**Model Mental Health Policy**

**Acknowledgement:** This model policy is based on the Canadian Human Rights Commission’s *Policy and Procedures on the Accommodation of Mental Illness* (2008).[[1]](#footnote-1)

**Effective Date:\***

**Revised Date:\***

**References:**

* *Human Rights Code*, R.S.O. 1990, c. H.19
* *Rules of Professional Conduct (Lawyers),* 7.1-3(d) and (e).
* *Paralegal Rules of Conduct*, 9.01 (d) and (e*)*.
1. **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;
* 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.
1. **Application**

This policy applies at every level of the Organization to all employees (including full-time, part-time, temporary, probationary, casual, and contract staff) and students with the Organization (see Section 3, Definitions).

This policy applies to every aspect of the employment relationship, including recruitment, selection, promotion, transfers, training, discipline, and performance appraisals.

1. **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.

**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 Section 10(1) of the Codea “mental disorder” and “condition of mental impairment” are included in the protected ground of disability. Mental illnesses that have been recognized as disabilities under Codeinclude 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, health and safety, and cost (taking into account outside sources of funding) are relevant factors in assessing undue hardship. Other factors such as business inconvenience, employee morale, or client preferences are not relevant to this determination.

1. **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.

1. **Responsibilities**
2. The Organization

Overall responsibility for implementing this policy rests with the **[Designated 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:

* + - 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.

(b) 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 he or she is 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 section 6, Procedure). 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 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 and 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.

(c) 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; and
* co-operate in the implementation of accommodation measures, where required.

An employee or applicant is responsible for making 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.

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 his or her disability only with persons who need to know about it.

1. **Procedure**
2. Applicant Seeking Accommodation

An applicant who requires accommodation in relation to a selection process should, as soon as possible, inform the hiring manager or human resources advisor 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.

1. Employee Seeking Accommodation

An employee may request accommodation from their immediate manager. The accommodation request, which should wherever possible be made in writing, should include the Code ground under which the accommodation is being requested, the reason accommodation is required including enough information to confirm the need for accommodation, and the employee’s specific needs related to the Code ground.

The manager may ask the employee for further information—such as documentation, a medical opinion or expert advice—when reasonably required to verify the need for accommodation and to develop an accommodation plan. In requesting documentation, expert advice or a medical opinion, the manager should:

* explain to the employee that the information will be kept confidential;
* refrain from asking for information about the history of the illness or its treatment;
* ensure that the information requested is needed so that appropriate plans for accommodation can be made;
* emphasize that the purpose of the request is to support the employee and that lack of information could hamper the accommodation process;
* ensure the employee understands that there will be instances where accommodation requests cannot be acted upon without supporting documentation;
* if an employee is reluctant to provide the needed information, the manager should consider asking a third party—such as a member of the human resources department—to gather this information and communicate recommendations regarding accommodation needs to the manager;
* refer the employee to the Member Assistance Program, if they are a licensee or licensing candidate, or any applicable Employee Assistance Program, which can provide information and referral to appropriate support services; and
* work with the employee and their representative, if requested, to identify accommodation options and an accommodation plan appropriate to that employee.

When the request involves issues outside the Organization’s expertise, the Organization may seek specialist advice, with the employee’s consent.

If the manager believes the Organization cannot provide or approve the accommodation, the manager must refer the request to the **[Designated Representative]** for a review and final decision.

1. Review of Accommodation Requests

The **[Designated Representative]** will make the final determination about whether granting an accommodation request would result in undue hardship for the Organization. If an accommodation request is denied, the **[Designated Representative]** must clearly explain this to the employee and provide reasons for its decision.

The **[Designated Representative]** may grant a request, deny a request, or propose an alternative to the request.

1. Monitoring, Adjusting, and Reviewing Accommodations

When an accommodation is offered and the applicant or employee believes the offered accommodation does not meet their needs, the applicant, the employee or the employee’s representative may ask the **[Designated Representative]** to review the offer.

Requests for a review of an accommodation offer may be verbal or written. All requests must be kept strictly confidential.

1. Changes to Accommodation Needs

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

1. Records

Records of any requests for accommodation should be submitted to the **[Designated Representative]**.

1. **Communicating the Policy**

The Organization will:

* provide all employees with a copy of this policy;
* ensure that all applicants receive information, in an appropriate format, about this policy; and
* ensure that a copy of the policy is permanently posted and updated on its intranet site, and displayed in a common area within the Organization.
1. **Reviewing and Updating the Policy**

The Human Resources Department 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.

1. **Reporting and Monitoring Requests**

The **[Designated 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.

1. **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 Representative].**

1. **Privacy and Confidentiality**

All requests for accommodation and all documents relating to a specific request for accommodation will be kept confidential, and will only be shared with the consent of the employee or applicant.

1. **Inquiries**

Inquiries about this policy should be addressed to the **[Designated 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]](#footnote-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
* 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.
1. **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 he or she has 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, coworker or family member

Individuals should approach their friend, coworker 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, coworker 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, coworker 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.

1. **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 9:00 am – 5:00 pm EST and asking to be connected to the Practice Management Helpline.

1. **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.
1. The Canadian Human Rights Commission’s policy is available online at: [**https://www.chrc-ccdp.gc.ca/sites/default/files/policy\_mental\_illness\_en\_1.pdf**](https://www.chrc-ccdp.gc.ca/sites/default/files/policy_mental_illness_en_1.pdf) [↑](#footnote-ref-1)
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). [↑](#footnote-ref-2)