets his or her needs – but they do not have the right to perfect or their preferred accommodation.

Exercise caution when requesting Independent Medical Evaluations (IME)

Note: Employers should exercise caution and seek legal advice before requesting an IME – particularly in the first situation – because asking an employee to undergo one

infringes on their privacy rights. As with any other medical assessment, the employer is entitled only to the medical information they need to accommodate the employee.

In certain situations, employers can ask an employee to have their accommodation needs assessed by a medical professional who is not their family doctor or specialist. This is called an Independent Medical Evaluation or IME.

The employer cannot ask for any more medical information from an IME than they can ask from the employee's own family doctor or specialist. Likewise, the employer should provide the same information given to the employee's medical professional.

There are generally four situations when an employer can ask an employee to undergo an IME:

1. When medical information provided by the employee's medical professional is unclear or insufficient, the employer must go back to that medical professional, identify the deficiency and request clarification. **If** the information subsequently provided is not responsive, the employer may then consider requesting an IME.
2. When there is contractual right to request an employee to undergo an IME, provided, for example, in a collective agreement.
3. When there is a legislative requirement in certain industries.
4. When an employee requests the assistance of a specialist.

Good Practices for IMEs

- Allow the employee to select the physician from a list of acceptable specialists.
- Agree in advance to accept the results of the IME.
- Provide the employee with time off work to attend the IME.
- Pay for the cost of the IME.

These practices are especially applicable to the 1st and 4th IME scenario.

Exercise caution when removing an employee from the workplace

Generally, an employee should not be removed from the workplace unless there is medical information to clearly support this. However, if an employee has health needs requiring urgent attention, or if they pose a serious risk to the safety of themselves or others, an employer should deal with this immediately. An employer should obtain legal advice when removing an employee from the workplace, and other agencies or offices may need to be contacted.