

WORKPLACE ACCOMMODATION HANDBOOK

TERMS AND DEFINITIONS

Accommodation is defined as an adaptation or adjustment to enable the employee with a disability to perform the essential duties of the job. The period of accommodation may be temporary or permanent, depending on the particular circumstances. Accommodation does not necessarily require that the essential duties of the job be changed to meet the needs of the employee. Non-essential duties which cannot be performed may be adjusted or reassigned.

If an employee cannot perform the essential duties in their existing position, accommodation may be made in other positions. The board will consider the following factors in this process: seniority, availability, qualifications, and legislative or contractual obligations. The nature of accommodation varies depending on the duration of the accommodation request, the applicable legislation, and the specific needs of the individual.

Accommodations may include, but are not limited to, some or all of the following:

- removing a physical barrier;
- providing an assistive device, such as those related to hearing, vision, mobility, and speech;
- modification of duties of the position;
- re-assigning the employee to another position if they have the necessary qualifications, skills and abilities to perform the essential duties of the position;
- reducing hours of work;
- reduction of contract;
- higher threshold of sick leave absences; and,
- enrollment in Attendance Support Plan (ASP).

Reasonable Accommodation: Both the Ontario Human Rights Commission (OHRC) and the Workplace Safety and Insurance Board (WSIB) view the board as a single employer, as such the term “reasonable” accommodation is then interpreted in a manner consistent with the resources of the entire board. Therefore, both the employing work location and central administration of the board have a role in providing accommodation to employees with disabilities to the point of undue hardship.

Reasonable Accommodation:

- does not require the board to create a new job;
- does not require the board to remove essential duties of the job or to change the job such that it becomes a substantially different one;
- is intended to assist the employee to meet performance standards. The disabled employee is entitled to an equal opportunity to perform the job in accordance with the same standards as expected of other employees; and,
- respects the dignity of the disabled employee. However, the disabled employee seeking accommodation cannot necessarily expect an ideal or preferred accommodation.

Appropriate Medical Documentation related to the disability related workplace accommodation should support a disability, as defined under the OHRC, and outline the medical restrictions and limitations that prohibit the employee from performing the essential duties of their position. The medical documentation must be from acceptable Health Care Professionals who have the ability to diagnose as per the *Regulate Health Professions Act* which include; Physicians, Psychologists, Dentists, Physiotherapists, Chiropractors, Nurse Practitioners, Mid-wives. The employee will be responsible for the cost of medical documentation, unless Health and Wellness is requesting further information from the physician through the employee.

Medical documentation will be retained in the employee's medical file in HRSHW and it should not be retained in a department/school file.

Disability: The broad definition for disability is described in the OHRC as:

- 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, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial device;
- a condition of mental retardation or impairment;
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols of spoken language;
- a mental disorder; or,
- an injury or disability for which benefits were claimed or received under the *Workplace Safety & Insurance Act*.

Essential Duties are those which constitute the primary purpose of the position. In order to determine the essential duties of a position, consideration is given to the duties necessary to produce the final product or service required. A detailed job description as well as Physical Demands Analysis (PDA) or a Cognitive Demands Analysis (CDA), may be used or sought to assist in defining the essential duties of a position.

Return to Work (RTW) Plan: when an employee is returning from a Long Term Disability (LTD) leave, the LTD provider develops a RTW Plan. The RTW Plan is an accommodation plan that outlines the employee's restrictions and limitations, and suggested workplace accommodation(s).

The RTW Plan shall be retained in the employee's medical file in HRSHW.

Undue Hardship: The Simcoe County District School Board (SCDSB) has a duty to accommodate unless to do so would cause undue hardship, as defined in the OHRC. Undue hardship for an organization is generally related to two factors: cost and safety.

Costs may amount to undue hardship if they are quantifiable and directly result in substantially decreased productivity, efficiency and effectiveness of the organization. If the accommodation requires the business to fundamentally change what they do, that may also be considered to be undue hardship.

Health and safety requirements may constitute undue hardship where attempts have been made to maximize protection but the risks remaining after accommodation outweigh the benefits enhancing the employee's opportunity. A potential conflict between the employer's significant legal responsibility for health and safety in the workplace and the employer's duty to implement accommodation in the workplace can arise:

- where an accommodation requirement conflicts with prescribed safety precautions, for example, an inability to use certain safety equipment or follow certain procedures; and/or,
- where the presence of certain accommodated employees in the workplace poses potential risks to other workers.

The HRSHW personnel in the Health and Wellness team within the Human Resource Services (HRS) Department is the individual responsible for coordinating the accommodation process for non-occupational illness and injuries.

For the purpose of this procedure, supervisor is defined as an individual who has charge of a workplace or authority over a worker, such as a superintendent, principal, manager or supervisor.

ROLES AND RESPONSIBILITIES

Employee:

- request accommodation of a disability;
- make their needs known to the best of their abilities, in writing, in order that the requested accommodation can be considered;
- answer questions or provide information regarding relevant restrictions or limitations including information from health care professionals. Medical documentation is required to support a disability as defined under the OHRC, and to support the request for accommodation;
- participate in discussions regarding possible accommodation solutions;
- cooperate with any experts whose assistance is required to manage the accommodation process;
- work with the HRSHW personnel, the supervisor and the union (if applicable) on an ongoing basis to manage the accommodation process; and,
- discuss the disability with only persons who need to know.

Bargaining Agents:

- respond to an employee seeking support regarding a workplace accommodation;
- share joint responsibility with the employer to facilitate accommodation;
- take an active role as partners in the accommodation process; and,
- support accommodation measures irrespective of collective agreements, unless to do so would create undue hardship.

Employer:

- accept the employee's request for accommodation in good faith, unless there are legitimate reasons for acting otherwise;
- obtain expert opinion or advice as required;
- take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possible accommodation and alternative solutions, as part of the duty to accommodate;
- keep a record of the accommodation request and actions taken;
- maintain confidentiality;
- limit requests for information to those reasonably related to the nature of the restriction or limitation so as to be able to respond to the accommodation request; and,
- grant accommodation requests in a timely manner, to the point of undue hardship, even when the request for accommodation does not use any specific formal language.

Workplace Accommodation Procedures

Initiation

Employees requesting workplace accommodation are required to provide appropriate medical documentation to HRSHW personnel. HRSHW personnel will determine if additional medical documentation is required, and notify the employee if necessary. The employee will be responsible for the cost of the medical documentation.

Supervisors may also notify HRSHW personnel of employees who appear to be appropriate candidates for workplace accommodation. This can be determined through discussions regarding employee absences, work performance, etc. HRSHW personnel will follow-up with the employee to determine if workplace accommodation and supporting medical documentation are required.

Although it is expected that the employee will take primary responsibility for initiating the need for accommodation, there may be some cases where the initiation for accommodation will come from the supervisor, an LTD provider, the WSIB or another source.

Notification and Verification

Employees are required to provide sufficient information (medical or otherwise) that is required by the board to assess the issues relevant to pursuing accommodation initiatives.

OHRC Guidelines on Accommodation clearly state:

“the person requesting accommodation must communicate his or her needs in sufficient detail and cooperate in consultations to enable the person responsible for accommodation to respond to the request”.

The duty to accommodate necessitates that the employer develop individual accommodations based on medical restrictions/limitations in conjunction with operational requirements while maintaining consistency of programming for our students. An employee or physician cannot prescribe an accommodation. The board may request outside evaluation, at its own expense, by medical or other experts to assist in determining accommodations needed, where appropriate.

Application

Each employee with a disability will be considered individually in order to determine what changes can be made to facilitate accommodation.

The present capabilities of the employee and the risks associated with the work are taken into account, rather than anticipating future changes in abilities or risks.

Implementation

The HRSHW personnel notifies the supervisor of the employee's restrictions and limitations, and determines if the employee can be accommodated in their current position/assignment.

Uncomplicated Accommodation Within the Department/School/Work Unit

If the employee is able to be accommodated in their current position/assignment with minimal modification/change, the HRSHW personnel will send an email to the supervisor and employee outlining the restrictions and limitations, and the accommodation. Should the employee or union wish, a meeting may be held.

Complex Accommodation Within the Department/School/Work Unit

If significant modifications/changes are required to accommodate the employee in their current position/assignment, a meeting may be scheduled by HRSHW personnel, and will include the employee, supervisor, union representative (if applicable). A plan will be developed and a follow-up email will be sent to all applicable parties.

Complex Accommodation Outside of the Department/School/Work Unit

If an alternate position/assignment is available HRSHW personnel will make a written job offer to the employee. If the employee accepts this offer, a meeting may be scheduled by HRSHW personnel, and will include the employee, supervisor, other workplace parties as required, and union representative (if applicable). A plan will be developed and a follow-up email will be sent to all applicable parties.

If the employee does not accept the alternate job offer, HRSHW personnel will advise the employee that they will be on an unpaid medical leave, and that they will need to provide appropriate medical documentation to support their inability to work in the alternate position, to be placed on a paid medical leave and to maintain their employment status with the board.

If no alternate position/assignment is available, HRSHW personnel will advise the employee that they will be on a paid medical leave, and that they will need to provide appropriate medical documentation to maintain their employment status with the board. HRSHW personnel will continue to work with other workplace parties to determine if any appropriate positions/assignments become available.

HRSHW personnel will advise the employee that prior to a return to work, or return to previous position/assignment, appropriate medical documentation certifying that they are able to return to work in their full capacity, or specifying limitations to full return, will need to be provided to HRSHW personnel. Medical documentation must be submitted at least two (2) working days prior to return.

The employee will notify the supervisor and HRSHW personnel if there is any change to their medical condition, or if they are experiencing any difficulties with the assigned duties of the accommodation agreement. If required, HRSHW personnel will schedule a follow-up meeting with the employee, supervisor, other workplace parties as required, and union representative (if applicable).

Requests for updated medical documentation will be requested by HRSHW personnel as required for permanent and temporary accommodations (based on the duration provided in previous medical documentation). The employee will be required to provide appropriate up to date medical documentation to support the ongoing requirement for a workplace accommodation(s), as well as confirm the existence of a disability, as defined under the OHRC.

Provision of equipment

Appropriate medical documentation is required to support the need for specialized equipment and assessment. Equipment may include specialized furniture items or assistive technology devices.

Employees are required to provide appropriate medical documentation to HRSHW personnel, outlining the need for specialized equipment. HRSHW personnel will determine if additional medical documentation is required, and notify the employee if necessary.

HRSHW personnel recommends equipment which may be required, through discussion with the employee, supervisor and/or through a workplace assessment. The employee may be required to perform periodic preventative maintenance on the equipment.

Furniture

Furniture items recommended through the workplace assessment, ~~such as~~ (e.g. desks, chairs, cabinets, footstools, etc.), may be purchased by the school.

HRSHW personnel contacts the supervisor to discuss recommended purchases, supplier information and the approximate cost. The supervisor or HRSHW personnel shall requisition the furniture. HRSHW personnel will provide adjustments and alterations as necessary, and determine if further follow-up is required.

Assistive Technology Devices

Assistive technology devices may include, but are not limited to, voice amplification systems, computers and/or accessories, computer software and mobility devices.

HRSHW personnel will consult with IT Services, Special Education Services, and/or other necessary service providers/consultants to determine the most appropriate assistive device(s).

HRSHW personnel, will purchase the most appropriate assistive device(s). HRSHW personnel will arrange with the appropriate service provider for installation and/or training. Semi-annual/annual updated medical documentation may be required to validate the necessity of the equipment.

The employee will notify HRSHW personnel of any change to their employment status (e.g. no longer require the equipment, statutory leave, resignation/retirement). If the employee transfers to a new work location HRSHW personnel will arrange for the equipment to be transferred to the new location. Should the employee resign/retire, or take a statutory leave, HRSHW personnel will arrange for the return of the equipment. If the employee requires the equipment upon return from their statutory leave, appropriate medical documentation must be provided to HRSHW personnel.

The employee will sign a Workplace Accommodation Supply Form to acknowledge receipt of equipment and confirm their understanding of expectations. The Workplace Accommodation Supply Form shall be retained in the employee's medical file in HRSHW.

Employees Returning from LTD

The LTD provider will notify HRSHW personnel with respect to the employee's anticipated return to work and request for accommodation.

The LTD provider will develop a RTW Plan, which outlines the employee's restrictions and limitations, and suggested workplace accommodation(s).

HRSHW personnel advises the supervisor of the employee's restrictions and limitations. HRSHW personnel and the supervisor determine whether or not the employee can be accommodated in their current position/assignment.

Accommodation Within the Work Unit

If the employee is able to be accommodated in their current position/assignment, a meeting will be scheduled by HRSHW personnel and will include the employee, supervisor, union representative (if applicable), and the LTD provider. The RTW Plan will be discussed and signed off by all parties present at the meeting.

Accommodation Outside of the Work Unit

If the employee is unable to be accommodated in their current position/assignment, even with significant modifications, HRSHW personnel will discuss alternate available positions with the supervisor, other workplace parties, the union representative (if applicable) and the LTD provider.

If an alternate position/assignment is available, a meeting will be scheduled by HRSHW personnel, and will include the employee, supervisor, union representative (if applicable) and the LTD provider. The RTW Plan will be discussed and signed off by all parties present at the meeting.

If no alternate position/assignment is available, HRSHW personnel will advise the employee, the union and the LTD provider. The LTD provider will determine the employee's eligibility for continuing LTD benefits. Should the LTD provider deem that the employee is no longer eligible for LTD benefits, HRSHW personnel will notify the employee that they will be on an unpaid medical leave, and that they will need to provide appropriate medical documentation to maintain their employment status with the board. HRSHW personnel will continue to work with other workplace parties to determine if any appropriate positions/assignments become available.

If the LTD provider deems that the employee is unable to do their essential duties, the employee may be asked to participate in an IME to determine if they can fulfill essential duties in another role within the board.

The employee will notify the LTD provider's Rehabilitation Coordinator/Case Manager if there is any change to their medical condition, or if they are experiencing any difficulties with the assigned duties which are indicated on the RTW Plan. The LTD provider will notify HRSHW personnel, and if required, HRSHW personnel will schedule a follow-up meeting with the employee, supervisor, union representative(if applicable) and the LTD provider.

Employees Returning from an Approved Workplace Safety and Insurance Board (WSIB) Claim

Procedures for employees returning from an approved WSIB claim are outlined in APM A4007 – Workplace Safety and Insurance Board Claims.

Hiring and Placement Protocol for Deaf and Hard of Hearing Applicants

The board acknowledges that it has a duty under the Ontario Human Rights Code to accommodate the disability-related needs of job and placement applicants, to the point of undue hardship.

This protocol is intended for use when an applicant for a job or placement with the SCDSB self-identifies as being deaf or hard of hearing.

Accommodations must be based on medically demonstrated abilities, limitations, and restrictions.

Interview

The board recognizes that individuals who are deaf or hard of hearing may use a variety of communication methods, including lip-reading, American Sign Language (ASL), writing and/or technology assistance.

Interviewers are encouraged to provide applicants with an overview of the interview process prior to the interview to ensure that the applicant can arrange for any accommodations that may assist them throughout the interview process.

It is recommended that interviewers inquire into the applicant's intended method(s) of communication, and whether any technological supports should be made available.

The board recognizes that where an applicant indicates that they will be using technological supports, reasonable modifications to the interview may be needed to ensure that the technological supports are able to function at the place and time of the interview.

Where an applicant indicates that they will be lip-reading or signing, it may be helpful to schedule the meeting in a location with appropriate lighting and seating in order to ensure that suitable sight-lines are available.

Interviewers are encouraged to inquire in advance if the applicant is planning to attend with an interpreter. If an interpreter is going to be present at the interview, interviewers should ensure that the interpreter is provided with seating which will allow for a clear view of both the applicant and the interviewer. Interview questions should be addressed to the applicant and not to the interpreter.

In addition to the foregoing, interviewers should consider the need for any other reasonable modification that may be appropriate during the interview, such as:

- providing the applicant with additional interview time;
- providing the applicant with a list of the names of the interviewers and individuals who are attending the interview;
- providing the applicant with a written itinerary for the interview;
- providing the applicant with a written version of the interview questions; and,
- providing the applicant with a written copy of the job description.

As with any interview, it will be important for the applicant and interviewer to make direct eye contact, and speak clearly to one another.

The board encourages applicants to identify any difficulties or concerns they may have with communication both prior to and/or during the interview.

Placement

Prior to the hiring and placement of an applicant, the board will evaluate all objective data relating to the job description and the Applicant's relevant medical information to determine if the applicant will be capable of performing the essential duties or requirements of the position. If the board deems it necessary to obtain additional information, the board and the applicant will participate in a third party assessment and/or functional abilities assessment, conducted by a qualified expert in the field to be completed in a timely way and in a manner so as not to disadvantage the applicant. The board acknowledges that such an assessment may not be required where the board determines that an internal applicant is capable of performing the duties of the position to which they have applied, or a qualified expert is not available within a reasonable time. For greater clarity, the board will not permanently fill a job posting until such objective data is available. Where a need for additional equipment is identified, the job site may also have to be assessed.

Onboarding

Onboarding for successful candidates will be provided in a manner which accommodates any disability-related needs, to the point of undue hardship. Note that the Human Rights Tribunal has held that an individual is entitled to reasonable accommodation, but not necessarily their ideal or preferred accommodation, and that determining the appropriate accommodations is a process which requires the participation of the employer and the employee.