

APPENDIX “A” TO THE MEMORANDUM OF SETTLEMENT

NOVEMBER 1, 2021 CONFIDENTIAL AND WITHOUT PREJUDICE MEDIATION WITH ELI GEDALOF BETWEEN YORK UNIVERSITY AND YUFA RE MODE OF DELIVERY/COVID GRIEVANCES

Family Status Accommodations: Guidelines and Process for Fall 2021 and Winter 2022

Terminology:

Throughout the document below there will be reference to family status accommodation which refers to circumstances where an employee’s request for an accommodation is approved by the Employer on grounds consistent with the Employer’s interpretation of a family status accommodation under the Ontario Human Rights Code.

Requests based on family status are not as common as other types of accommodation requests within York’s employee groups, but became more so in Fall 2021 with the University’s gradual return to in-person operations and implementation of the transitional remote work policy and planned return to regular in-person operations in Winter 2022. The information below will assist those who are receiving, supporting and responding to requests for family status accommodation.

A. Principles of Family Status Accommodation

Ontario law prohibits discrimination based on any of the 16 grounds identified in section 5 of the *Ontario Human Rights Code* and employers have a duty to accommodate employees to avoid such discrimination. York University employees who meet the requirements for family status accommodations must be accommodated in accordance with the *Ontario Human Rights Code*, and in accordance with York University policies and procedures. The following principles should be considered in determining whether an employee is eligible for family status accommodation, and if so the nature of the required accommodations.

1. The duty to accommodate family status works according to the same principles as the duty to accommodate persons with disability.
2. This duty to accommodate covers parent/child relationships in either direction: parent responsible for childcare, or adult child responsible for eldercare.
3. There is reason to believe this right (to accommodation) would be judicially interpreted to extend to other similar relationships of dependence and care. In cases where there is not a parent/child relationship, but where there is a similar relationship of dependence and care, a service provider or employer can request evidence that is reasonable in the circumstances to confirm that the relationship would qualify, in other words that the individual’s caregiving responsibilities can be seen as an immutable characteristic of their family status.
4. York will consider responsibilities in connection with relationships that are outside the traditional scope of family status such as responsibilities towards a spouse or common law partner so long as there is a relationship of dependence and care.
5. It is not a precondition for accommodation that the care relationship engages an individual’s legal obligations. For example, adult children are not legally required to care

for their elders in the same way that parents are the legal guardians of children, but adults providing elder care are still protected by the family status provisions of the *Code*. Legal guardian status is not a requirement for engaging a duty to accommodate for family obligations.

6. The duty to accommodate family status encompasses the essential needs of the family member who requires assistance or care and does not cover preferences or conveniences.
7. Accommodation is a multi-party process that involves the university and the employee. All those involved should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.
8. The person seeking accommodation has a responsibility to inform the employer of their caregiving needs related to a parent-child relationship (or other deemed relationship), and that there is a conflict between those needs and the organization's rules, requirements, standards, processes or procedures, and to explain in some detail the specifics of the conflict.
9. Persons seeking accommodation may be asked about their reasonable efforts to obtain family help and outside supports.
10. Persons seeking accommodation are obliged to disclose relevant information and a refusal to engage with the employer in either facilitating an understanding of their needs, providing information or working to find a solution may result in there being no duty to accommodate in a given case.
11. There is no duty on the person seeking family status accommodation to self-accommodate before approaching an employer for help, however an employer can inquire into the extent to which family help or community support is available in order to assess the need for accommodation.
12. Persons seeking accommodation are in the best position to identify and evaluate such outside resources. However, it is a best practice for employers to provide assistance to individuals in locating information regarding such resources; for example, through Employee and Family Assistance Programs.
13. Employers may make reasonable requests for information that are necessary to clarify the nature and extent of the accommodation need. Employers may request documentation of the validity of the accommodation-seeker's needs, such as medical documentation related to a family member's disability, or illness. Requests for evidence or supporting documentation should be reasonable in the circumstances to verify essential facts relevant to the employment.
14. Employers may also seek reasonable information regarding any available outside resources that the individual has enquired into.
15. As information related to family needs and arrangements may be highly personal, employers should take steps to ensure that information related to accommodation requests is kept confidential and shared only with those who need it.
16. Employers should act in a timely manner and take an active role in seeking accommodation solutions. Persons seeking accommodation should cooperate in the accommodation process, provide relevant information, and meet any agreed-upon standards once accommodation has been provided.

These principles will be applicable to the consideration of family status accommodation requests by Employee Well Being (EWB) and any contract staff or contractors working on behalf of EWB, such as OSI.

B. Process for Family Status Accommodation Requests

Requests for family status accommodation should be submitted in writing using the form required for that purpose by the employee to EWB at famsacc@yorku.ca. The employee is required to have informed their Dean or Associate Dean that they are requesting a family status accommodation prior to submitting their request to EWB. Decisions on eligibility for family status accommodation will be made centrally through EWB in order to preserve confidentiality of personal information, and to promote consistency and timely decisions across employee groups, Faculties and Divisions. Eligibility decisions will be based on York University's duty to accommodate under the Ontario Human Rights Code, with due consideration of the facts of each individual situation.

Where EWB determines that an employee is entitled to family status accommodation, they will inform the Dean's/Principal's Office and will offer advice about options for accommodation that may meet the employee's needs within the operational requirements of the workplace. Final decisions on the type of accommodation to be provided will rest with the Dean's/Principal's Office.

The following will guide institutional decision making on family status accommodation requests:

- Accommodations are provided **only** where eligibility criteria are met. This means that, for accommodation to be provided on grounds of family status, the situation must meet the legal definition of family status which **requires** a relationship of dependence and care.
- In light of the unprecedented changes in working conditions engendered by the global COVID-19 pandemic, EWB and/or OSI will apply more flexible standards for substantiation of accommodation needs for the Fall 2021 and Winter 2022 semesters only, with the understanding that any ongoing need for accommodation will be subject to the regular process for substantiation in summer 2022 onwards. As always, university policy in this regard will be informed by public health guidance as available.
- Accommodation needs will likely be time limited and decisions on both ongoing eligibility and the type of accommodation provided should build in, from the start, a review period.
- Written requests for family status accommodation will be addressed and responded to in writing as expeditiously as practicable.
- Where an employee has received written approval for a family status accommodation for fall 2021 they may request to continue the family status accommodation for winter 2022 upon confirming in writing to EWB that the basis upon which they requested and were granted a family status accommodation for fall 2021 has not materially changed, and where operationally feasible, such requests shall not be unreasonably denied. In appropriate circumstances, and where the University has reasonable grounds to do so, it may request updated medical documentation or other information or documentation relevant to the continuation of the family status accommodation for winter 2022.