
A PLACE FOR ALL:
A GUIDE TO CREATING AN
INCLUSIVE WORKPLACE



CANADIAN HUMAN RIGHTS COMMISSION

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This Guide is not a policy statement on what constitutes effective accommodation or what amounts to undue hardship. Rather it is designed to assist employers in developing their own accommodation policies. The Commission encourages employers to develop, in consultation with their employees, their own workplace accommodation policy and procedures.

EXECUTIVE SUMMARY

The purpose of the Guide is to help employers understand their legal obligations regarding the duty to accommodate, and create their own workplace accommodation policies and procedures. Employers will then be in a better position to provide an inclusive workplace and to minimize the likelihood of complaints of discrimination.

The duty to accommodate comes from two federal statutes: the *Canadian Human Rights Act* and the *Employment Equity Act*. An employer, service provider, or union has a duty to take steps to eliminate disadvantage to employees, prospective employees or clients resulting from a rule, practice, or physical barrier that has or may have an adverse impact on individuals or groups protected under the *Canadian Human Rights Act*, or identified as a designated group under the *Employment Equity Act*.

Employers and service providers must make sure that they build accommodation into their policies and practices as far as possible from the outset, and up to the point of undue hardship.

Even when every effort has been made to ensure, in advance, that corporate activities are free from discrimination, there will be circumstances where the needs of a specific employee will require an individualized adjustment in the workplace. In these instances, that employee should have access to individual accommodation.

This Guide is in three parts. The first section is the **Policy Guide**. It sets out the elements of a model policy on workplace accommodation. There are seventeen elements in this section, each of which has an explanation and a sample statement of that element.

The second section is the **Procedures Guide**. It is intended to help employers set up a procedure for analyzing employer programs and activities. The objective of such an analysis is to ascertain if an employer program or activity will give rise to discriminatory barriers.

The third section is the **Individual Accommodation Procedures Guide**. Explained here is a procedure for responding to requests from a specific employee for individual accommodation. There are six elements in this part. As with the other two sections, the explanation of each element includes a sample of that element.

The Commission encourages all employers to develop, in consultation with their employees, their own workplace accommodation policy and procedures.

INTRODUCTION

This Guide is about the duty to accommodate. It has been prepared by the Canadian Human Rights Commission (CHRC) in response to requests from government departments and other federally regulated organizations in the public and private sectors.

The purpose of the Guide is to help employers and employees understand their legal rights and obligations regarding the duty to accommodate, and aid in the creation of workplace accommodation policies and procedures. Employers will then be in a better position to:

- provide an inclusive workplace;
- respond effectively to individual accommodation needs;
- fulfill their responsibilities under the *Canadian Human Rights Act* and the *Employment Equity Act*; and
- minimize the likelihood of complaints of discrimination.

The duty to accommodate – What is it?

The duty to accommodate refers to the obligation of an employer, service provider, or union to take steps to eliminate disadvantage to employees, prospective employees or clients resulting from a rule, practice, or physical barrier that has or may have an adverse impact on individuals or groups protected under the *Canadian Human Rights Act*, or identified as a designated group under the *Employment Equity Act*.

The duty to accommodate recognizes that true equality means respect for people's different needs. Needs that must be accommodated result from factors such as disability, sex, age, family status, ethnic or national origin, and religious belief. Accommodation helps ensure that the opportunities of all Canadians are not limited for discriminatory reasons.

As indicated above, the obligation of accommodation arises from two federal statutes: the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA).

The *Canadian Human Rights Act*

The *Canadian Human Rights Act* provides that the special needs of a person relating to a prohibited ground of discrimination must be accommodated unless the employer or service provider can prove that to do so would be an undue hardship.

Section 2 underlines the importance of this principle by incorporating the duty of accommodation directly into the Purpose section of the Act.

Section 2 states: “ The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offense for which a pardon has been granted.”

A person who is denied accommodation can file a complaint with the Commission. Complaints can be made in relation to any aspect of employment, including pre-employment testing, the working environment, training and promotions.

The *Employment Equity Act*

The goal of the *Employment Equity Act* is to eliminate systemic discrimination against designated group members and accommodate diversity. Employers subject to the Act are required to develop and implement an employment equity program to remove barriers for women, members of visible minorities, Aboriginal persons, and people with disabilities, in order to achieve a representative workforce.

The *Employment Equity Act* and the *Canadian Human Rights Act* share a common purpose and supplement each other.

Under the EEA, employers are required to review employment systems, policies and practices to identify and eliminate barriers against designated groups. They must also undertake policies and programs to correct under-representation and provide for reasonable accommodation of differences in the workplace. Many of the activities required as part of the employment system review will be similar or identical to those suggested as part of this Guide.

The EEA has two specific provisions relating to reasonable accommodation. Section 5 of the Act provides that “*every employer shall implement employment equity*” by, among other measures, “*making such reasonable accommodations as will ensure that persons in a designated group*” achieve a degree of representation commensurate with their representation in the Canadian workforce and their availability to meet reasonable occupational requirements.

Section 10 of the Act specifies that an employer shall prepare an “*employment equity plan*” that provides for “*reasonable accommodations... to correct... under-representation.*”

The Supreme Court of Canada affirms the duty to accommodate

The duty to accommodate is a legal obligation which has been affirmed and clarified by the courts, including the Supreme Court of Canada.

The Supreme Court also clarified the responsibility of employers and service providers to ensure that all barriers to equality, for people protected under human rights law, are eliminated from their policies, rules, standards, practices and services at the design stage. Employers (and service providers) must make sure they build accommodation into their policies and practices, and up to the point of undue hardship.

For further information see **Appendix A — Key Court Decisions**.

Even when every effort has been made to ensure corporate activities are free from discrimination, there will be circumstances where the needs of a specific employee will require an individualized adjustment in the workplace. In these instances, an employee should have access to individual accommodation. See **Individual Accommodation Procedures Guide**.

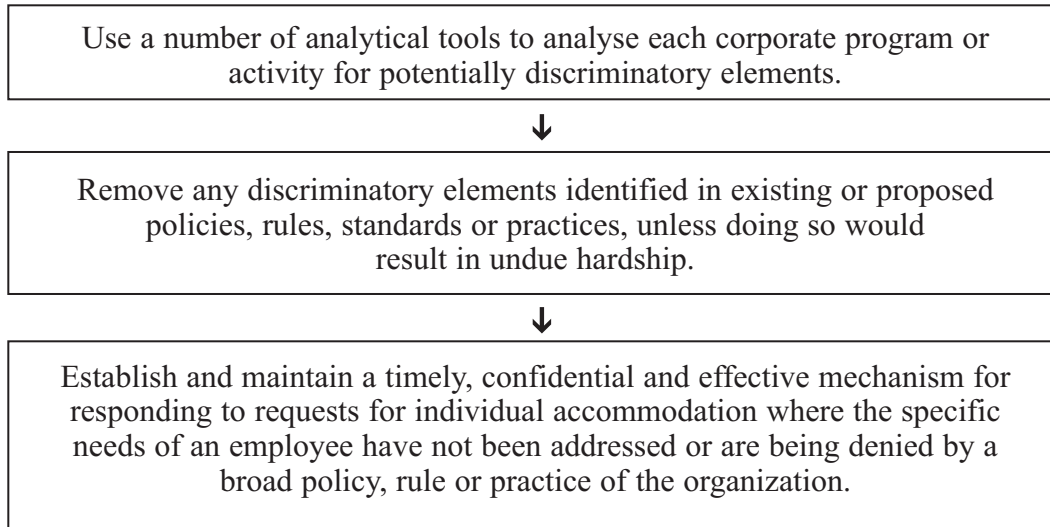
Accommodation and “undue hardship”

Accommodation is a positive obligation on all employers and service providers. However, the courts have recognized that the duty to accommodate is not open-ended. It may not be required if it can be shown that providing accommodation would cause “undue hardship” to the organization.

Canadian courts have put a very high value on achieving equality in Canadian society. To this end, the Supreme Court has accepted that failure to accommodate will only be justified where it would be impossible to do so without incurring undue hardship. (Although a considerable measure of hardship must be anticipated in ensuring accommodation, the courts have not provided a comprehensive definition of what is to be considered “accommodation” or “undue hardship”.) The factors that play a role when assessing undue hardship are “health, safety and cost”. The relative importance of each will vary from case to case.

A new framework

To assist employers to respond to their legal responsibilities under the human rights legislation, this Guide proposes a new framework for removing discriminatory barriers in the workplace.



In all considerations regarding accommodation, the dignity of the individual requiring accommodation will be one of the most important factors to be considered. Accommodation that gets the job done but does not adequately respect individual dignity will not be acceptable.

How to use this guide

This Guide has three sections: A Policy Guide; A Procedures Guide; and an Individual Accommodation Procedures Guide. These sections are divided up under suggested issue headings which identify the elements that should be covered within the policy and procedure. For example: Policy objective; Responsibility; Processing requests; and Review.

Under most of these headings there is text relating to the issue under three sub-headings: Question, Comment and Sample.

Question

The questions are designed to assist in clarifying possible content for each element and should be useful both in the development stage and as a tool to check final content.

Comment

The comment section provides additional information on the issue in order to clarify the law or justify suggested content.

Sample

A sample policy or procedure is provided as an illustration of possible content. Organizations wishing to use the sample as a model for developing their own policy and procedure will need to adapt the content to suit the size, function and structure of their organization, and to correctly identify the relevant positions.

Where it is proposed that responsibility for action be assigned to a person occupying a particular position, that position is identified in brackets, e.g., [Manager of Human Resources] to emphasize that organizations should name the appropriate person for accountability purposes. The lines of authority followed in the sample have the [Manager of Human Resources] reporting to the [Director of Corporate Services], who in turn reports to the [Head of Organization].

Please remember...

This Guide has been developed for organizations in their role as employers and service providers. Service providers must keep in mind that their legal obligations extend to their customers and clients.

In addition, while this Guide will be periodically renewed to reflect emerging legislation and case law, it is not a substitute for legal advice. Employers should consult with a lawyer if they have questions about the legal requirements regarding the duty to accommodate.

Your comments are welcome

This Guide is a working document that will be revised in light of evolving law, as well as the comments of organizations that use it. Suggestions on the scope, content and usefulness of the Guide are welcome. For convenience, a feedback sheet can be found at the back of the Guide. Any recommendations on useful resources to be added to the Appendices are also welcome.

Please forward your comments to:

Policy and International Program Branch
Canadian Human Rights Commission
344 Slater Street
Ottawa, Ontario
K1A 1E1
Phone: (613) 943-9146
Fax: (613) 995-1035
E-mail: policy-politiques@chrc-ccdp.ca

The most recent edition of this Guide can be obtained by calling the National Office of the Canadian Human Rights Commission at **1-888-214-1090** or going to the Commission's Web site at [**www.chrc-ccdp.ca**](http://www.chrc-ccdp.ca).

A copy of the Guide can also be obtained at the Commission's **Regional Offices** (see inside back cover).

Ce guide est aussi disponible en français.

POLICY GUIDE

This section of the Guide sets out the elements of a model employer policy on workplace accommodation.

1. Statement of commitment

- Question: Does the policy acknowledge the diversity of your workforce?
- Question: Does the policy express an overall commitment to ensuring that all employees will be able to contribute their skills and experience to the organization's performance without discrimination?
- Comment: Making a statement of commitment provides the employer with an opportunity to recognize the diverse nature of its workforce. It sends a strong message to employees that they can raise any concerns they have and that those concerns will be seriously addressed.
- Sample: [Everyone's Workplace Inc.] recognizes the diversity of its workforce and is committed to ensuring that all employees are able to effectively and efficiently use their skills and experience to contribute to the organization's performance, production and service delivery. This includes the opportunity to participate, without discrimination, in both work-related and other activities conducted within a work context.

2. Policy objective

- Question: Does the policy clearly state what the objective is behind developing this policy?
- Comment: The policy objective should state broadly what the employer wants to achieve through developing and applying this policy.
- Sample: The objective of this policy is to make the work environment inclusive and non-discriminatory and to establish effective mechanisms for responding to the individual accommodation needs of existing and potential employees.

3. Policy statement

- Question: Does the policy statement acknowledge the importance of ensuring that the design and implementation of workplace policies, rules, practices and operations do not result in barriers or discrimination?

Question: Does the policy make a clear commitment to establishing a mechanism for responding in a timely, sensitive and confidential way to requests for individual accommodation?

Comment: The 1999 Supreme Court decision in the *Meiorin* and *Grismer* cases clarified the need for employers and service providers to do all they can, up to the point of undue hardship, to ensure that all their corporate activities take into account the needs of their workforce.

This means that employers should no longer simply rely on an accommodation policy to respond to requests from individual employees who may be experiencing discrimination in the workplace. It means that employers should look closely at all their corporate programs and activities, including policies, practices, rules, standards, procurements and decisions relating to real property, and do all they can to eliminate potential discriminatory barriers within them.

For example, a general rule that all employees must be willing to travel overnight might discriminate against people on the grounds of family status because it will tend to preclude people with family responsibilities. Such a rule should be closely examined to ensure it is only applied to positions where overnight travel is an essential part of the job.

Similarly, procurement decisions for new communications technology should ensure the technology is fully accessible for people with a range of disabilities, or has compatible interfaces to allow for access.

Taking this action will reduce the need for individual accommodation. It should be remembered, however, that a specific employee may still require a particular accommodation in accordance with an individual accommodation policy.

For example, an employee's religious beliefs may require him or her to be absent from work on days of religious observance, to have prayer breaks during working hours, to observe a certain dress code, or to follow a dietary plan. An organization may have a policy allowing for flexible working hours, which aims to avoid discrimination on the basis of religious belief. However, a particular individual may have very specific religious commitments at a certain time of year that do not fit within the general policy. That individual's needs should be accommodated unless doing so would result in undue hardship. Managers should consider a number of flexible working arrangements.

Similarly, a washroom fit-out in the staff area may meet the design specifications required to provide access, as far as possible, to employees with mobility impairments, or those who use wheelchairs. General design specifications, found in building regulations, can never meet every individual's needs, but it is reasonable for employers to use them when completing a fit-out.

A particular employee may, however, require individual accommodation in the form of an additional support bar, carefully located, in order to gain access. The fact that the employer did all it could in the basic fit-out to build accommodation into the design does not mean that further individualized accommodation should not be provided short of undue hardship.

Sample: [Everyone's Workplace Inc.] will establish and maintain an effective system to ensure an inclusive workplace and provide workplace accommodation.

[Everyone's Workplace Inc.] will ensure that its corporate activities, including all policies, practices, procedures, procurements, and the construction or renovation of facilities will not result in discrimination.

[Everyone's Workplace Inc.] will respond in a timely, confidential and sensitive manner to requests for individual workplace accommodation.

4. Legal framework

Question: Does the policy recognize the employer's legal obligations under the *Canadian Human Rights Act*, the *Employment Equity Act* and, if applicable, the *Canadian Charter of Rights and Freedoms*?

Question: Is there a statement acknowledging a responsibility to minimize the need for individual accommodation by ensuring that any rules, policies, standards or practices have accommodation built in?

Comment: Identifying the legal framework under which the employer operates ensures all parties are clear about their rights and responsibilities, and puts the policy in a clear legal context.

Sample: This policy addresses our responsibilities under the *Canadian Human Rights Act* and the *Employment Equity Act*. The CHRA states that it is unlawful to discriminate on the grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted. The EEA's purpose is "to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and ... to correct the conditions of disadvantage in employment experienced by women, aboriginal people, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating people the same way but also requires special measures and the accommodation of differences."

Federal government bodies also have a responsibility to not discriminate against anyone protected under section 15 of the *Canadian Charter of Rights and Freedoms*. (The Charter concerns the relations between the government and the public and does not generally apply to the private actions of individuals or corporations.)

This policy acknowledges our duty as an employer to provide individual accommodation up to the point of undue hardship and the responsibility to minimise the need for individual accommodation by ensuring that any rules, policies, standards or practices are not discriminatory.

5. To whom does this policy apply?

Question: Does the policy state that it applies to all existing employees and job applicants?

Comment: The policy should state that it applies to all existing employees including part-time, limited term and indeterminate employees as well as people applying for positions.

Sample: This policy applies to all employees of [Everyone's Workplace Inc.] and applicants for positions with [Everyone's Workplace Inc.], at all sites where work is undertaken for [Everyone's Workplace Inc.]. It applies to employees in, and applicants for, part-time, limited term and indeterminate positions.

This policy is of particular relevance to those employees and applicants who are members of one or more of the groups against whom discrimination is prohibited under section 3 of the *Canadian Human Rights Act* and section 15 of the Charter.

6. Corporate activities covered by this policy

Question: Does the policy identify the range of corporate activities that could result in barriers?

Comment: A clear recognition of the range of programs and activities that might result in discriminatory barriers will assist decision makers in the organization in identifying areas of liability and clarify the organization's commitment under this policy. An employer will have to exercise some discretion over what corporate activities will be subject to analysis.

As previously noted, there is a great deal of overlap between what may be required as part of a workplace accommodation policy and the demands of the *Employment Equity Act*. The *Employment Equity Act* asks employers to perform employment systems reviews which include identification of barriers, removal strategies and preparation of the required accommodation policies. Employers that are subject to the *Employment Equity Act* can use the results of an employment systems review to satisfy some of the requirements of a workplace accommodation policy and vice versa.

Sample: [Everyone's Workplace Inc.] recognizes that many of its programs and activities have consequences for employees and have the potential to create or maintain discriminatory barriers. [Everyone's Workplace Inc.] is committed to ensuring that the following activities are reviewed to remove any discriminatory effect (Note: add to or remove from the list as appropriate):

- establishment of new operational areas or positions and renewal activities;
- all employment-related policies including recruitment, selection, training, promotion, retention and alternative work arrangements such as telework and flexible hours;
- purchase and management of information technology systems;
- purchase and management of communications systems;
- development and management of information services;
- decisions relating to real property;
- purchase of internal fittings (chairs, desks, lights, carpets, etc.);
- decisions relating to conferences, seminars and training.

7. What may be required?

Question: Does the policy identify how the range of corporate activities will be examined to ensure the workplace is inclusive and non-discriminatory?

Question: Does the policy identify the range of issues that may be considered when responding to requests for individual accommodation?

Comment: By identifying the range of issues that can be addressed under the policy, the employer is demonstrating its commitment to dealing with discrimination that may result from the current rules, policies, standards or practices of the organization. Further, the more comprehensive the coverage, the more inclusive the environment and the less likely it is that there will be a need for individual accommodation.

The employer is also assisting managers, supervisors and employees to understand their responsibilities and rights in relation to the range of issues that may need to be considered when dealing with a request for accommodation.

Federal government departments and agencies should note that the Public Service Employment Regulations have been amended specifying that an employee's probationary period can only commence after an employee has been accommodated.

Sample: [Everyone's Workplace Inc.] will ensure that, before deciding on or engaging in corporate actions, it will analyse these actions so as to identify and resolve potential barriers. Further, it will review all existing policies and procedures to identify and remove discriminatory elements. This may well involve permanent or ongoing changes to facilities, practices, policies and procedures.

[Everyone's Workplace Inc.] will ensure that it provides, in a timely and effective way, accommodation specific to an individual's needs. (See **Individual Accommodation Procedures Guide**.)

This could include, but is not limited to:

- **work station access and adjustments:** changes to work area design and means of access to the workplace and all facilities, modifications to technology and equipment;
- **hiring practices:** changes to the procedures used for testing, selection, training, promotion and termination;

- **work procedure adjustments:** changes to the specific requirements of a particular job, restructuring of duties, modifications to working hours, adoption of flexible work practices, relocation, flexible hours and leave options, and modification of particular policies;
- **provision of specific services, facilities, aids or equipment:** including the provision of interpreters, particular equipment, attendant services, a quiet place for prayer or assistance with particular aspects of a job;
- **reassignment of an individual employee:** a change of position or the reassignment of specific tasks to another position.

[Everyone’s Workplace Inc.] recognizes that the need for accommodation may arise during the employment selection process, at the commencement of employment or at some time after employment has commenced. An employee’s probationary period can only commence after an employee has been appropriately accommodated.

8. Responsibility

- Question: Does the policy clearly outline the responsibilities of the employer, supervisory staff, unions and employees?
- Question: Does the policy clearly state who has responsibility for ensuring that corporate programs and activities are non-discriminatory?
- Question: Does the policy acknowledge the employer’s responsibility to respond to requests from unions or others closely associated with the employee and initiate discussion on possible individual accommodation where appropriate?
- Comment: Clarifying responsibilities is vital for the effective implementation of the policy. The policy should cover issues such as who has ultimate responsibility for implementation, as well as the responsibilities of the employer and employee for identifying individual accommodation needs and options. Unions share with employers a duty to accommodate and should be included in any discussions considering options for accommodation.

While it is reasonable for the employer to request reports and medical information from the employee, the information sought should be limited to that necessary to assist in the identification of the most effective accommodation. It is vital that the privacy rights of the individual be protected.

The policy should also recognize that in some circumstances requests for accommodation may be made by third parties, including family members, work colleagues, advocates and unions, and that the employer may have a responsibility to initiate discussion on possible accommodation where an employee is unable for any reason to state that need.

This possibility is most likely to arise where the employee is unable, because of a particular characteristic, such as disability, to identify the need for accommodation, or to make the request. The employer must be sensitive to the potential of such situations occurring and act accordingly.

Again, it is vital that the employer protect the privacy rights of the employee. This means that the employer must not disclose any information about the employee to the third party making the request unless the employee has specifically provided her or his written consent to the employer.

Sample:

Overall responsibility for implementing this policy and procedure rests with the [Head of Organization].

The [Director of Corporate Services] is responsible for ensuring that all existing policies, rules, practices and procedures are reviewed to identify and eliminate discriminatory elements.

The person responsible for developing any proposal which results in a corporate activity or a new corporate program is also responsible for ensuring that the resulting program or activity is non-discriminatory.

All staff members are encouraged to notify the [Director of Corporate Services] of any barriers they believe prevent access or inclusion. The [Director of Corporate Services] is responsible for ensuring action is taken on such notifications.

[Everyone's Workplace Inc.] recognizes a shared responsibility for ensuring that an individual accommodation is identified.

[Everyone's Workplace Inc.] is responsible for advising employees and applicants about their right to accommodation and assisting the employee or applicant, with the help of their union or an employee representative, to identify the most suitable accommodation.

The employee or applicant is responsible for requesting accommodation including identifying, where possible, the types of accommodation she or he considers appropriate.

[Everyone’s Workplace Inc.] will accept and act on a request for accommodation made by a third party (family member, caregiver, trade union or bargaining agent, advocate or other representative). The procedure, in this event, will only continue with the consent of the employee or applicant.

[Everyone’s Workplace Inc.] recognizes that supervisors and managers also have a responsibility to initiate the procedure where she or he is aware that an employee or applicant has a need for accommodation, but is unable for any reason to state that need. The procedure, in this event, will only continue with the consent of the employee or applicant.

The employee has a responsibility to provide reports or medical information specifically relevant to the process of identifying appropriate accommodation.

Supervisors and managers are responsible for following the correct procedure when an employee or applicant identifies the need for accommodation.

9. Undue hardship

Question: Does the policy commit your organization to considering all options to provide accommodation short of experiencing undue hardship?

Question: Does the policy commit your organization to providing alternative accommodation up to the point of undue hardship, if the specific accommodation requested is considered to involve undue hardship?

Comment: Human rights legislation and case law have established the responsibility of employers to make changes to workplace policies, rules, practices and operations that result in discrimination and provide individual accommodation unless doing so would involve undue hardship. While the question of what constitutes undue hardship varies with the circumstances of employers, the courts have made it clear that employers must expect to experience some hardship in eliminating barriers and providing accommodation. The question tribunals and courts address is whether or not the hardship is undue.

The *Canadian Human Rights Act* provides that undue hardship must be assessed considering “health, safety and cost”. The mere fact that some cost, financial or otherwise, will be incurred is insufficient to establish undue hardship.

Some of the factors that the courts have considered relevant to an appraisal of what constitutes undue hardship include: disruption of the collective agreement, impact on other employees, interchangeability of work force and facilities, size and financial resources of employer, availability of other positions and external financing, and details of any additional risks or detriments. These considerations should be applied with common sense and flexibility in the context of the factual situation presented in each case. Keep in mind that there is a heavy onus upon employers and service providers to satisfy the courts that they will in fact suffer undue hardship if they are obliged to provide the accommodation requested. The **Procedures Guide** offers some guidance on how an employer might go about making decisions on this matter.

Where an employer concludes that a particular means of providing accommodation will result in undue hardship, it can choose to refuse to implement that particular means. However, the responsibility to provide accommodation still exists. For example, extensive changes to a work schedule to accommodate someone with a medical condition may be considered by the employer to constitute undue hardship, because of the effect the changes would have on the whole operation. Refusing that specific request does not mean that the employer should not attempt to find alternative ways of responding to the request. It is important to note, however, that only alternatives that are going to achieve non-discriminatory access or participation (without imposing undue hardship) are relevant.

Sample:

[Everyone's Workplace Inc.] is not required to make changes to workplace policies, rules, practices and operations or provide accommodation that will result in undue hardship.

Before refusing to provide accommodation, [Everyone's Workplace Inc.] will ensure that all effective options to accommodate, short of undue hardship, are considered.

Where a particular means of accommodation is requested and it has been found that it cannot be met without incurring undue hardship, every effort will be made to provide alternative accommodation up to the point of undue hardship.

The accompanying procedure document provides guidance on the issues that may be considered in relation to whether or not the provision of a particular accommodation will result in undue hardship. It also sets out the authority delegated to different management levels to approve specific financial or other allocations for accommodation.

10. Procedure

- Question: Does the policy refer to a procedure for ensuring the workplace is inclusive, non-discriminatory, and for responding to requests for individual accommodation?
- Comment: It is important for each person with responsibilities under this policy to have access to detailed procedural guidelines on how to implement the policy. As each workplace is different in size and organizational structure, the procedure has to be tailored to each organization.
- Sample: The proper procedure to follow is set out in the accompanying procedures document.

11. Privacy and confidentiality

- Question: Does the policy commit your organization to keeping confidential all information concerning individual requests for accommodation?
- Sample: All documents relating to specific requests for accommodation will be kept confidential and will only be disclosed with the consent of the employee or applicant. [Everyone's Workplace Inc.] will comply with all requirements of the *Privacy Act* to protect personal information.

12. Recourse rights

- Question: Does the policy inform employees of their rights to appeal decisions concerning requests for accommodation, and does it clearly state the limits of those appeal rights?
- Question: Does the policy inform employees of their right to complain under the *Canadian Human Rights Act*, and other complaints or grievance processes, if they are not satisfied with the outcome of their request for accommodation? In unionized workplaces, does the policy advise employees of their right to labour representation?
- Comment: If there exists formal or informal avenues of appeal within the workplace, these should be identified and utilized by employees, where appropriate. For example, the grievance process might be utilized in a unionized workplace, but only if accommodation is covered in the collective agreement and the time frames for resolving a grievance are compatible with responding to a request for accommodation. However, where no appeal mechanisms exist, or the appeal mechanisms that do exist are unsuitable, establishing an appeal process as a component of the policy and procedure may assist in avoiding formal complaints under human rights law.

Employers may decide to establish an appeal mechanism for employees on any aspect of the policy and procedure, including when a request for accommodation is refused on the grounds of undue hardship.

Sample: Where an employee or applicant believes that his or her request for accommodation has not been handled in accordance with this policy or the accompanying procedure, or is not satisfied with the type of accommodation offered, that employee or applicant has a right of appeal. The appeal process is set out in the accompanying procedure document.

In the event that a request for accommodation is denied on the grounds of undue hardship or any other ground, [Everyone's Workplace Inc.] recognizes the continuing right of employees or applicants to make a complaint under the *Canadian Human Rights Act*, the *Public Service Employment Act*, the *Public Service Staff Relations Act*, the *Canada Labour Code* or other complaint or grievance mechanisms.

13. Communication

Question: Does the policy clearly express a commitment to ensuring applicants for positions have information about their rights to request accommodation?

Question: Does the policy commit your organization to providing each employee with copies of the policy and procedure and posting copies on the intranet and in staff common areas?

Question: Does the policy commit your organization to providing regular reminders to employees of their right to seek accommodation?

Comment: An active communication strategy is important if existing employees are to be clear about their rights under the policy. Regular reminders about the existence of the policy and procedure will assist employees and supervisors to address issues in a timely manner.

Sample: [Everyone's Workplace Inc.] will ensure that all employees are provided with a copy of the policy and procedure. In addition, all applicants will be provided with information, in an appropriate format, about both this policy and the accompanying procedure document.

A copy of the policy and procedure will be permanently posted in a common area within each [branch/unit]. A copy of the policy and procedure will also be posted on [Everyone's Workplace Inc.] intranet and Internet Website.

At least twice a year all employees will be reminded of the policy and procedure by e-mail or other suitable distribution processes.

14. Review

Question: Does the policy include a review clause which commits your organization to regular reviews with input from all interested parties?

Sample: [Everyone’s Workplace Inc.] will review this policy and the accompanying procedure document bi-annually. All current employees and bargaining agents will be invited to contribute to the review.

15. Monitoring and reporting

Question: Does the policy include a requirement that someone has responsibility for monitoring all requests for individual accommodation to ensure the policy and procedure are being correctly applied?

Question: Does the policy include a commitment to keeping records of all requests for accommodation for reporting purposes?

Comment: To ensure this policy and procedure are applied effectively, it is essential to build into the policy the appropriate monitoring process which is the responsibility of a named individual or, in the case of large, decentralized organizations, several individuals. This allows for feedback to managers and supervisors and for more efficient review. It also enables the organization to track requests and provide documentation in the event of appeals or complaints.

Sample: The [Manager of Human Resources or other senior manager appointed by the employer] will monitor all requests for accommodation to ensure the policy and procedure have been correctly implemented.

[Everyone’s Workplace Inc.] will keep records of all requests for accommodations as detailed in the procedure document, and provide reports as may be required by the Government of Canada or any other authority.

16. Responsibility for interpretation

Question: Does the policy identify who is responsible for providing any interpretation necessary in relation to the policy and procedure?

Sample: The responsibility for interpretation of this policy and procedure rests with the [Director of Corporate Services].

17. Enquiries

Question: Does the policy identify someone who will deal with enquiries about the policy and procedure?

Question: Is the policy available in alternate formats?

Sample: Enquiries about this policy and procedure should be addressed to the [Director of Corporate Services].

PROCEDURES GUIDE

This part of the Guide is intended to help employers set up a procedure for analysing corporate programs and activities. The objective of such an analysis is to find out if a program or activity will give rise to discriminatory barriers and then remove or nullify those barriers.

To do the analysis, an employer needs to have a tool or strategy; (another word is 'lens'). A tool could be a series of questions to determine the effect of a policy or activity.

A tool could also be a specific checklist, such as a list of technical specifications for designing a Web page that is accessible to a visually impaired person.

Again, the objective is to use the tool to analyse a corporate activity in order to be able to uncover and remove discriminatory barriers.

A number of tools or lenses are already available. Others are being developed. (For details on where to obtain these tools, see Appendix C.)

The following are the four essential elements of a procedure for doing the analysis.

1. Identifying tools for analysis of corporate programs and activities

Question: Does the procedure identify who is responsible for maintaining an up-to-date database on existing analytical tools or “lenses” to analyse corporate programs and activities?

Comment: It is recommended that one person have overall general responsibility for ensuring the employer has access to all relevant tools.

Sample: The [Manager of Human Resources or Other Designated Employer Representative] is responsible for ensuring that [Everyone’s Workplace Inc.] has access to all current analytical tools or lenses.

2. Responsibility for analysis

Question: Does the procedure identify who is responsible and accountable for analyzing specific corporate activities?

Comment: Responsibility for approving new policies, practices, procurements and operations will vary within an organization. It is important for employers to identify who has responsibility for final decision-making in order to establish a clear line of accountability.

Sample: The person responsible for developing any proposal which results in corporate activity is responsible for ensuring appropriate lenses are applied.

The [Manager of Human Resources or Designated Employer Representative] is responsible for ensuring that all proposed corporate activities have been analysed to identify possible discriminatory barriers, and that all problems identified in that analysis have been addressed prior to the action being finalised, unless doing so would result in an undue hardship.

3. Communication and consultation

Question: Does the procedure allow for consultation with employees and unions in appropriate situations?

Comment: While not every corporate program or activity needs to be subject to extensive consultation, there will on occasion be activities that have broad consequences, such as the purchase of a new computer software system or a decision to move from one building to another. Employees and their representatives should have an opportunity to study the potential consequences of these activities.

Sample: Where appropriate, the responsible person will ensure, through the Employment Equity Committee or an appropriate labour management consultation forum, that staff and bargaining agents are advised of the proposed action and provided with sufficient information and an opportunity to make comments about any employment equity concerns.

4. Reporting

Question: Does the procedure include a mechanism for checking that an analysis of corporate activities has been undertaken before action is taken, and recording details of the analysis and outcome?

Comment: While operational activities may be the sole responsibility of operational managers, their decisions may have implications for the human resource side of the organization, which will have to deal with any requests for accommodation or any complaints of discrimination from employees. It is appropriate, therefore, for human resource personnel to monitor all corporate activities that may give rise to discriminatory barriers.

Sample:

A report describing action taken to ensure corporate activities do not create discriminatory barriers will be forwarded to the [Manager of Human Resources] before implementation. The report will particularly note any discriminatory barriers identified but not addressed.

The [Head of Organization] will be responsible for final decisions about whether or not to proceed with a proposal if discriminatory barriers have been identified as likely to arise, and no modification to remove this potential has been proposed.

The [Manager of Human Resources] is responsible for preparing an annual summary of activities in this area to be provided to the [Head of Organization], who will, in turn, provide this information as required in external reports.

INDIVIDUAL ACCOMMODATION PROCEDURES GUIDE

This section of the Guide outlines a detailed procedure for responding to requests from a specific employee for individual accommodation. The samples provided go into considerable detail about process, responsibilities and recording.

While some organizations may decide not to provide such detail, it is the Commission's experience that many accommodation-related difficulties have arisen because managers and supervisors have not had clear and formal procedures to follow. This has resulted in inconsistencies in the application of policies and greater vulnerability to complaints.

1. Information and initiating requests

Question: Does the procedure clearly set out who has responsibility for informing employees and applicants for positions about their rights?

Question: Does the procedure explain how and when requests for accommodation can be made?

Question: Does the procedure explain who is responsible for recording and initiating the process?

Comment: Procedures for providing information and initiating processes may vary according to whether or not the person requesting accommodation is an applicant for a position, or a new or existing employee.

Generally, the applicant or employee is responsible for requesting accommodation, but in some circumstances the employer may have a responsibility to initiate action leading to the provision of accommodation. While employers cannot be expected to 'second guess' an employee's needs, they should be sensitive to the fact that sometimes an employee may not be able to identify and/or express his or her need. A complaint about a failure to provide accommodation may be successful, even if the employee did not clearly request one, if it could be argued the employer should reasonably have known of the need, but did not act.

Example A: An employee tells her supervisor: "I'm having trouble getting to work at my scheduled starting time because of family responsibilities". This should be pursued as a request for workplace accommodation.

Example B: An employee tells his supervisor: “I need a half day a week off for the next six weeks to get treatment for a medical problem”. This should be pursued as a request for workplace accommodation.

Example C: An employee tells her supervisor that she would like a new chair because the present one is uncomfortable. Although this is a request for a change of facilities in the workplace, the statement is insufficient to put the employer on notice that this is a request for a workplace accommodation. The supervisor should, however, clarify the reason for the request to determine whether or not it arises due to a disability.

Example D: An employee with a developmental disability is required to deliver documents and messages to staff. There are two staff with similar names and the employee regularly mixes them up. The supervisor is aware of the employee’s disability. As such, the supervisor might reasonably believe that this problem may be related to the employee’s disability and that the employee is unaware of, or unable to make a request for workplace accommodation because of the disability. The supervisor should speak to the employee about the problem and ask if it would be helpful to develop a system that enables the employee to more easily distinguish between the two names.

(These examples are based, in part, on those provided by the US Equal Employment Opportunity Commission in *Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*.)

An applicant is not obliged to inform an employer of his or her accommodation requirements prior to being hired. However, if the employer raises the need for accommodation, but the applicant or employee specifically decides not to pursue the issue, the employer will likely have fulfilled its responsibilities in this area.

Many employers require new employees to take and pass a medical examination as a condition of employment. Where a medical examination is a job requirement, this should be discussed with an applicant only after the job offer has been made and accepted.

The need for accommodation cannot be used when evaluating the merits of an applicant or employee.

Sample:

(i) Applicants

The [Manager of Human Resources] shall ensure that all people making enquiries about positions advertised within [Everyone's Workplace Inc.] are provided with information about the accommodation policy and procedure, and advised of the process for requesting accommodation during the selection process.

A person making an enquiry or applying for a position who requires accommodation in relation to the selection process should be advised to direct the accommodation enquiry as soon as possible to the [Manager of Human Resources]. The person should identify the accommodation required and the reason it is needed.

The [Manager of Human Resources] is responsible for ensuring that Part I of Form A is completed and countersigned by the applicant when a request is made.

(ii) New employees

The person responsible for making the offer of a particular position shall, after making the offer and receiving an acceptance, advise the new employee of his or her right to workplace accommodation and ask whether accommodation is required.

The [Manager of Human Resources] shall ensure that all new employees are provided with a copy of the policy and procedure in the employee handbook.

A new employee who requires accommodation may make a request for accommodation either before, or as soon as possible after commencing the job, to the [Manager of Human Resources] or the supervisor, advising them of the accommodation required and the reason it is needed.

Where the employee is not aware of the appropriate accommodation, but is aware that there will be some accommodation required, it is sufficient for him or her to advise of the need.

The person who receives the request for accommodation is responsible for ensuring that the request is recorded on Part I of Form A (See **Appendix B**) and countersigned by the employee.

A copy of Part I of Form A should be forwarded to the [Manager of Human Resources] within two working days of the request being made.

(iii) Existing employees

The [Manager of Human Resources] is responsible for ensuring that all existing employees are reminded of the policy and procedure every six months, and for ensuring that a current copy of the policy and procedure is available in each designated common area within [Everyone's Workplace Inc.].

When existing employees become aware of the need for workplace accommodation, they are responsible for advising their supervisor of this need and the accommodation required (if known).

The supervisor is responsible for ensuring that the request is recorded on Part I of Form A and countersigned by the employee.

A copy of Part I of Form A should be forwarded to the [Manager of Human Resources] within two working days of the request being made.

Supervisors are to be sensitive to requests that are not framed in the specific language of 'workplace accommodation', and to situations where no request is made, but a problem is apparent which may require some form of accommodation.

2. Processing requests

- Question: Does the procedure clearly explain what action should be taken to process the request?
- Question: Does the supervisor, or responsible person, know what to do when he or she needs external assistance or when his/her delegated authority is limited?
- Question: Does the procedure identify at what point questions of cost or risk to health or safety should be referred to those with authority to make decisions in relation to undue hardship?
- Comment: Many requests for individual accommodation will be dealt with by the immediate supervisor speedily and with little effect on the organization. Some, however, may involve complex technical, organizational, safety or cost issues. Each employer needs to clearly explain to supervisors what they have to do to process a request, when and where they can go to seek expert assistance, and when they need to refer to a higher authority for decision-making.

It is also important for supervisors to know that, when there are alternative means of meeting the request for accommodation, preference should be given to the choice of the employee. If the supervisor decides to choose an alternative because of cost or other reasons, the supervisor should be careful to ensure that the alternative is equally effective in meeting the accommodation needs of the employee.

The procedure under this heading should include a statement about levels of delegated financial and other authority. This Guide does not include anything in the sample as this will differ with each organization.

Sample:

(i) Applicants

On receiving the request, the [Manager of Human Resources] will discuss the accommodation required and identify possible alternatives with the applicant.

The [Manager of Human Resources] will make a decision concerning the request and, if approved, take the necessary action to ensure that the accommodation is provided.

The [Manager of Human Resources] should seek specialist advice where the request would require complex changes to the selection process. Such advice should be obtained after discussion and agreement with the applicant.

If the [Manager of Human Resources] is unable to approve the request for whatever reason, she or he must, within three working days of the request, advise the applicant of this decision and of the right to appeal as set out below.

Where there is a delay caused by implementing the accommodation, the applicant shall not be disadvantaged in the selection process. The applicant will be given additional time, equivalent to the delay, to complete the application process.

Parts II and III of Form A are to be completed and forwarded to the [Manager of Human Resources] within five working days of the accommodation request being finalized.

(ii) New and existing employees

On receiving the request the supervisor or [Manager of Human Resources] shall discuss with the employee the accommodation required and whether or not there are alternatives.

The employer representative may require documentation from the employee to verify the need for accommodation. Information should be limited to facts relevant to identifying the appropriate accommodation. For example, in cases involving accommodation of persons with a disability, employees have a right to privacy and need only provide a description of their functional limitations, not a report on the specific nature of their disability. Medical reports should be treated as strictly confidential and circulated on a need-to-know basis only.

When an employee has requested accommodation, the employer representative shall, in consultation with the employee:

- discuss the purpose and essential functions of the employee's job;
- determine the precise job-related limitation;
- identify potential accommodation and assess the effectiveness each would have in allowing the individual to perform the job optimally; and
- identify any costs, benefits or detriments flowing from the alternatives.

Where the request involves issues outside the expertise of the employer, specialist advice should be sought. A list of sources of specialist advice is included in Appendix C. These are included as suggestions only and the list is by no means exhaustive. It is at the sole discretion of the parties to choose their own specialist for advice.

Such advice should be obtained after discussion and agreement with the employee.

Every effort should be made to adopt the accommodation preferred by the employee. If, however, there is an equally effective accommodation available, [Everyone's Workplace Inc.] may choose to proceed with the one that is the least costly or easiest to provide.

Where the cost of the accommodation is greater than the amount for which the particular employer representative has authority, or where the employer representative identifies other significant potential detriments flowing from the accommodation, such as significant disruption to operations, she or he shall refer the request to the [Director of Corporate Services] for action.

The employer representative has authority to refuse accommodation for reasons other than undue hardship, such as believing there is insufficient evidence that the accommodation is needed or is linked to a protected ground under the *Canadian Human Rights Act* or Charter. In the event of such a refusal, she or he must advise the employee immediately of this decision, and of the right to have the decision reviewed in accordance with the Appeal Process set out below. An employee should also be advised of the right to seek legal or other counsel, and the right to representation during the Appeal Process.

Where the preferred accommodation is refused, but an alternative is offered, the employee is to be advised of his or her right to have this decision reviewed in accordance with the Appeal Process set out below.

Where the provision of accommodation raises the likelihood of undue hardship, the employer representative will refer the matter to the [Director of Corporate Services].

Parts II and III of Form A are to be completed and forwarded to the [Manager of Human Resources] within five working days of the accommodation request being finalized.

3. Undue hardship

- Question: Does the procedure clearly state who is responsible for making decisions concerning questions of undue hardship?
- Question: Does the procedure explain that when the accommodation specifically requested is thought likely to result in undue hardship, alternative accommodation will still be provided, up to the point of undue hardship?
- Question: Does the procedure require that the employee be advised of the right to complain under the *Canadian Human Rights Act* if the request is refused?

Comment: As stated at the beginning of this Guide, this publication is not a policy statement or regulation on what constitutes undue hardship as this is in the end a case-specific decision. That issue is for the Canadian Human Rights Tribunal and higher courts. All that can be said here is that the courts have determined that fulfilling human rights responsibilities can involve some hardship. The fact that something might be difficult or costly does not mean that it would amount to undue hardship.

The *Canadian Human Rights Act* states in section 15(2) that questions of undue hardship should be resolved “considering health, safety and cost”.

An employer can establish a mechanism for dealing with questions of undue hardship by referring to what the law says and how the Tribunal and courts have interpreted undue hardship in case law.

In the case of government departments and agencies, it is highly unlikely that the test for undue hardship will be met solely by demonstrating that an individual agency does not have adequate funds to provide accommodation. Actions may need to be taken to identify additional funds from within government as a whole.

Sample: The [Director of Corporate Services] will make a decision about the likelihood of undue hardship arising by considering:

- The nature and cost of the accommodation as assessed in the context of the size and financial situation of the employer as a whole.
- Safety and/or health risks, if any, and who bears them.

If the [Director of Corporate Services] concludes that the accommodation will result in undue hardship, she or he will forward an undue hardship analysis and recommendation to the [Head of Organization or Senior Executive Officer] as soon as possible, and not later than ten working days after receiving the request, unless specific specialist information or assistance is required and obtaining this results in a delay.

The [Head of Organization or Senior Executive Officer] will provide a decision with reasons in writing to the [Manager of Human Resources] and to the employee within five working days of receiving the analysis and recommendation.

Where the [Head of Organization or Senior Executive Officer] agrees that the accommodation would result in undue hardship, consideration must be given by the [Manager of Human Resources], in consultation with the employee's supervisor and the employee, to offering alternative accommodation, such as possible changes to the job description or relocation to another, more suitable, position.

If the employee disagrees with the decision to refuse the accommodation, she or he may appeal using the procedure set out below.

The employee must be advised of his or her rights to appeal and counsel, and to lodge a complaint under the *Canadian Human Rights Act* [and any other applicable external complaint or grievance procedure.]

4. Appeal process

- Question: Does the procedure describe the conditions under which an appeal can be made?
- Question: Does the procedure describe the process for making appeals for both applicants and new and existing employees?
- Question: Does the procedure require that the employee be advised of the right to complain under the *Canadian Human Rights Act* if an accommodation request is refused?
- Comment: If formal or informal avenues of appeal already exist within the workplace, an employer may choose not to create or provide an appeal process for applicants and employees, or choose to limit such a process to issues other than decisions concerning undue hardship. However, if an employer intends to rely on a grievance procedure, it should ensure that accommodation is covered in the collective agreement and the time frames involved are suitable for responding to a request for accommodation.

Sample:

(i) Applicants

Where a request for accommodation is refused, or the applicant believes the request has not been handled in accordance with this policy and these procedures, the applicant has a right of appeal to an Appeal Committee consisting of the [Manager of Human Resources] and two representatives from the [Employment Equity Committee or appropriate labour management consultation forum].

The applicant must be advised of this right immediately by the [Manager of Human Resources].

The applicant must advise the [Manager of Human Resources] within five working days if she or he wants the decision reconsidered by the Appeal Committee. The applicant has the right to make written submissions or to speak to the Committee about why the request should be approved. The applicant has the right to be accompanied by an advocate.

The Appeal Committee will make its recommendation within three working days of the appeal, and the recommendation of the Appeal Committee is to be sent immediately by the [Manager of Human Resources] to the [Head of Organization or Senior Executive Officer] for decision.

The applicant is to be informed immediately of the decision.

If the appeal is refused, the applicant is to be advised of his or her continuing right to make a complaint of employment discrimination under the *Canadian Human Rights Act* [and use any other applicable external complaint or grievance procedure.]

(ii) New and existing employees

Where a request for accommodation is refused, a less desirable accommodation approved where there are alternatives, or the employee believes the request has not been handled in accordance with this policy and these procedures, the employee has a right of appeal to an Appeal Committee consisting of the [Manager of Human Resources] and two representatives from the [Employment Equity Committee or appropriate labour management consultation forum].

The employee must be advised of this right immediately by the [Manager of Human Resources].

The employee must advise the [Manager of Human Resources] within five working days if she or he wants the decision reconsidered by the Appeal Committee. The employee has the right to make

written submissions or to speak to the Committee about why the request should be approved. The employee has the right to be accompanied by an advocate.

The Appeal Committee will make its recommendation within three working days of the appeal, and the recommendation of the Appeal Committee is to be sent immediately by the [Manager of Human Resources] to the [Head of Organization or Senior Executive Officer] for decision.

The employee is to be informed immediately of the decision.

If the appeal is refused, the employee is to be advised of his or her continuing right to make a complaint of employment discrimination under the *Canadian Human Rights Act* [and use any other applicable external complaint or grievance procedure.]

5. Training

Question: Does the procedure commit your organization to ensuring that all staff responsible for implementing the policy and procedure receive training?

Question: Does the procedure identify the issues that should be covered in training, including identifying discriminatory barriers and responding to requests for individual accommodation?

Comment: Training on the use of the policy and procedure is essential if the employer is to fulfill its responsibilities in a consistent and timely manner. The sample given includes an extensive list of topics that should be addressed if managers and supervisors are to feel confident they can make sure corporate activities do not result in discrimination and respond to requests for individual accommodation.

Sample: All staff with a supervisory responsibility will receive specific training on the policy and procedure associated with ensuring workplace inclusion and accommodation.

The design, development and conduct of this training will be the responsibility of the [Director of Corporate Services] and will include:

- background and rationale (why we have a policy and procedure)
- diversity awareness (sensitivity to specific issues arising for particular groups)
- creating a discrimination-free workplace through the use of analytical tools or “lenses”

- procedure (how the procedure works, key questions that will arise, critical time elements)
- roles and responsibilities (who has responsibility for which aspects of the implementation of the procedure, including communication of the policy)
- decision-making authority (who has delegated authority to make decisions)
- due diligence (responding appropriately to needs and ensuring active consideration)
- sensitivity to requests that are framed in language other than that of workplace accommodation
- identification of expertise and resources to assist in identifying and obtaining appropriate accommodation (both internal and external to the organization)
- the appeal process (how the process works, rights within the process)
- reporting (what is required, who is responsible, form of reporting)
- confidentiality (reminder of rights to protection of personal information - *Privacy Act*)

The training will be provided as soon as practicable after a person begins supervisory responsibilities. A refresher course will be conducted with all supervisory staff every two years.

6. Review

Question: Does the procedure describe the process for review of the policy and procedure?

Sample: The [Director of Corporate Services] is responsible for the conduct of a bi-annual review of the policy and procedure. The [Director of Corporate Services] will conduct the review through the [Employment Equity Committee or appropriate labour management consultation forum], and will ensure that all current staff and bargaining agents have an opportunity to contribute their views both in writing and in consultation meetings.

At the completion of the bi-annual review, the [Director of Corporate Services] will prepare a report on the outcomes of the review and ensure that the report is available to staff.

Any recommendations arising from the review will be forwarded to the [Head of Organization or Senior Executive Officer] for action.

APPENDIX A — KEY COURT DECISIONS

The duty to accommodate is a legal obligation which has been affirmed by the courts, including the Supreme Court of Canada. The 1999 Supreme Court decision in the case of *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3, (known also as the *Meiorin* case) is particularly useful in interpreting the duty to accommodate. This case resulted in a unified test for determining whether or not the defence of *bona fide* occupational requirement applies. Shortly thereafter, the Supreme Court extended the application of the *Meiorin* test to the provision of services and claims of *bona fide* justification in a case formally known as *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (referred to as the *Grismer* case).

The Supreme Court also clarified the responsibility of employers and service providers to ensure that all barriers to participation, for people protected under human rights law, are eliminated from their policies, rules, standards, practices, and services at the design stage.

In effect, the Court proposed that employers should no longer simply rely on an individualized accommodation response to requests from employees who face barriers in the workplace. Employers and service providers must make sure that they build accommodation into their policies and practices as far as possible, up to the point of undue hardship:

“Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. **They must build conceptions of equality into workplace standards.** By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the **standards governing the performance of work should be designed to reflect all members of society**, insofar as this is reasonably possible. Courts and Tribunals must bear this in mind when confronted with a claim of employment related discrimination. **To the extent that a standard unnecessarily fails to reflect the differences among individuals, it runs afoul of the prohibitions contained in various human rights statutes and must be replaced. The standard itself is required to provide for individual accommodation, if reasonably possible.** A standard that allows for such accommodation may be only slightly different from an existing standard but is a different standard nonetheless.” [Emphasis added]. Paragraph 68, *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*.

“Employers and others governed by human rights legislation are now required in **all cases** to accommodate the characteristics of affected groups with their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them. Incorporating accommodation into the standard itself ensures that each person is assessed according to her or his own personal abilities, instead of being judged against presumed group characteristics. Such characteristics are frequently based on bias and historical prejudice and cannot form the basis of reasonably necessary standards.” Paragraph 19, *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*.

This means that employers and service providers should ensure that all their corporate programs and activities, including policy-making, development of rules, standards or programs, purchases of new technology or equipment, real property decisions, and information provision are barrier free. Workplace standards must be designed to reflect all members of society, as opposed to being designed on the basis of a current (unrepresentative) workforce.

Even when every effort has been made to ensure corporate activities are free from discrimination, there will be circumstances where the needs of a specific employee will require an individualized adjustment in the workplace. In these circumstances, an employee should have access to an individual accommodation. (See **Individual Accommodation Procedures Guide**.)

For more information on the *Meiorin* case and the *Grismer* case, see the Commission’s publication *Bona Fide Occupational Requirements and Bona Fide Justifications Under the Canadian Human Rights Act*, available from the Commission or on its Home Page at www.chrc-ccdp.ca.

Another case of note is *Central Okanagan School District No. 23 v. Renaud* [1992] 2 S.C.R. 970 which states that a union shares joint responsibility with the employer to seek to accommodate an employee, and both are equally liable if nothing is done. In particular, a union may be found liable if it has participated in the formulation of a work rule that has a discriminatory effect on an employee or if it impedes the reasonable efforts of an employer to accommodate.

On the issue of disability, the Supreme Court rules that employees who are perceived to have disabilities are protected by prohibitions against discrimination on the basis of handicap or disability. The Court said,

“ that a “handicap” may exist even without proof of physical limitations or the presence of an ailment. The “handicap” may be actual or perceived and, because the emphasis is on the effects of the distinction, exclusion or preference rather than the precise nature of the handicap, the cause and origin of the handicap are immaterial. Further, the *Charter* also prohibits discrimination based on the actual or perceived possibility that an individual may develop a handicap in the future.” Paragraph 81, *Québec (Comm. des droits de la personne et des droits de la jeunesse) et Mercier c. Montréal*

APPENDIX B — SUGGESTED FORMS

Form A , Part I: Notification of need for accommodation

Name:

Contact details:

Details if a current employee:

Position number:

Classification:

Branch or Division:

Describe request or need to be addressed:

Professional assessment being requested

Yes / No

Date of request:

Name of person completing form:

Signature of person completing form:

Signature of person requesting accommodation:

If appropriate please attach supporting documentation.

Part II: Clarification of need

Describe action taken to clarify both the need and the potential accommodations including advice sought from experts:

Name of person completing form:

Signature of person completing form:

PART III: Report on outcome of accommodation request

1. Was accommodation provided: Yes / No
(If no, go to question 7)
2. If yes, describe the accommodation provided:
3. What was the dollar cost (if any) of this accommodation? \$ _____
4. Is this accommodation usable only by the individual staff member
(e.g. a specific computer screen, approval of particular leave, etc)? Yes / No
5. Was this the accommodation requested by the employee? Yes / No
6. Date accommodation implemented: ____/____/_____
(Go to question 9)
7. If the answer to Question 1 was no, please provide the reasons that the
accommodation was not provided: (please attach relevant additional material)
8. Who authorised the decision not to provide accommodation? _____
9. Has the employee been advised of the outcome of the request? Yes / No
10. Has the employee been advised of his/her appeal and complaint rights? Yes / No
11. Date the employee was advised: ____/____/_____

Name of person completing form:

Signature of person completing form:

Date of completion:

APPENDIX C — LIST OF USEFUL RESOURCES

NOTE: If you know of a resource that should be added to this list please let us know.

Tools to analyse corporate policies and activities

Gender-Based Analysis - Status of Women Canada have produced a handbook and brochure entitled *Gender-Based Analysis: A Guide for Policy-Making*, which offers step-by-step techniques for integrating gender throughout the policy development and analysis process, and assesses the impact of proposed or existing policies or programs on men and women. Available from Status of Women Canada Web site at www.swc-cfc.gc.ca under Publications.

Treasury Board Real Property Accessibility Policy - This Treasury Board policy requires all government departments to provide barrier-free access to and use of real property it owns or leases. The policy specifically references the Canadian Standards Association *Barrier-free Design Standard (CAN/CSA-B651-M95)* and provides a helpful appendix Barrier-Free Design Implementation Requirements. The policy is available at the Treasury Board Web site www.tbs-sct.gc.ca under Policies and Publications (Real Property Management).

Accessible Procurement Toolkit - The toolkit includes specific requirements that procurement officers or managers with purchasing authority can add to contracting documents to ensure that products or services will be accessible to the widest range of people (see www.apr.gc.ca).

Employment Equity Policies: The Treasury Board Secretariat has developed a number of policies and guides to assist managers achieve employment equity. These include: 'Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service', 'A Guide to Planning Inclusive Meetings and Conferences', and 'Creating a Welcoming Workplace for Employees with Disabilities' which can be found on the Treasury Board Website at www.tbs-sct.gc.ca under Policies and Publications - Employment Equity.

Resource centres

The **Canadian Council on Rehabilitation and Work** is a Canada-wide network of organizations and individuals. The Council offers information, education, training and Internet-based services which support the employment of people with disabilities. Some of the programs and services it provides include: WAEN—a resume database for persons with disabilities, JAS (Job Accommodation Service) information and support regarding accommodation and WORKink which provides online career counselling and labour market and career information. For more information on the Canadian Council on Rehabilitation and Work, see www.ccrw.org.

Disability WebLinks gives you access to a database of over 1500 federal, provincial and territorial disability-related programs, services and information items. In most cases a Web link is provided. The information is categorized by jurisdiction (federal, provincial or territorial) and by one or more of 10 topics: accessibility, education, employment, financial supports, health, housing and residential services, personal supports, rights, tax programs and transportation. The address is www.disabilityweblinks.ca

Accommodation Ideas: Consultants from the U.S. Job Accommodation Network have compiled several ideas on how to accommodate individuals with disabilities. The information is organized by disability. See www.jan.wvu.edu/media/ideas.html

Adaptive Computer Technology (ACT) Centres: Environment Canada, Canadian International Development Agency and Human Resources Development Canada have Adaptive Computer Technology Centres (ACT) which offer practical, state-of-the-art, adaptive computer technology solutions to federal government employees with disabilities. The Centres' services include: assisting managers and employees to identify their adaptive computer technology requirements, providing training to employees on adaptive tools, integrating adaptive technologies with employees computers and providing on-going support. The ACT Centres can be reached through their Website www.act.gc.ca

Office for Disability Issues (ODI): This site contains information on disability issues, the Government of Canada Disability Agenda and related programs, services and activities of Human Resources Development Canada. See www.hrhc-drhc.gc.ca/sdd-dds/odi

Persons with Disabilities Online: To obtain comprehensive information on the range of Government of Canada programs for persons with disabilities, individuals can visit www.pwd-online.ca. At this website you can access information on a variety of disability-related topics, including accessibility, education, employment, financial support, health, housing and residential support, personal support, rights, tax programs and transportation.

Computer and Website accessibility

Government of Canada Internet Guide: Provides guidance on the design and maintenance of web sites to ensure access for all users. www.canada.gc.ca/programs/guide/

Common Look and Feel Policy: Government of Canada standard for ensuring that all web sites can be easily accessed by the widest possible audience. See www.cio-dpi.gc.ca/clf-upe/

Web Accessibility Initiative (WAI): Coordinates with organizations around the world, pursues accessibility on the Web through 5 primary areas: technology, guidelines, tools education and outreach, and research and development. Provides Web content accessibility guidelines. See www.w3.org/WAI

Web Accessibility Testing Services (WATS): WATS is a pilot project of the Chief Information Officer for the Government. It is designed to provide public service Web Masters with a view of their web sites as perceived in a typical situation by a person with a disability. For further information see www.cio-dpi.gc.ca/clf-upe/1/wats/wats_e.asp

Community resources

Enablelink: Canadian Abilities Foundation- Database of non-governmental disability related programs, services and information items. See www.enablelink.org

Integrated Network of Disability Information and Education: World wide resource on products, services and information regarding disabilities. See www.indie.ca

Finding assistive devices, services and products

Assistive Devices Industry Office (ADIO): Industry Canada has created a Canadian Capabilities data base of over 150 Canadian assistive device companies, which can be searched either alphabetically or by type of disability addressed (Alternative and Augmentative Communications, Blind and Low Vision, Deaf and Hard of Hearing or Mobility). Includes a link to the Accessible Procurement Toolkits. See www.strategis.ic.gc.ca/adio under Assistive Device companies in the Canadian capabilities database. Or call 1-800-328-6189.

Travel

The **Access to Travel Website** provides information on accessible transportation and travel across Canada with the aim of making accessible travel easy and enjoyable. It includes a National Carriers Directory, information on local transportation, travel resources, information on federal government policies related to accessible transportation and an online complaints mechanism. You can reach this website at www.accesstotravel.gc.ca.

Human rights organizations

Canadian Human Rights Commission (CHRC): Provides information on the rights and responsibilities of employers and employees, including advice on barrier-free employment practices. www.chrc-ccdp.ca

Ontario Human Rights Commission (OHRC): Provides a specific guideline on workplace accommodation: *Guidelines for Assessing Accommodation Requirements for Persons with Disabilities*. www.ohrc.on.ca

U.S. Equal Employment Opportunity Commission (EEOC): Provides information specifically designed to assist employers and employees in relation to workplace accommodations. Includes *Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*. www.eeoc.gov

FEEDBACK SHEET

This Guide is very much a work in progress. As we receive feedback from you, the users, and as legislation changes, the guide will change. If it is not helpful, we need to know. Of course, if it is helpful, we would like to know that too!

Please take a moment to respond to the following questions:

1. Province of head office:
2. Size of organization: under 20 employees ___ 20-500 employees ___
501-1,000 employees ___ over 1,000 employees ___.
3. Did this Guide provide sufficient information about the duty to accommodate?
Generally yes ___ Generally no ___.
4. Was the **Policy Guide** adequately explained? Yes ___ No ___. If not, why not?
5. Was the **Procedures Guide** adequately explained? Yes ___ No ___.
If not, why not?
6. Was the **Individual Accommodation Procedures Guide** adequately explained?
Yes ___ No ___. If not, why not?
7. Is the Guide presented in an easy-to-read format? Yes ___ No ___.
8. Is the Guide written in clear, understandable language? Yes ___ No ___.
9. Was the Guide helpful? Yes ___ No ___. If not, why not?
10. Feel free to comment at length on the Guide:

For more information, contact the office of the Canadian Human Rights Commission nearest you.

National Office

Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario
K1A 1E1
Telephone: (613) 943-9146
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: (613) 995-1035
Electronic mail: policy-politiques@chrc-ccdp.ca
Web site: www.chrc-ccdp.ca

Regional Offices

Atlantic:

5475 Spring Garden Road
Suite 504
Halifax, Nova Scotia
B3J 3T2
Telephone: (902) 426-8380
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (902) 426-2685

Quebec:

1253 McGill College Avenue
Suite 470
Montréal, Quebec
H3B 2Y5
Telephone: (514) 283-5218
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (514) 283-5084

Ontario:

175 Bloor Street East, Suite 1002
Toronto, Ontario
M4W 3R8
Tel: (416) 973-5527
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (416) 973-6184

Prairies and Nunavut:

(Man., Sask., NW Ont. and Nunavut)
175 Hargrave Street, Suite 750
Winnipeg, Manitoba
R3C 3R8
Telephone: (204) 983-2189
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (204) 983-6132

Alberta and

Northwest Territories:

10010 - 106 Street, Suite 308
Edmonton, Alberta
T5J 3L8
Telephone: (780) 495-4040
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (780) 495-4044

British Columbia and Yukon:

757 West Hastings Street
Suite 420
Vancouver, British Columbia
V6C 1A1
Telephone: (604) 666-2251
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (604) 666-2386