

Lignes directrices de Citoyenneté et Immigration Canada sur l'obligation de prendre des mesures d'adaptation

**Préparé par
l'Unité de l'équité en matière d'emploi, de la diversité et
des langues officielles
Direction générale des ressources humaines
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Citizenship and Immigration Canada Guidelines on the Duty to Accommodate

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Background

1.1 INTRODUCTION

Citizenship and Immigration Canada (CIC) values the diversity of its workforce - their various skills, qualifications, abilities, perspectives, and experiences.

The CIC Guidelines on the Duty to Accommodate are designed to help managers/supervisors, human resources practitioners, and employees understand their legal obligations and their rights regarding the duty to accommodate and to provide them with practical advice and tools to facilitate the accommodation process. These guidelines outline the procedures to follow in order to request and to provide accommodation. This document reflects input gathered from consultations with employees, management and union representatives and is consistent with the principles of fundamental Canadian Human Rights legislation and the terms established in collective agreements.

1.2 EFFECTIVE DATE

(insert date once approved). These guidelines replace the previous version dated 2003.

1.3 OBJECTIVE

The principal objective of these guidelines is to enable persons employed by CIC and those seeking employment with the Department to fully participate in the workplace by ensuring an equitable, accessible, and supportive work environment.

1.4 STATEMENT

To achieve this objective, the Department will establish effective mechanisms for responding to requests for accommodation of existing and potential employees to ensure an inclusive workplace accessible to all.

CIC is committed to:

- a) identifying and eliminating any barriers to recruitment, selection, career development, promotion or training practices;
- b) integrating consideration of accommodation needs into all workplace standards, systems, processes, facilities and procurements;
- c) responding to individual accommodation requests of current and prospective employees in a timely and considerate manner; and
- d) promoting awareness and understanding of the legal obligations regarding the duty to accommodate.

1.5 APPLICATION

These guidelines apply to:

- a) all full-time, part-time, casual, seasonal, term, and indeterminate employees with respect to accommodation within the workplace; and
- b) all candidates from outside the federal Public Service, as well as existing employees with respect to accommodation during appointment processes.

Although the guidelines apply only to employees of, and candidates for, positions in CIC, managers are expected to abide by the spirit of the guidelines when dealing with other persons who work for CIC, including students and consultants.

1.6 LEGAL FRAMEWORK

The concept of accommodation arose from human rights jurisprudence and is reflected in three primary instruments: the [Canadian Charter of Rights and Freedoms](#), the [Employment Equity Act](#), and the [Canadian Human Rights Act](#).

The [Canadian Charter of Rights and Freedoms](#) provides all individuals with the equal protection and equal benefit of the law without discrimination, and does not preclude any program or activity that has as its objective the improvement of conditions for disadvantaged individuals or groups.

The [Canadian Human Rights Act](#) prohibits discrimination on the following 11 grounds: race, national or ethnic origin, colour, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital status, family status, mental or physical disability (including previous or present drug or alcohol dependence), and pardoned conviction.

The [Employment Equity Act](#) requires employers to identify and remove employment barriers and provide accommodations to ensure that designated group members achieve equitable representation within the public service. Employment equity covers four designated groups, one of which is women. The three other groups are defined as women, persons with a disability, Aboriginal peoples and persons in a visible minority group. For additional information on the various designated groups, please consult the frequently asked questions about self-identification: (<http://cicintranet.ci.gc.ca/connexion/hr-rh/workplace-lieu/diversit/faq-eng.aspx>).

2. GUIDELINES

2.1 WHAT IS DUTY TO ACCOMMODATE

The duty to accommodate is a legal obligation which has been affirmed by the courts, including the Supreme Court of Canada. An employer, service provider, or union must take steps to eliminate disadvantage to employees, prospective employees or clients resulting from a rule, practice, or physical barrier that has, or may have, an adverse impact on individuals or groups protected under the *Canadian Human Rights Act*, or identified as a designated group under the *Employment Equity Act*, unless doing so would result in undue hardship.

The duty to accommodate is most often applied in situations involving persons with a disability. In these situations, accommodation often means removing physical barriers, or providing technical devices such as a screen reader for a blind employee. However, the duty to accommodate also applies to all 11 grounds covered by the *Canadian Human Rights Act*. Accommodation helps us ensure equal opportunities for all Canadians. The guidelines provide several examples of workplace and employment accommodations.

In employment, the duty to accommodate translates to valuing and accommodating differences so that all employees can work to the best of their ability. Employers are required to review their corporate programs and activities, including employment policies, practices,

standards (including compliance with [Treasury Board's Common Look and Feel Policy](#)), procurements (e.g. new computer technology) and decisions relating to real property, and do all they can to eliminate potential discriminatory barriers within them, unless doing so would result in undue hardship.

2.2 LIMITS OF THE DUTY TO ACCOMMODATE

Accommodations can cover a wide variety of situations and therefore many different solutions are possible. However, the duty to accommodate is not unlimited. Employers are not obligated to do the following: recruit a person who, following the provision of accommodations, is unable to meet the conditions of employment or create unproductive employment. These limits are based on two concepts: undue hardship and bona fide occupational requirements.

2.3 UNDUE HARDSHIP

Undue hardship describes the limit beyond which employers and service providers are not expected to accommodate. Section 15(2) of the *Canadian Human Rights Act* states that “it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering **health, safety and cost**” in order for the accommodation to be considered too much of a burden. While the question of what constitutes undue hardship varies with the circumstances of employers, the courts have made it clear that employers must expect to experience some hardship in eliminating barriers and providing accommodation. The question tribunals and courts address is whether or not the hardship is undue or excessive.

2.4 FACTORS TO CONSIDER IN DETERMINING UNDUE HARDSHIP

Some of the factors that the Courts have considered relevant to an appraisal of what constitutes undue hardship include: the size and financial resources of the employer; disruption of the collective agreement; impact on other employees; interchangeability of work force and facilities; availability of other positions, etc. The fact that some costs, financial or otherwise, will be incurred, is insufficient to establish undue hardship. Prior to making a decision that invokes undue hardship, managers must seek advice from the [Manager, Employment Equity, Diversity and Official Languages](#)

2.5 BONAFIDE OCCUPATIONAL REQUIREMENTS

Bona fide occupational requirements are a standard or an essential task that is an integral part of performing the duties of a specific position. For a standard to be considered a bona fide occupational requirement, CIC must demonstrate that any accommodation or changes to a standard would create undue hardship.

A three-step process has been established to determine if a standard is a bona fide occupational requirement:

- The purpose of the standard adopted must be rationally connected to the performance of the job.
- CIC must have adopted the standard in an honest and good faith belief that it was necessary to fulfill the legitimate work-related purpose.
- The standard must be necessary to accomplish the legitimate work-related purpose.

Once a standard is considered a bona fide occupational requirement, CIC is not expected to change it to accommodate an employee. The manager should still explore whether any other form of accommodation exists to be as inclusive as possible.

In 1999, the Supreme Court of Canada released a decision in the Meiorin case that clarified how an occupational requirement is justified. Based on this decision, a three-step process was established by the Supreme Court of Canada to encourage the development of standards that are free from discriminatory barriers and that accommodate the potential contributions of all employees. The test requires that employers take into account the capabilities of different members of society before adopting a bona fide occupational requirement or qualification, and before adopting standards and tests to evaluate a person against this bona fide occupational requirement. This does not mean that the employer cannot set standards, but it does mean that the standards must only reflect the true requirements of the position.

For example, if a position requires an employee to be able to lift heavy weights, the employer must show that this ability is a bona fide occupational requirement that is essential to the performance of the job. In making this assessment, the employer must consider possible modifications of the position, including the use of assistive devices such as hoists and other lifting devices.

2.5.1 Three-step test to demonstrate a bona fide occupational requirement:

Step one: Establish a rational connection

Was the rule adopted for a purpose rationally connected to the performance of duties attached to the position?

Step two: Establish good faith

Did the employer adopt the rule in an honest and good faith belief that it was necessary to the fulfillment of a legitimate work-related purpose?

Step three: Establish reasonable necessity

Is the rule reasonably necessary to the accomplishment of that legitimate work-related purpose?

Information on the three step process for determining if a rule or standard is a **bona fide occupational requirement** is available on the [Canadian Human Rights Commission web site](#).

2.6 ACCOMMODATION EXAMPLES

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

- Allowing reasonable leave for employees who are dependent on alcohol or drugs for rehabilitation purposes. The *Canadian Human Rights Act* includes substance abuse in the definition for disability.
- Rearrangement of break schedule to accommodate chronic conditions such as diabetes. Where the request involves a temporary or recurrent work schedule change for the employee that does not negatively affect other employees, the request should normally be granted by the manager/supervisor.
- Ensuring that technology and systems are fully accessible.

- Adapting training programs to the needs of employees with a learning disability.
- Providing interpreters for a hearing impaired employee at conferences.
- Providing temporary or long term accommodation for an employee recuperating from injury or illness (e.g. alteration in work schedules, a change in job duties, or provision of equipment or assistance).
- Accommodating special dietary requirements at work-related events including meetings, conferences, retreats, information sessions and social events;
- Finding solutions to accommodate an employee who is sensitive to stimulants such as scented products and chemicals.
- Considering a number of flexible work arrangements to accommodate work life challenges. Where the request involves a form of alternative or modified work arrangement, the Department's Guide to Alternative Work Arrangements and Leave Options should be consulted.
- Allowing employees to be absent on their holy days by considering options such as approving annual leave, compensatory leave, shift exchange, compressed work week, or make-up time, if operationally feasible. The TBS Directive on Leave and Special Working Arrangements concerning Leave with Pay requires managers to examine each request individually and make every effort to permit absence without loss of income, within the terms of collective agreements, as appropriate.

2.7 CAN AN ACCOMMODATION REQUEST BE DENIED?

The onus is on the employer to prove undue hardship.

Managers/supervisors should consult with their Human Resources Advisor prior to determining that an accommodation cannot be made because it would constitute undue hardship. Issues of safety or possible breaches of the *Canada Labour Code* should be dealt with under the requirements and procedures set out in the Code.

As soon as a decision to deny an accommodation is made, the decision should be reviewed by the Sector/Branch Assistant Deputy Minister (or equivalent) to ensure that all avenues have been explored and to discuss further alternative solutions. The decision of the Assistant Deputy Minister shall be final.

If the reviewed decision is not overturned, that decision shall be immediately communicated in writing to the employee with a copy to the Manager, Employment Equity, Diversity and Official Languages. Where the preferred accommodation is denied, but an alternative is offered, the written notice shall explain both the specific reasons for the denial of the preferred accommodation (e.g. why the accommodation would not be effective, or why it would result in undue hardship) and the Assistant Deputy Minister's reason for believing that the alternative will be appropriate.

The written notice must also include the following paragraph:

"You are entitled to pursue other avenues of resolution such as through the Department's Informal Conflict Resolution process or by filing a grievance. You may also seek redress through the informal conflict resolution process under the *Canadian Human Rights Act* (add the following only if applicable) or to lodge a complaint with the Public Service Staffing Tribunal."

2.8 RESPONSIBILITIES

Overall responsibility for implementing these guidelines rests with the Deputy Minister. The duty to accommodate is a joint obligation of the Deputy Minister, managers/supervisors, employees, and unions representing employees.

2.8.1 The Deputy Minister is responsible for:

- Maintaining an inclusive, accessible and barrier-free work environment.
- Ensuring that all managers abide by these guidelines and to provide them with the resources necessary for implementing them.

2.8.2 Managers and supervisors are generally responsible for:

- Being the first point of contact for employees requiring accommodations;
- Enhancing their understanding of human rights legislation and the duty to accommodate;
- Identifying and eliminating practices, procedures, policies and physical barriers that could have an adverse impact in their workplace;
- Informing all new employees of the departmental accommodation guidelines;
- Fostering an open environment in which accommodation needs can be communicated;
- Integrating the resources necessary to accommodate their employees or potential employees within their budgets and financial planning exercises;
- Acknowledging requests for accommodation from employees or bargaining agents designated by the employee within 7 business days;
- Initiating a discussion with their employee when they become aware that an employee may have a need for accommodation (e.g. recent behavioural changes);
- Respecting the confidentiality and dignity of each person seeking accommodation; and
- Accommodating individual employees when barriers cannot be removed, up to the point of undue hardship.

2.8.3 Employees requiring accommodation are responsible for:

- Informing their manager/supervisor of their employment-related needs and fully co-operating to find a workable solution;
Note: CIC will accept and act on a request for accommodation made by a third party on behalf of an employee or an applicant such as; a family member, bargaining agent, legal or other representative. The procedure in this event will only be pursued with the consent of the employee or applicant;
- Providing reports or medical information (e.g. non-diagnostic medical information which identifies abilities or work restrictions);
- Collaborating with the departmental representatives in finding the most appropriate means of accommodating their employment-related needs;

- Meeting all essential job requirements and standards of their position or their modified position once accommodation has been provided, and continuing to work with their manager/supervisor to ensure that the accommodation remains effective; and
- Informing their manager/supervisor when changes may be required or when the accommodation is no longer required.

2.8.4 Unions/Employee Representatives have the responsibility, if required, to:

- Actively participate in the accommodation process; and
- Support accommodation requests, unless it would create undue hardship.

2.8.5 Human Resources Advisors are responsible for:

- Reminding and advising managers/supervisors, and candidates of the existence of these guidelines and the procedures for obtaining accommodation;
- Providing, when required, front-line support to managers/supervisors, employees and candidates to facilitate accommodation;
- Seeking advice on behalf of managers from a specialist at the Public Service Commission Personnel Psychology Centre for substitute assessment instruments;
- Ensuring all relevant information for the accommodation of candidates is included within the staffing files; and
- Enhancing their understanding of human rights legislation and the duty to accommodate.

2.8.6 The Manager, Employment Equity, Diversity and Official Languages, Human Resources Branch is responsible for:

- Being the main resource for all accommodation requests, by liaising with all the other areas involved, following-up on duty to accommodate requests, monitoring progress, and maintaining records for monitoring purposes;
- Assisting managers, human resources practitioners and employees by providing information on various accommodation options and experts who may be able to assist with, and advise on, effective accommodation solutions;
- Tracking departmental statistics on the type of accommodation requests and the costs associated with the measures implemented (without identifying employees);
- Overseeing the implementation of these guidelines;
- Updating the guidelines to ensure they are current and comply with applicable legislation.

2.8.7 The Manager, Workplace Health and Recognition is responsible for:

- Promoting the establishment and the maintenance of a safe and healthy work environment for all employees in order to reduce or prevent the incidence of occupational injuries or illnesses.

2.8.8 The Manager Labour Relations is responsible for:

- Providing advice on dealing with return-to-work situations; consults and collaborates with bargaining agents; and provides recommendations to improve departmental accommodation measures.

2.8.9 The Director, Accommodation Management is responsible for:

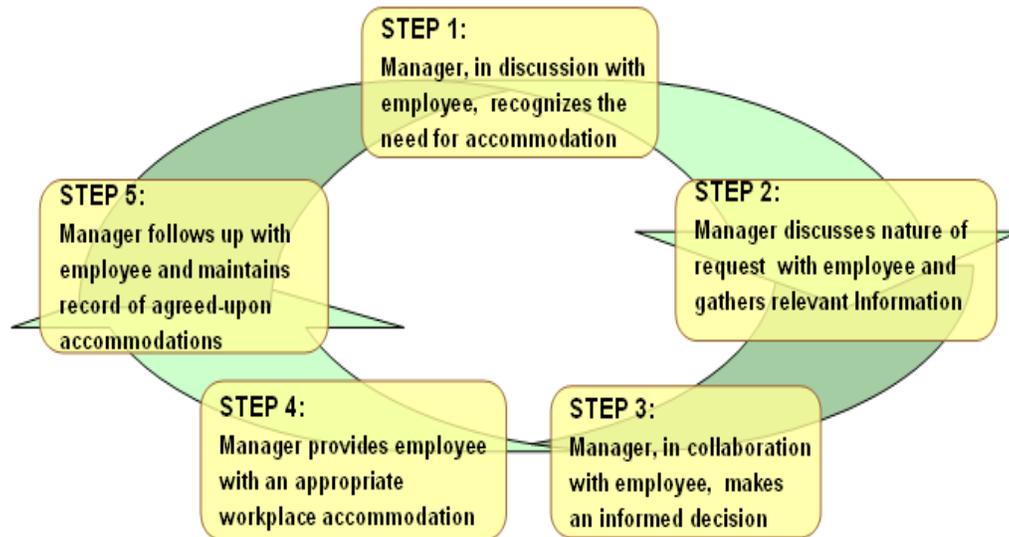
- Providing direct support to the department in support of accommodation requirements in areas including design, construction, operations, boardroom services, and office relocations.

3. ACCOMODATION REQUEST PROCEDURES

Duty to Accommodate

DTA Process is a Shared Responsibility

Step-by-Step Process involves Managers and Employees



This five-step diagram shows how simple it can be to respond to a request for accommodation. While the majority of workplace accommodation requests are easy to resolve, there are some requests that require a more in-depth review for decision. A detailed description of each step in the process, to address the immediate questions of managers and employees is available in **Appendix B**.

3.1 Accommodations and the appointment process

3.1.1 *Appointment Policy (2005)*

The Public Service Commission (PSC) developed an appointment framework. It respects the core values of merit and non-partisanship, as well as the values guiding appointments, which are access, fairness, representativeness, and transparency.

The Appointment Policy component includes requirements to ensure that the appointment process is inclusive, respectful of differences and free of discrimination on the prohibited grounds contained in the *Canadian Human Rights Act*. Specifically, these requirements are found in the following three policies: [Advertising in the Appointment Process](#); [Employment Equity in the Appointment Process](#); and [PSC Policy on Assessment](#)

The Public Service Commission (PSC) has consultants who provide information and advice on assessment accommodation. Only the Personnel Psychology Centre (PPC) can establish assessment accommodation when a standardized PSC test is used, and all organizations must contact the PPC to make the necessary arrangements. PPC consultants can also recommend accommodation for organizational assessments, on a cost recovery basis. Departments and agencies are **not required** to contact the PPC when accommodation is needed for an organization-specific assessment tool. For more information, you may consult [Assessment Accommodation Information for managers and human resources specialists](#).

3.1.2 **Some considerations:**

- A person's qualifications must be assessed after the person has been accommodated.
- Have as many diverse applicants in mind when developing an assessment tool.
- When using an existing or developing an assessment tool, ensure that the tool is available in an alternative format. For example, documents produced in Portable Document Format (PDF) are not yet fully accessible to persons with visual impairments.
- Ensure that methods or tools used in the assessment process accurately assess the qualifications required and do not constitute barriers.
- If speed of executing a particular task is not a requirement of the job, is the time allotted to do the same task in the assessment long enough so everyone can finish?
- Do the assessment instruments focus only on knowledge and skills which could be acquired only through job experiences?
- Ensure that the interview site is physically accessible (for example, having access ramps, automated door openers, accessible parking spaces, etc).
- Include persons from employment equity designated groups in assessment boards. One of the potential benefits of a diverse assessment board is the availability of a broader understanding of the ways in which persons may demonstrate their qualifications, thus better enabling managers to make sound selection decisions based on work-related requirements. Managers may contact the [Employment Equity Coordinator](#) for potential board members belonging to designated groups.

Notes: Persons needing accommodation must inform those responsible for assessment of their needs for accommodation, however, it is not necessary for persons to self-identify in order to request an accommodation during the appointment process. In an appointment

process where the area of selection is limited to candidates of employment equity groups, the person applying must declare that she or he belongs to the designated groups specified in the statement of merit criteria in order to be considered for appointment.

Ensure that the person collecting the accommodation-related information is trained in handling confidential medical information, and will share the information with the manager responsible for the appointment decision on an 'as-needed' basis only (for example, if the manager is responsible for administering the accommodation measures). The person providing the accommodation is only entitled to know the functional limitations of the person accommodated and the nature of the accommodation required, not the nature of the disability.

The [Guide for Assessing Persons with Disabilities](#) outlines the general principles, which help determine accommodations for persons with disabilities, taking into account the nature of the disability, the qualifications being assessed and the type of assessment method being used. They also propose a range of specific accommodations for various assessment methods (written tests, interactive exercises, selection interviews, etc.). Since determining appropriate accommodations is done on a case-by-case basis, human resources advisors may consult with a [Personnel Psychology Centre \(insert link\)](#) expert from the PSC.

3.1.3 When the duty to accommodate is applied in the appointment process, managers and supervisors are generally responsible for:

- Providing job advertisements in an accessible format upon request;
- Instructing internal and external candidates on how to request accommodation during the appointment process;
- Informing candidates in a timely manner of the type or the nature of the exams or other evaluation methods that will be used in the appointment process to allow them to make an informed request for appropriate accommodation;
- Ensuring assessment instruments, including exams and interviews, assess fairly and accurately the qualifications required; and
- Contacting candidates seeking accommodation in order to discuss their particular needs. Some persons may not be able to attend an interview if the date conflicts with the observance of a religious holiday; persons with a disability, such as a person who is deaf, may need time to make arrangements to be accompanied by a sign language interpreter.

3.1.4 Candidates participating in an assessment process are responsible for:

- Making their accommodation needs known and giving sufficient information at the early onset, to persons responsible for assessment to allow them to make appropriate accommodation arrangements and assess needs in a fair and equitable manner; and
- Collaborating with departmental representatives to find the most appropriate accommodation.

Note: Unless the individual raises it him/herself, the job interview is not the appropriate time to discuss his/her disability. Once the job offer is accepted, the manager must advise the new employee of his/her right to workplace accommodation and ask whether accommodation is required. Ideally, accommodations should be completed prior to the employee's arrival as the employee's probationary period can only begin after an employee has been appropriately accommodated. For the purpose of probation only, the date of

appointment for persons with disabilities who require job accommodation is the date on which the accommodation is provided. As such, this will allow the employee the benefit of having the tools necessary to carry out the job effectively, from the outset of the probationary period.

4. REQUESTING MEDICAL DOCUMENTATION

Managers can ask employees or candidates for information about the following:

- Prognosis for full or partial recovery from a disability or illness;
- Employee's fitness to return to work;
- Employee's functional limitation and/or workplace restrictions;
- Employee's fitness to perform specific parts of their job;
- Likely length of time for any physical or mental restrictions or limitations;
- When the return to work date is unknown, the date(s) of the employee's next medical and follow-up appointments.

A sample letter for the employee to take to his or her treating physician is to be completed when a manager requires additional details about an employee's functional limitations or restrictions in the workplace. See **Appendix C**.

Notes: In cases that involve a prolonged absence from work, the goals of the accommodation component are to create a welcoming workplace for the returning employee and support a successful return to work. Reintegration into the workplace is a vital step in the recovery process following an illness or injury. In the vast majority of cases, reconnecting with work colleagues helps build self-confidence and a sense of belonging and purpose, both of which contribute to restoring and maintaining optimal health. Managers may need to request a Fitness to Work Evaluation (FTWE) to identify appropriate accommodations if the information provided in a medical certificate is not sufficient. Pursuant to the [Occupational Health Evaluation Standard](#), if the employee is absent for a lengthy period and a return date has not been established, or he or she is returning to work and you have serious concern about his or her fitness for duty, you can request a FTWE to verify whether the employee can safely return to work. Ensure that the professional conducting the FTWE receives an up-to-date copy of the employee's job description that outlines the physical and psychological requirements of the job. Consult the CIC [Manager, Labour Relations](#) about the procedures to follow to request an FTWE (or if the employee is receiving disability benefits, a functional capacity evaluation or assessment).

The FTWE will tell you what, if any, functional limitations the employee has and what specific accommodations or modifications to work duties he or she requires. With the employee's consent, the FTWE can be conducted:

- By his or her treating physician or by an occupational health evaluation professional to whom the physician makes a referral;
- By the insurer or a Workers' Compensation Board if the employee is receiving disability benefits (in which case, it is called a functional capacity evaluation or assessment); or
- By Health Canada through the Public Service Health Program.

Note that Health Canada will not perform a FTWE if an employee is receiving either Disability Insurance (DI) or long-term disability (LTD) benefits under the Public Service Management Insurance Plan (PSMIP) or is on injury-on-duty leave or Workers' Compensation. In these situations, the evaluation can be arranged by the insurer or the provincial Workers' Compensation Board to assist in planning for the employee's return to

work.

For Return to Work Accommodation Scenarios, you may consult the following publications:

[Managing for Wellness - Disability Management Handbook for Managers in the Federal Public Service and the Canadian Human Rights A Guide for Managing the Return to Work](#)

Managers should seek specialist advice where the request involves issues outside your expertise and/or when the employee cannot identify the accommodation required. Advice could be sought from your human resources advisor, the Manager, Employment Equity, Diversity and Official Languages, the Manager, Labour Relations, the Manager Workplace Health and Recognition, the Director, Accommodation Management, the person's own physician, psychologist, and/or centres of expertise dealing with disabilities issues (e.g. learning disabilities associations). Such advice should be obtained after the matter has been discussed and agreed with the employee.

Every effort should be made to provide the accommodation preferred by the employee. However, if there is an equally effective accommodation available, you may choose to proceed with the one that is the least costly or easiest to provide, as long as it is effective.

Allow the employee to retain technical aids, equipment and support materials should the employee move to another position within the federal Public Service.

5. WHO DEFRAYS THE COST OF ACCOMMODATION?

Managers/supervisors are responsible for responding to accommodation requests. They are expected to integrate into their budget and financial planning exercises the resources necessary to accommodate their employees. Routine medical notes are to be provided by and paid for by the employee (ie: to explain absences, to modify hours of work or to create a return to work schedule). However, if the manager requires additional information from the treating physician (or needs to clarify information the physician has provided), the manager will pay. If CIC requires an updated or in-depth assessment of the employee's or candidate's condition or disability, the manager is responsible for paying for the assessment. For example, CIC is responsible for paying the cost of updated or new assessment reports for the employee's or candidate's condition or disability (i.e., as is required by the Personnel Psychology Centre in making recommendations for accommodation). It is the responsibility of the manager to present the accommodation need to the appropriate level of signing authority, e.g., the Director and/or Director General.

6. RECORD KEEPING

Since accommodation issues can be contentious, it is recommended that managers/supervisors fully document their actions in relation to any accommodation process. It is important to record accommodation requests and related measures to allow the Employment Equity, Diversity and Official Languages Unit to monitor implementation of this policy and build its capacity to respond to a variety of accommodation situations.

6.1 CONFIDENTIALITY

Documentation supporting the need for a particular accommodation (e.g. note from physician to clarify the limitations caused by the disability and/or the type of accommodation

that would be most effective) is strictly confidential and should only be provided to the employee's immediate manager/supervisor. This information will not be placed on the employee's personnel file. Personal information concerning an employee's disability cannot be released without the prior written consent of the individual.

7. ENQUIRIES

Enquiries on the CIC Duty to Accommodate Guidelines should be directed to the Employment Equity, Diversity and Official Languages Unit at 613-952-7649.

Appendix A – Contacts and References

CIC CONTACTS

Manager, Employment Equity, Diversity and Official Languages	613-952-7649
Manager, Labour Relations	613-941-7783
Manager, Workplace Health and Recognition	613-941-7698
Director, Accommodation Management	613-954-2388

REFERENCES

Difficulties and delays in accessing some of these links may occur as these sites are updated regularly.

LEGISLATION AND POLICIES

- [Canada Labour Code Part II overview](#)
- [Canadian Charter of Rights and Freedoms](#)
- [Canadian Human Rights Act](#)
- [Employment Equity Act](#)

TREASURY BOARD SECRETARIAT

- [Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service](#)
- [Accessibility Standard for Real Property - Treasury Board of Canada Secretariat](#)
- [Common Look and Feel Standards for the Internet \(CLF 2.0\) Treasury Board of Canada Secretariat](#)

PUBLIC SERVICE COMMISSION

- [Guidelines for Assessing Persons with Disabilities - Public Service Commission of Canada](#)
- [Guide to Implementing the Policy on Employment Equity in the Appointment Process](#)

PUBLICATIONS

- [Creating a Welcoming Workplace for Employees with Disabilities - Treasury Board of Canada Secretariat](#)
- [Guide to Planning Inclusive Meetings](#) – Treasury Board of Canada Secretariat
- [Duty to Accommodate - Frequently Asked Questions - Canadian Human Rights Commission](#)
- [A Place for All: A Guide to Creating an Inclusive Workplace - Canadian Human Rights Commission](#)
- [Guide to Alternative Work Arrangements and Leave Options](#) – CIC
- [Managing for Wellness - Disability Management Handbook for Managers in the Federal Public Service](#)
- [Canadian Human Rights A Guide for Managing the Return to Work](#)

WEB SITES

- [The Accessibility, Accommodations and Adaptive Computer Technology \(AAACT\) Program – Environment Canada](#)
- [Office for Disability Issues \(ODI\)](#) – HRSDC
- [Accessible Procurement Toolkit](#) – Industry Canada

Appendix B – Procedures for requesting accommodation

EMPLOYEES

Step 1: Request for Accommodation

- Inform your manager/supervisor of your need for accommodation. Some requests do not have to be in writing. They can be dealt with informally and in confidence between you and your manager/supervisor. For temporary or one time accommodation, the matter may be discussed and the appropriate arrangements made.
- A written request to the manager, by e-mail or a formal letter, must be made if the employee:
 - Requires long term or ongoing accommodation;
 - Requires a flexible work arrangement as part of the accommodation; or
 - Requires changes to the physical work space.
- A written request protects the interests of both the employee and the employer.
- When a written request is required, the request should be as specific as possible and provide the following:
 - A detailed account specifying the barrier you need to overcome (e.g. the ability to read the computer screen more easily and quickly) and the type of accommodation required if known.
 - Documentation to support the accommodation 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 (e.g. non-diagnostic medical information).
 - The approximate length of time the accommodation will be required.

The Request for Workplace Medical Certificate Form in **Appendix C** (insert link here) documents the history, focuses the request and protects both manager and employee. The employee or candidate must be as specific as possible about the nature of the need for accommodation.

Step 2: Gathering of information

- While the person seeking accommodation has a right to privacy, the manager has a right to, and a need for, information that can help determine appropriate accommodation measures. Employees 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, unless a person's needs are evident, e.g., the employee uses a wheelchair or has a profound sight impairment. Managers are not entitled to know the diagnosis of an employee's illness or disability, only the limitations caused by the illness or disability.

Note: Although self-identification is important to the implementation of employment equity in the workplace, employees do not have to complete a self-identification form either to obtain accommodation or after they have been accommodated.

Step 3: Identification of the appropriate accommodation

- Cooperate with your manager/supervisor and with any experts whose assistance is required in the process of identifying and implementing the appropriate accommodation to meet particular needs. Be prepared to consider any reasonable accommodation options that the manager proposes, as the manager may need to consider the interests of other employees and work requirements when choosing a suitable accommodation.

Step 4: Implementation of the accommodation measure

- Cooperate and participate to the implementation of the accommodation measure.

Step 5: Follow-up

- Inform your manager/supervisor when accommodation is no longer required or if accommodation changes.

MANAGERS AND SUPERVISORS

The employee's needs should be discussed in a respectful and sensitive manner. Many employees will find it difficult to request accommodation or even to discuss matters they see as barriers in the workplace because of a concern that it will have a negative impact on their career or work life. Assess each request for accommodation individually, using a case-by-case approach, and respect an individual's right to privacy and confidentiality. A key element to ensuring the success of an accommodation is the on-going communication with, and the involvement of, the individual being accommodated in every step of the process. Accommodation is done in a manner that maximizes integration and dignity of the individual.

Step 1: Request for accommodation

- Send an acknowledgement letter or e-mail to the employee requesting accommodation within 7 business days from the date of receipt of the request.

Step 2: Gathering of information

- Meet with the employee to identify the nature of the accommodation.
- Request only the relevant information to the work situation so that an appropriate plan for accommodation can be made. If applicable, provide the employee with the Medical Certificate Form in **Appendix C** (insert link here) for the employee to take to his health care professional. You will also need to provide a copy of the employee's job description or a list of essential job functions.

The Request for the Medical Certificate Form in **Appendix C** (insert link here) once completed by the medical expert, will clarify the limitations caused by the disability and the type of accommodation that would be most suitable.

Step 3: Identification of the appropriate accommodation

- Identify with the employee the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the position.
- Prepare an accommodation plan specifying the details of the accommodation, who is responsible, who will be involved (including co-workers, if applicable), the timelines for implementing the accommodation, and the duration if applicable.

- 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.

Step 4: Implementation of the accommodation measure

- Ensure the most effective accommodation that meets the job-related or workplace accessibility needs of the employee is implemented in a timely, effective and efficient manner.

Step 5: Follow-up

- Consult with the employee and follow-up regularly, because the employee's needs may change over time. In case of job modification, conduct a regular review.

Appendix C – Template for Requesting a Medical Certificate

Source: [Managing for Wellness - Disability Management Handbook for Managers in the Federal Public Service - Template for Requesting a Medical Certificate](#)

Instructions on Using This Template for Requesting a Medical Certificate

The purpose of a medical certificate is to obtain three key pieces of information from the employee's treating physician:

- **Verification that the employee is absent from work for health reasons** and thus that sick leave is being used appropriately. This, among other things, can help the employee avoid an interruption in income;
- **An assessment of the expected duration of absence** and/or the earliest date that a return to work could safely commence, in order to know to manage workload during the employee's absence; and
- **Any accommodations that will be needed**, which you would subsequently discuss with the employee and make arrangements to put in place in time for the return to work date to help facilitate a successful return to work.

To obtain this information, the following steps are recommended:

1. Obtain the name and mailing address of the employee's treating physician from the employee.
2. Obtain proof of the employee's consent to have his or her physician provide you with the information. **A sample employee consent form is provided on p. 27.**
3. Obtain a copy of the employee's job description and ensure that it is up to date.
4. Compose a letter to the employee's treating physician requesting that he or she complete a Medical Certificate Form, explaining why it is needed and providing a brief summary of the duties of the employee's job and workplace conditions. **A sample letter to the physician is provided on page 23.** Areas in red and within square brackets indicate where you would input specific information about the employee and his or her job.
5. Provide a Medical Certificate Form to be completed and signed by the treating physician to make supplying the required information as straightforward as possible for the physician. **A sample medical certificate form is provided on p. 25.** Areas in red indicate where you would tailor the form to include the name of the employee and other pertinent information.
6. Obtain a blank postage-paid envelope addressed to you, into which the physician would insert the completed Medical Certificate Form.

In summary, you would mail a package to the treating physician containing:

- Your letter requesting the completion of the Medical Certificate Form;
- The employee's signed consent form ;

- An up-to-date copy of the employee's job description;
- A Medical Certificate Form that you have tailored to include the employee's name, address, etc.; and
- A postage-paid self-addressed envelope.

You are advised to keep a full copy of this package for your records.

Sample Letter to the Treating Physician

Date: [dd-mm-yyyy]

Dear Dr. [Name]:

Re: [Employee Name], [Address]

I am writing to you as [Mr./Ms./Mrs. last name]'s [manager, supervisor] to request a medical certificate for employment purposes. As you may be aware, [employee's full name] is currently absent from work at [Name of Department / Agency] for health reasons. [Mr./Ms./Mrs. last name] works as a [job title].

I am writing to you, [Mr./Ms./Mrs. last name]'s treating physician, to request:

1. Formal verification that [Mr./Ms./Mrs. last name] is experiencing an injury/illness that currently precludes [him/her] from working, which is required to substantiate the use of sick leave and help [Mr./Ms./Mrs. last name] avoid an interruption in income;
2. Whether a return to work will be possible and if so approximately when, which will help us to manage workload during the duration of [Mr./Ms./Mrs. last name]'s absence; and
3. What, if any, accommodations we should make for [Mr./Ms./Mrs. last name] to ensure [he/she] can safely return to work, including on a graduated basis if that is your recommendation. (More information on the demands of [Mr./Ms./Mrs. last name]'s job, and our commitment to accommodation is provided below.)

A form to gather this information from you is attached, along with a consent form signed by [Mr./Ms./Mrs. last name] permitting me to request this information from you and [Mr./Ms./Mrs. last name]'s job description. I would appreciate it if you could complete the Medical Certificate Form and return it to me in the postage-paid self-addressed envelope as soon as possible.

Job Details

[Mr./Ms./Mrs. last name]'s job generally involves [brief description of the job tasks, demands and working conditions, such as whether the employee works alone or in a team, interacts with clients, requires physical stamina to do the work, such as having to be able to stand for the majority of the workday, works to demanding deadlines, works in an environment that is loud, bright or subject to temperature changes, works shifts or overtime on a regular basis, and/or must travel or drive frequently as part of the job.] (Please see the attached job description for more information.)

Our Commitment to Accommodation

There is a large and growing body of scientific evidence that a return to work as soon as it is safe to do so supports better health outcomes for employees who experience illness and/or injury. Our organization is committed to making all necessary accommodations to assist our ill/injured employees in returning to work, pursuant to an assessment from their treating physician.

These accommodations can include different job tasks, flexible work arrangements such as shorter hours, ergonomic adjustments to the workstation and other job or workplace adaptations to ensure the employee can safely return to work.

At **[name of department/agency]**, we take the health and safety of our employees very seriously. I will share a copy of the completed Medical Certificate Form with **[Mr./Ms./Mrs. last name]**. Whatever recommendations you make regarding return to work will help me work with **[Mr./Ms./Mrs. last name]** and our HR team to develop a plan for a successful return to employment.

If there is anything further we can do to support **[Mr./Ms./Mrs. last name]** that would help improve **[his/her]** health status, please do not hesitate to let me know. Note, however, that we do not need, nor are we requesting confidential medical information including the diagnosis or prescribed treatment. We respect the privacy of our employee's personal medical information at all times. If you believe we need certain medical information in order to ensure a healthy and safe workplace for **[Mr./Ms./Mrs. last name]**, please discuss this with **[him/her]**. The final decision as to whether to share this information with us will be up to **[Mr./Ms./Mrs. last name]**.

We thank you in advance for your time and effort in responding to this request and for assisting us in supporting the health, safety and wellness of a valued employee.

Sincerely,

[Manager, supervisor name]

[Signature block]

Sample Medical Certificate Form

Medical Certificate Form

[To be completed by the manager before sending to the treating physician:]

- Employee's name:
- Home address and telephone number:
- Date of birth:
- Job title:
- Name of employer and work address:
- Brief job description **[nature of the work, physical/intellectual requirements]:**
- Date of commencement of absence due to health reasons:

This section to be completed by the treating physician.

Note: The information provided will be treated as confidential. We are interested in the employee's anticipated return-to-work date, any expected functional limitations upon return to work, and your recommendations for accommodation measures. We do not require information about diagnosis and treatment.

1. This patient is currently experiencing an illness/injury or medical condition that precludes him/her from performing the duties of his/her job. **[Yes/No]**
2. I anticipate that this patient will not have completed treatment and recovery and be ready to begin assuming work duties before **[(day/month/year)]**.
3. Accommodations will be required to facilitate the patient's return to work. **[Yes/No]**
4. I have reviewed the patient's job description and determined that the following accommodations will be required:
 - **Graduated return to work with reduced hours**
(If selected, please specify below how many days in a five-day week the employee can safely begin working and for how long the reduced hours should be maintained.)
 - **Modified work duties**
(If selected, please specify any and all work-related activities that the employee should not be undertaking and for what period of time.)

- **Physical adjustments to the workstation/area**
(If selected, please specify the required adjustments.)
- **Adjustments to the work environment**
(If selected, please specify the required adjustments.)
- **Assistive devices and/or other special equipment**
(If selected, please provide details.)

Physician's signature

Date

Sample Employee Consent Form

[Employee name, title, address]

Consent to have my treating physician provide specific information to my employer for the purposes of producing a medical certificate

I hereby authorize my treating physician to provide the following information to my employer by mail:

1. Verification that I am experiencing an injury/illness and/or medical condition that currently precludes me from performing the duties of my job.
2. Whether a return to work will be possible, and if so approximately when.
3. What, if any, accommodations should be made to my job duties or in the workplace to enable me to safely return to work.

I understand that my employer will provide me with a copy of the medical certificate.

Signature

Date

Name (please print)

Witness signature

Date

Name (please print)

Appendix D – Checklist for accommodation in the workplace

1.	Did you consult the employee regarding his or her accommodation needs?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
2.	Have you evaluated the employee's needs and gathered the necessary information?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
3.	In complex cases, have you consulted internal and external sources to determine the most appropriate accommodation?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
4.	Have you evaluated all the possible options and related costs?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
5.	Did you work with the employee to document the process?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
6.	Have you contacted the Employment Equity, Diversity and Official Languages Unit?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
7.	Have you informed the employees of the decision?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
8.	Have you communicated the decision to all the parties involved?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
9.	Have you examined all the relevant documentation and the costs incurred	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
10.	Have you implemented the accommodation?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
11.	Have you monitored and evaluated the proposed accommodation?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable

Appendix E – Checklist for accommodation in an appointment process

1.	Are your processes inclusive and accessible?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
2.	Do you post employment opportunities in alternative formats and do you circulate the appointment process advertisements among organizations dealing with the designated groups (persons with disabilities, visible minorities, aboriginal persons and women)?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
3.	Are the work descriptions detailed, accurate and up-to-date? Are the essential and non-essential tasks differentiated from one another? Did you consider Bona Fide Occupational Requirements	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
4.	Are accommodation needs referred to on the process poster?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
5.	Have you consulted the candidate or human resources advisor regarding accommodation needs?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
6.	If the candidate requested accommodation, was the accommodation implemented prior to any assessment?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
7.	Did you check with the candidate or human resources advisor regarding accommodation needs?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
8.	Did you document the accommodation process as soon as possible?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
9.	Did you conduct the interview with the person with a disability or in need for accommodation in the same way that you would with anyone else?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable
10.	Was the composition of the selection board diversified?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not applicable

Appendix F - Frequently asked questions about the Duty to accommodate

- 1. Is the duty to accommodate considered a special treatment for an employee?**
Fundamentally, the duty to accommodate objective is to ensure that individuals are provided with the tools and support to enable them to perform to the best of their ability in a workplace that is truly in touch with and responsive to their needs. From this perspective, duty to accommodate should not be perceived as a means to provide an individual with special treatment over the others.
- 2. Who is responsible for requesting accommodations?**
The responsibility for requesting accommodations rests with the employee. Employees cannot assume that the employer is aware of their particular needs. Employees are responsible for communicating their needs and collaborating to the identification and implementation of accommodations measures. In fact, their first resource on this matter is their manager.
- 3. Why should I accommodate one of my employees?**
The duty to accommodate is based on legal obligations under the *Canadian Human Rights Act*. The duty to accommodate requires employers to identify and eliminate rules creating discriminatory barriers to some individuals. Therefore, the duty to accommodate implies that some practices and/or rules be modified by proposing alternative solutions that will eliminate those barriers.
- 4. Do I have an obligation to accommodate the religious faith of an employee?**
Yes. Under the *Canadian Human Rights Act*, employers have a duty to accommodate employees for their religious beliefs. These accommodations may take various forms such as: flexible hours of work, establishment of a compressed work schedule, etc. For more information about the duty to accommodate religious beliefs, please communicate with the Employment Equity, Diversity and Official Languages unit.
- 5. Is there a maximal cost beyond which I do not have the duty to accommodate?**
In most cases, the cost related to accommodations is minimal. In order for an employer to deny accommodations based on cost, the cost factor must be a major threat to the viability of the organization. From a legal perspective, it is clear that an employer cannot simply use the cost to justify undue hardship. The size of the organization is also an important factor to consider. As such, a large organization such as the Public Service of Canada can't easily make the argument that an accommodation would result in undue hardship in terms of cost for the organization.
- 6. As a manager, what type of information concerning the medical condition of an employee do I have access to?**
Even though the manager/employer has a duty to accommodate, this doesn't mean that they have a right to know everything about the employee's medical condition. In fact, they can only inquire about the employee's limitations. In other words, to identify the best possible accommodations, managers/employers only need to know the employees' limitations.
- 7. At what point during a selection process must candidates be provided with accommodations?**
Candidates must be informed of their rights to request accommodations at every step of the staffing process. As an example, a candidate may be unable, because of

family obligations, to attend an interview early in the morning but may be available later during the day. For a written test, a person with a visual impairment may require that documents be provided in a larger format or require specific computer adaptive programs to complete the test. In both examples, the candidates must be aware of their rights to request accommodations and benefit from these accommodations throughout the staffing process. Keep in mind that accommodation does not give some candidates an advantage over others, rather it ensures that all candidates are on equal grounds during the selection process.

8. Where can I get more information about the duty to accommodate?

If you require more information or assistance with a duty to accommodate situation, you can communicate with the Employment Equity, Diversity and Official Languages unit at 613-952-7649. The Employment Equity, Diversity and Official Languages unit is the main contact for assistance with duty to accommodate requests.