

## C. Sample Policy on Accommodation and Procedure

A detailed sample policy that can be adopted for use by the licensee's legal workplace. For accommodation of employees or applicants for employment, see the "Policy on *Integrated Accessibility* under the *Accessibility for Ontarians with Disabilities Act*"

**Effective Date:\***

**Revised Date:\***

**Approved By:\***

### References:

- *Human Rights Code*, R.S.O. 1990, c. H.19
- *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11
- *Integrated Accessibility Standards*, O. Reg. 191/11
- *Law Society Act*, R.S.O. 1990, c. L.8, s. 33 – "Prohibited conduct"
- Rules of Professional Conduct, s. 6.3.1 - "Discrimination"
- Paralegal Rules of Conduct
- "A policy primer: Guide to developing human rights policies and procedures", Ontario Human Rights Commission (December 2013)
- "Policy and guidelines on disability and the duty to accommodate", Ontario Human Rights Commission (December 2009)
- "Policy on ableism and discrimination based on disability", Ontario Human Rights Commission (June 2016)
- "Working Together: The Code and the AODA", Ontario Human Rights Commission

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## PURPOSE

XYZ Organization (the "Organization") is committed to providing an environment that is inclusive and that is free of barriers based on age, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy) gender identity, gender expression, sexual orientation, record of offences, marital status, family status, and disability. XYZ commits to provide accommodation for needs related to the grounds of the *Ontario Human Rights Code*, unless to do so would cause undue hardship, as defined by the Ontario Human Rights Commission's Policy on Disability and the Duty to Accommodate.

Accommodation will be provided in accordance with the principles of dignity, individualization, and inclusion. XYZ will work cooperatively, and in a spirit of respect, with all partners in the accommodation process.

The purpose of this policy is to:

- Ensure that partners and employees at XYZ are aware of their rights and responsibilities under the *Ontario Human Rights Code* with respect to accommodation;
- Set out in writing the organization's procedures for accommodation and the responsibilities of each of the parties to the accommodation process.

## APPLICATION

This policy:

- Applies at every level of XYZ, and extends to all partners, employees (including full-time, part-time, temporary, probationary, casual, and contract staff), students and volunteers. It also applies to people who are applying for employment with the organization;
- Applies to every aspect of the employment relationship, including recruitment, selection, promotion, transfers, training, salaries, benefits, discipline, performance appraisals, and termination. It covers rates of pay, hours of work, leaves of absence, and holidays;
- Applies to the physical offices of XYZ; and
- Extends outside of the offices of XYZ, such as off-site client meetings, business travel, firm-sanctioned social events, and to electronic communications.

All new and existing employees will be provided with a copy of this accommodation policy and procedure. All job applicants who are selected for an interview will be notified of the accommodation policy and procedure before the interview.

## DEFINITIONS

**Accessibility:** Refers to access and the absence of barriers that prevent individuals and/or groups from fully participating in all aspects of employment and service provision. The term is often linked to people with disabilities and their rights to access.

**Accommodation:** The Organization's duty to adjust its rules, policies, or practices in order to allow for the full participation of employees or applicants who have needs based on grounds protected by the *Ontario Human Rights Code* (the "Code"). The Organization will provide an accommodation unless doing so would result in undue hardship. An accommodation will be individualized and consider the employee or applicant's unique circumstances.

Some examples of appropriate workplace accommodation include, but are not limited to:

- Workstation adjustments
- Job redesign

- Changes to organizational policies and practices
- Technical aids
- Human support
- Providing materials in alternative formats
- Building modifications
- Counselling and referral services
- Temporary or permanent alternative work
- Changes to performance standards
- Leaves of absence
- Changes to scheduling or hours of work
- Changes to work uniforms

**Duty to Accommodate:** The obligation of an employer, facility, and service provider to take steps to eliminate the disadvantage caused by systemic, attitudinal, or physical barriers that exclude individuals or groups protected under the *Code* from participating in all aspects of employment. There is a procedural obligation to explore all accommodation options, and a substantive obligation to implement an accommodation that is reasonable. Every accommodation request will be fully considered, and may be refused only if no *Code*-related need is substantiated or if undue hardship can be demonstrated.

The duty to accommodate is informed by three principles: respect for dignity, individualization, as well as integration and full participation.

- **Respect For Dignity:** Accommodation will be provided in the way that most respects the dignity of the person, if doing so does not cause undue hardship. Human dignity encompasses individual self-respect, self-worth, and inherent worth as a human being. It includes physical and psychological integrity and empowerment. It is harmed when people are marginalized, stigmatized, ignored, or devalued. Privacy, confidentiality, comfort, individuality, and self-esteem are all important factors.
- **Individualization:** There is no set formula for accommodating people identified by *Code* grounds. Each person's needs are unique and will be considered afresh when an accommodation request is made. People sharing the same condition often experience it in very different ways, with different symptoms, limitations, and prognoses.
- **Integration and Full Participation:** Accommodations should be developed and implemented with a view to maximizing a person's integration and full participation. Achieving integration and full participation requires barrier-free and inclusive design, as well as removing existing barriers. Where barriers continue to exist because it is impossible to remove them at a given point in time, then accommodations should be provided, up to the point of undue hardship.

**Employee:** For the purposes of this policy, the term "employee" includes full-time, part-time, temporary, probationary, casual, contract staff, and independent contractors.

**Licensee:** A person licensed as a lawyer or paralegal in the province of Ontario.

**Undue Hardship:** The limit beyond which employers are not expected to provide an accommodation. Under the *Code*, cost, outside sources of funding, and health and safety are relevant factors in assessing undue hardship. Other factors such as business inconvenience, employee morale, or client preferences are not relevant to this determination. *Bona fide* accommodation requests require more than a minimal effort on the part of the employer. The employer must take all reasonable steps to determine if an employee, job applicant and/or service recipient can be accommodated. However, there are limits on how much the employer is required to do. If the employer can show that further efforts to accommodate would create undue hardship for it, it has met its legal obligations.

## ROLES AND RESPONSIBILITIES

### 1. The Organization

Overall responsibility for implementing this policy rests with the **[designated workplace representative]**. The manager and employee share responsibility for identifying and addressing accommodation needs.

The Organization will foster an environment that is conducive to providing accommodation in accordance with the principles of dignity, individualization, and inclusion by:

- Providing all employees with a copy of this policy;
- Ensuring that all applicants receive information, in an appropriate format, about this policy;
- Ensuring that a copy of the policy is permanently posted and updated on its intranet site, and displayed in a common area within the Organization;
- Being flexible, when possible, in individual working patterns to support an acceptable balance between work and home life;
- Ensuring that all forms of harassment in the workplace are not tolerated;
- Ensuring that employees who are licensees and law students are aware of the confidential Member Assistance Program, and that all employees are aware of any Employee Assistance Program that offers them support services, including mental health services, that are covered through their benefit plans;
- Engaging in positive practices and behaviours that prevent discrimination and stigma; and

In relation to accommodation requests, the Organization has a responsibility to:

- Advise employees and applicants about their right to accommodation and to respond to requests for accommodation in a comprehensive and timely manner;
- Accept an employee or applicant's request for accommodation in good faith, unless there are legitimate reasons not to do so;

- Take steps to ensure that alternative approaches and possible accommodation solutions are investigated;
- Explore various forms of possible accommodations and alternative solutions;
- Accommodate employees and applicants unless doing so would cause undue hardship;
- Ensure that no employee or applicant is penalized for making an accommodation request;
- Ensure that managers have the tools, resources, support, and advice necessary to accommodate their employees;
- Ensure that any employee information relating to an accommodation is kept confidential; and
- Ensure positive reintegration into the workplace for an employee who has been on leave.

## 2. Managers

Managers must follow the correct procedure when an applicant or employee seeks accommodation (see Procedure section). The manager must keep a record of the accommodation request and action taken and submit a record of the request for accommodation to the **[designated workplace representative]**. The manager must protect the employee's confidentiality, and limit requests for information to what is reasonably related to the nature of the limitation or restriction that is needed to respond to the accommodation request.

If a manager believes that an employee is impaired due to an illness, including a mental health condition, the manager must take steps to ensure that the interests of the Organization and its clients are protected.

## 3. Employees/Applicants

Every employee has a responsibility to:

- Be aware of the confidential Members Assistance Program, of any Employee Assistance Program that provides support services, including mental health services, to employees of the Organization, which are covered through the Organization's benefit plans;
- Respond respectfully and responsibly when other employees require accommodation;
- Engage in positive practices and behaviours that prevent discrimination and stigma;
- Co-operate in the implementation of accommodation measures, where required;
- Make their accommodation needs known to the best of their ability. This responsibility includes identifying, where possible, the types of accommodation a

person considers appropriate. It is important to furnish enough information so that the Organization can understand the accommodation needed. If requested, an employee or applicant should provide supporting documentation from a health care provider to help the Organization develop appropriate accommodation; and

- Once accommodation has been provided, an employee has a responsibility to meet all agreed-upon performance standards and requirements, and to continue to work with their manager to ensure that the accommodation remains effective. The employee is required to discuss their disability only with persons who need to know about it.

## PROCEDURE

### 1. Requests for Accommodation

#### a. Applicant Seeking Accommodation

An applicant who requires accommodation in relation to a selection process should, as soon as possible, inform the hiring manager or **[designated workplace representative]** and identify what type of accommodation is required, if possible. It is standard practice to advise all applicants for employment of their right to accommodation, and if accommodation is requested and provided, to confirm whether the accommodation is satisfactory. The Organization may require documentation from the applicant to verify the need for accommodation. On receiving the request, the manager or human resources advisor will work with the applicant to develop the accommodation option that will best allow the applicant to participate in the selection process.

Where the request involves issues outside the Organization's expertise, the Organization may seek specialist advice, with the applicant's consent.

#### b. Employee Seeking Accommodation

Requests for accommodation by employees should be made to the **[designated workplace representative]**. Accommodation requests should, whenever possible, be made in writing. The accommodation request should indicate:

- The *Code* ground the accommodation is being requested on;
- The reason accommodation is required, including enough information to confirm the existence of a need for accommodation; and
- The specific needs related to the *Code* ground.

All accommodation requests will be taken seriously. No person will be penalized for making an accommodation request.

### 2. Provision of Information

The parties to the accommodation process must share information about accommodation needs and potential solutions. In some cases, it be necessary to obtain expert opinions or information in order to confirm the need for accommodation, or to determine appropriate accommodations.

The **[designated workplace representative]** may require further information related to the accommodation request in the following circumstances:

- Where the accommodation request does not clearly indicate a need related to a *Code* ground;
- Where further information related to the employee's limitations or restrictions is needed to determine an appropriate accommodation; and/or
- Where there is a demonstrable objective reason to question the legitimacy of the person's request for accommodation.

Where expert assistance is necessary to identify accommodation needs or potential solutions, the accommodation seeker is required to cooperate in obtaining that expert advice. Any costs associated with obtaining such expert advice will be borne by XYZ Organization.

Failure to respond to such requests for information may delay the provision of accommodation.

The **[designated workplace representative]** will maintain information related to:

- The accommodation request;
- Any documentation provided by the accommodation seeker or by experts;
- Notes from any meetings;
- Any accommodation alternatives explored; and
- Any accommodations provided.

This information will be maintained in a secure location, separate from the accommodation seeker's file, and will be shared only with those persons who need the information.

### **3. Privacy and Confidentiality**

XYZ will maintain the confidentiality of information related to an accommodation request and will only disclose this information with the consent of the person seeking accommodation. Persons requesting accommodation will be asked only for information required to establish the foundation of the accommodation request, and to respond appropriately to the accommodation request.

### **4. Accommodation Planning**

The accommodation process is a shared responsibility, and everyone involved must work cooperatively, share information, and work towards potential accommodation solutions. Accommodation requests will be dealt with promptly.

The **[designated workplace representative]**, the person requesting accommodation related to a *Code* ground and, where appropriate, any necessary experts will work together cooperatively to develop an Accommodation Plan for the individual.

The Accommodation Plan, when agreed on, will be put in writing, and signed by the individual requesting accommodation, the accommodation seeker's manager, or supervisor, and the **[designated workplace representative]**. An Accommodation Plan may include the following:

- A statement of the accommodation seeker's relevant limitations and needs;
- Arrangements for necessary assessments by experts or professionals;
- Identification of the most appropriate accommodation short of undue hardship;
- Clear timelines for the provision of identified accommodations;
- Criteria for determining the success of the accommodation plan, together with a mechanism for review and re-assessment of the accommodation plan, as necessary; and
- An accountability mechanism.

## **5. Interim Accommodations**

Where necessary, interim accommodation will be provided while long-term solutions are developed.

## **6. Review of Accommodation Requests**

The **[designated workplace representative]** will make the final determination about whether granting an accommodation request would result in undue hardship for the Organization. The **[designated workplace representative]** may grant a request, deny a request, or propose an alternative to the request. If an accommodation request is denied, the **[designated workplace representative]** must clearly explain this to the employee and provide reasons for its decision.

## **7. Identifying and Implementing the Accommodation**

Accommodation may take many forms, depending on the applicable *Code* ground. What works for one individual may not work for another. Each person's situation must be individually assessed. The aim of accommodation is to remove barriers and ensure equality. An accommodation will be appropriate where it results in equal opportunity to attain the same level of performance or to enjoy the same level of benefits and privileges experienced by others, and where it respects the principles of dignity, inclusion, and individualization. Accommodations will be developed on an individualized basis. In each



case, the organization will implement the most appropriate accommodation, short of undue hardship.

Appropriate accommodations may include, but are not limited to:

- Modification of dress code (e.g., due to creed)
- Leaves of absence (e.g., for religious observance, pregnancy, disability, or family status)
- Changes to scheduling or hours of work (e.g., due to pregnancy, creed, or family status)

## 8. Monitoring Accommodations

The **[designated workplace representative]** and the person receiving accommodation will monitor the success of the Accommodation Plan, and promptly address any deficiencies or any relevant changes in the workplace or the employee's needs.

Employees must notify their manager when their accommodations are no longer required or when they need to be modified.

## 9. Undue Hardship

Accommodation will be provided to the point of undue hardship. A determination regarding undue hardship will be based on an assessment of costs, outside sources of funding, and health and safety. It will be based on objective evidence.

A determination that an accommodation will create undue hardship may only be made by the **[designated workplace representative]**.

Where a determination is made that an accommodation would create undue hardship, the person requesting accommodation will be given written notice, including the reasons for the decision and the objective evidence relied upon. The accommodation seeker will be informed of their recourse under XYZ Organization's Policy on *Human Rights Code-Based Discrimination and Human Rights*, and under the Ontario *Human Rights Code*.

Where a decision has been made that an accommodation would cause undue hardship, XYZ Organization will proceed to implement the next best accommodation short of undue hardship, or will consider phasing in the requested accommodation.

## REVIEWING AND UPDATING THE POLICY

The **[designated workplace representative]** will regularly review this policy and will make revisions as necessary. All employees will be invited to contribute to the review

process. The Organization will accept comments on the policy at any time and, unless a comment raises an urgent concern, they will be considered during the regular review.

## **REPORTING AND MONITORING REQUESTS**

The **[designated workplace representative]** will monitor all requests for accommodation to ensure the policy has been correctly implemented. The Organization will keep records of all requests for accommodation and will report to the appropriate authorities, as required.

## **INQUIRIES**

inquiries about this policy should be addressed to the **[designated workplace representative]**.