

QUICK TIPS Accommodation

Accommodation is an individualized process by which the employer removes barriers in the recruitment and selection process, as well as in the workplace.

REASONABLE ACCOMMODATION:

Human Rights legislation requires that employers have a duty to accommodate by providing reasonable accommodation to support the special needs of all employees, for example, improving accessibility to the workplace, religious observance, and alternative work arrangements. "Reasonable" imparts a duty to accommodate unless it would impose undue hardship on the employer.

UNDUE HARDSHIP:

Is determined on a case-by-case basis taking into consideration many factors which include, safety, financial cost, employee morale, operational requirements and the impact on collective agreement provisions. It is recognized that the use of the term "undue" implies that some hardship is acceptable.

Departments should consult Staff Relations when assessing whether the test of "undue hardship" has been met.

A. Selection Process

Accommodation in the selection process is meant to remove barriers that keep an applicant or candidate from fairly competing for an employment opportunity for which they are qualified. The requirement to provide accommodation in the selection process is based on the prohibited grounds of discrimination under the Nova Scotia Human Rights Act. The following guidelines should be followed:

- all interviews should be held in accessible locations;
- all candidates identified for an interview should be asked if they need any accommodations when they are contacted for an interview;
- accommodations may, for example, include sign-Language Interpretation for candidates who are Deaf, provision of electronic copies of job-descriptions, modification of the day or time of the interview if religious observance, accessible transportation or child care are at issue, provision of interview questions in braille, large print or electronically if questions are provided to all candidates prior to the interview;
- candidates may not be asked during an interview whether they need any accommodations to fulfill the requirements of the position;
- inappropriate questions should not be asked during an interview, please refer to the Nova Scotia Human Rights Commission publication "For Employers: A guide for drafting job application forms and interview questions"
<http://www.gov.ns.ca/humanrights/publications/default.htm>
- accommodations can only be discussed in an interview if they are raised by the candidate;

- if testing is require candidates must be notified beforehand in case they need to bring a technical aid to fully participate in the testing;
- Upon offer of employment then the successful candidate can be asked whether they need any accommodations to fulfill the duties of the position.

B. On the Job

The duty to accommodate imposes a positive duty to accommodate the workplace to provide an employee protected under the Human Rights Act with an opportunity to perform a productive job. The duty to accommodate is to the “point of undue hardship”.

The process of accommodation is an individualized process. “Undue hardship” is a variable standard and must be approached on a case-by-case basis taking into consideration many factors including, health or safety risk, financial cost, size and resources of the Employer, employee morale, disruption to the workforce and impact on collective agreement provisions. It is recognized that the use of the term "undue" implies that some hardship is acceptable.

Departments should consult with their HR departments and PSC Staff Relations when assessing whether the test of "undue hardship" has been met.

Some examples of reasonable accommodation could include:

- provision of technical aids and accessibility to parking, buildings, offices, washrooms, etc. to accommodate persons with physical disabilities;
- provision of print materials in alternate formats to accommodate persons who are blind or vision impaired;
- changes to a work schedule to accommodate cultural or religious differences;
- modification or reassignment of duties.

In many cases, a manager in consultation with his/her employee and Human Resources will be in a position to develop and implement reasonable accommodations. In more complex cases, managers, line HR professionals, Occupational Health and Safety Consultants, PSC Staff Relations Consultants and the Union will be engaged in the process.

The following process should be followed when dealing with an issue of workplace accommodation:

1. Establish that a “Duty to Accommodate” Exists – The employee’s request for an accommodation must be based on a protected ground under human rights legislation.
2. Medical Assessment – As the majority of accommodation cases relate to physical or mental disability, the first step in dealing with an issue of accommodation is most usually a medical assessment. In some instances, an occupational or functional assessment should be completed. The medical information must be adequate to understand and facilitate the accommodation (for

example, limitations, capabilities, prognosis, fitness to return to work, duration of any limitations or restrictions).

In cases where the disability and the accommodation is obvious (E.G. the employee is a wheelchair user and requires access or the employee is Deaf and requires an Interpreter) then a medical assessment will not be necessary. In these instances the individual, working with their Manager, Human Resource representative and the Diversity Unit of the Public Service Commission are in the best position to identify the appropriate accommodations.

3. The Employee's Position – Based on the medical information, the Employer must consider whether the employee's position can be modified/alterd to accommodate to the point of undue hardship the employee's limitations or restrictions while enabling the employee to be productive in the workplace.

4. Departmental Options -- In the event the employee cannot be accommodated in his/her position without the Employer enduring undue hardship, the Employer must canvass other opportunities within the Department.

5. Options outside the Employee's Department – In the event the employee cannot be accommodated within his/her Department, the Employer must consider opportunities across all government departments. The Public Service Commission will work with the employee and any other players to facilitate the accommodation.

The Public Service Commission administers the Diversity Accommodation Fund which Departments or Offices can access should there be a need to accommodate individual employees. Contact the Diversity Unit of the PSC's Strategic Support Services Division or visit the PSC's website for more information: www.gov.ns.ca/psc/diversity