



DUTY TO ACCOMMODATE RESOURCES FOR EMPLOYERS

INTRODUCTION

The Saskatchewan Human Rights Commission has created this toolkit to help employers learn about their duty to accommodate and how to provide effective accommodations to their employees. It includes:

- What workplace accommodations are
- What accommodations can look like?
- Accommodation responsibilities
- A step-by-step accommodation process for employers
- Tips for accommodation
- Things to consider for establishing accommodation best practices

Please note that this document provides general information only. This is NOT legal advice. We hope you find it useful but encourage you to seek legal advice where applicable.

NEED HELP? CONTACT US

Email:
contact@saskhrc.ca

Website:
www.saskhrc.ca

Phone:
(306) 933-5952

Toll Free:
1-800-667-9249

Fax:
(306) 933-7863



WHAT ARE WORKPLACE ACCOMMODATIONS?

Accommodations are changes or adjustments to certain rules, standards, policies, and physical environments that enable employees to participate in the workplace without experiencing discrimination based on characteristics protected by The Saskatchewan Human Rights Code, 2018.



PROTECTED CHARACTERISTICS

The Saskatchewan Human Rights Code, 2018 forbids discrimination based only on certain personal characteristics. Sometimes these are called “protected characteristics.” These include:

- Colour
- Race or Perceived Race
- Ancestry
- Nationality
- Place of Origin
- Disability
- Religion
- Creed
- Age
- Marital Status
- Family Status
- Sex (including pregnancy)
- Sexual Orientation
- Gender Identity
- Receipt of Public Assistance

Under the Code, employers have a legal obligation to ensure that employees with one or more of these protected characteristic have equal opportunities, access, and benefits. This is called duty to accommodate. Employers have a duty to accommodate employees, and people applying for jobs, to the point of undue hardship.



DID YOU KNOW: The Code does not require a “perfect” solution when it comes to workplace accommodation, just a “reasonable” solution.

WHAT IS UNDUE HARDSHIP?

In most cases, accommodation is simple and affordable. However, situations may arise where providing accommodations is not feasible for health, safety or cost-related reasons. This can result in an employer experiencing undue hardship. Undue hardship occurs when all measures of accommodation are exhausted and the employer has done everything possible to accommodate the needs of a person with protected characteristics.



It is important to note that onus is on the employer to prove that they have made all “reasonable efforts” to accommodate. When assessing whether or not an accommodation would lead to an undue hardship, employer should consider the following factors:

- Would the impact of the accommodation result in an intolerable financial cost or an unbearable disruption to business?
- Would adjusting working conditions to accommodate a person pose too great a risk to the health and/or safety of the individual, colleagues, or the public?
- Would accommodating the person cause disruption to the collective agreement or negatively impact rights that have been bargained for?

There is no standard formula or precise legal definition of undue hardship. Each situation is unique and must be assessed on a case-by-case basis. The point of undue hardship will vary in each situation. For instance, a business with three employees may not be able to accommodate a request for revised work hours as easily as a business that has 250 employees.



DID YOU KNOW: Undue hardship is more than minimal hardship. It must be based on actual evidence of hardship and not merely assumptions about how hard it would be to accommodate a person.

Bona fide occupational requirements (BFORs)

In some cases, there may be a bona fide occupational requirement for employment in certain positions. Employers may not have to accommodate employees who do not meet those requirements. Employers should not to make a final determination that a requirement is a bona fide occupational requirement without the advice of Labour Relations.

WHAT CAN ACCOMMODATIONS LOOK LIKE?

Workplace accommodations require give and take on both sides. It is important for employers and employees to work together to make accommodation a collaborative process built on communication.

Accommodations can come in many different forms. They may include, but are not limited to, changes like the ones listed below:

Modifying existing architecture or workplace environment

- Modifying furniture
- Adding ramps, automatic doors, etc.
- Providing private space for prayer or breastfeeding
- Providing an all-gender washroom option



Modifying job responsibilities

- Reassigning work
- Modifying job duties
- Adjusting work pace and/or order
- Customizing duties or creating specialized jobs
- Job carving
- Task bundling

Modifying workplace policies

- Allowing employees to work from home or from a remote location
- Providing flexible leave
- Extended health benefits

Flexible scheduling

- Adjusting start and/or finish times
- Modifying break schedule
- Allowing for compressed work weeks
- Providing additional training time

Providing assistive technologies

- Technological hardware such as keyboards, monitors, and computer mice
- Lifting/reaching/carrying aids
- Instructional techniques (verbal or written instructions, checklists, recorded directives, etc.)
- Computer software (eg. cognitive assisted applications, voice text to voice app, etc.)
- Other technology such as electronic organizers or smartphones

Allowing for:

- Leave of absence for recuperation or to obtain medical information
- A gradual return to work
- Part-time work or job-sharing
- Service animals
- Statutory holiday exchange to support employees in observing their own religious or cultural days



DID YOU KNOW: Most accommodations are easy to introduce and cost very little. More than half of workplace accommodations cost nothing.



ACCOMMODATION RESPONSIBILITIES

The accommodation process is based on responsibility – shared by all parties – to have meaningful dialogue about accommodation and to work together to find reasonable solutions.

EMPLOYER RESPONSIBILITIES

While both the employer and employees have responsibilities in this process, the duty to accommodate is the employer's responsibility. This is because the Code imposes an obligation on the employer to provide a discrimination-free environment.

Employer responsibilities include:

- Taking every accommodation request seriously
- Responding promptly to accommodation requests
- Treating people requiring accommodation with dignity and respect
- Determining if the employee is medically fit to perform a job (if in question)
- Collaborating with the employ to find a reasonable accommodation
- Maintaining confidentiality with respect to information that underlies the employee's accommodation
- Monitoring the situation to ensure the accommodation is effectively meeting the employee's needs. Needs can change over time, and may require adjustments to an existing accommodation plan

EMPLOYEE RESPONSIBILITIES

Employees have the right to ask for an accommodation based on Code-protected characteristics (see page 2). It is then the employee's responsibility to cooperate with their employer – and union, if applicable – to find a reasonable accommodation.

Employees are also expected to:

- Let the employer know accommodations are needed and explain why
- Provide reasonable accommodation requests and consider all proposals or solutions that reasonably meet their needs – a reasonable accommodation proposed by an employee may not be the employee's preferred option
- Inform the employer if the accommodation measures need to be change or the agreed-upon solution is not working
- Provide relevant medical information that supports the accommodation request

UNION RESPONSIBILITIES

Union representatives often play a facilitator and/or advisory role in connection with employee accommodation. An employee may, where applicable, request the involvement of a union representative for advice or assistance regarding their requests for accommodation.



Union representatives have an obligation to cooperate in the search for reasonable accommodation solutions. They are required to:

- Assist in the accommodation process wherever possible
- Helps the union member when necessary
- Document efforts to assist the union member and achieve accommodation
- Screen collective bargaining agreements for potential Code violations

Unions cannot just be a bystander in the accommodation process. They can be added as Respondents to human rights complaints where they fail to participate in the accommodation process or meet the duty to accommodate.

THE ACCOMMODATION PROCESS

STEP 1: Recognize the need for accommodation and have the conversation

Employee request

Typically, the onus is on the employee (or employment candidate) to notify the employer if they require accommodation. Employers should take a positive approach to accommodation, accept requests in good faith, and only request supporting information when it is required to implement the necessary accommodation.

Employer duty to inquire

In some specific cases, employers have an obligation to initiate a discussion with an employee when circumstances suggest that the employee may need an accommodation. This is called the duty to inquire. The duty to inquire is essentially about checking in with an employee. This can be a sensitive process – particularly when it involves a possible mental health disability or addiction – and should be handled with the utmost consideration for the privacy and dignity of the employee. If necessary, a conversation with an employee about job performance, absenteeism, or changes in the employee's behavior, it is important to provide concrete examples. The discussion should be collaborative and may continue over time. The procedure for accommodation in such cases can only continue with the employee's consent.

Employment candidates

Generally, employers should only discuss a job applicant's accommodation needs if the applicant brings it up prior to being hired. However, in certain situations, job applicants may require accommodations in order to fully participate in the application process. When posting job advertisements, it is a good idea for employers to include information about how to request accommodation for the application process.

STEP 2: Gather information

The next step is to gather relevant information and assess whether the employee's needs can be met without a formal accommodation request.



Often, formal requests are not required. Talking to an employee about what they need can lead to an informal, appropriate, and effective accommodation. For instance, an employee may simply need time off to attend a religious ceremony or require a temporary change in work hours to provide childcare.

Other times, however, employers will need additional information to support an accommodation request. These requirements are most often associated with disability-related accommodations where medical information is necessary.



WHAT MEDICAL INFORMATION IS AN EMPLOYER ENTITLED TO?

Generally speaking, employers are entitled to request information about:

- The nature of the illness
- Whether the illness or condition is permanent or temporary
- If temporary, the estimated time frame for improvement to occur
- Restriction or limitations, and how long these may impact the employee
- How the medical conclusion was reached
- Treatment or medication that might impact the accommodation or affect the employee's ability to perform their job

Employers are NOT entitled to information about:

- The diagnosis
- Subjective symptoms
- Objective findings
- Test results

When formal documentation is required, it is important to keep all the documents in the employee's accommodation file, separate from their human resources file.

Once all relevant information and supporting documentation, if needed, is collected, assess the employee's work environment then sit down with them to discuss options or measures that might address their needs. Focus on finding solutions together.

Depending on the situation, employers may need to involve the employee's union representative.

Sometimes obtaining external documentation can take time. Employers should work with the employee to enact temporary accommodation measures until the assessment process has been completed.



STEP 3: Accommodate

Make an informed decision

It is important for employers to take time to review the accommodation request, understand the needs of the employee, and review any applicable supporting documentation. Each person has unique needs so employers should address every accommodation on a case-by-case basis.

Work with employees and other relevant parties (eg. union representatives) to make effective decisions and find a reasonable solution that respects the employee's dignity, privacy, and confidentiality.

Did you know? An employee must be willing to participate in the accommodation process. If not, under certain circumstances, accommodation may not be possible and the employer's duty to accommodate could end. Participation can mean as little as providing relevant information.

Implement accommodation

Once a decision has been reached and the accommodation has been agreed upon, tell the employee how and when it will be implemented. Ideally, employers will develop an accommodation plan for each employee who needs accommodation.

Your accommodation plan should:

- Be documented in writing
- Be signed by all involved parties
- Identify the specific accommodation details that have been agreed upon – timelines, duties, restrictions/limitations, etc.
- Include training on the use of adjusted equipment, assistive devices, etc.
- Where applicable, include a return-to-work agreement that outlines conditions the employee agrees to meet when returning to work.

When creating an accommodation plan, employers should keep in mind the plan is flexible and can be subject to change based on the employee's needs and updated information.

If the duty to accommodate does not apply to a specific request, employers must promptly advise the employee of the rationale for NOT providing accommodations – eg. because of a BFOR and/or it would cause undue hardship for the employer.

STEP 4: Monitor and review

Employers are advised to follow up and periodically check in with the employee to make sure the accommodation plan is meeting their needs. If an employee's needs change or an urgent concern arises, the accommodation may require adjustment or modifications.

Be sure to document any changes made to the accommodation. In fact, employers to keep detailed records documenting the entire accommodation process. These records must be kept private and confidential.

Flexibility and ongoing communication are key to this process.



TIPS FOR ACCOMMODATION

The following information offers some helpful tips for employers to provide and maintain effective workplace accommodations.

- **Respond promptly to accommodation requests.** Employees should make accommodation requests with as much advance notice as possible. And employers should respond promptly. It is important to avoid delays throughout the accommodation process by addressing issues right away. Asking for medical early in an accommodation can also help avoid delays.
- **Seek confirmation and clarification of requirements.** For disability-based accommodation requests, confirming the specific requirements and limitations of an employee can usually best be obtained through medical notes. Ask for clarification when medical information is vague.
- **Consider all accommodation requests.** The employer must act in good faith and try to meet the accommodation needs of employees. It may be helpful to start by assuming you will be able to implement the accommodation, then do the planning to see how it will be done. This mental exercise will help uncover potential problem points. Only reject accommodation options for objective reasons.
- **Put everything in writing.** Document all steps you take as an employer during the accommodation process. Where conversations with an employee are verbal, follow up with an email confirming what was discussed/decided. Even simple accommodations can become more complex over time, so document matters from the very beginning.
- **Be creative.** Experiment. Try new options. Then try again. In complex cases of disability, job requirements, and work environment, finding satisfactory accommodation arrangements can be difficult. The parties should be willing to try different forms of accommodation in their search for an appropriate and durable arrangement.
- **Monitor the accommodation arrangements.** Accommodations should be expected to change over time. All parties should understand that accommodation arrangements are subject to change. Sometimes, employers should schedule periodic reviews of accommodation agreements or arrangements. Often, an employee's medical situation changes – they recover or, sometimes, their condition worsens. Other times it is the needs of the employer that change.
- **Communication and cooperation are key.** Successful accommodations require the active participation of the employee and the employer (and sometimes the union too). Lack of cooperation can lead to the failure of accommodation. Communication is key. And trust is essential for honest communication. Sometimes, an employer must be persistent in order to establish clear channels of communication.



ESTABLISHING ACCOMMODATION BEST PRACTICES

Develop an accommodation process

To help foster an inclusive and understanding workplace, employers should develop an accommodation process. It is always a good idea for the process to be documented and distributed to all employees so they know how to request accommodation.

The process or policy may:

- Identify who accommodation requests should be made to
- Detail how accommodation requests should be submitted – in person, by email, via accommodation form(template)
- Explain that management will arrange a meeting to talk with the employee requesting accommodation
- Identify if and/or when documentation is needed to substantiate an accommodation request
- Clarify the rights and responsibilities of all parties involved in the accommodation process
- Outline steps the employer will take to maintain the employee's privacy, as well as guideline the employer will use to monitor and accommodation plan

Provide accommodation training for management, supervisors, and HR staff

Employers should train management, supervisors, and human resources staff on how to deal with accommodation requests and how to have conversations about accommodation with employees.

They should be trained to:

- Have informative, safe conversations with staff about accommodations
- Explain the organization's accommodation process and procedures
- Support staff members seeking accommodation, as well as those being accommodated
- Understand they need to be flexible and that accommodations require individualized approaches and assessments
- Check in with employees throughout the accommodation process
- Inform employees of potential options if accommodations change
- Understand what they can legally ask for during the accommodation process
- Support



DID YOU KNOW: Many employees are not fully informed and do not understand various aspects of accommodation. These practices may help employers create a work environment in which accommodations are normalized and the accommodation process is understood by everyone.



ACCOMMODATION: EMPLOYEE REQUEST (TEMPLATE)

Describe your restrictions, limitations, and needs. For example, “unable to lift heavy items.”

Indicate which protected characteristic(s) relate to your needs:

- Disability (physical or mental)
- Age
- Religion or creed
- Family status
- Marital status
- Sex (including pregnancy)
- Sexual Orientation
- Gender Identity
- Race or perceived race
- Place of origin
- Nationality
- Ancestry
- Colour
- Receipt of public assistance

Suggest potential options for accommodations

Explain how accommodation will help you work

How long do you require accommodations?

Date to discuss accommodation

Employee Name:

Date of Request: