

# **Directive on the duty to accommodate**

Published: 2020-04-23

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Published by Treasury Board of Canada, Secretariat  
90 Elgin, Ottawa, Ontario, K1A 0R5, Canada

Catalogue Number: BT22-226/11-2020E-PDF  
ISBN or ISSN: 978-0-660-34638-0

This document is available on the Government of Canada website, [Canada.ca](https://Canada.ca)

This document is available in alternative formats upon request.

Aussi offert en français sous le titre : Directive sur l'obligation de prendre des mesures d'adaptation

# Directive on the Duty to Accommodate

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## 1. Effective date

- 1.1 This directive takes effect on April 1, 2020.
- 1.2 This directive replaces the *Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service* dated June 3, 2002.

## 2. Authorities

- 2.1 This directive is issued pursuant to the same authorities indicated in section 2 of the *Policy on People Management*.

## 3. Objectives and expected results

- 3.1 In addition to the objectives indicated in section 3 of the *Policy on People Management*, the objective of this directive is to develop an inclusive, barrier-free workplace in which all persons have equal access to opportunities in the core public administration.
- 3.2 In addition to the expected results indicated in section 3 of the *Policy on People Management*, the expected results of this directive are as follows:
  - 3.2.1 Candidates for employment and persons employed are treated with dignity and respect in an inclusive, barrier-free environment;
  - 3.2.2 When barriers cannot be removed, individuals are accommodated up to the point of undue hardship, taking into consideration issues of health, safety and cost; and
  - 3.2.3 Accommodations are made based on the circumstances of each case while the individual's right to privacy and confidentiality are respected.

## 4. Requirements

- 4.1 The head of human resources is responsible for the following:
  - 4.1.1 Ensuring that candidates for employment and persons employed are informed of:
    - 4.1.1.1 Their right to accommodation under the *Canadian Human Rights Act*; and

4.1.1.2 Any mandatory procedures to be followed when seeking an accommodation;

4.1.2 Ensuring that managers and supervisors are informed about their responsibilities and obligations with regard to:

4.1.2.1 Addressing individuals' accommodation needs with regard to work-related policies, practices, systems or procedures that exclude or hinder their full and equal participation in employment in the core public administration; and

4.1.2.2 The relevant confidentiality and privacy considerations.

4.2 Managers and supervisors are responsible for the following:

4.2.1 Maintaining the dignity and respect of persons employed by addressing their work-related needs without resorting to a formal request for accommodation, to the extent reasonable;

4.2.2 Satisfying the employer's legal obligation to accommodate an individual's needs when they stem from one of the grounds prohibited by the *Canadian Human Rights Act*, up to the point of undue hardship and in a timely manner;

4.2.3 Providing persons employed with work-related information, including on employment opportunities, in accessible formats;

4.2.4 Identifying the resources necessary to fulfill their duty to accommodate in their business and human resources plans;

4.2.5 Ensuring that accommodation arrangements are reviewed and updated at least annually;

4.2.6 Ensuring that persons employed are informed that they have a responsibility to respect the accommodation requirements and privacy of others;

4.2.7 Restricting access to any information about an individual's request for accommodation to the people who have a need to know. The type of information required will depend on the specific facts of each case;

4.2.8 Retaining a written record of the accommodation in accordance with relevant information management requirements, when appropriate;

4.2.9 Ensuring that the needs of individuals who may require accommodation are taken into consideration when planning or designing work-related processes, events or conferences; and

4.2.10 Consulting persons employed when there are changes to physical structures, systems or equipment so that the workplace remains barrier-free.

4.3 Persons employed are responsible for the following:

4.3.1 Informing their manager of their functional limitations or their work-related needs;

4.3.2 Providing their manager with the information necessary to identify appropriate accommodation, including information on relevant limitations and restrictions;

4.3.3 Cooperating and collaborating in good faith with their organization's representative(s) to find one or more means to accommodate such needs, taking into consideration issues of health, safety and cost;

4.3.4 Notifying their manager if their accommodation needs change; and

4.3.5 Respecting the accommodation requirements and privacy of others.

## **5. Roles of other government organizations**

5.1 This section identifies the roles of other key government organizations in relation to this directive. In and of itself, this section does not confer any authority.

### **Canadian Human Rights Commission**

5.2 The Canadian Human Rights Commission is responsible for administering the *Canadian Human Rights Act*, including the process for handling complaints of discrimination under the prohibited grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and a conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

### **Human Rights Tribunal of Canada**

5.3 The Human Rights Tribunal of Canada is responsible for adjudicating complaints referred to it by the Canadian Human Rights Commission, related to the prohibited grounds of discrimination.

### **Federal Public Sector Labour Relations and Employment Board**

5.4 The Federal Public Sector Labour Relations and Employment Board is responsible for adjudicating labour relations complaints related to issues such as refusals of accommodation

and situations in which employees believe that they have not received appropriate accommodation.

## Public Service Commission of Canada

5.5 The Public Service Commission of Canada is responsible for the following:

5.5.1 Identifying and eliminating barriers in recruitment and staffing; and

5.5.2 Providing guidance on accommodation in staffing processes.

## 6. Application

6.1 This directive applies to the persons employed and the organizations listed in section 6 of the *Policy on People Management*.

## 7. References

7.1 Legislation

- *Canadian Human Rights Act*
- *Employment Equity Act*
- *Privacy Act*

7.2 Related policy instruments

- *Policy on Privacy Protection*
- *Directive on Official Languages for Communications and Services*
- *Directive on Official Languages for People Management*
- *Accessibility Standard for Real Property*

## 8. Enquiries

8.1 For interpretation of any aspect of this directive, contact Treasury Board of Canada Secretariat Public Enquiries.

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## Appendix: Mandatory Procedures for the Duty to Accommodate

### A.1 Effective date

- A.1.1 These mandatory procedures take effect on April 1, 2020.

## A.2 Procedures

- A.2.1 These mandatory procedures provide details on the requirements set out in section 4 of the *Directive on the Duty to Accommodate*.

### Candidates seeking employment

- A.2.2 With regard to subsection 4.2, the mandatory procedures for managers when dealing with candidates are as follows:
- A.2.2.1 If, after being informed of their right to accommodation under the *Canadian Human Rights Act*, a candidate identifies an accommodation need, clarify with the candidate the nature of the barrier and the associated implications;
  - A.2.2.2 Obtain from the candidate the necessary information and documentation about any limitations or restrictions and, if applicable, any relevant professional assessments or recommendations;
  - A.2.2.3 Consult appropriate subject matter experts with regard to the accommodation measure(s), if required;
  - A.2.2.4 Inform the candidate about the proposed accommodation measure(s); and
  - A.2.2.5 Retain a record of the accommodation requested and provided in the appropriate departmental records.

### Persons employed

- A.2.3 With regard to subsection 4.2, the mandatory procedures for managers of persons employed are as follows:
- A.2.3.1 If a person employed has indicated a work-related need, clarify the nature of the barrier and the associated implications with the person employed;
  - A.2.3.2 Determine in consultation with the person employed whether the work-related need can be addressed without resorting to a formal request for accommodation, e.g., temporary change in hours of work, alternate work location, no costs associated with solution;

- A.2.3.3 Obtain from the person information and documentation about any limitations or restrictions and, if applicable, any relevant professional assessments or recommendations;
- A.2.3.4 Request additional information from the individual or obtain the individual's consent prior to seeking information from a medical practitioner or other relevant third party, in support of a request for accommodation;
- A.2.3.5 Consult internal subject matter experts with regard to the accommodation measure(s), including any related implications (e.g., security, technology, financial), if required;
- A.2.3.6 Work with employee representatives when accommodation affects other individuals or if the person employed being accommodated requests that employee representatives be consulted;
- A.2.3.7 Inform the person about the proposed accommodation measure(s);
- A.2.3.8 Provide training to individuals who have been accommodated on the use of any adjusted equipment or systems;
- A.2.3.9 Communicate information about the accommodation with the individual's colleagues only when necessary and only with the consent of the individual;
- A.2.3.10 Retain a record of the accommodation requested and provided in the appropriate departmental records; and
- A.2.3.11 Allow persons employed to retain technical aids, equipment and support materials if they move to another position in the core public administration and still require that accommodation.

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ISBN:

**Date modified:** 2020-04-01



