



Duty to Accommodate: A General Process For Managers

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Duty to Accommodate: A General Process For Managers

This tool provides managers with a general process for assessing and responding to an accommodation request. It is not legal advice.

Accommodation is to be determined on a case-by-case basis.

Managers play an important role in fostering an inclusive workplace. They need to show exemplary leadership to create a respectful, diverse and barrier-free working environment.

In doing so, managers are proactively meeting the objectives of the *Policy on People Management*, the *Directive on the Duty to Accommodate* and the *Accessible Canada Act* and its Regulations. They are also responding to the Clerk's Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service.

Collaboration and communication throughout the process

Managers play a pivotal role in shaping the work environment by setting the tone and creating a positive work culture. The employee and the manager must work together to make accommodation a real collaborative process built on ongoing communication.

- Managers work with their employees to create an inclusive and barrier free workplace based on equity, dignity and respect that is free of bias, harassment and discrimination
- For an employee to feel comfortable approaching their manager and having a conversation about the barriers that prevent them from being successful in their job, the manager must create a climate of trust, openness and safety
- Persons must be accommodated in a way that respects their dignity, privacy, confidentiality, comfort and autonomy

For persons with disabilities, the employer and manager can use the [GC Workplace Accessibility Passport](#) to streamline the workplace accommodation process and start the conversation on barriers in the workplace and solutions to address those barriers (refer to [GC Workplace Accessibility Passport Guidance for Managers](#)).

Steps

1. [Recognize the need for accommodation](#)
Remove discriminatory barriers, examples to recognize the need for accommodation
2. [Gather relevant information and assess needs](#)

Talk about barriers, gather information, discuss options

○ 3. Make an informed decision

Review the request, consult all relevant parties, focus on solutions

○ 4. Implement the decision

Communicate the accommodation decision, implementation, recourse options

○ 5. Keep records and follow up

Document the accommodation process, follow-up, privacy and confidentiality

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- 3. Make an informed decision
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- 5. Keep records and follow up

1. Recognize the need for accommodation

The duty to accommodate is about removing discriminatory barriers that are prohibited by the *Canadian Human Rights Act*. These barriers hinder an employee's or candidate's full participation in the workplace. Managers

should take a positive approach to accommodation that supports timely decisions. This approach is consistent with the principles of Public Service Renewal, and legislation and policy related to the duty to accommodate.

The duty to accommodate is a shared responsibility that may involve multiple parties, such as employees or candidates in an appointment process, union representatives, and experts. It's important to remember that managers may have a duty to enquire if they believe that an employee requires accommodation measures, even if the employee has not requested it.

The duty to accommodate extends beyond the traditional workplace. It applies wherever the employee is required to perform work either temporarily or permanently (such as telework or while on travel status).

Examples of recognizing the need for accommodation may include:

- departments clearly stating duty to accommodate information in their hiring and onboarding processes to seek information from candidates and employees
- an employee ¹, candidate ² or a third party acting on behalf of the employee or candidate has requested accommodation
- managers using their observations and knowledge of the employee as a basis for initiating a discussion about the possible need for accommodation.

A request for accommodation does not have to be in writing. Self-identification for employment equity purposes is not required to be eligible for accommodation.

More information

▼ Prohibited grounds of discrimination

The duty to accommodate is not about employee preferences. It is about removing discriminatory barriers related to the 13 prohibited grounds of discrimination by providing reasonable accommodation measures to ensure the full and equal participation of all employees and to equip all employees to be successful and to contribute to their full potential. The first step is to determine whether the request relates to one or more of the grounds of discrimination prohibited under the *Canadian Human Rights Act*:³

- race
- national or ethnic origin
- colour
- religion
- age
- sex (including discrimination because of pregnancy or childbirth)
- sexual orientation
- gender identity or expression
- marital status
- genetic characteristics
- family status
- disability
- conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered

The *Policy on People Management* defines a “barrier” as one that includes physical, architectural, technological or attitudinal obstacles, policies, practices, systems or procedures that exclude or hinder the

full and equal participation of persons protected from discrimination by the *Canadian Human Rights Act*, in employment. Employers must remove systemic barriers and, where other barriers exist, they must provide appropriate supports or workplace adaptations (accommodation) to enable all employees to contribute to their full potential. The obligation to accommodate and the process remain the same even if the work location changes (for example, telework).

Employment-related barriers may not be obvious: the way in which a process is designed or performance is measured can prevent a qualified person from being hired, finding meaningful work or being promoted in an organization. Some people who experience such barriers are excluded, or are treated differently, because of ideas, beliefs or assumptions that other people have about them; this is called an “attitudinal barrier”.

▼ Legislation and policy references

- *Accessible Canada Act*
- *Canadian Human Rights Act*
- *Canada Labour Code, Part II*
- *Employment Equity Act*
- *Privacy Act*
- *Directive on the Duty to Accommodate*
- *Policy on People Management*

Footnotes

- 1 “Employee” is synonymous with “persons employed” (*Policy on People Management* and the *Directive on the Duty to Accommodate*) and includes those employee groups that do not fall under the indeterminate category, such as students and individuals hired for term or casual assignments.
- 2 “Candidate” includes applicants from outside the federal public service and employees who are participating in the staffing process.
- 3 *Canadian Human Rights Act* (section 2 and section 15(2))

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2. Gather relevant information and assess needs

All accommodation documents must be kept confidential and separate from all human resources files.

- Ensure that the employee or candidate understands their responsibilities.
- Talk with the employee about the barriers they may face in the workplace that might hinder their productivity, including any accommodation that was provided on an informal basis or any accommodation that was provided in a previous position or organization.
- To best support the employee with their work-related needs, the focus should remain on finding appropriate and efficient accommodation solutions. This includes having the person who is to be accommodated involved in discussions.
- Determine with the employee whether the work-related need can be addressed without a formal request for accommodation, such as temporary change in hours of work or alternate work location. It is a good practice for managers to look for creative solutions and strategies to support their employee's work success.
- Find out about the organization's requirements, processes and accessibility plans.
- Document the steps and keep the organizational contact informed (if applicable).
- Consult other resources if the individual is unable to provide the information needed to determine the accommodation requirement (such as the organization's human resources functional specialists or other functional specialists ¹ – managers may contact an employee's health practitioner or doctor only with the employee's consent).
- With the employee, gather relevant information and supporting documentation, if needed, and refer to relevant collective agreements and policies. Assess the employee's work environment and discuss a

range of options or measures that may address the need for accommodation.

- Focus on finding solutions to address the barrier(s) that hinder the employee's full participation in the workplace. Where external documentation and/or advice is needed, work with the employee to implement temporary accommodation measures until the assessment process is completed.
- With the employee, identify any impacts or issues for the rest of the team and how, if needed, to communicate and provide information to affected colleagues while maintaining an inclusive and respectful workplace environment. Depending on the situation, managers may need to involve the employee's union representative.

More information

▼ Employee ² and candidate ³ responsibilities

The employer is entitled to receive the information it needs to find reasonable accommodation. Refusing to allow the employer to obtain necessary information could be a deciding factor in whether the employer has met its legal responsibilities pertaining to the duty to accommodate.

The employee or candidate is expected to:

- communicate the need for accommodation and not assume that the manager knows or should have known about the need
- cooperate with the organization by providing relevant and appropriate information to support the request for accommodation
- undergo a health evaluation or assessment if, for example:

- there is conflicting information
- the information they provided is not clear or
- they have been off for an extended period of time and an evaluation or assessment is required to determine whether the accommodation measures that were in place before are still appropriate, or whether new measures are required
- work with the manager to find reasonable accommodation solutions
- consider all proposals or solutions that reasonably meet the needs or that remove barriers in the workplace. A reasonable accommodation proposed by a manager may not be the employee's preferred option.
- advise the manager if accommodation measures need to be changed or if the agreed-upon solution has not worked as intended and explore ways to modify the arrangements (accommodation is not always a one-time provision; changes in employee needs or the job itself can trigger the need for new solutions)

▼ Where can I go for help?

For more information on managing an accommodation request, contact:

- departmental contact for workplace accommodation and/or departmental contact for the Employee Assistance Program (EAP)
- functional specialists ¹
- informal conflict management services offices
- Accessibility, Accommodations and Adaptive Computer Technology (AAACT) program

- Assessment Accommodation Unit
- Canadian Human Rights Commission
- Employee Assistance Program (EAP)
- Job Accommodation Network
- 2SLGBTQI+ Secretariat

▼ Supporting documentation

General

Regardless of the grounds for an accommodation request, **the type, amount and source of supporting documentation requested should be determined on a case-by-case basis**, according to the specific circumstances and complexity of the request. For example:

- A recommendation from an occupational health and safety advisor or occupational therapist, based on an ergonomic assessment, is appropriate to support the purchase of ergonomic furniture or equipment where the employee is not aware of their furniture or equipment needs
- In many cases, whether the accommodation request is related to a disability, family status or any other prohibited ground, the person's accommodation request **can be addressed through collaborative engagement** between the manager and the employee without requesting information or documentation from external sources
- For accommodation requests based on religion, employees may provide information that describes their sincerely held religious belief or practice. Managers are encouraged to consult with their organization's human resources functional specialists

- For all other grounds of discrimination under the *Canadian Human Rights Act*, managers may consult with their organization's human resources functional specialists or other functional specialists for guidance

Privacy considerations

When gathering and sharing information, managers **must**:

- ensure that employees' private information is shared strictly on a need-to-know basis
- manage information appropriately to mitigate the risk of others intentionally or unintentionally accessing employees' personal and/or medical information
- adhere to the *Privacy Act* and respect its principles, such as accountability, identifying purposes, consent, limiting collection, limiting use, disclosure and retention, accuracy, safeguards, openness, individual access and challenging compliance

Disability-related requests

Managers should act in a timely manner to support the employee's full participation in a high-performing workforce that ensures good governance and service to Canadians. In cases where a person has requested an accommodation, **the employer is entitled to receive sufficient information to provide effective accommodation**. If an employee has completed a GC Workplace Accessibility Passport, then the completed Passport should be sufficient documentation, in most situations, to support workplace accommodation requests (refer to GC Workplace Accessibility Passport Guidance for Managers).

If the employee is facing one or more barriers to their full participation in the workplace, the manager should talk to the employee to find timely solutions that address the barriers. The discussion can include:

- the tasks or responsibilities that hinder the employee's full and equal participation
- recommendations of effective adaptations of the equipment, processes, policies or environmental factors that may be creating barriers for the employee

Requests for a broad assessment of an employee's disability or functional limitations should be avoided if **existing information from the employee and/or from a previous assessment** can be simply clarified or updated.

The employer is not usually entitled to know the exact diagnosis, treatment or medications. The employer may, however, enquire whether the employee is undergoing treatment or taking medications that could affect the safety of the employee or others in the work environment, or that could have an impact in relation to the accommodation measures.

When seeking information from medical professionals, the focus should be on clarifying the employee's accommodation needs based on their abilities, and not on the illness or disability. In short, an accommodation should not be viewed as a "problem" to fix. The goal should be to enquire what accommodation measures would best support the employee's full participation in the workplace.

Previous documentation

The GC Workplace Accessibility Passport is a useful tool to document the accommodation measures for employees with disabilities and helps to increase administrative efficiency. When the employee changes jobs or managers, it also provides the new manager with information on what accommodation measures and solutions were previously put in place (refer to GC Workplace Accessibility Passport Guidance for Managers).

If an employee has already provided supporting documentation, such as a GC Workplace Accessibility Passport, or previously received an accommodation, new information should not normally be requested from external specialists unless:

- the employee's job-related duties have significantly changed
- there are changes in their personal circumstances that affect their ability to perform job-related functions or
- the employee is unable to provide the required information themselves

A change in an employee's supervisor or senior management is not usually an appropriate reason to request new documentation or a reassessment of the employee's functional limitations or accommodation measures, nor change or withdraw existing accommodation or supportive measures.

Non-cooperation in the provision of adequate information

A supportive environment, where everyone is treated with respect, dignity and fairness, significantly improves employee engagement, enhances performance, and fosters a cooperative working environment.

If, after conversations have taken place, the employee decides not to cooperate and refuses to provide adequate information, the employee should be informed that, if managers are unable to assess their request, accommodation may not be provided. In these cases, managers may have met the duty to accommodate. It is important that managers document what they have done to try to accommodate the employee's needs.

Footnotes

- 1 Functional specialists may include but are not limited to subject matter experts in labour relations, occupational health and safety, duty to accommodate, employment equity, facilities, information technology and health professionals.
- 2 “Employee” is synonymous with “persons employed” (*Policy on People Management and the Directive on the Duty to Accommodate*) and includes those employee groups that do not fall under the indeterminate category, such as students and individuals hired for term or casual assignments.
- 3 “Candidate” includes applicants from outside the federal public service and employees who are participating in the staffing process.

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3. Make an informed decision

Each person has unique needs. Work with the individual to find a solution.

- Take the time to review the request, understand the needs and review supporting documentation

- Determine if the request might fall under the limits to the duty to accommodate
- Work with all relevant parties, beginning with the employee, their union representative where applicable, functional specialists and, if necessary, co-workers, to determine one or more possible accommodations
- Empower the employee to call in other parties to help make the process easier
- Try to find an effective, practical, timely and cost-efficient solution while ensuring that the solution respects the employee's dignity, privacy, confidentiality, comfort and autonomy
- Document the process followed to consider and act on the employee's accommodation request, including any accommodation that was provided on an informal basis, or any accommodation that was provided in a previous job or organization

More information

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furniture or equipment where the employee is not aware of their furniture or equipment needs

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accommodation measures, nor change or withdraw existing accommodation or supportive measures.

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If, after conversations have taken place, the employee decides not to cooperate and refuses to provide adequate information, the employee should be informed that, if managers are unable to assess their request, accommodation may not be provided. In these cases, managers may have met the duty to accommodate. It is important that managers document what they have done to try to accommodate the employee's needs.

▼ Limits on the duty to accommodate

Accommodation requires a balance between the rights of an employee or candidate and the right of an employer to operate a productive workplace.

The duty to accommodate is not limitless. There is no requirement to:

- accommodate where **undue hardship** to the employer (health, safety and cost) would result
- create an unnecessary job
- retain an employee who is unable to meet their employment responsibilities after reasonable accommodation has been implemented. For example, managers are not required to accept

substandard performance or unpredictable attendance.

Employees, once accommodated, are expected to meet **bona fide occupational requirements** and standards. It is important to ensure that all employees understand performance expectations

- hire a candidate who, after being accommodated during the selection process, does not meet the essential qualifications required for the position
- accommodate an employee's persistent absences if the absences are unrelated to a disability or any other prohibited ground. This situation must be resolved through proper mechanisms, such as informal conflict resolution, the disciplinary process or the performance management processes

▼ Employee ¹ and candidate ² responsibilities

The employer is entitled to receive the information it needs to find reasonable accommodation. Refusing to allow the employer to obtain necessary information could be a deciding factor in whether the employer has met its legal responsibilities pertaining to the duty to accommodate.

The employee or candidate is expected to:

- communicate the need for accommodation and not assume that the manager knows or should have known about the need
- cooperate with the organization by providing relevant and appropriate information to support the request for accommodation
- undergo a health evaluation or assessment if, for example:
 - there is conflicting information
 - the information they provided is not clear or

- they have been off for an extended period of time and an evaluation or assessment is required to determine whether the accommodation measures that were in place before are still appropriate, or whether new measures are required
- work with the manager to find reasonable accommodation solutions
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- advise the manager if accommodation measures need to be changed or if the agreed-upon solution has not worked as intended and explore ways to modify the arrangements (accommodation is not always a one-time provision; changes in employee needs or the job itself can trigger the need for new solutions)

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4. Implement the decision

Accommodation is about removing barriers to enable an employee to perform and contribute fully to the organization.

- Inform the individual of the decision about the accommodation and how and when it will be implemented. Or, promptly advise the

individual of the rationale for not providing accommodation, for example as a result of a bona fide occupational requirement and/or undue hardship for the employer

- If the duty to accommodate applies, put in place the measures to implement the agreed-upon approach
- Consult the individual about the best approach to explaining the accommodation to anyone affected by the measures, if necessary. Inform others, as needed and agreed upon, in a timely manner
- Ensure that you and the individual are aware of all available recourse mechanisms. If the employee disagrees with the decision on accommodation, they should first discuss it with their manager, and if not satisfied with the response, can begin the normal recourse processes, including:
 - your departmental Informal Conflict Management System
 - your departmental Ombud
 - grievance through their union, if applicable. Represented employees may consult with their union to explore the recourse mechanisms open to them
 - filing a complaint with the Canadian Human Rights Commission

More information

▼ Performance and the duty to accommodate

Employees who are not reasonably accommodated may have difficulty completing their job-related duties. This may be inaccurately perceived by others as a performance issue.

Employees may be reluctant to disclose information about personal circumstances that could have an impact on their work. Managers may have a duty to enquire in certain circumstances and take steps to

determine whether an accommodation is needed, even if the employee has not requested it.¹ Some examples are outlined below.

Managers can also consult with the organization's human resources functional specialists or other functional specialists for guidance in such situations.

Signs that might indicate that accommodation is needed include:

- feedback from co-workers indicating that the employee's behaviour has changed recently
- a sudden drop in attendance and increase in leave use
- an increase in lateness
- manager observes changes in the employee's behaviour
- employee expresses difficulty completing their work responsibilities

Managers should:

- discuss work issues with respect, sensitivity and awareness of possible cultural differences
- offer information about available support, such as the Employee Assistance Program
- explore adjustments that can be made and accommodation measures that can be implemented
- ensure that the employee understands that changes can also be made at work to enable them to better manage their workload
- with the employee's consent, obtain information from the treating medical professional or counselor, if required
- make the required adjustment(s) or implement the accommodation measures and

- meet regularly with the employee to ensure that the accommodation is working and that additional accommodation is not required

If managers have had supportive and respectful discussions with the employee about their specific behaviours and how the accommodation process could identify potential accommodation measures, and the employee does not want to pursue the matter, managers should document the steps that were taken to show that everything reasonable was done to help the employee, and that the obligation regarding the duty to accommodate was fulfilled.

▼ What is a bona fide occupational requirement?

A bona fide occupational requirement is a requirement that every individual performing a specific job must meet because the requirement is essential to the effective and safe performance of the job. When there is a bona fide occupational requirement, accommodating the needs of an individual with respect to that requirement would impose undue hardship. Undue hardship is based on health, safety and cost.

To identify a bona fide occupational requirement, managers should follow a three-step process that was established by the Supreme Court of Canada (*Meiorin* and *Grismer* cases, 1999):

- The rule or standard adopted must be connected to the functions of the position
- The rule or standard is adopted in good faith on the grounds that it is necessary
- The rule or standard is reasonably necessary to accomplish the purpose or goal, in the sense that the employer cannot

accommodate individuals who possess the characteristics of a particular group without incurring undue hardship

▼ How to determine undue hardship

Employers are required to provide accommodation up to the point of undue hardship. There is a limit to the duty to accommodate, but there is no set formula for deciding what constitutes undue hardship. The determination of undue hardship varies for each employer and for each accommodation situation.

Managers determining undue hardship should:

- document their conscientious and genuine best efforts
- include input from the employee and the union representative
- collaborate with the organization's human resources functional specialists and other functional specialists, where applicable
- consult their departmental legal advisors, if applicable

Evidence to support a case for undue hardship should be objective, real, direct and (for cost) quantifiable, such as:

- financial statements and budgets
- expert opinions
- detailed information about the work tasks and the requested accommodation or
- information about the conditions of employment, health and safety limitations and their effects or impacts, where applicable (such as why a person cannot be accommodated)

Undue hardship is typically examined at the enterprise level, not the manager's unit level.

Footnotes

- 1 *Mager v. Louisiana-Pacific Canada Ltd.*, unreported, British Columbia Human Rights Commission, June 29, 1998
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5. Keep records and follow up

Managers should respect the dignity and privacy of the person being accommodated. Communication with others should be limited to those who need to know and to what they need to know.

- Records should document the entire process and be kept private and confidential
- Regularly follow up with the individual and modify the accommodation as needed and when an employee's circumstances change
- Document any changes and provide pertinent information to the organizational contact (if applicable) on a timely basis, respecting privacy and confidentiality
- Integrate accommodation needs into future human resources and business planning

More information

▼ Documenting the accommodation process

Documenting the accommodation process may help demonstrate that the duty to accommodate has been fulfilled. The employer should be able to document the process that was followed to consider and act on the employee's request for accommodation, including accommodation provided on an informal basis.

References

- [Accessibility Strategy for the Federal Public Service](#)
- [Government of Canada's Accessibility glossary](#).
- [Health Canada - Occupational Health and Safety](#).
- [TBS Performance Management Program for Employees](#)

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