

TOPIC Reasonable Accommodation

POLICY Employers shall make reasonable accommodation for an individual's special needs where those needs are associated with any characteristic protected by The Human Rights Code (Manitoba).

QUESTIONS AND ANSWERS

1. What are the applicable characteristics protected by The Human Rights Code (Manitoba)?
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AUTHORITY

The Human Rights Code C.C.S.M. c. H175
Civil Service Act, Conditions of Employment Regulation 23
GEMA 7 – No Discrimination
Workers Compensation Act C.C.S.M. c. W200

Reviewed April 11, 2007

QUESTIONS AND ANSWERS

1. **What are the applicable characteristics protected by The Human Rights Code (Manitoba)?**
 - ancestry
 - nationality

- ethnic origin
- religion
- age
- sex (including pregnancy)
- gender-determined characteristics
- sexual orientation
- marital or family status
- source of income
- political belief
- physical or mental disability (and related characteristics or circumstances)

2. What is accommodation?

Accommodation in employment means adapting working conditions, work assignments or workstations to address the special needs of an individual where those special needs are due to characteristics protected by The Human Rights Code (Manitoba).

Accommodation includes issues of access for persons with special needs including the pre-employment selection processes.

Reasonable accommodation often involves a simple change to how something is typically done, which takes into account a need a person or group has that is based on a protected characteristic.

Sometimes equality means treating everyone the same. But sometimes equality means treating people differently to create a level playing field.

Most people in the labour force perform their job functions with no accommodation. However, accommodation may be of temporary or permanent necessity for the special needs of some individuals.

3. Why should employers accommodate?

Reasonable accommodation is not only a legal requirement; it also benefits the workplace in several ways:

- It allows a person with special needs to perform all assigned duties and to meet the productivity standards established by the work unit.
- It works to reduce or eliminate the effects of discrimination.
- A flexible management style benefits everyone.
- It uses the full potential of a person with special needs.

Accommodation issues may arise for employees at any point between pre-employment contact through to retirement.

4. Who is responsible for making accommodation?

Managers (the employer) have the primary responsibility for ensuring that appropriate and reasonable accommodation takes place because they can allocate resources and implement options. More specifically, managers have the following responsibilities:

- To assess the circumstances of the individual requesting accommodation.
- To assess the competencies, skills and abilities of the employee requesting accommodation.
- To maintain close contact with the employee while searching for appropriate work assignments.
- To identify options for accommodation in consultation with the employee.
- To originate a reasonable accommodation solution.
- To implement the accommodation.
- To communicate the intent of the accommodation to other employees.

In the event that an accommodation option is not readily identified, the manager is expected to widen the scope of their search with the assistance of Human Resource Services to include the branch, division, department and other departments of government as necessary.

Unions have responsibilities to accommodate as well and must represent a member requesting accommodation and be flexible in applying the terms and conditions of the collective agreement.

All employees are responsible for co-operating in making the accommodation work.

5. What kinds of medical accommodation are available?

There are many types of accommodation options available including but not limited to;

- Technical aids or workstation modifications
- Modified or alternate work duties
- Task bundling
- Flexible hours of work
- Change in work location
- Building modification

- Communication services

The type of accommodation possible and available is determined in consultation with the employee requiring it. Accommodation options may be limited by factors such as the nature of work, operational requirements and cost. An employer is not necessarily required to create a position in order to make an accommodation.

6. How far must an employer go to accommodate special needs?

The obligation to accommodate is discharged when the hardship of accommodation becomes “undue”. Seven factors are used to determine whether an accommodation presents undue hardship:

- Cost
- Impact on others
- Health and safety
- Disruption of the collective agreement
- Nature, size and scope of the employer
- Interchangeability of workforce and facilities
- Business efficiency

Each of these factors are weighed to the specific facts and circumstances of the accommodation situation and the onus of proof of undue hardship rests on the employer.

Given the number of positions and varied employment tasks throughout the Civil Service, a defense of undue hardship would likely not succeed given the size and scope of the employer (Government of Manitoba).

Managers are encouraged to consult with Human Resource Services for assistance in determining the reasonableness of a request for accommodation and as an additional resource in the identification and implementation of accommodation options.

7. What is the process for ensuring that accommodation has been properly considered?

Managers should become involved when a specific request for accommodation has been made or it is otherwise made apparent that an employee has special needs or medical limitations.

Note of Caution:

It is not a fixed rule that an employee must advise the employer of a need for

accommodation. If an employer has reason to suspect, or ought reasonably to have suspected, based upon a significant change in an employee's behaviour or performance, that an employee might be contending with a dependency, depression or other psychological condition, the employer should make real efforts to pursue relevant inquiries to determine if there is a disability issue at the heart of the conduct that is resulting in the employee's inability to meet the normal expectations of the workplace.

Where a disability is confirmed, the employer should proceed to assess the relevant accommodation issues as set out below. If the employee denies there is anything wrong and refuses assistance, then the employer has discharged its duty to inquire as to whether there is a need for accommodation. It is recommended that the employer consult Human Resource Services for further guidance.

Accommodation of an employee's special needs can usually be achieved without difficulty but sometimes, the process can become more complex and the following check list is offered to managers as guidance to ensure that proper consideration has been made in fulfilling their duty and obligation to accommodate.

- Determine if an employee's request for accommodation or your suspicion about a possible need for accommodation falls under the protected characteristics of the Human Rights Code (Manitoba) listed in the answer to question 1 above.
- Review any information that the person seeking accommodation provides to support the request for accommodation. (medical certificate, etc..)
- Listen to and consider the needs of the person seeking accommodation and their suggestions for accommodation.
- Document the request for accommodation, the information provided by the employee, and any considerations / actions made to address the situation.
- If an employee is requesting accommodation due to a disability, have you obtained relevant and satisfactory medical information from the employee's caregivers?
 - Additional medical documentation over and above that already received may be required.
 - Set out in writing to the employee what information you might need to assist in the accommodation process.

- Review current position description.
 - Determine if the employee can perform his or her existing job as is.
 - If not, determine if the employee can perform their current job in a modified or “re-bundled” form.
 - If it is determined that the employee cannot perform the essential duties of their current job, even with accommodation, document this and set out the reasons why.

- Examine other positions in the workplace.
 - Identify all other job possibilities in the branch, division and department.
 - Determine if the employee can perform another job in its existing form.
 - If not, determine if the employee can perform another job in a modified or “re-bundled” form.
 - Identify what essential duties of those jobs the employee can do and what they cannot do due to their restrictions.
 - Identify what can be done to enable the employee to perform any of the possible work tasks.
 - If it is determined that the employee cannot perform the essential duties of other positions even with accommodation, document this and set out reasons why.

- Discuss position assessment results with relevant parties
 - Get input from the employee and perhaps their union representative as to what the employee can do from the options identified by the employer.
 - Get input from medical or other relevant experts as to what the employee can do from the options identified.

- Decide on the most appropriate and reasonable accommodation
 - An employee is not entitled to the accommodation they precisely want or the most ideal solution.
 - They are entitled to reasonable and appropriate accommodation.
 - If full accommodation is not possible without undue hardship, consider suggesting options that may partially meet the needs of the person seeking accommodation.
 - If accommodation is not possible at all due to undue hardship, ensure that you have the necessary documentation to support this and consult Human Resource Services.

- Reply to the request for accommodation within a reasonable amount of time.
- o Implement accommodation
 - Document and communicate.
 - Outline in writing for the employee what will be implemented inclusive of any terms or conditions attached to the accommodation.
 - Communicate with supervisors / co-workers to ensure they are aware of what is being done and why.
 - Request and obtain support from supervisors and co-workers as required.
- o Monitor
 - Follow up to ensure that the accommodation implemented meets the needs of the person who requested the accommodation.
 - Review and modify the accommodation if circumstances or needs change (including if accommodation is no longer required).

8. What is the responsibility of the person requesting accommodation?

- Advise employer of the need for accommodation in a timely manner.
- Provide all medical and other relevant information to help your employer assess your accommodation request.
- Cooperate in the assessment, search, and implementation of accommodation.
- Perform assigned duties once accommodation has been made.

9. Who pays for accommodation?

Departments are responsible for the cost of accommodation although, the great majority of accommodations are of little or no cost.

The purchase of technical aids or workstation modifications for accommodation are exempt from any Treasury Board directive on furniture and equipment purchases.

Any items purchased as an accommodation remains the property of the Government of Manitoba and stays with the employee for as long as is needed while they are employed in the Manitoba civil service. This allows employees to

change employment positions within government and to maximize the use of the accommodation.

External sources of funding for accommodation may also be available through rehabilitation agencies such as, but not limited to, the Workers Compensation Board or Manitoba Public Insurance.

10. Does an employee on Workers Compensation or Long Term Disability get preferential treatment when filling vacancies?

Sometimes. In filling vacancies, managers must give first consideration to employees on the Re-employment List. Once this obligation is fulfilled, managers may consider the direct appointment of employees requiring accommodation including those employees looking to return to work from Workers Compensation or Long Term Disability.

11. What happens with my salary should my accommodation result in a lower paying classification?

Salary levels are based on the classification of the position you are working. Should permanent accommodation be required and an employee is placed in a position of a lower classification, the employing authority may make written request to the Director, Compensation Services, Treasury Board Secretariat for Over Grade Pay Protection (OGPP) for up to a maximum of 2 years.

12. Where can I get additional information?

Additional information on accommodation and The Human Rights Code (Manitoba) can be obtained through your departmental Human Resource Services and / or The Manitoba Human Rights Commission website at www.gov.mb.ca/hrc .