

Accommodation in the Workplace Policy

POLICY #PC-02-22

FINAL

PURPOSE

The purpose of this policy is to:

- provide guidelines for workplace accommodation so that all employees are dealt with fairly, equitably and consistently, while adhering to legislative requirements with respect to the Ontario Human Rights Code (“Code”) and the Workplace Safety and Insurance Act and;
- serve to outline the internal complaint process/mechanism and procedures for employees to bring complaints/issues of discrimination to the attention of management for resolution where appropriate, consistent with the Ontario Human Rights Code (OHRC).

APPLICATION & SCOPE

This policy applies to all full-time, part-time and contract employees of OLG.

POLICY STATEMENT

It is the policy of OLG to make every reasonable effort to accommodate an employee, to the point of undue hardship, where an employee identifies a need for temporary or permanent accommodation in accordance with the Ontario Human Rights Code because he or she is unable to perform his/her essential job duties.

Although the most common ground for accommodation requests is disability, requests made for accommodation under any of the other protected grounds of the Ontario Human Rights Code (the Code) are possible and should be approached using the process described herein.

OLG recognizes the dignity and worth of every person by treating employees fairly, equitably and consistently. Every effort will be made such that the impact of accommodation will not discriminate against another group protected by the Code.

DEFINITIONS

Disability or Handicap as defined in the *Ontario Human Rights Code* (Section 10.1.), means:

- 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, includes 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 appliance or device,
- a condition of mental impairment or a developmental disability,
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- a mental disorder, or
- an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997 (“handicap”) “Disability” does not include a minor or common medical condition such as the cold, flu or minor backache that arises from the stresses, pains and inconveniences of everyday life.
- “Disability” may be temporary, short-term, long-term or permanent.

Employment Accommodation: an individualized process by which the employer removes barriers in the workplace that keep an employee from participating equally in all aspects of employment because of a prohibited ground of discrimination under the Human Rights Code (i.e. age, sex, disability) and must be done in consultation with the individual requiring the accommodation and tailored to meet the current and known needs; this may mean taking measures to enable an employee to either perform his or her job, on a modified basis, or perform another job of value to the employer, however does not mean lowering standards or creating jobs which do not have productive value for the employer. **Examples of**

Employment Accommodation:

- Workstation redesign
- Job redesign
- Policy or practice adjustments
- Technical aides or assistive devices
- Human support
- Building modifications

Prohibited Grounds: Under the Ontario Human Rights Code, every person has the right to equal treatment with respect to employment on the basis of race, ancestry, place or origin, colour, ethnic origin, citizenship, creed (religion), sex, sexual orientation, age, record of offences, marital status, family status, same sex partnership status or disability.

Essential Duties: fundamental job duties or requirements of a position. Essential duties are such that they cannot be eliminated or substantially modified without changing the nature of the position. To determine the essential duties of a position, consideration should be given to:

- How often each duty is undertaken
- Proportion of time spent on each duty
- Impact of removing a duty
- Description of current position, and
- Normal productivity expected in the position

Alternate work (Temporary Accommodation): a form of modified work and is an assignment for an employee who is fit to return to work in some capacity, but due to medical restrictions, is unable to perform the essential duties of his/her regular job for a defined period of time; alternate work is also referred to as temporary accommodation.

Temporary accommodation may be an appropriate accommodation to assist an employee where the nature of the disability and its limitations are temporary or episodic, in a return-to-work context or in a situation where a disability renders an employee temporarily unable to perform the pre-disability job.

Permanent Accommodation: considered when an employee's condition is permanent or considered long term. Permanent accommodation may take the form of restricting an employee from a particular duty or task, hour restrictions or may require alternate placement if the employee cannot perform the essential duties of their job. Permanent Accommodation may take place if all of the following conditions are met:

- The employee cannot perform the essential duties of their own position even with modifications
- A vacancy is available
- Employee is capable of physically performing the essential duties of an alternate job
- Employee is qualified to perform an alternate job

REQUIREMENTS

When responding to an employee's request for accommodation, it is important to determine whether the employee's condition/circumstance and its effect on his/her ability to meet the essential duty requirements of his/her employment, results in a right to be accommodated in the workplace.

1. Employee Requests Accommodation

- 1.1. Employees are responsible for promptly advising their Manager/Supervisor of any circumstance, interfering with their ability to attend work or perform regular duties. Failure of the employee to provide timely notification and adequate information may affect OLG's ability to respond promptly to the request.
- 1.2. Although the primary responsibility for initiating a request for accommodation rests with the employee; there may be some cases where the initiation for accommodation will come from the Manager/Supervisor, Human Resources, The Workplace Safety & Insurance Board or some other source.
- 1.3. Employees are required to provide all information requested (medical or otherwise) that is required by the employer to assess the issues relevant to pursuing accommodation initiatives.
- 1.4. 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.
- 1.5. Employees must also continue to respond promptly to any inquiries, written or otherwise, relevant to identifying, assessing, implementing or altering any relevant accommodation initiative.

2. Determine Extent of Disability (if applicable)

- 2.1. OLG may utilize our Disability Management service provider to determine if a disability under the Human rights code exists. In order to make this determination the Disability Management provider will require objective medical evidence to validate the prognosis, the nature and extent of limitations as well as the expected duration of the accommodation.
- 2.2. All information will be maintained as strictly confidential. While awaiting medical validation, the employee's restrictions/limitations will be accommodated on a temporary basis whenever possible. Once the request for accommodation has been medically validated, the department and employee should immediately begin to identify, assess and document ways the employee can be accommodated.

3. Order of Accommodation

- 3.1. Generally, the hierarchy of job accommodation will include the following when determining appropriate accommodation (Appendix A)
 - Employee's own job with modification/modified work
 - Temporary alternate work/temporary accommodation (within their own department and with the same job grade)
 - Temporary alternate work/temporary accommodation (within their own department with a different job grade)
 - Temporary alternate work/temporary accommodation (outside of their department with the same job grade)
 - Permanent alternate work/permanent accommodation (outside or within their own department with the same job grade)

- Permanent alternate work/permanent accommodation (outside or within their own department with a lower job grade)
- Permanent alternate work/permanent accommodation in a reduced job status (i.e. full time to part time)

3.2. Human Resources should be involved in any cases that may require permanent accommodation in an alternate position for which the employee may be qualified.

3.3. In cases of permanent accommodation to an alternate position, the employee's pay and benefits are based on compensation within the alternate position's job grade and range.

3.4. Alternate OLG locations will also be considered when attempting to accommodate an employee. This review can generally be limited to a review of available positions as employers are not required to 'create' a new position to meet the duty to accommodate.

3.5. If no accommodation can be provided, and there is no reasonable prospect of the employee returning to work, the employee's employment status with OLG will be reviewed and termination considered, subject to any collective agreement, WSIB legislation, *Employment Standards Act 2000* and/or common law obligations regarding severance and notice.

4. Confidentiality

4.1. The employee seeking accommodation has a right to privacy. As such, medical information is always considered confidential. The Disability Management service provider may review medical documentation and provide OLG with the following information as needed to respond to an accommodation request. This may include, but is not limited to:

- The prognosis for a full or partial recovery
- The employee's fitness to return to work
- The employee's fitness to perform specific components of the pre-injury job
- The likely duration of any physical or mental restrictions or limitations following the employee's return to work

4.2. The employer and/or Disability Management service provider has a right to, and a need for, information that can help determine appropriate accommodation measures.

5. Documentation

5.1. All efforts to accommodate an employee must be recorded. Documentation should include, but is not limited to:

- The request for accommodation;
- Corresponding information received through the Disability Management service provider;
- All accommodation options considered and if rejected, the reason for rejection; and
- Any/all expert advice obtained to assist in the accommodation process.

5.2. All offers of accommodation must be in writing. If an employee rejects an offer of accommodation that meets their need, the 'refusal' should also be documented.

6. Complaint Procedure

6.1. Where an employee at any step of this policy believes that the Employer has discriminated against him/her because of disability in contravention of the Ontario Human Rights Code ("OHRC") and brings this complaint forward to a Supervisor, Manager or human resource representative, the Manager, with the support of a human resource representative, if required, will meet with the complainant to explain the process and options available.

6.2. During this initial meeting, the *complainant* will be advised that:

- OLG will take complaints of discrimination seriously and emphasize the Corporation's commitment to resolving employee concerns as quickly as possible.
- The complainant will be informed of his/her right to file a complaint with the Ontario Human Rights Commission.
- While OLG makes every effort to maintain confidentiality, some information may have to be shared in order to seek a resolution.
- As the *complainant*, he/she is protected against retaliation or reprisal for raising concerns.
- The informal and formal resolution options available will be discussed.

7. Investigation Process

Resolution Option – Informal

7.1. Complainant Intervention: If the complainant feels comfortable, he/she should discuss with the respondent why he/she feels the decision(s) are discriminatory.

7.2. The *complainant* may prefer to have a third party, normally the human resource representative, speak to the *respondent*. If the *respondent* is the human resource representative, the complainant may request another representative, normally a human resource representative from an alternate workplace.

7.3. During the discussion with the respondent, the complainant or complainant's representative will:

- Discuss the complainant's concerns and try to find a resolution
- Explain that resolving the situation at this level may avoid a more formal resolution process
- Review OLG's Accommodation in the Workplace Policy with the individual
- Discuss next steps
- Thank the individual for his/her co-operation

Mediation

7.4. Mediation involves a neutral third party (i.e., Human Resource Representative) facilitating communication between the complainant and respondent to assist them in resolving the conflict to the satisfaction of both parties.

7.5. The mediation meeting will be documented and kept in the employee's *occupational nonoccupational file*. The facilitator will follow up with the complainant in a timely manner to ensure a resolution has been achieved and/or to determine appropriate next steps to address concerns and such follow up will be documented.

Resolution Option – Formal

7.6. Where an employee alleges the Employer has discriminated against him/her because of disability in contravention of the Ontario Human Rights Code ("OHRC") the employee shall file a formal complaint with the Employer.

7.7. A formal complaint investigation will determine whether the allegation constitutes workplace discrimination and, if so, the appropriate action that should be taken.

7.8. A trained Human Resources Representative will conduct the investigation using the techniques and processes outlined in OLG's *Advisor and Investigator Manual*. The Investigator is responsible for providing recommendations for resolution.

7.9. The appropriate Executive Director, Human Resources has the discretion to retain a qualified external consultant to conduct the mediation or investigation where the issues are complex, where there is potential conflict of interest or where there are ongoing issues. A list of approved investigators will

be made available to the appropriate Executive Director, Human Resources.

7.10. Meeting with Complainant

The Investigator will meet with the Complainant and:

- Explain and provide a letter confirming the role of the investigator, a statement of confidentiality, the investigation process and protection from retaliation/reprisals.
- Outline the investigation timelines; investigations must be completed as expeditiously as possible without compromising the investigation.
- Interview the complainant.
- Validate the interview with the complainant.
- Request the names of any witness(es) who may have information that would be useful to the Investigation.
- Take interview notes, review the notes with the complainant and ask the complainant to initial notes confirming the information is accurate.

7.11. Meeting with Respondent

The Investigator will meet with the Respondent and:

- Interview the respondent(s), providing the particulars of the allegations
- Request the names of any witness(es) who may have information that would be useful to the investigation.
- Take interview notes and ask the respondent to initial the notes.

7.12. Meeting with Witnesses

The Investigator will meet with Witnesses and:

- Explain and provide a letter confirming the role of the investigator, a statement of confidentiality, the investigation process and protection from retaliation/reprisals.
- Interview each witness separately
- Take interview notes and ask witness to initial notes confirming information is correct.

7.13. Consider any Available Evidence

Evidence may include, but is not limited to, letters, emails, documents and other information.

7.14. Documentation and Investigation Report

- Witness statements and other relevant information will be formally documented and placed in a separate file with the investigation report. The statements and documentation will not be released except as required by law.
- At the completion of the investigation, the Investigator will prepare a written report that includes the allegations, the respondents position, witness and documentary findings, conclusions and discussion about policy violation(s). as well as the analysis process, the legal framework taken into consideration, a factual review and any findings of fact regarding discrimination as well as any other relevant issues.
- The investigation report will be provided to the appropriate Manager, Human Resources who will review the recommendations and determine which recommendations if any, will be implemented to correct any existing problems and/or prevent similar problems from occurring in the future. In the event of a conflict, the investigation report will be provided to an alternate Human Resources Manager, who will review and make recommendations to correct any existing problems and/or prevent similar problems from occurring in the future.
- Final decisions regarding the disposition of a complaint will be made by the appropriate Human Resource Manager and Executive Director, Human Resources and will be communicated in writing to the complainant and respondent.

- The Investigator will keep the investigation report in a confidential investigation file, separate from the complainant or respondent's personnel file, and will only release it if required by law.

7.15. Refusal to Intervene or Investigate

OLG has discretion to refuse to intervene or investigate or may discontinue an investigation where: an adequate remedy already exists; the complaint is frivolous, vexatious or not made in good faith; another complaint avenue has been pursued (such as a grievance); or having regard to all the circumstances further investigation of the matter is unnecessary.

7.16. Independent Review Committee

A review committee will be established to oversee, monitor, and evaluate this process.

ROLES AND RESPONSIBILITIES

ROLE	RESPONSIBILITY
Employee	<ul style="list-style-type: none"> ▪ Notify the Manager/Supervisor as soon as possible of any accommodation need that relates to his/her ability to perform job duties or participate fully in the workplace ▪ Cooperate with requests for information about capabilities and limitations; by providing clear and sufficient information to support the requested employment accommodation ▪ Fully participate in OLG's Disability Management program, if the requested accommodation is due to a disability ▪ Work collaboratively with the Manager/Supervisor/HR to develop an employment accommodation ▪ Advise the Manager/Supervisor promptly of any changes to his/her status, or of any difficulties with the accommodation. ▪ Perform the essential duties of the assigned position within the range of his/her abilities ▪ Support the employment accommodation of other employees, including accepting changes in duties, when necessary, to accommodate a co-worker's needs ▪ Treat with dignity and respect other employees who require accommodation
Department Manager/Supervisor	<ul style="list-style-type: none"> ▪ Work with, and involve all other parties as required (i.e. Employee, HR, Union (where applicable) Abilities Management Specialist, Health and Safety Officers, Ergonomic Specialist) to implement appropriate accommodation ▪ Identify the essential duties of the position ▪ Communicate promptly and in a timely fashion with the employee, upon becoming aware of the need and/or solution to the accommodation request, or forward onto the next level of authority for approval ▪ Be fair and equitable to the employee and their coworkers ▪ Maintain the integrity of the OLG principles and process for accommodation, and take all reasonable steps to prevent accidents in the workplace ▪ Document and report on the accommodation
Human Resources	<ul style="list-style-type: none"> ▪ Ensure that employees are being treated equitably and fairly ▪ Provide advice and coaching to Managers and Supervisors

	<p>about this policy and its implementation; relevant legislation and collective agreements; and related benefits and entitlements, including STSP, LTIP, and WSIB entitlements</p> <ul style="list-style-type: none"> ▪ Seek advice from subject matter experts, when necessary ▪ As necessary, consult with the Labour Relations department on any situation where a proposed accommodation solution would be inconsistent with the collective agreement provisions and/or on the rights of other represented employees ▪ Treat all documentation that is received as confidential ▪ Assist the Manager/Supervisor in assessing the employee's skills and abilities against the essential duties of the job ▪ Assist with the identification of potential alternative positions or options ▪ Support the accommodation on an ongoing basis ▪ Educate all parties on their continued role in the accommodation ▪ Track accommodation and maintain accurate records ▪ Liaise with external providers to assist in returning disabled employees to work
Human Resources – Wellness, Abilities and Safety	<ul style="list-style-type: none"> ▪ Provide assistance and consultation to HR Services when required ▪ Ensure compliance with all applicable legislation ▪ Provide reporting on effectiveness of the process ▪ Monitor effectiveness of tools provided to educate on process ▪ Make revisions to the program as deemed necessary
OLG's Disability Management Service Provider	<ul style="list-style-type: none"> ▪ Evaluate the medical documentation provided by the employee's treating practitioner in relation to the request for accommodation due to a disability ▪ Provide the employee's medical restrictions to OLG, and when required, any other information this is necessary to respond to the employee's request for accommodation

RELATED POLICY DOCUMENTS

- Short-Term Sickness Plan Policy
- Respectful Workplace – Human Rights and Anti-Harassment/Discrimination Policy
- [Ontario Human Rights Code](#)
- [Workplace Safety and Insurance Act](#)
- [Policy and Guidelines on Disability and the Duty to Accommodate \(Ontario Human Rights Commission\)](#)

FORMS

- Appendix A - Checklist-Employment Accommodation for Persons with Disabilities
- Appendix B- Examples of Accommodations (Temporary and Permanent)

POLICY OWNER

Senior Vice President, People and Culture

POLICY APPROVAL

Approver	Date
Rick Campbell, Senior VP, Human Resources	July 21, 2009

REVISION / REVIEW HISTORY

Revision / Review Date	Updated By	Summary of Revision / Review
May 17, 2024	Policy Services	<ul style="list-style-type: none">▪ Updated template▪ Supersedes L-HRPP06-01 Accommodation in the Workplace Policy