

What is the duty to accommodate?

Employers have a legal duty to provide reasonable accommodation for the needs of employees where their needs are based on a characteristic protected under *The Human Rights Code* of Manitoba. Protected characteristics include physical or mental disability (health issues), marital or family status (including parenting obligations), age, circumstances related to pregnancy, and others.

The purpose of the duty to accommodate is to ensure that employees who are otherwise able to work can do so where working conditions can be adjusted to meet their needs without undue hardship to the employer.

Employers have a duty to reasonably accommodate employees in relation to COVID-19, unless doing so would create undue hardship. The concept of undue hardship recognizes that the accommodation will often create some hardship on the employer and that is expected. Only where the employer can show that the employee's legitimate needs cannot feasibly be met for reasons like safety, cost, or bona fide operational requirements is the threshold of undue hardship reached. For example, an employee needs to work from home and there is absolutely no work that can be done from home no matter what modifications and arrangements are put in place.

Does my employer have to accommodate me if I have a medical condition that places me at a higher risk related to COVID-19, or do I need to use my sick leave?

Employers have a duty to accommodate employees with an existing medical condition or other personal health circumstance which may affect their ability to perform their duties or work safely due to COVID-19, up to the point of undue hardship. The duty to accommodate also applies in circumstances in which employees are presently medically fit to perform their job duties but are at higher risk for severe illness from COVID-19 such that it is not safe for them to be in the workplace.

If an employee demonstrates the need for an accommodation based on a medical condition, the employer must conduct an individualized assessment to determine whether the employee can be accommodated to continue to work without causing undue hardship. Potential accommodations could include allowing employees to work from home, making modifications to the workplace, providing enhanced personal protective equipment, or other flexible options, depending on the individual circumstances. The employer must make every reasonable effort to provide employees with meaningful work that is consistent with their medical restrictions.

If there is no work for an employee to do, then it is not necessarily discriminatory or a breach of the duty to accommodate for the employer to permit the employee to use their sick time; however, use of sick time is only appropriate if no reasonable accommodation can be provided that would allow the employee to work.

Does my employer have to accommodate me if my child or family member has a health condition that places them at a higher risk related to COVID-19?

Employers have a duty to accommodate employees whose familial obligations and responsibilities affect their ability to perform their job duties due to COVID-19, up to the point of undue hardship. For example, an employee may have a child or other family member in the employee's household who has a medical condition that places them at higher risk from COVID-19. Alternatively, an employee may provide daily care to an elderly parent who is vulnerable to COVID-19.

Before seeking an accommodation based on family status, employees should make reasonable efforts to meet their familial obligations through reasonable alternative arrangements. Employers are not required to accommodate employees' preferences or personal choices in relation to family status; rather, only their reasonable needs. For example, an employee providing care to an elderly parent should explore whether other arrangements can be made, such as engaging another family member to provide care.

What happens if my circumstances or my employer's circumstances change?

The duty to accommodate is an ongoing one; an employer is obliged to revisit an accommodation if circumstances change such that the accommodation no longer meets an employee's needs. Additionally, if an employee is denied an accommodation on the grounds that there is no work for the employee to perform, the Employer is obliged to reconsider the employee's accommodation request if and when work does become available.

How do I request an accommodation from my employer?

Employees seeking an accommodation must provide their employer with sufficient medical and other relevant information to establish their restrictions or needs based on a protected characteristic.

Where an accommodation is being sought based on a medical condition, employees should provide their employer with a medical letter from their treating practitioner, which should provide the general nature of the medical condition, details regarding the restrictions arising therefrom, and any additional information necessary to assess and support the employee's request for accommodation. Where the general nature of the medical condition relates to a higher risk of severe illness from COVID-19, the letter should state that this is the case.

Where an accommodation is being sought based on family status, employees should provide their employer sufficient information regarding their family circumstances to establish their need for accommodation. Employees should also advise their employer of the alternative arrangements they explored to address those circumstances prior to making an accommodation request, if applicable. If the accommodation request is based on a child or other family member in the employee's household who has a medical condition that places them at higher risk from COVID-19, then a medical note which states that this is the case should be provided to the employer.

If you believe you may be entitled to an accommodation in relation to COVID-19, please contact an MTS staff officer toll free at 1-800-262-8803, or (204) 888-7961 to discuss your specific circumstances.