

APPLICATION OF DUTY TO ACCOMMODATE INJURY AND DISABILITY POLICY

Introduction

This document provides guidelines on applying the *Duty to Accommodate Injury and Disability Policy*.

Guidelines

- Accommodation measures are individualized and treated on a case by case basis depending upon employee's limitations and restrictions as well as job demands. Exact procedures may differ depending upon the situation and circumstances.
- In dealing with accommodation matters, time is of the essence. The goal is to find a timely resolution to safely, reasonably and with dignity accommodate the employee with the goal of transitioning him/her back into or remaining in the workplace.
- Every effort is made to place the employee in a job at the pre-disability pay rate; however this is not always possible.
- The Employer must accommodate to the point of undue hardship. Undue hardship occurs when an accommodation would create a substantial and unmanageable workplace burden for the GNWT and is determined on a case by case basis as the facts of each situation are different. Costs, financial or otherwise, must be substantial in order to declare an undue hardship. The following are some examples of what is not considered to be undue hardship:
 - Reasonable leave costs;
 - A minor disruption to a collective agreement; and
 - Minor building renovations.
- Accommodation can entail a number of solutions, including, but not limited to:
 - Modifying appropriate aspects of the job;
 - Modifying hours of work;
 - Gradual return to work schedule;
 - Changing or modifying the work environment;
 - Purchasing or modifying tools, equipment and aids.
 - Providing an alternate position; and
 - Bundling duties from existing positions.
- The onus is on the home department to bear the costs associated with the implementation of accommodation measures.
- Accommodation does not mean creating a job for which there is no need.

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- The search for reasonable accommodation begins with the employee's home position and then home department and region. If that is not possible, or if all efforts at doing so have been reasonably exhausted, the search is broadened to all GNWT departments, regions, boards and agencies.

The hierarchy for accommodations should proceed as follows:

- Employee's home position in their home department and region
 - An alternate position in the employee's home department and region
 - An alternate position in another department but located within the employee's home region
 - An alternate position in the employee's home department outside of the employee's home region
 - An alternate position in another department outside of the employee's home region
- When an accommodation is implemented, best efforts are made to place the employee in a job at the pre disability pay rate; however this is not always possible.
- The duty to accommodate may be discharged when an employee:
 - Refuses a reasonable offer for accommodation;
 - Refuses every option except his/her preferred accommodation.
 - Denies a need for accommodation;
 - Does not fulfill the responsibilities of his/her role in the accommodation process including providing appropriate medical prognosis; or
 - When the government has reached the point of undue hardship.
- The duty to accommodate is not limited to indeterminate employees.

Procedures

Triggering the Duty to Accommodate

1. The goal is to have the employee participating in the workplace in meaningful employment. If the employee is on sick or disability leave; the longer an employee remains off work, the more difficult it is for him/her to transition back into the work environment. The manager must be diligent about identifying accommodation measures as soon as reasonably possible.
2. An accommodation can be triggered in four ways:

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- i) a request from an employee that is substantiated by medical information;
- ii) observable *prima facie* evidence of a need for an accommodation, such as a broken leg;
- iii) a recommendation from the Employer based on medical information from the appropriate medical practitioner and in collaboration with the employee;
- iv) recognition from the Employer that a condition exists that is possibly impacting the employee's ability to work and may require an accommodation (psychological and substance abuse issues are examples of conditions that may require an employer to trigger the duty to accommodate conversation with an employee).

Early Intervention (Initial Employee – Employer Communication)

3. Employee advises his/her immediate supervisor when:
 - He/she is at work and needs an accommodation. This should be provided in writing (Example, Attachment A) with supporting medical prognosis; or
 - He/she is absent from work. It is the employee's responsibility to maintain effective communication with the employer throughout his or her absence, which includes keeping his/her direct supervisor informed of the potential return to work date.
4. Facilitating an employee's accommodation as early as is safe and medically reasonable requires ongoing communication. If an employee has been away from work on sick leave for an extended period of time (two weeks or more), the manager contacts the employee to enquire about the employee's return to work status. This and all further communication should be documented by the manager (See Attachment B for an example).
5. The manager verbally advises the employee of his/her responsibility to provide a medical prognosis and information regarding limitations and/or restrictions. The manager advises the employee of the process and timelines for doing so. *Note: this does not preclude management's right to ask for medical substantiation of sick leave at any time where there is a demonstrated and reasonable basis for doing so.*
6. The manager, with guidance from the Client Service Manager/Manager of Service Center, is responsible for obtaining a current prognosis and medical information regarding restrictions and/or limitations up until such time as the employee is returned to work with accommodation measures in place, or returned to full duties (dependent on the nature of the disability). A template letter (Attachment C), job summary (Attachment D) and prognosis form

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(Attachment E) may assist in collecting the relevant information. Each case is different and there are no absolutes in terms of when and how many times the medical information is requested. However, it is key to seek medical information regarding limitations and/or restrictions at appropriate intervals.

In some cases, the manager will receive all the necessary information to trigger and fulfill an accommodation immediately. In others, this process may take more time.

7. The fact that an employee is receiving disability or injury benefits from an insurer does not negate the manager's responsibility for seeking current appropriate medical information at appropriate intervals, nor the employee's responsibility to provide the requested information.

In instances where the employee is receiving disability or injury benefits, it may be possible to obtain information directly from the insurer or the *Workers' Safety and Compensation Commission (WSCC)*, with the signed consent of the employee (Attachment F). The manager or Client Service Manager consults with the Duty to Accommodate Advisor and, if appropriate, the Duty to Accommodate Advisor:

- obtains the consent from the employee; and
- receives the medical information obtained through consent.

8. The Benefits Leave Officer should provide the Duty to Accommodate Advisor with copies of letters from WSCC and the insurer advising whether an employee has been accepted for benefits or not; as well as copies of any subsequent correspondence.

Accommodating the Disability

9. Once the duty to accommodate has been triggered, the manager should schedule a meeting with the employee and Client Service Manager/Manager of Service Center to initiate a dialogue regarding possible accommodation needs and options. The manager should advise the employee that he/she may be accompanied by a union representative, if the member is of a bargaining unit.
10. Prior to the scheduled meeting, the employee, manager, Client Service Manager/Manager of Service Center and if applicable union should each begin identifying accommodation options.
11. If the accommodation is not straight forward (for example adjusting the hours or duties of the current position), the search for other options should include reviewing the department's vacancy list and/or assessing whether

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duties can be re-bundled. The Client Service Manager/Manager of Service Center assists this process through his/her in-depth knowledge of the operations of the home department.

12. The manager facilitates the meeting, with the Client Service Manager/Manager of Service Center in attendance, to provide support.
13. The nature of the search for a reasonable accommodation and the number of meetings required is dependent on the accommodation required.
14. Once an accommodation has been determined and the manager has obtained Deputy Head or designate approval, the manager and Client Service Manager/Manager of Service Center draft an Accommodation Plan (the "Plan"). (Example, Attachment G) The Plan should include:
 - whether this is a temporary, short term or permanent accommodation;
 - any work hardening component (phased in hours or work or duties);
 - limitations and/or restrictions being accommodated;
 - specific details of the accommodation;
 - monitoring process;
 - timelines; and
 - relevant signature blocks (Deputy Head or designate, manager, employee and, union.)
15. The Duty to Accommodate Advisor reviews and may provide feedback on the Plan.

Once the Plan has been reviewed, and modified if needed, the Client Service Manager/Manager of Service Center obtains relevant signatures.

16. The Client Service Manager/Manager of Service Center places the original signed Plan on the employee's personnel file and distributes copies to all signatories, and the Duty to Accommodate Advisor.
17. If the employee does not agree to a reasonable accommodation, the employee signs a form (Attachment H) that states the reasons why he/she is refusing the accommodation. The Client Service Manager/Manager of Service Center forwards a copy to the Duty to Accommodate Advisor for review.
18. The Duty to Accommodate Advisor reviews all refusals to ensure the offered accommodation was reasonable. If the Duty to Accommodate Advisor concurs that the accommodation was reasonable, and the employee

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continues to refuse, the duty to accommodate may be discharged by the Deputy Head.

19. The Duty to Accommodate Advisor, in consultation with the Client Service Manager/Manager of Service Center and Labour Relations Advisor, when appropriate, may recommend to the Deputy Head that termination of employment for medical reasons is appropriate.
20. **After an employee has been placed in a temporary, short-term, or permanent accommodation, the direct supervisor, the employee, and the union where applicable, meet routinely during the first six (6) months, and thereafter as necessary, to discuss how the accommodation is working and whether any changes to the Accommodation Plan are necessary.**

Cross Department Accommodations

21. If a reasonable accommodation cannot be made within the home department, the Deputy Head **seeks approval from** the Deputy Head of Human Resources **for** a cross departmental accommodation **by providing the rationale supporting the request.**

An example of when a cross departmental accommodation would occur is:

- If the employee is unable to perform job demands due to medical reasons and there are no accommodations that can be made to the job to allow the employee to perform job duties. In addition, there are no vacancies or upcoming vacancies within the department that could be performed with or without modifications.

The Duty to Accommodate Advisor can facilitate the search for, and case management of, an accommodation in another department, board or an agency. This should be done in conjunction with the Client Service Manager/Manager of Service Center and with the cooperation of Deputy Heads.

22. The employee is entered onto a priority hiring list. This list is considered prior to job vacancies being advertised. If **there is a possible match between the employee's, skills, abilities and knowledge and those required in the position, a meeting may be coordinated with the employee and department to further assess suitability for a reasonable accommodation.**
23. **Should the suitability of a vacant position be in question, the Deputy Head of the home department and the Deputy Head of the department with the vacant position should consult with the Duty to Accommodate Advisor.**

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- 24. The Deputy Head of the home department and the Deputy Head of the department with the vacant position will discuss the suitability of the vacant position for the employee requiring accommodation.**
- 25. The final determination on whether the vacant position constitutes a reasonable accommodation and whether the employee will be appointed to the position rests with the Deputy Head of the department with the vacant position pursuant to the authority delegated by the Minister Responsible for the Public Service.**
26. Employees can be direct appointed to another position within the public service if:
 - When on a leave of absence (2 months or greater) another person is appointed to his/her position to maintain operations. This appointment, under Section 37 of the Public Service Act, has been delegated to Deputy Heads; or
 - When the above doesn't apply when a recommendation is provided from the executive council to the Minister of Human Resources (2d of executive council direct appointment guidelines).
27. If the accommodation process is exhausted without establishing a reasonable accommodation, the Deputy Head of Human Resources provides recommendations to the Deputy Head of the home department on whether or not the GNWT's duty to accommodate has been fulfilled and how to proceed.

Documentation

28. Anyone with a role in the process should document all communication in regard to all aspects of the accommodation process.
29. All medical information should be placed in a sealed envelope prior to being placed on the employee's personnel file. The envelope should be clearly marked as containing confidential medical information and may only be opened by a Client Service Manager/Manager of Service Center, the Duty to Accommodate Advisor, or the Manager of Benefits.

Benefits Counseling

30. Benefits Counseling, including long term disability and retirement on grounds of medical disability, continues to be the responsibility of the applicable Benefits staff. The manager, the Client Service Manager/Manager of Service Center and/or the Duty to Accommodate Advisor, as needed and as in as timely a manner as possible, ensure that

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employees are advised of the need to seek advice from the applicable Benefits staff member.

Communication with Insurers regarding Accommodation Issues

31. Any communications to Insurers in regards to Accommodation issues should be done by, or in consultation with, the Duty to Accommodate Advisor. If an Insurer communicates directly with the manager or Client Services Manager, he/she should advise the Duty to Accommodate Advisor.

Attachment A

Personal and Confidential

Request for Accommodation Form

Please submit this form to your supervisor. Your supervisor will arrange a meeting with you to discuss your request. You may be requested for further documents from your medical practitioner to substantiate your request.

Employee Name: _____

Date: _____

Dept: _____

Job position: _____

1. What limitations/restrictions related to your job position are you currently experiencing?

2. What component of your job position has been impaired by your condition?

Supervisor Follow up:

Accommodation provided: Yes No

Explain:

Employee Signature: _____ Supervisor Signature: _____

Attachment B

Personal and Confidential

Duty to Accommodate Communication Log

<p>Employee:</p> <p>Position Title:</p> <p>Position Number:</p> <p>First day of Disability:</p> <p>Reports To (Name, Position Title and Number):</p>

Date & Time	Type of Contact <i>(via phone, letter, e-mail or in person? –if in person list other individuals present)</i>	Communication Item	Follow-up Req'd <i>(include what follow up is required, by whom and due date)</i>
March 02/09 - 1015	Phone	<i>Discussed Jane's well-being in general. Enquired as to expected return to work date. Jane advised complications with medical condition and not able to return to work for at least 6 months. Advised Jane that employer needs further documentation from her physician and advised would be sending her a letter to present to her physician in order to obtain- information required. Advised Jane that I will follow up with her by phone once I have rec'd further information from physician.</i>	
March 03/09	<i>Letter sent to Jane with attached form for physician to complete.</i>	Request for information from physician. See attached.	Action Item: Letter req'd from physician Responsibility: Self to follow up Due Date: April 01/09
March 22/09 2230	<i>E-mail supervisor to Client Service Manager</i>	<i>See attached. Email to set up meeting with employee and union</i>	Action Item: Schedule date for meeting. Contact employee, union Responsibility: manager, union, CSM

Attachment C

{insert method of delivery here}

DATE (dd/month/yyyy)

PERSONAL AND CONFIDENTIAL

EMPLOYEE
POSITION
DEPARTMENT

REQUEST FOR MEDICAL PROGNOSIS

{Insert reason for letter here. Include date that the employee raised the accommodation issue or date of employee behaviour requiring prognosis. Thank the employee for bringing disability to our attention and set a tone for the letter. First letter should be supportive and encouraging}

The Government of the Northwest Territories is committed to assisting and supporting employees requiring workplace accommodations. The objective is to provide safe, timely and reasonable accommodation measures in a manner that treats each employee with dignity. In reaching this objective the Employer, employee, medical practitioner and union (if applicable) each have an active role in the accommodation process.

A medical prognosis is an essential component of the accommodation process that explains how your medical condition affects your ability to perform job duties. Based upon the information received we will be in a better position to accommodate you in the workplace by promoting as productive a work life as possible.

Your medical practitioner plays a key role in explaining what job duties you are able to perform based on the attached *Overview of Duties* form. **Please provide your medical practitioner with the Overview of Duties form and ask her/him to complete the attached GNWT Employee Request for Medical Prognosis form. Please return the completed form to me by {insert date}.** It may also be helpful if you share this letter with your medical practitioner as it explains why a prognosis is needed. Should you have difficulty in obtaining this information by this date please advise me of such.

I understand that having any type of medical condition can be stressful and I want to remind you that the GNWT has an Employee and Family Assistance Program (EFAP). It is a confidential, voluntary counselling and referral service available to all GNWT employees and their dependants. This program is designed to help with any personal or work-related issues before they become more serious. To take advantage of support in person, by telephone or through online resources, please contact EFAP toll-free, 24 hours a day, seven days a week:

1-800-387-4765 (English)

1-800-361-5676 (French)

www.shepellfgi.com

As a member of the *{insert bargaining agent here; do not use acronyms}* you may wish to share this letter with your union representative.

If you have any questions or require additional information please contact me. If you should require additional time to obtain the prognosis, notify me at the earliest opportunity.

Sincerely,

{insert supervisor name and position}

cc. Personnel File

{insert applicable name of Deputy Head}

{insert name of applicable Client Service Manager}

Duty to Accommodate Advisor

Attachment D

Job Summary

Name:

Position Title:

Dept:

Nature of Job (A short paragraph explaining the nature of the job and tasks involved in layman's terms).

Physical Demands of the Job (List the physical demands of the job including the frequency and duration – **do not** take these only from the back page of the job description as those are only the unusual working conditions)

	Frequency	Duration	Weight	Other/Comments
Standing				
Sitting				
Squatting				
Walking				
Kneeling				
Pushing/Pulling				
Bending/Twisting				
Overhead Reaching				
Climbing stairs/ladders				
Use of upper/lower extremities				
Lifting – below shoulder height				
Lifting - above shoulder height				
Operating Heavy Equipment				
Operating a Motor Vehicle				
Flying				
Computer work (typing, mousing)				
Paper work				
Filing				
Phone				

Other Physical Demands:

Psychological/Cognitive Demands of the Job *(List the cognitive demands of the job including frequency and duration. – do not take these only from the back page of the job description as those are only the unusual working conditions)*

Psychological/Cognitive Demands	Demand Frequency	Comments
Degree of self-supervision required		
Degree of supervision exercised		
Working alone		
Performance pressures		
Attention to detail required		
Performance of multiple tasks		
Need to work cooperatively with others		
Exposure to emotional situations		
Exposure to confrontational situations		
Responsibility and accountability required		
Reading literacy		
Writing literacy		
Computer literacy		
Numerical skills		
Communication		
Memory		

Other psychological/cognitive demands:

Workplace Environment *(Describe in point form the working environment, for example: Does most of the work take place outside in sometimes inclement weather, if so describe. Is this an indoor position and the employee shares an open concept office, if so describe.)*

Any other job comments: *(Describe any other comments that affect the demands of the job position such as shift work, overtime, tools used, etc)*

GNWT Employee Request for Medical Prognosis

This report is provided at the request of the Patient/GNWT Employee:

GNWT employee last name	first name	Community
GNWT position title		GNWT employing department

Request and Consent to release prognosis information

I hereby authorize the Health Practitioner to release the information to myself and/or the Government of the Northwest Territories.

Employee's Signature	Date
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Present Capabilities and Limitations	(Please refer to the attached Statement of Duties)
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For the purposes of: providing suitable and appropriate work tasks for this patient; for developing a timely and safe return to work plan for the employee; providing the information needed by the Employer to honour the spirit and intent of the legal obligation to 'Accommodate' employees, PLEASE ANSWER THE FOLLOWING:

1. At this time, does this patient have any limitations impacting the ability to carry out his/her job duties?
 - Yes (If yes, please continue completion of form)
 - No (If no, please skip to back of page and sign accordingly)

2. At this time, can this patient perform any duties in the attached Statement of Duties?
 - YES (all duties)
 - YES (with limitations as specified in #3))
 - NO (if no, skip to #9)

3. Please indicate the limitations.

	Frequency	Duration	Weight	Other
Standing				
Sitting				
Squatting				
Walking				
Kneeling				
Pushing/Pulling				
Bending/Twisting				
Overhead Reaching				
Climbing stairs/ladders				
Use of upper/lower extremities				
Lifting				
Keyboarding				
Operating Heavy Equipment				
Operating a Motor Vehicle				
Flying				
Hours of Work (see #4)				
Dealing With People				
Isolation				
Working Outdoors				

4. Could the employee return to work if daily/weekly hours of work were adjusted? If so, please provide rationale and recommendation:

5. Are there additional specific details relating to the limitations noted?

6. How long will the accommodation be needed?

7. Have you discussed a Return to Work and the task limitations with the patient? YES NO

No Return To Work At This Time

8. If a return to work is not possible at this time, please explain specifically why none of the duties can be carried out, even in a modified way.

9. Is a date of return to work anticipated? YES NO

Date anticipated: _____

Appointment and/or Referral Schedule:

Please provide the dates and duration of future follow up appointments or referrals. If you do not know when the referral appointment will be scheduled please indicate an approximate date.

Future Appointments	Referrals	Date and Duration

Health Practitioner's Signature		Date
Name spelling & Designation	Clinic Name & Telephone	

Attachment F

Personal and Confidential

Consent for Release of Information

I, _____ born _____.
(Print full name) (day, month, year)

of _____
(Full address)

hereby consent to the _____
(INSERT NAME OF INSURER OR HEALTH CARE PROVIDER)
disclosing and/or receiving all medical information related to:

for the purpose of providing my employer sufficient information about my medical limitations and restrictions so that my employer may accommodate my safe, timely and effective return to work.

This information may be released to the Government of the Northwest Territories Duty to Accommodate Advisor,

(Name of Duty to Accommodate Advisor)

at _____
(Full address)

This consent for release of information is in effect until: _____
(day, month, year)

I acknowledge that I have been made aware of the reasons for the disclosure of the above information.

I understand that I may revoke my consent at any time, by providing a signed, written statement to that effect.

Employee Signature: _____

Dated: _____

Witness signature: _____

Dated: _____

Attachment G

Personal and Confidential

Accommodation Plan

Employee Name:

Home Position: *{insert position number, position title, and indicate status i.e. indeterminate/term or casual}*

Accommodation Position: *{may be the same or different than the home position}*

Position Reports to: *{indicate reporting position number, title and incumbent}*

Effective Date: *{indicate start date of accommodation}*

Reason for Accommodation:

{Insert name} has been absent from the workplace for health reasons since *{insert date}*. Her treating physician has advised that *{insert name}* has the following restriction and/or limitation: *{insert restrictions and/or limitations}*.

Further to this the physician has advised: *{insert physician's recommendation, for eg. the employee only gradually return to work starting with three hours a week for the first two week and increasing in one week increments every two weeks until full hours are reached}*

Accommodation includes: *{insert modifications as required. These will vary from case to case dependent on the limitations and restrictions but might include, but is not limited to such things as: reduction in hours; reduction in duties, changed duties; modifications to workplace; change in location. If a gradual return to work is planned, include schedule}*

Attachment G

Monitoring and Review: *{insert who the employee will be reporting to, expectation that employee will advise supervisor of any difficulties with the accommodation, expectation that supervisor will also be responsible for monitoring; next scheduled physician visit; and scheduled review dates}*

Remuneration: *{insert information such as the employee will only be paid for hours Worked; employee pay range and step; whether there are sick leave credits that can be liquidated for remaining hours or whether remaining hours will be paid by insurer and who will advise insurer of plan; and how leave credits will be }.*

Duration of accommodation:

Duty to Accommodate Advisor Review: *{Advisor signs that the plan has been reviewed. If the Advisor finds anomalies or gaps, he/she will phone the Client Service Manager and Manager to discuss and will not sign until issues have been discussed and agreed upon}*

Advisor Signature: _____

Date: _____

Attachment G

Signature Block:

The employer and the employee recognize that an accommodation plan involves an ongoing process of trial and evaluation and that amendments to this plan may be necessary. Both parties agree to communicate with each other in an effort to achieve a successful outcome.

Employee _____

Date: _____

Manager: _____

Date: _____

UNW Representative: _____

Date: _____

Deputy Head or Designate: _____

Date: _____

CC. Personnel file

Attachment H

Personal and Confidential

I, _____, have reviewed the attached *Accommodation Plan* and am refusing the offer to accommodate my medical limitations and restrictions for the following reasons:

I, understand that by refusing such, the Employer may determine it has discharged the duty to accommodate.

Employee Signature: _____

Date: _____