

Sample Policy on Mental Health

A detailed sample policy that can be adopted for use by the licensee's legal workplace.¹

Effective Date:*

Revised Date:*

Approved By:*

References:

- *Human Rights Code*, R.S.O. 1990, c. H.19
- Rules of Professional Conduct, ss. 7.1-3(d) and (e).
- Paralegal Rules of Conduct, ss. 9.01 (d) and (e)
- "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)
- "Policy on ableism and discrimination based on disability", Ontario Human Rights Commission (June 2016)

PURPOSE

XYZ Organization (the "Organization") is committed to fostering a supportive workplace environment where:

- All employees have and demonstrate a positive attitude towards mental health;
- All employees are treated with dignity and respect;
- An employee feels safe self-identifying as a person with a mental health disability and seeking support from the Organization as they pursue treatment;
- Discrimination on the basis of mental health disability is prevented; and
- Mental health disabilities are understood and accepted without stigma as a result of the Organization providing ongoing training and information about mental health.

This policy is designed to:

- Help managers take proactive steps to ensure that employees with mental health disabilities are supported appropriately;

¹ This model policy is based on the "Policy and Procedures on the Accommodation of Mental Illness", Canadian Human Rights Commission (October 2008), available online: https://www.chrc-ccdp.gc.ca/sites/default/files/policy_mental_illness_en_1.pdf

- Ensure that employees who require accommodation for mental health disabilities receive effective, timely, and confidential assistance;
- Prevent employee impairment due to mental health disabilities, or ensure that the Organization intervenes as early as possible in the event of an employee's impairment;
- Counteract the stereotypes, myths, negative attitudes, and stigma that can be associated with mental illness through the promotion of positive attitudes modelled by the Organization's leadership team and managers, clear practices, and ongoing education; and
- Support existing policies that help prevent and eliminate discrimination.

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), and students;
- 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 absences, 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.

DEFINITIONS

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"), including mental health disabilities. The Organization must provide an accommodation unless doing so would result in undue hardship. An accommodation must 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

Applicant: An applicant is an applicant for employment at the Organization.

Discrimination: An unequal treatment that imposes a burden or withholds a benefit based on one or more grounds protected by the *Code*, including mental health disabilities. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or rules, practices or procedures that appear neutral, but have an adverse effect on individuals with characteristics protected under the *Code*. An action is discriminatory if a prohibited ground is one factor for that action, it need not be the only or even the primary factor.

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.

Member Assistance Program: A program provided by Homewood Human Solutions and funded by the Law Society of Ontario (the “Law Society”) that offers mental health services and information, at no cost, to licensees, students and their families.

Mental Health Disability: According to s. 10(1) of the *Code* a “mental disorder” and “condition of mental impairment” are included in the protected grounds of disability. Mental illnesses that have been recognized as disabilities under Code include anxiety, panic attacks, schizophrenia, alcohol dependence, and drug addiction. It is not possible to provide an exhaustive list of mental health disabilities as human rights law is constantly evolving. A mental health disability can arise as a chronic condition of prolonged duration, a situational condition that is triggered by a difficult life event, or a single episode or series of episodes interrupting periods of good health in a person’s life.

Impairment: A condition that has a material and negative effect on a person’s judgement, memory, reactions or otherwise interferes with the person’s work performance. Mental illness and impairment due to a mental health condition are not equivalent. Illness is the existence of a physical or mental disease, while impairment is a functional classification that implies an inability to perform work with reasonable skill and safety.

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.

GUIDELINES ON ACCOMMODATION AND UNDUE HARDSHIP

Most individuals with mental health disabilities are fully capable of engaging in the accommodation process. However, some employees, who have not come to terms with their illness or are prevented from doing so because of the very nature of their disability, may not take adequate steps to obtain treatment or seek accommodation. Some forms of mental illness can affect a person's ability to assess their own situation and to appreciate the need to participate in accommodation efforts. This lack of awareness by an employee or applicant is not a justification for the Organization to cease its accommodation efforts before exploring all reasonable accommodation options.

There are, however, limits on the Organization's duty to accommodate. While denial of the existence of a mental illness may be a symptom of the condition, the accommodation process requires the cooperation of the employee or applicant. In some cases, the Organization may have fulfilled its procedural and substantive duty to accommodate because the person did not take part in the process, for example by refusing to comply with reasonable requests for information needed to show their accommodation needs or refusing to play a part in developing accommodation solutions.

In addition, the Organization does not need to provide accommodation if doing so would amount to undue hardship. To establish undue hardship based on the cost of providing an accommodation, the Organization would need to show that the costs of providing the accommodation are so substantial that they would alter the essential nature of the Organization, or so significant that they would substantially affect its viability. When establishing undue hardship based on a health or safety risk, the Organization cannot rely on anecdotal, impressionistic, or after-the-fact justifications. The Organization must show that it obtained information about the abilities of the employee and about their disability, and explored all possible accommodations. It is also important for the Organization to determine whose health and safety is at risk and the magnitude of the risk.

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 good mental health 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;
- Encouraging employees to engage in daily practices that promote mental health and wellbeing;
- Identifying workplace pressures that may cause high and lasting levels of stress that negatively affect mental health, and developing practical strategies to address them;
- Being flexible, when possible, in individual working patterns to support an acceptable balance between work and home life;
- Encouraging all employees to take positive steps to safeguard their own mental health;
- 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 mental health services, and/or of any other mental health services that are covered through their benefit plans;
- Providing and promoting education for all employees to help them recognize the signs of mental illness, and to respond respectfully and responsibly if they identify those signs in others;
- Engaging in positive practices and behaviours that prevent discrimination and stigma; and
- Ensuring that managers model positive attitudes concerning mental illness.

In relation to accommodation requests for mental health disabilities, 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 for a mental health disability is kept confidential; and
- Ensure positive reintegration into the workplace for an employee who has been on leave due to a mental health disability.

2. Managers

Managers must be alert to the possibility that an employee may require accommodation for a mental health issue even if the employee has not made a specific or formal accommodation request. Employees may be reluctant to disclose that they have a mental illness because of the stigma that is associated with mental health conditions. An employee may also not be aware that they are experiencing a mental health issue. It is not a manager's responsibility to diagnose a mental illness; however, in some circumstances, it may be necessary for a manager to speak with the employee privately to assess whether mental illness may be a factor in a workplace performance issue and, if so, to encourage the employee to seek help, and/or to initiate a request for accommodation.

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 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:

- Take all appropriate measures to safeguard their own mental health;
- Encourage and engage in daily practices that positively promote mental health and well-being;
- Identify workplace pressures that may cause high and lasting levels of stress which negatively affect mental health, develop practicable strategies to address them, and bring them to the attention of their managers;
- Be aware of the confidential Members Assistance Program, of any Employee Assistance Program that provides mental health services to employees of the Organization, and/or of any other mental health services, which are covered through the Organization's benefit plans;

- Attend education programs and review communications designed to help them recognize and respond to signs of mental illness;
- Respond respectfully and responsibly when observing behaviour that may indicate another employee's impairment due to a mental health condition, and bring such behaviours to the attention of their manager;
- 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]**. The accommodation request, which should wherever 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 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 must implement the most appropriate accommodation, short of undue hardship.

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.

INTERPRETATION

This policy is intended to supplement the Organization's existing accommodation policy, further ensuring that the Organization fosters a work environment that is conducive to good mental health, and that best practices are followed in accommodating employees with mental health disabilities. This policy is also intended to complement the Organization's workplace wellness initiatives. The responsibility for interpretation of this policy rests with the **[designated workplace representative]**.

INQUIRIES

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

Appendix A

Frequently Asked Questions

1. What are some of the signs and symptoms of mental illness?

The following is a non-exhaustive list of signs and symptoms that are often associated with mental illness.² The list is not intended to be used for self-diagnosis of any particular condition. An individual experiencing many of the signs and symptoms on this list should consider consulting a health professional.

- lack of energy/interest
- sleep disturbances, difficulty sleeping, or excessive sleeping
- nightmares or intrusive thoughts
- feeling physically exhausted
- having a negative attitude toward work, self, other people, or life in general
- feeling discouraged
- experiencing progressive loss of idealism
- feelings of guilt or shame
- feeling overly suspicious
- feelings of losing control
- feelings of helplessness or hopelessness
- feelings of sadness, tearfulness, or worthlessness
- feeling emotionally drained
- feeling anxious
- sudden feelings of extreme anxiety or intense fear without a clear cause, especially when combined with physical symptoms such as sweating, shortness of breath, nausea, chest pain or dizziness
- feeling irritable or angry
- overreacting or having angry outbursts
- treating colleagues, staff, clients and adversaries in a detached way
- experiencing problems with concentration
- putting off work, frequently delaying meetings with others and/or missing deadlines
- being frequently absent from or late for work
- deteriorating quality of work
- experiencing increased rigidity
- having a sense of omnipotence or indispensability, making it difficult to cut back on workload or responsibilities
- changes in appetite, diet, or eating habits

² This list is drawn from S. Gilmore, "Balance or Burnout: Which Way are You Headed?", in J. Simmons, ed., *Life, Law and the Pursuit of Balance* (U.S.A.: Maricopa County Bar Association, 1997) 16; and CBA Wellness, "Mental Health and Wellness for the Legal Profession" (CPD: MDcme.ca, 2017).

- experiencing ulcers, headaches, backaches, or high blood pressure
- withdrawing from normal activities
- withdrawing socially by distancing oneself from family, friends, and colleagues
- experiencing increased marital or family conflicts or conflicts with close friends
- engaging in compulsive behaviours such as overeating or overspending
- engaging in substance abuse.

2. How can I assist someone that I suspect has a mental illness?*

For managers concerned about an employee

In most cases, it is best for the manager to meet with the employee privately to talk about their concerns about the employee's work-related performance. Addressing the issue of an employee's health as it relates to work performance can be a delicate task, especially when mental health issues may be involved. The manager should prepare for the meeting by being familiar with mental health resources available to the Organization's employees, and with the Organization's accommodation policies.

During the meeting, the manager may be able to encourage the employee to seek help or request an appropriate workplace accommodation while they deal with their mental health issue. However, it is not the manager's job to probe an employee's personal life, diagnose the problem, or act as their counsellor. The focus of the conversation should be on the employee's behaviour in the workplace, and the manager should be clear about any potential disciplinary consequences that may arise if the employee's workplace behaviour does not improve. The manager must be prepared for the possibility that the employee may not acknowledge that they have a mental health issue, and may reject the manager's offer for help.

After the meeting, the manager should follow up with the employee or designate someone who can follow up on their behalf. The manager must also ensure that any record of the meeting is kept in a secure location, such as a locked filing cabinet or a password protected digital file, in order to maintain the employee's confidentiality.

A manager has a responsibility to the Organization and to the employee if they suspect that their employee is suffering from a mental health condition that is impairing their capacity to work. Moreover, if the manager and employee are both licensees, then the manager may also have a professional obligation to report the licensee's impairment to the Law Society. (See the answer to question 3 for more information)

For individuals concerned about a friend, co-worker or family member

Individuals should approach their friend, co-worker or family member to say that they are worried about them and explain the reasons for their concern. They should choose a time to speak to the person where they will both feel comfortable and will not be interrupted. They should listen non-judgmentally to the person and avoid the temptation to make assumptions, offer solutions, or diagnose their problem.

The person should understand that their friend, co-worker, or family member may not be willing to acknowledge they have a mental health issue, or may not be ready to talk. The person should consider other ways of offering support such as staying in touch and spending more time with their friend, co-worker, or family member so that they feel less alone, or suggesting other people that they may prefer to speak to.

If an employee is concerned that another employee's ability to work is impaired due to a mental health issue, they should report that concern to their manager confidentially.

3. What are my professional obligations if I suspect that another licensee lacks the capacity to provide professional services because of a mental health issue? (for licensees only)

Mental health issues may impact a lawyer or paralegal's capacity to provide professional services or their competency. Rules 7.1-3(d) and (e) of the Rules of Professional Conduct (for lawyers), and 9.01(2) (d) and (e) require that lawyers and paralegals report to the Law Society conduct that raises substantial questions about another lawyer or paralegal's capacity to provide professional services or their competency, unless doing so would be unlawful or would violate solicitor-client privilege.

For assistance interpreting the duty to report obligations under the Rules, lawyers should consider contacting the Law Society at (416) 947-3315 or 1-800-668-7380, ext. 3315, Monday to Friday 9:00AM-5:00PM EST and asking to be connected to the Practice Management Helpline. You can also email practicereview@lso.ca.

4. What kinds of accommodations is someone with a mental health disability likely to require?

It is not possible to provide an exhaustive list of accommodations for mental health disabilities, as accommodations need to be based on the employee's unique circumstances. The following list provides examples of accommodations that may be appropriate for those with mental health disabilities:

- Flexibility in the start or end of working hours to accommodate effects of medication or the timing of medical appointments.
- Allowing the employee to take breaks more frequently.
- Modifying the employee's job duties.
- Reassigning minor tasks to other employees.
- Allowing an employee to relocate to a quieter work space.
- Allowing an employee to work from home.