

DUTY TO ACCOMMODATE

Background

Accommodation of employees within the workplace is a shared responsibility between the employer, the employee, and the union (where applicable). Good Spirit School Division is committed to providing all employees with a healthy work environment encompassing safety and support for all employees and will take any meaningful and practical steps necessary to achieve and promote this commitment.

Where temporary accommodations are made, the parties shall review such arrangements on a regular basis. Employees on a permanent accommodation will be reviewed as deemed appropriate by the Superintendent of Human Resources.

Procedures

1. Good Spirit School Division has a duty to accommodate ill, injured or disabled employees and is committed to returning them to a safe and productive job and work environment.
2. Duty to accommodate is a legal principle that requires employers and unions to ensure they do not discriminate against an individual on the basis of a prohibited ground, in this case a disability.
 - 2.1 The *Saskatchewan Human Rights Code* requires the accommodation of an employee who suffers from a disability.
 - 2.2 The *Saskatchewan Employment Act* requires the employer, where reasonably practicable, to modify duties or reassign if the employee becomes disabled and cannot perform job duties.
3. The return-to-work process begins immediately after an illness, injury or disability occurs. Accommodation plans are intended to be transitional and have a fixed duration, however, in some cases a permanent accommodation may be required in the case of a disability.
4. Employees requesting an accommodation have a duty to participate in the process to the best of their ability, capacity and in good faith.
5. Any employee's personal information will be held in confidence and only provided to those necessary in the accommodation.

6. The duty to accommodate is not about employee preferences but is about removing discriminatory barriers related to the disability, up to the point of undue hardship. The goal is to return the employee to their pre-disability position and location where possible. Where this is not possible, the supervisor, Superintendent of Human Resources, and union (if applicable) will work jointly with the employee to find a reasonable accommodation. Some examples that can be explored may including offering:
 - 6.1 A graduated return-to work program,
 - 6.2 A change to assignment,
 - 6.3 Tools and equipment to assist the employee in effectively performing tasks,
 - 6.4 Other possibilities as co-determined between the employer and the employee.
7. When, in the opinion of the Superintendent of Human Resources, it has been clearly established based upon the medical information available, that the ill, injured or disabled employee will not return to their former position, due to permanent restrictions, the employer will explore all reasonable alternatives to accommodate the employee up to an undue hardship.
8. The employee must demonstrate there is a disability verified by a medical practitioner and:
 - 8.1 Identify the need for accommodation through immediate supervisor
 - 8.2 Provide sufficient appropriate and ongoing medical information through a Medical Functionality Assessment Form (MFAF) to the Good Spirit School Division so that the medical issue clearly fits the definition of a disability under *The Saskatchewan Human Rights Code* and related jurisprudence.
 - 8.3 Participate and cooperate throughout the process by meeting with your supervisor and union to communicate what the medical restrictions are that will require accommodation and how they will be addressed while at work.
 - 8.4 Take the medically recommended steps towards rehabilitation and self-improvement.
 - 8.5 Try the proposed accommodation before it is refused.
9. The medical restrictions do not require disclosure of the diagnosis of the condition.
10. If an employee refuses to provide the required medical information, the school division's duty to accommodate ceases and the employee is suspended until such time as the employee provides the required medical information.
11. Undue hardship exists when the steps required to accommodate the employee are so extreme, onerous or difficult that it is clear that it is unreasonable to expect the Good Spirit School Division to implement them.

11.1 The onus is on the Good Spirit School Division to show undue hardship as per the *Saskatchewan Human Rights Code*.

11.2 In the case of employment, undue hardship will generally be reached when the employer is able to show that there is no reasonable chance that the employee will be able to return to work within the reasonably foreseeable future and that all reasonable efforts at accommodation have been tried and found unsuccessful.

11.3 If the Good Spirit School Division can show undue hardship, the division is not obligated to provide accommodation at that time.

12. All medical information supplied by the employee will be treated as confidential by all parties and in accordance with The Local Authority Freedom of Information and Protection of Privacy Act.

Reference:

Duty to Accommodate: Guide for School Divisions and Saskatchewan Teachers Federation Members.
March 2013

Duty to Accommodate: Guidelines for Illness, Injury & Disability (CUPE) April 2017

Saskatchewan Human Rights Code

Saskatchewan Employment Act