



# **Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service**

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# Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service

## Preamble

The Treasury Board and the Public Service Commission are committed to developing an inclusive, barrier-free work environment in which all persons have equal access to opportunities in the federal Public Service, appointments are based on merit and all employees feel included and valued. This policy outlines the principal steps necessary to attain the goal of a representative Public Service that includes persons with disabilities.

This policy is consistent with fundamental Canadian legal principles. The Canadian Charter of Rights and Freedoms guarantees certain democratic rights to all persons and prohibits discrimination on the basis of physical or mental disability. In several cases, Canadian courts have emphasized that accommodation is an essential means of ensuring the equal participation of all persons in all sectors of Canadian society.

Under the Canadian Human Rights Act, employers must accommodate individuals and groups of individuals to the point of undue hardship considering issues of health, safety and cost.

The Employment Equity Act requires the reasonable accommodation of persons with disabilities and others within the federal workplace. The Act also requires employers to identify and remove barriers to the employment of persons in designated groups.

Under the Employment Equity Act, the Treasury Board and the Public Service Commission share employer responsibilities to the extent of their authority under the Financial Administration Act and the Public Service Employment Act. This policy therefore sets out the requirements for the Treasury Board, the Public Service Commission and their delegates.

Annex A provides guidelines to help in the interpretation of this policy. These guidelines may be updated periodically based on experience in applying the policy.

## Effective date

This policy becomes effective June 3, 2002. It replaces the Treasury Board Policy on the Provision of Accommodation to Employees with Disabilities dated July 1, 1999.

## Policy objectives

This policy's goal is to ensure the full participation of persons with disabilities in the federal Public Service whether as candidates for employment or as employees.

## Policy statement

It is the policy of the Treasury Board and the Public Service Commission to create and maintain an inclusive, barrier-free environment in the federal Public Service to ensure the full participation of persons with disabilities. This policy is to be implemented by:

- identifying and removing barriers to employment, career development and promotion of persons with disabilities unless doing so would result in undue hardship
- designing all employment systems, processes and facilities to be accessible by building accommodation into workplace standards, systems, processes and facilities and
- accommodating individuals when such barriers cannot be removed. Such accommodation must be made to the point of undue hardship taking into consideration issues of health, safety and cost. Accommodation must also be based on the circumstances of each case and must respect an individual's right to privacy and confidentiality.

## Application

This policy applies:

- a. with respect to accommodation within the workplace, to all departments and agencies and other portions of the Public Service listed in Part 1 of Schedule 1 of the Public Service Staff Relations Act for whom the Treasury Board is the employer and
- b. with respect to accommodation during staffing processes, to all departments and agencies and other portions of the Public Service for which the Public Service Commission has exclusive authority to appoint persons.

## Definitions

In this policy:

Accommodation/accommodate (adaptation/adapter) – refers to the design and adaptation of the work environment to the needs of as many types of persons as possible and, according to the Supreme Court of Canada, refers to what is required in the circumstances of

each case to avoid discrimination. Several examples of accommodation are listed in the guidelines attached to this policy.

Adaptive technology (technologie d'adaptation) -- consists of work-related devices or equipment that allow employees with disabilities to participate as fully as possible in the workplace and include items such as magnification software and hardware, voice recognition software and augmentative communication devices.

Attendant services (services auxiliaires) -- refers to the provision of services to persons with disabilities who require assistance with the duties of their position, as well as assistance with activities of everyday living during the employees' hours of work.

Barriers (obstacles) -- are physical barriers as well as formal or informal policies and practices that restrict or exclude persons in the designated groups from employment opportunities in the federal Public Service.

Bona fide occupational requirements (exigences professionnelles justifiées) -- according to the Supreme Court of Canada, are those requirements that:

- the employer has adopted for a purpose or goal that is rationally connected to the functions of the position,
- the employer has adopted in good faith, in the belief that they are necessary to fulfil the purpose or goal and
- are reasonably necessary to accomplish the purpose or goal in the sense that the employer cannot accommodate persons with the characteristics of a particular group without incurring undue hardship.

More information on the application of this definition is contained in the Guidelines attached to this policy.

Candidates (candidats) -- includes applicants from outside the federal Public Service, as well as existing employees who are participating in a staffing process.

Employees (employés) -- includes full-time, part-time, casual, seasonal, term and indeterminate employees.

Employment and employment-related opportunities (chances d'emploi et les possibilités liées à l'emploi) -- includes appointments, promotions, deployments, secondments, assignments, training and career development opportunities.

Facilities (installations) -- includes premises and equipment.

Flexible work arrangements (modalités de travail flexibles) -- include but are not limited to telework and compressed work weeks.

Persons with disabilities (personnes handicapées) -- as defined by the Employment Equity Act, are persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who:

- consider themselves disadvantaged in employment by reason of that impairment or
- believe that an employer or potential employer likely would consider them disadvantaged in employment by reason of that impairment.

These would include persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

For the purpose of this policy, persons with disabilities do not have to fall strictly within this definition. Examples of types of disabilities that may require accommodation are listed in the attached Guidelines.

Staffing and selection processes (processus de dotation et de sélection) -- include open, closed or without competition staffing actions that result in a permanent or temporary appointment or deployment. Staffing and selection processes encompass all related activities such as establishing qualifications, advertising, assessment, giving notice that an appointment or deployment has been made, recourse and disclosure, as well as any related communications with candidates.

Systems (systèmes) -- includes information systems and employment systems (such as policies, practices, directives and guidelines).

Work-related events (activités liées au travail) -- includes meetings, training programs, conferences, retreats, seminars, social events and information sessions, whether conducted inside or outside the workplace.

## Policy requirements

The Public Service Commission and/or its delegates will:

- ensure that Standards for Selection and Assessment do not discriminate on any prohibited ground of discrimination, including disability, unless the requirement is a bona fide occupational requirement,
- ensure that all employment opportunities are advertised in an accessible format,
- ensure that assessment methods or tools used in the staffing process, including tests and interviews, accurately assess the qualifications required, do not constitute barriers and assess candidates fairly,
- ensure that the second language evaluations and language training programs do not contain barriers,
- inform all candidates of this policy and the procedure for obtaining accommodation during the staffing process,
- inform all candidates, in a timely fashion, of the type or nature of tests or other evaluation methods that will be used in the selection process to allow the candidates to make an informed request for appropriate accommodation,
- if necessary, consult appropriate health care professionals and others, with the candidate's consent, to determine the accommodation appropriate to that person,
- respect candidates' right to privacy and confidentiality, and
- accommodate individual candidates with disabilities up to the point of undue hardship.

Candidates in a selection process must:

- inform the Public Service Commission or departmental staffing representative of any accommodation required in a timely fashion so that appropriate accommodation can be arranged and
- collaborate with departmental representatives in finding the most appropriate accommodation.

The Treasury Board Secretariat will:

- inform all departments of this policy,
- provide interpretation and guidance to departments with respect to the requirements of this policy, and
- undertake a comprehensive review of the provisions and operation of this policy within five years of its coming into effect.

Deputy heads are responsible for the implementation of this policy within their departments. They and their delegates must:

- create and maintain an inclusive, barrier-free work environment that is accessible,
- inform all employees of this policy and the procedure for obtaining accommodation,
- ensure that employment opportunities are advertised in an accessible format,
- ensure that all managers within the department abide by this policy,
- make available the resources necessary for implementing this policy,
- examine all systems to identify any barriers to employees with disabilities, and remove those barriers,
- when barriers cannot be removed, accommodate individual employees with disabilities up to the point of undue hardship,
- consult employees with disabilities, including employees with learning disabilities, with respect to:
  - any design, changes or upgrades to physical structures, new or existing systems or equipment so that the workplace is accessible to employees with disabilities, and
  - the planning and design of work-related events and conferences so that all events and opportunities are accessible to employees with disabilities,
- provide training to employees with disabilities on the use of any new or upgraded equipment or systems,
- ensure that employees with disabilities are provided with information in a timely fashion and a usable format,
- after general barriers have been removed and general accommodation measures have been put in place, proceed with individual accommodation requests of persons with disabilities by:
  - consulting with the employee to identify the nature of the accommodation,
  - if necessary, consulting appropriate medical and rehabilitation advisors and others, with the employee's consent, to determine the accommodation appropriate to that person and
  - accommodating the employee,
- consult and collaborate with bargaining agents or other employee representatives where accommodation affects other employees or where the employee being accommodated requests that the bargaining agents or other employee representatives be consulted,
- provide and pay for technical aids, equipment and services for employees with disabilities as well as repairs to such aids and equipment,
- respect individuals' right to privacy and confidentiality and
- allow employees with disabilities to retain technical aids, equipment and support materials should they move to another position within the federal Public Service and accommodation is still required.

Employees must:

- inform their supervisors of their employment-related needs,
- collaborate with the department or its representatives in finding the most appropriate means to accommodate their employment-related needs, and
- notify the department when attendant or other services, technical aids or equipment are no longer needed, and return the equipment.

## Monitoring

The Treasury Board Secretariat will assess and evaluate the effectiveness and implementation of this policy in accordance with the Policy on Active Monitoring.

The Public Service Commission will also monitor the application of this policy as part of its overall active monitoring of the federal Public Service staffing system.

Departments and agencies will provide early notice to the Treasury Board Secretariat and/or the Public Service Commission of significant issues arising from the implementation of this policy.

## References

Access to Information Act  
Canada Labour Code, Part II  
Canadian Charter of Rights and Freedoms  
Canadian Human Rights Act  
Employment Equity Act and Regulations  
Financial Administration Act  
Official Languages Act

Privacy Act  
Public Service Employment Act and Regulations  
Public Service Staff Relations Act  
Communications Policy  
Disability Insurance Plan for Public Service Employees  
Personnel Psychology Centre Guidelines for Assessment of Persons with Disabilities  
Policy on Alternate Formats  
Policy on Language Training  
Policy on the Disposal of Surplus Moveable Crown Assets  
Policy on the Staffing of Bilingual Positions  
Public Service Commission's Standards for Selection and Assessment  
Public Service Management Insurance Plan (Long-Term Disability)  
Real Property Accessibility Policy

## Enquiries

Enquiries should be directed to human resource or employment equity personnel in your department or agency. They may review questions of policy interpretation or clarification with the Employment Equity Division of the Treasury Board of Canada Secretariat or with the Public Service Commission.

Information may also be obtained from the Treasury Board Secretariat Employment Equity Division's Web site at the following address: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12543> or from the PSC Web site at <http://www.psc-cfp.gc.ca>

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## Annex A - Guidelines

These guidelines are not intended to be exhaustive, but offer some suggestions on how to interpret and implement this policy.

As stated in the preamble, the Treasury Board and the Public Service Commission are committed to an inclusive and barrier-free work environment in which all persons have equal access to opportunities in the federal Public Service and appointments are based on merit. Creating such a work environment requires that differences are accommodated before the merit assessment is undertaken and that assessment and evaluation tools are inclusive and barrier-free.

According to the Supreme Court of Canada, barriers to participation for persons with disabilities must be eliminated from policies, rules, standards and practices at the design stage. Employers cannot rely on accommodating individuals after the fact but must build accommodation into their policies or practices, as far as possible, to the point of undue hardship. If provision for accommodation has not been incorporated into the policy or standard then the policy or standard is not a bona fide occupational requirement.

The corporate culture of a department or agency can ensure that persons with disabilities feel welcome in that environment. Training should be made available to managers and others, such as selection board members, on the duty to accommodate.

The accommodation process should be as uncomplicated as possible and should respect the dignity and privacy of the person being accommodated. This can be accomplished if, at the time any person applies for a position, he or she is asked whether or not accommodation is required. The inquiry should be made again at the time of appointment or at the beginning of any other staffing process.

Under certain circumstances, employers may be required to offer accommodation to an employee even though the employee has not requested accommodation. Such situations should be handled with the utmost consideration for the privacy and dignity of the employee and managers may wish to obtain confidential, expert advice from within their departments or from the Treasury Board Secretariat or the Public Service Commission before proceeding.

A request for accommodation need not be in writing, but should be communicated as clearly and specifically as possible. The person to whom the request has been directed should do the following.

1. Determine the type of accommodation required, based on information provided by the candidate or employee.
2. If the candidate or employee does not know what type of accommodation is required, consult experts in the field to determine the appropriate accommodation. This could include the person's own physician, psychologist or centres of expertise within the Public Service Commission or the accommodating department.
3. Provide the accommodation based on the request of the person being accommodated, or, if necessary, on the advice of experts.

Persons requesting accommodation may be asked to provide documentation from a qualified health care professional to clarify the limitations caused by the disability and/or the type of accommodation that would be most effective. Any medical records provided should be kept strictly confidential and separate from personnel files. Requests for this type of information should come from personnel designated to deal with accommodation requests and trained to handle potentially sensitive medical information.

Departments and agencies are expected to integrate into their budgets and financial planning exercises the resources necessary to accommodate their employees. When considering cost, it should be kept in mind that in many cases the cost will be amortized over the employee's entire career. Also, there are many payment options available, include leasing, for any necessary equipment.

Departments and agencies should develop their own internal procedures for dealing with accommodation requests, including mechanisms for resolving situations where accommodation is denied. All candidates and employees should be advised of such

procedures.

Persons who are denied accommodation may also wish to use the recourse mechanisms set out in the Public Service Employment Act, or contact the Canadian Human Rights Commission.

To implement employment equity, the federal Public Service encourages and promotes members of designated groups to identify themselves. However, an employee does not have to self-identify as a person with a disability in order to be accommodated or to have accommodation offered to him or her. The self-identification process is voluntary and the information obtained from it is confidential. No one can be forced to self-identify to receive accommodation or after he or she has been accommodated.

Although this policy applies only to employees of, and candidates for positions in, the federal Public Service, managers and others are expected to abide by the spirit of the policy when dealing with other persons who work for the federal Public Service, such as students and locally engaged staff.

## Examples of Disabilities

Determining what is a disability depends on the circumstances of each case. The following have been found to be disabilities:

- blindness or other severe visual impairment
- deafness or other severe hearing impairment
- mobility impairment
- chronic pain
- environmental sensitivities
- addictions
- learning disabilities
- speech impairment
- chronic conditions, such as diabetes
- psychiatric disabilities
- developmental disabilities
- other permanent or temporary conditions that cause pain or limit or restrict activities

## Examples of Accommodation

During the selection process, a person's qualifications must be assessed after the person has been accommodated. Types of accommodation during the selection process may include, but are not limited to:

- providing information about the position in multiple formats for candidates who are blind or visually impaired,
- ensuring that applicants who are deaf or hearing impaired can make inquiries via a TTY number or fax,
- allowing extra time, where appropriate, for tests or exams and
- ensuring that the interview site is physically accessible.

Types of accommodation in the workplace may include, but are not limited to:

- attendant services,
- adaptive technology,
- changes to work sites,
- flexible work arrangements, including but not limited to telework, task modifications or other alternative work arrangements,
- converting printed matter to alternative media and reader services for employees who are blind,
- providing work space and furnishings appropriate to the nature of the disability,
- providing interpreters for deaf and hearing-impaired employees and
- adapting training programs to the needs of employees with disabilities, including those with learning disabilities.

Alternate formats can include:

- braille documents
- large print documents
- electronic versions of documents

## Other Matters

Attendant and other services

The contracting department should refer to the standard clauses established by Public Works and Government Services Canada for inclusion in contracts for attendant and other services.

Travel status

When employees with disabilities are on travel status and suitable attendant services cannot be provided, or the services of a travel companion are required, a separate contract may be necessary and the service shall be provided at the department's expense.

Parking requirements

Departments and agencies are responsible for setting parking rates for government-owned or leased parking lots. Departments

should determine whether it is appropriate to charge parking fees to employees with a disability who are unable to use public transit, and, if so, what those fees should be.