

1.0 SCOPE

1.1 Authority

- 1.1.1 This policy was established under authority of Cabinet Minute No. 04-03, dated February 5, 2004 and amended under the authority of Deputy Ministers' Review Committee Minutes No. 24-10, dated May 28, 2024.

1.2 Application

- 1.2.1 This policy applies to all Yukon government workplaces and to all persons hired under the *Public Service Act* and the *Education Act*.

1.3 Purpose

- 1.3.1 This policy establishes a consistent approach to understanding and addressing the needs of employees with disabilities to ensure they have equal opportunity to be productive members of the public service.
- 1.3.2 This policy describes the shared responsibility of the Government of Yukon departments (including corporations, directorates, and agencies) and the Public Service Commission in fulfilling the employer's legal duty to accommodate employees with disabilities.

1.4 Guiding Principles

- 1.4.1 The Yukon Government is committed to upholding the duty to accommodate the needs of employees with disabilities, pursuant to the *Human Rights Act* and the *Workers' Safety and Compensation Act*.
- 1.4.2 The following general principles guide the delivery of disability management, return-to-work, and accommodation services for Government of Yukon employees:
- i. treat all employees with respect for dignity;
 - ii. prevent discrimination of any employee due to disability;
 - iii. protect employees from the financial and social impacts of disability by reducing time away from work when it is safe and when the employer is able to do so;
 - iv. encourage all parties to act with good faith;
 - v. respond to each accommodation with an individualized approach;
 - vi. take the least intrusive approach when collecting information and planning accommodations;
 - vii. protect employee privacy; and
 - viii. prioritize early identification and assistance.

1.5 Definitions

The below definitions are for the purpose of this policy.

1.5.1 **Disability:** A mental or physical disability as defined by s.37 of the *Human Rights Act*. Under the *Human Rights Act*:

“mental disability” means any mental or psychological disorder such as organic brain syndrome, emotional or mental illness, or learning disability;

“physical disability” means any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a service animal or on a wheelchair or other remedial appliance or device.

1.5.2 **Duty to Accommodate:** The employer’s legal obligation, up to the point of undue hardship, to make reasonable adjustments to rules, job requirements, policies, practices, and work assignments to enable disabled employees to meaningfully participate in employment.

1.5.3 **Mental Stress:** When an employee experiences symptoms and reactions related to normal workplace stressors where there is no confirmed diagnosis of a mental disability. Workplace stressors could include but are not limited to a change in the work performed or working conditions, promotion, transfer, demotion, discipline, suspension, termination, workload fluctuations or assignment changes, timeline pressures, interpersonal conflict, performance evaluation, burnout, and dissatisfaction with the work environment.

1.5.4 **Reasonable Accommodation:** An accommodation that balances the employee’s needs with the rights of other employees and the employer’s right to run a productive organization. A reasonable accommodation addresses the employee’s limitations, restrictions, and abilities; is safe and does not put the employee or coworkers at risk or hinder recovery; is meaningful work in that the work makes sense, has a point, and is something that the employer would normally pay someone to perform.

2.0 ROLES AND RESPONSIBILITIES

2.1 **Public Service Commission**

2.1.1 The Public Service Commission plays a leadership role in ensuring the Government of Yukon’s obligations are consistently and fairly met across the organization by

establishing policies, guidelines, training, and communication materials, along with assisting employees and management with regards to carrying out their roles with respect to the duty to accommodate.

- 2.1.2 The Public Service Commission plays a central role in obtaining, with the employee's consent, medical information or medical clarification required to support an accommodation.
- 2.1.3. The Public Service Commission must provide advice on how to approach the duty to inquire, along with planning early interventions and gathering relevant medical information. Indicators include, but are not limited to:
 - i. an employee discloses or shares medical information that they have a diagnosed illness or injury;
 - ii. changes to an employee's functions or baseline behaviour, including changes that are:
 - a) significantly outside the range of normal;
 - b) recurring;
 - c) present for an extended period;
 - d) significantly impacting performance;
 - e) impacting conduct or behaviour to the extent that it may result in discipline or dismissal;
 - f) impacting other areas of an employee's life; or
 - g) presenting a threat to the employee's health and safety or the health and safety of others.
- 2.1.4 The Public Service Commission will develop a plan for evaluating disability accommodation in the Government of Yukon.
 - i. This evaluation will occur every five years.
 - ii. The Public Service Commission will report to the Deputy Ministers Human Resources Committee (DMHRC) regarding findings and will create an action plan for addressing such findings toward continuous improvements.
- 2.1.5 The Public Service Commission will ensure clear processes and forms for consent to collect, use, and disclose personal employee information required for the accommodation.
- 2.1.6 The Public Service Commission facilitates access to medical assessments, return to work supports, and wage loss protection benefits (long-term disability).
- 2.1.7 The Public Service Commission works with the Yukon Workers' Safety and Compensation Board to support the return to work of employees who are on accepted workplace injury claims.

- 2.1.8 The Public Service Commission tracks trends and metrics so they can:
- i. evaluate the employer's effectiveness in accommodating employees with disabilities; and
 - ii. report performance to the Deputy Ministers' Human Resource Advisory Committee.
- 2.1.9 The Public Service Commission decides on the duty to accommodate, including:
- i. whether the duty to accommodate has been triggered;
 - ii. how to approach case management;
 - iii. if medical information is required and how to obtain it;
 - iv. when the Public Service Commission will take the lead with case management;
 - v. the best method for accommodating a disability;
 - vi. the reasonableness of a proposed accommodation;
 - vii. the timelines related to accommodation and case management;
 - viii. how to take an integrated approach for case management in cases where conflict, disability, discipline, and performance intersect; and
 - ix. whether undue hardship has been reached.

2.2 Departments

- 2.2.1 Deputy Heads and their delegates are ultimately responsible for ensuring requests for accommodation are handled in a reasonable, consistent, and timely manner within their departments. They do so by:
- i. making final decisions with respect to prioritizing employees with disabilities for appointment, transfer, or assignments before taking competitive recruitment actions;
 - ii. anticipating disability in the personnel budget and in job designs to ensure that temporary alternative work assignments and the funding to support them are available as needed;
 - iii. supporting the placement of employees from different departments within their department as part of the shared employer duty to accommodate; and
 - iv. ensuring that Managers in their department understand their responsibilities related to accommodation and they fulfill them.
- 2.2.2 Supervisors and Human Resource professionals play a key role in fulfilling the employer's duty to inquire by taking a good faith and supportive approach by:
- i. responding to employees who disclose they have a disability impacting them in the workplace;
 - ii. initiating the duty to inquire when they observe a change in the employee's performance, attendance, or behaviour that suggests they could have a disability;
 - iii. consulting with the Public Service Commission/Disability Accommodation Consultant on the duty to inquire and approach to accommodation as early as

possible, addressing specific restrictions, limitations, medical needs, and the skill set of the employee;

- iv. consulting with the Public Service Commission as early as possible when there are reasonable indications that an employee may be struggling with a mental health injury or illness;
 - a) Employees with disabilities generally bear the initial obligation of disclosing and identifying the nature of their disability. The employer recognizes that some mental disabilities may make it problematic for the employee to disclose they have a disability. In these cases, the supervisor may have an increased responsibility for initiating the duty to inquire.
- v. tracking sick leave usage to identify a potential disability and initiate the duty to inquire when triggers are noted. A threshold for leave is exceeded or the employee falls below 60% of hours worked per month.

2.2.3 Department supervisors, managers, and Human Resource staff are responsible for fulfilling their roles and responsibilities as set out in the *Disability Management and Accommodation Guidelines*.

2.3 Employees

2.3.1 Employees seeking an accommodation have a responsibility to disclose that they have a disability (as defined in this policy) and the nature of the disability (e.g., physical, psychological, or cognitive) to the employer but are not required to disclose their specific diagnosis.

2.3.2 Employees are responsible for cooperating and participating in the accommodation process by providing medical and other relevant information needed to plan a reasonable accommodation. Relevant information may include, but is not limited to, medical restrictions, limitations, prognosis, nature of condition, and functional abilities.

2.3.3 Employees are required to participate in reasonable offers of accommodation, including job modifications and alternate work arrangements with the expectation that adjustments can be made if needed to ensure suitable accommodation.

2.3.4 Employees have the responsibility—if they disagree regarding the reasonableness of an accommodation—to provide information regarding why they feel it is unreasonable and to pursue the appropriate dispute resolution process.

2.3.5 Employees are expected to contribute to a respectful work environment that supports the accommodation of their coworkers and respects the employees' right to privacy regarding medical issues and disability accommodation.

2.4 Privacy

- 2.4.1 All parties involved in the disability accommodation process have the responsibility to treat any employee's accommodation request in a confidential manner, subject to such disclosure as may be required to implement an accommodation within the limits on use and disclosure prescribed in the *Access to Information and Protection of Privacy (ATIPP) Act*.
- 2.4.2. The Public Service Commission will complete regular reviews the Accommodation and Return to Work Service's program.
 - i. This assessment will be updated every five years, or when there are significant changes to the process.
- 2.4.3 The Public Service Commission will ensure completion of appropriate consent forms and disclosure notices to employees who are participating are complete.

3.0 ACCOMMODATING EMPLOYEES

3.1 Approach

- 3.1.1 When planning an accommodation, priority must be given to options that allow an employee to remain at work or return to work as early as it is safe to do so, whether in the home department or another department.

3.2 Method

- 3.2.1 Supporting the employee to return to work or remain in their substantive position by reasonably:
 - i. changing the working conditions; and
 - ii. modifying job duties.
- 3.2.2 Temporarily assigning the employee to another position or work assignment within the home department first, before looking within other departments and bargaining units with the purpose of:
 - i. work hardening or recovery periods;
 - ii. understanding their restrictions and limitations; and
 - iii. assess the employee's transferable skills. All of which are mentioned in detail within the Disability Management and Accommodation Guidelines.
- 3.2.3 Permanently appointing an employee to available job opportunities in alternate occupations in which the employee would be capable of performing most of the essential requirements of the position, with or without modifications.

3.3 Timelines

- 3.3.1 During the initial 24 months, unless their medical information indicates they are permanently unable to perform the essential work requirements of their position of the

disability period if there is no permanent medical restriction, the employee's home department:

- i. Assumes the employee is able to return to their substantive position with or without modifications.
- ii. Prioritizes the employee for positions within their home department.
- iii. Provides funding for temporary work assignments, whether within the home department or in another department.
- iv. The '24-month period' will typically begin from the date when the employer receives medical documentation.

3.3.2 When an employee's disability period reaches 24 months, the employer will conduct a review to assess whether the employee is unlikely to be able to return to performing the essential requirements of their substantive position.

3.3.3 When the employee's medical information indicates they are permanently unable to perform the essential requirements of their substantive position, or a review under 3.3.2 indicates the employee is unlikely to be able to return to performing the essential requirements of their substantive position, the employee will be prioritized for permanent appointment to available job opportunities in alternate occupations in any department in the Government of Yukon for which the employee:

- i. can perform most of the essential duties of the position with or without modifications; and
- ii. at minimum, meets an equivalency to the minimum required education and experience at, at least, the underfill level.
- iii. will be paid by the department in which the work is performed according to the assigned position salary level; and
- iv. accommodated henceforth.

4.0 LIMITATIONS ON THE DUTY TO ACCOMMODATE

4.1 Undue Hardship

4.1.1 The Government of Yukon recognizes its responsibility to make reasonable accommodations to meet the needs of employees with disabilities up to the point of undue hardship as defined in s.8 of the Human Rights Act. The criterion for determining undue hardship includes:

- i. safety risks that may impact the employee, other employees, or the public;
- ii. disruption to the public;
- iii. effect on contractual obligations (including the collective agreement);
- iv. financial cost; and
- v. business efficiency.

- 4.1.2 The duty to accommodate an individual may be limited where accommodation or changes to a bona fide occupational requirement would create an undue hardship. A bona fide occupational requirement must be:
- i. adopted for a purpose connected to the performance of the essential duties of the job;
 - ii. adopted in an honest and good faith belief that the requirement is necessary to fulfill the essential duties of the job; and
 - iii. necessary to the accomplishment of the essential duties of the job.

4.2 **Decline of a Reasonable Offer**

- 4.2.1 When an employee declines one or more of the reasonable offers of accommodation, the employer may determine that they have met their duty to accommodate.

4.3 **Mental Stress**

- 4.3.1 Mental stress is generally not considered to be a disability that triggers the employer's duty to accommodate. The Government of Yukon recognizes that employees may fluctuate within the mental health continuum from healthy, to reacting, to injured or ill.

5.0 **REFERENCES**

- *Disability Management and Accommodations Guidelines*
- *Government of Yukon, General Administration Manual, Volume 3: Human Resource Policies –*
 - *Policy 3.8: Confidential Employees*
 - *Policy 3.13: Leave with Pay*
 - *Policy 3.17: Attendance and Work Breaks*
 - *Policy 3.27: Leave Without Pay*
- *Human Rights Act*
- *Government of Yukon/PSAC Collective Agreement (Article 25 - Sick Leave and Article 57 - Duty to Accommodate)*
- *Government of Yukon/YAEP Collective Agreement (Article 20 - Sick Leave)*
- *Government of Yukon Section M: Conditions of Employment for Excluded Groups (Sick Leave Provisions)*