

REASONABLE ACCOMMODATION CHECKLIST FOR EMPLOYERS: HOW TO RESPOND TO A REQUEST FOR ACCOMMODATION

MANITOBA HUMAN RIGHTS COMMISSION

- ❑ An employee has made a request for accommodation
 - **WORD OF CAUTION:** It is not a fixed rule that an employee must advise the employer of a need for accommodation. If an employer has reason to suspect, or ought reasonably to have suspected, based upon a significant change in an employee's behaviour or performance, that an employee might be contending with a psychological or stress-related or other condition, the employer should pursue relevant inquiries to determine if there is a disability issue at the heart of the conduct that is resulting in the employee's inability to meet the normal expectations of the workplace. Where a disability is confirmed, the employer should proceed to assess the relevant accommodation issues as set out below. If the employee denies there is anything wrong and refuses assistance, then the employer has discharged its duty to inquire as to whether there is a need for accommodation.
- ❑ Determine if an employee's request for accommodation or your suspicion about a possible need for accommodation falls under *The Manitoba Human Rights Code* (section 9(2) factors). If it doesn't fall under *The Code*, a duty to accommodate under human rights law does not arise.
- ❑ Review any information that the person seeking accommodation provides to support the request for accommodation ex. medical documents
- ❑ Listen to and consider the needs of the person seeking accommodation and their suggestions for accommodation
- ❑ If an employee is requesting accommodation due to a disability, have you obtained relevant medical information from the employee's caregivers (this may be over and above what the employee might have already given you)
- ❑ As much as possible, set out in writing to the employee what information you might need from them to assist in the accommodation process – you can never go wrong by creating a paper trail
- ❑ Once you have information to enable you to assess the employee's accommodation request, proceed to do the following:
 - ❑ Reply to the request for accommodation within a reasonable amount of time
- ❑ REVIEW CURRENT JOB
 - Determine if employee can perform his or her existing job as is
 - If the employee cannot, then determine if s/he can perform his or her existing job in a modified or "re-bundled" form
 - If it is determined the employee cannot perform the essential duties of the current job even with accommodation, document this and set out the reasons why
- ❑ EXAMINE OTHER JOBS IN THE WORKPLACE
 - If the employee cannot perform his/her existing job in a modified form, identify all other job possibilities in the organization
 - Determine if the employee can perform another job in its existing form
 - If the employee cannot, determine if s/he can perform another job in a modified or "re-bundled" form
 - Identify what, of the essential duties of those jobs, the employee can do and what they cannot do due to restrictions
 - Identify what can be done to enable the employee to perform any of the possible jobs
 - If it is determined the employee cannot perform the essential duties of other jobs even with accommodation, document this and set out reasons why

❑ DISCUSS JOB ASSESSMENT RESULTS WITH RELEVANT PARTIES

- Get input from the employee and, if a unionized workplace, the union as to what the employee can do from the options identified by the employer
- Get input from medical or other relevant experts as to what the employee can do from options identified

❑ DECIDE ON THE MOST APPROPRIATE AND REASONABLE ACCOMMODATION

- An employee is not entitled to the accommodation they precisely want or the most ideal solution. They are entitled to reasonable and appropriate accommodation.
- If full accommodation is not possible without undue hardship, try to suggest options that may partially meet the needs of the person seeking accommodation
- If accommodation is not possible at all due to undue hardship, make certain you have the necessary information to support such a claim. Make sure you are able to provide details to justify a refusal to accommodate. If cost is a factor, for example, you will need to show why the particular cost of implementing an accommodation is an undue hardship.

(ACCOMMODATION CHECKLIST CONT'D)

❑ IMPLEMENT ACCOMMODATION

- Document, document, document & Communicate, communicate, communicate!: outline in writing for the employee what will be done and any terms/conditions attached
- Make sure supervisors and co-workers are aware of what is being done and why and if their support is needed, it has been requested and obtained

❑ MONITOR

- follow up to ensure that the accommodation implemented meets the needs of the person who requested the accommodation
- Review and modify the accommodation if circumstances or needs change (including if accommodation is no longer required)