

Employment Accommodation and Return to Work Operating Policy

**Centre for Leadership & Human Resource
Management**

Table of Contents

Table of Contents.....	i
Introduction	1
Purpose	1
Application and Scope	1
Principles	1
Mandatory Requirements.....	2
General	2
Employment Accommodation.....	4
Return to Work	4
Responsibilities	5
Deputy Heads.....	5
Managers	6
Employees	7
Human Resources	8
Ministry of Government Services.....	9
Glossary.....	11
Appendix 1	13

Introduction to Employment Accommodation and Return to Work

Employment accommodation (EA) and return to work (RTW) strategies are designed to promote the safe and timely return to work of employees with injuries, illnesses or disabilities. Effective EA and RTW helps all employees contribute to the achievement of the OPS's goals, in a manner that respects and recognizes the dignity and value of each employee.

Effective EA and RTW strategies involve the cooperation, participation and partnership of all OPS employees, including managers, employees in need of EA or RTW, their co-workers, human resources professionals and bargaining agent representatives where appropriate. All workplace parties take an active role, as appropriate, to ensure the success of EA and RTW. Effective EA and RTW supports the OPS core values, including diversity, fairness and collaboration.

Purpose

The purpose of this policy is to ensure that the Ontario Public Service (OPS) as Employer provides timely and effective [employment accommodation](#) and return to work for employees with injuries, illnesses or disabilities.

Application and Scope

This policy applies to all employees appointed under the Public Service Act, and to the ministries and agencies, that appoint such employees. It also applies to OPS job applicants, with respect to accommodation during the recruitment process only.

Principles

Employment accommodation for people with disabilities is a fundamental part of the right to equal treatment under the Human Rights Code, regardless of:

- Whether or not the accommodation or return to work creates operational inconvenience
- The cost associated with the accommodation, as long as the cost does not impose undue hardship on the employer
- Whether or not others in the workplace are understanding about the employee's disability and its impacts

- The employee's performance rating or popularity with others in the workplace.

The OPS as Employer has the right to ensure that accommodation results in an employee performing meaningful work of benefit to the OPS.

Accommodation is intended to enable an employee to perform the essential duties of a particular job/assignment. Where possible, this will be the employee's home job, but it may instead be a reassignment made for accommodation purposes.

Employment accommodation must be individualized.

Every employee with a disability has different needs, and each job or work situation is different. Where possible, accommodation involves finding a solution that is adapted to both the employment accommodation needs of the employee and the essential duties of the job.

Accommodation and return to work efforts must be timely, in order to attempt to maintain the employee's livelihood, productivity, self-esteem and work readiness.

Employment accommodation and return to work must be implemented in a way that respects the employee's dignity, which includes:

- the employee being fully included as a participant in the accommodation and return-to-work planning process;
- support of the employee's full participation in the workplace and his/her independence, self-esteem and reputation;
- respect for the employee's accommodation and return-to-work needs and the confidentiality of the employee's health information.

Accommodation is a partnership between the manager, the employee, and in most situations for represented employees, the bargaining agent.

- Case law establishes that the employer has a duty to accommodate and the bargaining agent has a duty to cooperate with respect to accommodation.
- The employee also has an [obligation to assist and cooperate](#) in his/her accommodation.
- The parties work together when the employee needing accommodation requests bargaining agent involvement, or when the accommodation may have an impact on the collective agreement and/or on the rights of other represented employees.

Mandatory Requirements

General

- Employment accommodation and return-to-work opportunities must be provided to employees with disabilities, short of undue hardship, in accordance with legal and collective agreement obligations, and the principles of this policy. Applicable laws include the [Human Rights Code](#), [Workplace Safety and Insurance Act](#), [Ontarians with Disabilities Act, 2001](#), and [Accessibility for Ontarians with Disabilities Act, 2005](#)
- Employment accommodation in relation to the recruitment process must be offered to OPS job applicants (e.g., at the time of invitations to interview), and provided if requested.
- Accommodation efforts normally follow the following sequence. (See flowchart in Appendix 1.):
 - Accommodate within the employee's own job first.
 - If the employee cannot be accommodated to perform the essential duties of his/her own job without creating undue hardship, reassign ('[health reassignment](#)') the employee within the ministry to an assignment that meets the following criteria, if such an assignment is available;
 - employee is minimally qualified and can perform the essential duties of the assignment with appropriate accommodation;
 - assignment meets any applicable salary and geographic parameters;
 - assignment is to a position represented by the employee's current bargaining agent.
 - Where an initial search determines that there are no such available opportunities in the employee's ministry, an OPS-wide search is conducted, concurrent with a continuing search in the home ministry. Priority should be given to positions represented by the employee's current bargaining agent. If the only position available is represented by another bargaining agent, the potential reassignment will be discussed with the current and potential bargaining agents prior to placement.
- Managers must explore the full range of employment accommodation options, creatively and in cooperation with the employee, before determining that an employee's disability-related needs cannot be accommodated. This includes, among other options, job modification, temporary assignments, graduated return to work, and health reassignment to another position (in the home ministry or another ministry).
- Employees' health and disability-related information must be treated with the utmost confidentiality, in accordance with [OPS Health Information Program](#). Such information must only be shared on a strict need-to-know basis, and in addition can only be shared outside the OPS with the employee's specific written consent, except where provided by law.

- Accommodation and return-to-work efforts must be documented and kept up-to-date in order to provide a clear record of what options were considered, as well as what decisions were made and why.
- Managers and supervisors must ensure a supportive work environment for accommodation and return to work.

Employment Accommodation

- Employment accommodation must be provided to ensure the employee is able to participate in employment with dignity. In support of the Ontarians with Disabilities Act, 2001 (ODA):
 - Ministries must ensure that managers and supervisors undergo training in fulfilling the government's ODA obligations related to accessibility in employment.
 - The OPS must inform its employees of rights and obligations under the ODA with respect to accessibility in employment.
 - Ontario Shared Services will reimburse ministries, through the [Employment Accommodation Fund](#), for eligible employment accommodation expenses that the ministry has incurred, and for which the ministry has submitted a complete application.
- Before committing to accommodation solutions that may be inconsistent with the collective agreement and/or on the rights of other represented employees, the ministry HR branch must seek advice from Employee Relations Division, MGS, regarding discussions with the affected bargaining agent(s).
- When an employee is relocated as a result of a health reassignment, at the request of the ministry, the eligibility for and extent of reimbursement of the employee's relocation expenses will be determined in accordance with the [Relocation Expenses Directive](#).

Return to Work

- An employee's home ministry is responsible for return-to-work efforts on an ongoing basis, until the employee is permanently reassigned to another ministry or ceases to be employed by the OPS.
- When an employee is absent from the workplace for an extended period due to injury, illness or disability, the ministry must not permanently fill the employee's home job for:
 - 30 months from the date the employee stopped working, (for employees receiving LTIP benefits), and
 - 24 months from the date the employee stopped working, for other cases (e.g., employees returning from WSIB absences)
 in order to leave the job available for the employee's return to work.
- If an employee is on a temporary assignment or secondment when s/he leaves work due to injury, illness or disability, the ministry to which the employee has been seconded/temporarily assigned is responsible for return

to work to the secondment position/temporary assignment for the duration of the secondment. The employee does not have the right to have his/her assignment/secondment extended beyond its scheduled termination date.

- For unclassified employees who have sustained a work-related injury, illness or disability, the ministry is responsible for re-employing the employee up to the scheduled contract termination date. An unclassified employee does not have the right to have his/her appointment extended beyond its scheduled termination date.
- Employment opportunities designed to gradually increase the employee's capacity to perform the essential duties of their home job (e.g., temporary 'work hardening' assignments, WSIA and LTIP rehabilitative employment opportunities, etc.) must be provided, where possible, for employees who are medically cleared to return to work and restrictions have been identified that support a rehabilitative employment opportunity . These opportunities must be provided in a manner that is responsive to the individual needs of employees.

Responsibilities

Deputy Heads

Deputy heads are responsible for:

- providing leadership in creating and maintaining workplaces that support and facilitate employment accommodation and return to work;
- ensuring that managers implement this policy;
- ensuring that managers and supervisors receive training in fulfilling the government's obligations with respect to accessibility in employment, pursuant to the Ontarians with Disabilities Act, 2001;
- ensuring that managers and others responsible for implementing this policy have the appropriate knowledge, skills, processes and resources;
- ensuring that all employees are provided information about the rights and obligations of the government with respect to accessibility in employment, pursuant to the Ontarians with Disabilities Act, 2001;
- reviewing ministry practices, to ensure that employment barriers to people with disabilities are prevented where possible, or identified and removed, in accordance with the Ontarians with Disabilities Act, 2001, and the Human Rights Code;
- ensuring that the ministry does not request an OPS-wide health reassignment unless the ministry has reviewed and considered internal alternatives available at the time

- ensuring that the ministry accepts health reassignees from other ministries, as long as the employee is minimally qualified and his/her accommodation needs can be met, short of undue hardship.

Managers

General responsibilities:

- leading and maintaining a work environment that promotes respect, and supports employees who need accommodation or return-to-work support;
- informing employees about their rights, entitlements, options and responsibilities related to accommodation and return to work;
- safeguarding confidentiality of employees' health information;
- Seeking advice, guidance and support from human resources professionals, whenever necessary;
- ensuring that all job applicants are made aware of the availability of employment accommodation during the recruitment process, and are provided accommodation, short of undue hardship, when they request it ; and
- providing and paying for documents prepared by their work units, in alternate formats, that OPS employees with disabilities may use.

Managing specific employment accommodation and return to work situations:

- working cooperatively with employees (and their representatives, where necessary) to develop accommodation and return-to-work plans;
- obtaining information and assistance, as appropriate and with the employee's consent, about:
 - the employee's capabilities/limitations/needs – from the employee and if appropriate, medical practitioners, LTIP carriers, the Workplace Safety and Insurance Board (WSIB), and/or other assessment specialists in health professions;
 - accommodation and return-to-work options – from the employee and if appropriate, rehabilitation professionals (including LTIP carriers, WSIB), external vendors and specialists in employment accommodation, and/or internal staff in areas such as human resources, information technology and procurement;
- consulting human resources staff and obtaining approval before implementing an accommodation that may be inconsistent with collective agreement provisions;
- implementing and adhering to accommodation/return-to-work plans;

- documenting accommodation/return-to-work plans, including information about discussions held, options considered, reasons for acceptance or rejection of options, and actions taken;
- paying for accommodation-related expenses, and requesting human resources staff to help arrange reimbursement of eligible expenses from the Employment Accommodation Fund for People with Disabilities, when appropriate;
- ensuring that employees who are incapable of performing the essential duties of their home job, despite best efforts to accommodate them, are:
 - advised of benefits entitlements in a timely manner;
 - only retained on salary to the extent of their eligibility to be paid;
 - put forward for reassignment to another position, when appropriate.

Monitoring and follow-up:

- maintaining contact with employees who are absent from work because of injury or illness, to communicate concern for the employee's health, obtain information about expected return-to-work date and anticipated accommodation needs, and prepare for his/her timely and safe return;
- monitoring and revising accommodation/return-to-work plans in cooperation with the employee to respond to changing employee and operational needs;
- advising accommodated employees as early as possible about upcoming operational changes that may cause the employee to need new or different accommodation;
- addressing co-worker cooperation issues throughout the employment accommodation process.

Employees

Employees who need disability-related accommodation or are absent from work due to injury or illness are responsible for:

- identifying to the manager as soon as possible any accommodation needs that relate to their ability to perform job duties or participate fully in the workplace;
- cooperating with requests for health information about capabilities, limitations and prognosis, and with independent medical evaluations, when required, to provide clear and sufficient information to support employment accommodation or return to work;
- collaborating with the manager in developing an employment accommodation and/or return-to-work plan;

- accepting an accommodation/return-to-work solution that meets the employee's accommodation needs and treats the employee with dignity, even if the solution is not necessarily the one the employee would have preferred;
- adhering to the accommodation or return-to-work plan, monitoring how well it is working, and advising the manager promptly about any difficulties encountered;
- advising the manager promptly of any changes in health/disability status that may require changes in an existing accommodation/return-to-work plan; and
- completing required documentation where the employee is being considered for a reassignment for health/disability reasons (e.g., identify skills and competencies).

In addition, employees who are absent from work due to injury or illness, and who may not be able to return directly to their regular duties or working hours without accommodation, are responsible for:

- maintaining ongoing communications with their manager on recovery progress, anticipated return-to-work date, potential employment accommodation needs, and work scheduling needs to accommodate treatment/rehabilitation. Information about anticipated return-to-work date and accommodation needs should be provided as early as possible in order to give the manager and employee time to prepare a return-to-work/EA plan before the anticipated date of return. If sufficient advance notice is not provided, it may not be possible for the manager to make accommodation arrangements in time for the employee to return on the anticipated date.

All employees are responsible for:

- supporting the employment accommodation and return to work of other employees, including accepting some change in duties when necessary to accommodate a co-worker's needs; and
- treating with dignity and respect other employees who require accommodation and/or are returning to work after an absence due to injury, illness or disability.

Human Resources

Human resources are responsible for:

- providing advice and coaching to managers and supervisors about this policy and its implementation; relevant legislation and collective agreements; and related benefits and entitlements, including LTIP and Workplace Safety and Insurance Act (WSIA) entitlements;
- seeking advice from subject matter experts, when necessary;
- safeguarding confidentiality of employees' health information;

- carrying out ministry-level administrative responsibilities with respect to the Employment Accommodation Fund;
- conducting timely searches for possible health reassignments within the ministry, when an employee cannot be accommodated in his/her own position
- working with MGS to help identify cross-ministry health reassignments available in their ministry;
- assisting managers in assessing employee skills and competencies against the requirements of vacancies available in their ministry;
- determining when the conditions for requesting an OPS-wide health reassignment exist, coordinating the provision of required documentation, and representing the ministry on all related matters;
- assisting managers with referrals and requests for assistance from external specialists, in relation to assessment of employee capabilities and needs; rehabilitation planning; and employment accommodation solutions;
- consulting with the Employee Relations Division (ERD) on any situation when a proposed accommodation solution would be inconsistent with collective agreement provisions and/or on the rights of other represented employees, and either discussing the matter with the bargaining agent(s) concerned or allowing ERD to do so, as ERD determines; and
- providing or arranging other related services, as determined by the ministry – e.g., education/information for managers and employees, resolution of disputes related to employment accommodation or return to work.

Ministry of Government Services

The Ministry of Government Services is responsible for:

- maintaining and revising this policy and related guidance and tools;
- providing advice to ministries about the interpretation and application of this policy, as well as related legislation, collective agreements and programs;
- working with ministry HR branches to identify cross-ministry health reassignments;
- developing, related OPS-wide performance measures, specifying any reporting requirements, and monitoring policy implementation;
- reviewing OPS-wide human resources policies and practices to help prevent, and otherwise identify and remove any systemic barriers facing employees and job applicants with disabilities;
- consulting with bargaining agents on a timely basis whenever a proposed accommodation would conflict with collective agreement provisions, or approving consultation at a ministry level;

- providing advice on OPS-wide training with respect to this policy;
- providing training content for managers that meets the government's obligation under the Ontarians with Disabilities Act, 2001;
- ensuring delivery of training for managers and supervisors that meets the Government's obligation under the Ontarians with Disabilities Act, 2001;
- safeguarding confidentiality of employees' health information;
- administering the OPS [Employment Accommodation Fund](#) for people with disabilities, which reimburses (funding permitted) eligible expenses related to employment accommodation for people with disabilities;
- providing information and advice to employees and managers about OPS benefits entitlements related to work absences due to injury, illness or disability;
- providing procurement advice and assistance that facilitates the timely procurement of goods and services required for accommodation, including the development and management of OPS-wide vendors of record (VORs) for EA and RTW-related services and expertise;
- preventing and otherwise identifying and removing systemic information technology barriers to the productivity and full participation of employees with disabilities, where appropriate;
- providing advice and assistance to managers and employees in accommodating the information technology-related needs of individual employees with disabilities; and
- maintaining information technology and procurement policies that support and facilitate the productivity, full participation, and timely accommodation of employees with disabilities, where technology can be utilized to assist the employee to attain his/her maximum contribution and participation in the workplace.

Glossary

Disability: Under section 10(1) of the Human Rights Code, “Disability” means :

- (a) 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, including diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, 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,
- (b) a condition of mental impairment or developmental disability;
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997 (“handicap”)

“Disability” does not include a minor or common medical condition such as the cold, flu or minor backache that arises from the stresses, pains and inconveniences of everyday life.

“Disability” may be temporary, short-term, long-term or permanent.

Employment Accommodation: an individualized process by which the employer removes barriers in the workplace that keep an employee from participating equally in all aspects of employment because of a prohibited ground of discrimination under the Human Rights Code (e.g., age, sex, disability). Employment accommodation (EA) must be done in consultation with the individual requiring the accommodation and be tailored to meet the current and known needs. Employment accommodation may be temporary (short-term) or permanent (long-term), depending on the restrictions and abilities of the employee, and the requirements of the job. Examples of EA include: workstation adjustments, job redesign, policy and practice adjustments; technical aids/assistive devices, human support; alternate formats, and building modifications.

Employment Accommodation Fund (EAF) for People with Disabilities: This central fund, managed by Ontario Shared Services, helps to reimburse managers for eligible services and equipment required for accommodation for job applicants and employees with disabilities. While the EAF may not be available to cover all EA-related expenses (e.g. due to funding/demand issues), the OPS must still provide appropriate EA. [Website](#)

Health Reassignment: is the process of reassigning an employee to another position (either in his/her home ministry or elsewhere in the OPS) who is temporarily or permanently incapable of performing the essential duties of his/her home position because of disability, despite best efforts by the ministry to accommodate the employee's needs, short of undue hardship.

Undue Hardship: Employers must accommodate an employee's disability-related needs that arise specifically within the employment context, unless it can be demonstrated that providing the accommodation would cause undue hardship for the employer. The factors to be taken into account in assessing undue hardship in the OPS are:

- cost (Note: the OPS as a whole is considered to be the employer);
- outside sources of funding, if any;
- health or safety factors, such as when a proposed accommodation would unduly endanger the safety of the employee and/or other people.

Factors that cannot be used to justify undue hardship include business inconvenience, employee morale, and customer preference.

Note: The OPS Employment Accommodation Fund for People with Disabilities reimburses ministries for eligible accommodation expenses.

If you have any questions or require further information about this document, please contact your Ministry Human Resources Branch

Appendix 1

Employment Accommodation / Health Reassignment Process Flowchart

Accommodation within the employee's own job

Reassignment to another position

