

Accommodation of Staff Procedure

RATIONALE:

Hamilton-Wentworth District School Board (HWDSB) is committed to meeting its legal obligations under the Human Rights Code and Workplace Safety and Insurance Act to provide safe working and learning environments that support employees with disabilities in the performance of their job duties. This is to be achieved by:

- respecting the dignity of employees with disabilities in the accommodation process;
- protecting the safety of all staff;
- maintaining the employee's right to privacy; and
- responding appropriately to support the employee by providing meaningful work

TERMINOLOGY:

Accommodation: Modifying a job, job site, or the way in which a job is done to enable the employee with a disability to perform the essential duties of the job. The steps in the accommodation process are to determine:

1. the essential duties of the affected employees' position. The period of accommodation may be temporary or permanent, depending on the particular circumstances;
2. the anticipated timeline of the accommodation;
3. where the accommodation is needed, i.e. location;
4. possible solution(s) to enable a safe and early return to work;
5. an implementation plan that supports medically identified restrictions and limitations;
6. how to reassess accommodation needs on an ongoing basis to determine success of the accommodation.

HWDSB will consider the following factors in this process: seniority, availability, qualifications, and legislative or contractual obligations. The nature of accommodation varies depending on the duration of the accommodation request, the applicable legislation, and the specific needs of the individual.

Both the Human Rights Commission and the Workplace Safety and Insurance Board view the Board as a single employer, and expect "reasonable" accommodation be provided to employees with disabilities. Therefore, both the department/school and central administration of HWDSB have a role in providing reasonable accommodation.

Reasonable Accommodation: Reasonable accommodation is modifying a job, job site, or the way in which a job is done to enable the employee with the disability to perform the essential duties of the job without undue hardship to the employer.

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Reasonable accommodation does not require an employer to:

- create a new job in order to keep an employee employed;
- remove essential duties of the job or to change the job such that it becomes a substantially different one;
- accept sub-standard or incompetent performance. The disabled employee is entitled to an equal opportunity to perform the job in accordance with the same standards as expected of other employees;
- provide a perfect solution.

Disability: A disability or handicap, as defined in the Ontario Human Rights Code, is:

- a) any degree of physical disability, infirmity, malformation or disfigurement, that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial device.
- b) a condition of mental retardation or impairment
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language.
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act. Sickesses and non-work related injuries that are commonplace, widely shared or temporary in nature are not necessarily considered to be a disability for which accommodation is required.

Essential Duties: Essential Duties are those which constitute the primary purpose of the job. In order to determine the essential duties of a job, consideration is given to the duties necessary to produce the final product or service required. It is usually considered an essential part of the job if a duty:

- constitutes a substantial portion of the work
- is an integral part of the job
- is not normally delegated

A detailed job description as well as a Physical Demands Analysis may be used or sought to assist in defining essential duties.

Undue Hardship: Legislation requires an employer to provide reasonable accommodation unless to do so would cause undue hardship. Undue hardship for an organization is generally related to:

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1. Health and safety requirements may constitute undue hardships where attempts have been made to maximize protection but the risks remaining after accommodation outweigh the benefits enhancing the employee's opportunity.
2. Costs may amount to undue hardship if they are quantifiable and directly result in substantially decreased productivity, efficiency and effectiveness of the organization.
3. Other factors. e.g. undue negative impact upon other employees in certain situations.

Supervisor: Anyone who is responsible for the work of an employee.

PROCEDURES:

1.0 Initiation

- 1.1 Employees are responsible for promptly advising management or Human Resources of any condition, illness or injury interfering with their ability to attend at work or perform regular duties. Failure of the employee to provide timely notification and adequate information may affect the responsibility and obligations of the Board to provide accommodation.
- 1.2 When the employee has a disability, which requires job accommodation, the supervisor will notify Human Resources

AND/OR

- 1.3 Although it is expected the employee will take primary responsibility for initiating the need for accommodation, there may be some cases where the initiation for accommodation will come from the supervisor, Human Resources, Workplace Safety and Insurance Board or another source.

2.0 Notification

- 2.1 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.

Ontario Human Rights Commission (OHRC) Guidelines on Accommodation clearly state:

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

- 2.2 Human Resources plays a coordinating role:
 - to assist work units in their staffing needs

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- to ensure compliance with Collective Agreements and legislation, e.g. Workplace Safety and Insurance Act and Human Rights Code
- to monitor on-going accommodation
- to inform the employee of the right to contact their union/ federation, where applicable

3.0 Verification

3.1 Employees must promptly respond to any inquiries, written or otherwise, relevant to identifying, assessing, implementing or altering any relevant accommodation initiative.

3.2 A medical doctor will assess the employee when:

- the employee is off the job due to injury/disability
- the present abilities of the employee to perform the job are not clear

The Board may request an assessment by a Board assigned physician.

3.3 The medical doctor must provide a certificate stating:

- whether or not the employee is able to work under modified circumstances
- *what the restrictions or limitations are*
- a timeline for being off work and/or performing modified work duties

3.4 When the physical demands of the job are unclear, Human Resources will obtain a Physical Demands Analysis for that job.

3.5 When the employee has been off work and requires accommodation, the employee does not return to work until the medical information is submitted to the employer and job accommodation is in place.

4.0 Application

4.1 The employee continues to play a key role and has the responsibility to continue to actively communicate and fully participate and co-operate in any of the steps or phases of the accommodation implementation.

4.2 HWDSB and Unions and Federations (where applicable) have a joint responsibility to work out a solution with respect to accommodation.

4.3 Each employee with an injury or disability will be considered individually in order to determine what changes can be made to facilitate accommodation.

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- 4.4 The *present* capabilities of the employee and the risks associated with the work are taken into account, rather than anticipating future changes in abilities or risks. HWDSB may require subsequent medical review to verify the continued need for accommodation.

5.0 Implementation

Successful accommodation initiatives depend upon the cooperation, input and support of all parties; the employee, the Board and the Union or Federation (where applicable). It is expected that all three parties will work cooperatively to ensure that they successfully address accommodation issues that arise in the workplace.

5.1 Uncomplicated accommodation

The Board and/or its representative(s) has the responsibility to determine an accommodation within a work unit in the least disruptive manner based on restrictions and limitations.

Accommodation can be accomplished within the work unit with little disruption when:

- the present abilities of the employee to perform the work are known and,
- the nature of the job accommodation is uncomplicated, and
- minor adjustments can be made to modify the workplace or the employee's work plan or schedule

5.2 Complex accommodation

When accommodation is more complicated, and cannot be easily implemented under 5.1, a consultation process involving Human Resources and Union or Federation representatives (where applicable) and management will be used to develop and implement an accommodation plan. This may involve the purchase of equipment, technology or other aids to assist the employee in performing the essential duties of their job. In addition, comparable vacant positions for which the employee is qualified and able to perform the essential duties will be considered, as long as it does not constitute a promotion. Employees assuming a "comparable" position will be paid at the rate of pay of the comparable position.

5.3 When an employee cannot perform essential duties of available jobs for which they are qualified

5.3.1 When the disability is work-related, the employee will be referred to the Workplace Safety and Insurance Board.

5.3.2 An employer cannot accommodate an individual who is unable to perform the essential duties of a job.

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6.0 Conclusion

- 6.1 When medical documentation is presented indicating fitness to return to full duties/full hours, the employee is returned to the original position and resumes regular duties.
- 6.2 When medical documentation is presented indicating permanent restrictions/limitations, the accommodation will be reviewed to determine if permanent abilities can be maintained within the current assignment and accommodation plan.
- 6.3 Each situation is ultimately assessed in accordance with individual circumstances. These procedures are not meant to limit or restrict options and, ultimately, the accommodation of personnel will be in compliance with the legislative and collective agreement requirements which may apply from time to time.