

## County of Essex Policy Manual

### Accommodation Policy

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<b>Approved by:</b>	County Council
<b>Department:</b>	All Departments
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#### 1.0 Preamble

The Corporation of the County of Essex is committed to providing equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, citizenship, creed, sex, sexual orientation, age, record of offence(s), marital status, family status, same sex partnership status, disability, colour or ethnic origin as described by the Ontario Human Rights Code. This includes "non evident" disabilities (such as chronic fatigue syndrome), and mental disabilities.

The need for an employment accommodation policy has been recognized as essential from a human resources, human rights and employment equity perspective. In addition, employment accommodation is a legal obligation in accordance with the Human Rights Code.

Accommodation can be described as a means of identifying and removing barriers in the work environment or in the method of doing work, which prevent otherwise, qualified persons from enjoying equality of employment. This will be undertaken in a way which is sensitive to an employee's individual circumstances in order that the Corporation may benefit from the employee's active participation in the workforce.

# Accommodation Policy

**Policy Number: 08-003**

---

Reference the Employee Harassment Policy 92-001 regarding accommodation related to harassment, and Early and Safe Return to Work Policy 08-001.

## 2.0 Principles

In order to meet the needs of individuals affected, the overriding principles of approach should be those of:

- Individualization: designing accommodation to meet the needs of each employee or job applicant. Some accommodation plans may be relatively steady, and others may be more dynamic.
- Partnership: involving the person requiring the accommodation, administrators and managers of the Corporation, medical specialists, and the applicable bargaining agent, as all parties have obligations in the accommodation process.
- Consultation: involving those in the partnership in development of the accommodation plan.
- Inclusion: ensuring that the person to be accommodated is involved in the process and plan design.
- Respect for confidentiality and dignity.

The priority is to fully explore accommodation within the employee's own job, then within their bargaining unit, then within the Corporation. Such exploration should be inclusive to include participation of the appropriate union(s) and/or local(s). This preferred sequence must also respond to the employee's restrictions, skills and abilities.

In accordance with these principles, it is recognized that a point may be reached where an employee may never be able to perform their own job (even with accommodation).

Accommodation assignments are not perfect. Accommodation involves meeting the needs of many stakeholders (employee requiring accommodation, the Corporation, residents, other employees, other employees also requiring accommodation, and one or more bargaining units).

# Accommodation Policy

**Policy Number: 08-003**

---

## 3.0 Purpose

The Corporation of the County of Essex will support the accommodation of employees and job applicants who identify as having a disability or requiring religious accommodation, in a manner which respects their dignity, is equitable and which enhances their ability to compete for jobs, perform their work and fully participate in employment at the Corporation.

Although these are the most common grounds for accommodation requests, requests for accommodation under any of the other grounds of the Ontario Human Rights Code are possible and should be approached using the process described herein.

To accomplish the goal of effective accommodation, the Corporation will endeavour to achieve a workplace free of barriers by providing accommodation for the needs of those individuals covered by the Code, up to the point where it causes undue hardship for the Corporation.

### 3.1 The Duty to Accommodate

The duty to accommodate refers to the Corporation's obligation to take appropriate steps to remove barriers for prospective and present employees.

Individuals requesting accommodation are involved and included in the development of accommodation measures to address their needs; additionally individuals have the responsibility to communicate any known accommodation needs and to cooperate in the accommodation process.

While an employee who has been denied accommodation can file a complaint under the Ontario Human Rights Code, employees are encouraged to first raise concerns through the Corporation's internal complaint and grievance resolution procedures as outlined in corporate policy and collective agreements. Failure to provide accommodation short of undue hardship may be found to be discrimination on the basis of disability.

### 3.2 Employment Accommodation

Employment accommodation is an ongoing process of identifying and removing or minimizing the adverse effects of barriers in the work environment or in the method of doing work.

# Accommodation Policy

**Policy Number: 08-003**

---

The accommodation is based on individual circumstances and can include, but is not limited to recruitment, selection, training, promotion, performance appraisal, benefits provision and any other condition of employment where the need for accommodation may be identified.

The process is consultative, involving the Corporation and employee (and bargaining unit(s) where applicable), resulting in specific temporary or permanent changes, services, adaptations or adjustments that enable a qualified individual to compete for jobs and perform the essential duties of a job.

### 3.3 **Persons with Disabilities**

Employment accommodation for persons with disabilities is the most common. The definition of “disability” used in this Policy is derived from the Ontario Human Rights Code and is defined as:

- any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, and any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, or physical reliance on a guide dog or on a wheel chair or other remedial appliance or device;
- a condition of mental impairment or developmental disability;
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- a mental disorder, or
- an injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act.

### 3.4 **Religious Observance**

Persons who celebrate their religion on other days that are currently required by law may need to be accommodated in order to practice

## Accommodation Policy

**Policy Number: 08-003**

---

their religion. For example, it is equitable that people who celebrate religious holidays currently not denoted in the Employment Standards Act to be allowed to take time off for their religious observances in the event these fall during the work week or that flexible hours be permitted.

Reference [Appendix A](#) for a definition of Creed.

### 3.5 Who is Responsible?

The process of accommodating individuals is a shared responsibility of the Corporation, the employee, and unions representing employees, where applicable. Those persons in senior administrative and managerial positions, such as Department Heads, and Managers (hereinafter referred to as Managers of the Corporation) will generally be the first contact for employees requesting accommodation.

Together, in consultation with Human Resources, the employee and applicable union, and possibly outside specialists, they will identify the most appropriate method of accommodation, which meets the needs of the employee.

The interests of all parties in the process will be taken into account and all parties will be treated fairly.

There will be cases where a suitable Accommodation Plan is not available within an employee's own job, bargaining unit, or even within the Corporation. In accordance with Human Rights legislation, such determinations of whether there is or is not a suitable Accommodation Plan will be handled on a case-by-case basis in consultation with Human Resources and the applicable union(s) executives/stewards.

## 4.0 Roles and Responsibilities

Although it is expected that the employee will take primary responsibility for initiating the request for accommodation, there may be some cases where the request for accommodation will be initiated by a Manager of the Corporation, the Human Resources Department, the Workplace Safety and Insurance Board (WSIB) or another source. Regardless of who initiates the

# Accommodation Policy

**Policy Number: 08-003**

---

request, there are several key players in the process of accommodating individuals and their roles are described below.

## 4.1 **Program Coordinator**

Each employee group will have a program coordinator assigned to project manage each employee's Accommodation Plan with the parties listed below. This program coordinator will be a non-union employee from Human Resources, or a leadership position that is conversant in accommodation issues.

## 4.2 **Employee Requiring Accommodation**

The employee will notify the appropriate Manager of the Corporation regarding the need for job accommodation. The employee will identify any known employment barriers that require accommodation and participate in the accommodation process.

The employee may be required to provide appropriate documentation supporting the employee's claim of a disability or need for accommodation due to religion. Reference the Return to Work and Attendance Management Policies for more details.

## 4.3 **Manager**

If such person has reason to believe there is an accommodation need or s/he receives a request, s/he has the responsibility to promptly and positively initiate action on the request in a timely fashion upon becoming aware of the need and either work toward resolving the accommodation issue, or forward the issue to the next level of management who has the authority to affect the accommodation.

The Human Resources Department must be contacted for consultation and guidance. They will assist in the preparation of the accommodation plan.

## 4.4 **Third Parties**

Other individuals may become involved in the accommodation process and may include expert resources. In some cases, information may be requested from third parties. This is to be undertaken in consultation with the Human Resources Department.

# Accommodation Policy

**Policy Number: 08-003**

---

Co-workers are also required to cooperate in the accommodation process.

## 4.5 **Bargaining Unit(s)**

To assist in representing the interests of the employee seeking accommodation and other employees, assigned bargaining unit representatives will participate in accommodation discussions involving employees they represent.

## 5.0 **Procedure**

In determining how to accommodate an employee, the first step is to determine essential duties of a position as defined in the job fact sheet and Physical Demands Analysis (PDA). Flexibility in considering the way functions can be performed is necessary to allow the person being accommodated to achieve outcomes in a way which may be different from traditional methods. Accommodation of non-essential duties may be accomplished by using an alternate method for fulfilling these functions.

### 5.1 **Recording an Accommodation Plan**

For any employee requiring it, an accommodation plan will be prepared which will outline the nature of the accommodation and the agreement of the parties to adhere to the accommodation agreement. It is particularly important that all parties work together to establish objectives for the individual's accommodation plan, to explore the range of accommodation options available and to develop criteria that will be used to select from among the various options.

The following are key components of the employment accommodation process for individuals. They are intended to help ensure timely and effective outcomes. The components should be interpreted with flexibility and modified according to the specific needs of each job applicant and employee:

- Identify needs
- Identify and analyze barriers to performance or participation
- Define accommodation objectives

# Accommodation Policy

**Policy Number: 08-003**

---

- Provide interim accommodation
- Investigate, test and select most suitable accommodation options
- Implement accommodation
- Provide accommodation training if required
- Follow-up and evaluate according to agreed upon indicators

Reference the Return to Work Policy for a more detailed description of the procedure.

The procedure is the same for all categories of employees.

Job posting processes may be circumvented as a last resort. Such circumvention would require consultation with all applicable parties.

## 5.2 **Monitoring and Updating Temporary Accommodation Plan**

Following the Principles in [section 2](#) of this policy, it is prudent for the parties (employee, the Corporation's accommodation expert, immediate supervisor, bargaining unit representative; (if applicable), health care provider) to assess both the short term and long term effectiveness of the accommodation plan.

As a guideline, after an accommodation period of more than 6 months (i.e. an "intermediary accommodation"), or when it is established that the accommodation is a "permanent accommodation", a comprehensive review of the accommodation plan should occur.

Included in the review will be:

- an exploration of accommodation beyond the employee's current role (if the employee is currently being accommodated in their current role), or
- accommodation within the employee's own bargaining unit, and ultimately
- an accommodation outside of the employee's bargaining unit (if the employee is currently being accommodated

## Accommodation Policy

**Policy Number: 08-003**

---

within the employee's bargaining unit but not in the employee's role)

Adherence to these guiding principles will provide accommodation opportunity to a greater number of employees.

### 5.3 Religious Observance

The day of religious observance may be accommodated through the normal scheduling of work. If the day or event of religious observance falls on a day the employee is scheduled, accommodation will be pursued. Because in most instances these days are known in advance, the employee should notify his/her Department Head or Manager as early as possible in order that, if necessary, alternate plans can be made in the workplace.

## 6.0 Appendices

- [Appendix A – Definition of Terms](#)
- [Appendix B- Checklist; Employment Accommodation for Persons with Disabilities](#)
- [Appendix C – The Duty to Accommodate and Undue Hardship](#)

# Accommodation Policy

**Policy Number: 08-003**

---

## Appendix A - Definition of Terms

**Aboriginal Peoples** - Aboriginal peoples of Canada consist of individuals who identify themselves as Status Indians, Non-Status Indians, Inuit, or Metis.

**Accommodation** - Refers to employment practices, systems and support mechanisms designed to accommodate differences so that no individual experiences reduced access to employment opportunities or benefits because of race, ancestry, place of origin, citizenship, creed, sex, sexual orientation, age, record of offence, marital status, family status, same sex partnership status, disability, colour or ethnic origin.

- **Temporary Accommodation:** An employee's restrictions are temporary, or it has not yet been determined if an employee's restrictions are temporary or permanent, and the accommodation period has been less than 6 months.
- **Intermediary Accommodation:** An employee's restrictions are temporary, or it has not yet been determined if an employee's restrictions are temporary or permanent, and the accommodation period has been longer than 6 months
- **Permanent Accommodation:** An employee has permanent restrictions that prohibit the employee from ever performing their own job (with or without accommodation)

**Barrier** - An overt or covert obstacle. In an employment equity context it means systemic obstacles to equal employment or promotion opportunities, obstacles that must be overcome for equity to be possible.

**Bona fide Occupational Requirement (B.F.O.R.)** - A bona fide occupational requirement is a standard or rule that is integral to carrying out the functions of a specific position. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship. For example, an airline pilot must have very good eyesight. This standard is integral to carrying out the duties of a pilot's job. When a standard is a BFOR, an employer is not expected to change it to accommodate an employee. However, to be as inclusive as possible, an employer should explore whether some form of accommodation is possible.

## Accommodation Policy

**Policy Number: 08-003**

---

**Creed** – Creed is a prohibited ground of discrimination under the Ontario Human Rights Code. Although it is not defined, the Ontario Human Rights Commission has adopted the following definition: Creed is interpreted to mean “religious creed” or “religion” and is defined as a professed system and confession of faith including both beliefs and observances or worship. A belief in a God or Gods, or a single Supreme Being or deity is not a requisite. Religion is broadly accepted by the Commission to include, for example, non-deistic bodies of faith, such as the spiritual faiths/practices of aboriginal cultures, as well as bona fide newer religions (assessed on a case by case basis).

**Designated Groups** - Groups selected as the focus of employment equity because their labour market experience reveals long-standing patterns of: high unemployment; lower than average pay rates; and concentration in low status jobs. The groups of Canadians or permanent residents in Canada that have been designated as having employment disadvantages are women, Aboriginal peoples, persons with disabilities, and persons who are, because of their race or colour, in a visible minority.

**Discrimination** - An action or behaviour that results in the unfavourable treatment of one individual by another or the exclusion or restriction of one group by another. Discrimination has the effect of excluding or restricting access to jobs, education, or participation in an organization.

**Employment Equity** - A comprehensive planning process adopted by an employer to:

- Identify and eliminate both intentional and systemic discrimination in the organization’s employment procedures, policies and practices;
- Remedy the effects of past discrimination; and
- Ensure appropriate representation of designated groups throughout an employer’s work force.

**Systemic Barriers** - Practices and policies (whether intentional or unintentional) that appear neutral but have a relatively higher negative impact on disadvantaged groups and are not reasonable or bona fide. In many cases, these may appear to be fairly and equally applied to all job applicants or employees. However, they are discriminatory and create a barrier if they have an adverse impact on one group and are not clearly related to ability to perform a job or actual job requirements.

## Accommodation Policy

**Policy Number: 08-003**

---

**Undue Hardship** - The general principle under Ontario's Human Rights Code is that all persons must be treated without discrimination so long as they are able to perform the essential duties of their job. This requires reasonable accommodation short of undue hardship to the employer. The Ontario Human Rights Commission has issued guidelines on undue hardship.

## Accommodation Policy

Policy Number: 08-003

---

### Appendix B - Checklist: Employment Accommodation for Persons With Disabilities

#### What is the extent of the disability?

physical demands analysis to be provided to appropriate health care provider

medical evidence (obtain release for medical information or equivalency)

ensure medical evidence links restrictions and accommodation to job requirements and the employee (ask for prognosis and general description of disability, but not diagnosis)

follow-up if medical evidence is inadequate or inaccurate

#### Can the employee's own job be modified short of undue hardship?

work redesign, reconfiguration of tasks

alternative schedules and hours

reassignments and other available jobs

use of equipment, assistive devices

temporary rehabilitative assignments

#### Has a thorough review of other "available" positions been conducted?

inside the bargaining unit

outside the bargaining unit

#### Has the cooperation of the employee been secured?

information about extent of restrictions

job modification suggestions

written consent for release of required medical information only

## Accommodation Policy

**Policy Number: 08-003**

---

### **Has the cooperation of the union been secured?**

- assessment of contractual restrictions
- proposals for contractual modifications
- consideration of impact on rights of others

### **What is the level of accommodation required?**

- non-financial impact on the department and Corporation
- financial impact on the department and Corporation
- costs associated with accommodation
- potential cost reduction measures considered
- outside sources of funding available to assist
- health and safety requirements
- impact on other employees, residents, patients
- impact on contractual and collective agreement obligations

### **Is the means of accommodation consistent with the dignity requirement?**

- are there other methods of accommodation available which would better promote dignity without imposing undue hardship?

### **Is there a process for ongoing review of the prospects for and effectiveness of accommodation?**

- has there been any change in circumstances which would impact upon the availability of accommodation?
- regular, consistent monitoring and communication with the employee
- regular and documented input from employee, supervisor, health care professional
- input from the union

## Accommodation Policy

**Policy Number: 08-003**

---

### **Is there documentation of each step of the process?**

- absenteeism record
- information from employee
- required medical information and prognosis
- copies of correspondence
- notes of telephone calls and interviews
- record of accommodation discussion with union, employee
- record of modified duties alternatives considered, scope of modifications
- record of all costs, safety risks associated with alternatives
- record of all cost reduction measures explored/initiated
- record of all risk reduction measure explored/initiated
- record of why alternatives accepted/rejected
- record of the agreed upon accommodation plan

# Accommodation Policy

**Policy Number: 08-003**

---

## **Appendix C - The Duty to Accommodate and Undue Hardship**

The Code provides that the employer must accommodate the disability related needs of a person, unless it can be demonstrated that no appropriate accommodation exists or that providing the accommodation would cause undue hardship to the employer. The Code designates three determinants of undue hardship: cost, outside sources of funding, if any, and health or safety factors.

### **Cost:**

Undue financial hardship occurs when the cost for providing accommodation is so substantial that it affects the employer's capacity to deliver services or programs within the enterprise.

In the removal of a large-scale systemic barrier, these steps may be planned for, documented, and phased in gradually, so as not to affect the delivery of services. In such cases, interim accommodation must be provided to enable individuals to meet the performance expectations of a job.

### **Outside Sources of Funding:**

The Code requires that outside sources of funding to offset the cost of accommodation, such as grants, government subsidies and loans, be considered before an employer claims undue financial hardship.

### **Health and Safety Risk:**

Situations may exist where health or safety requirements, legislated or not, effectively exclude a person with a disability from employment. The Ministry of Labour may be required to accommodate the individual by waiving or modifying the health and safety requirements, and providing alternative precautions where possible.

Even with alternative precautions in place, a health and safety risk to a person with a disability or to others may remain. If the remaining risk only affects the person with a disability, the department may be obliged to explain the potential risk to the individual and allow the person to decide if she or he will assume the risk. If the remaining risk affects others and the seriousness of the risk outweighs the benefits of the equality, "undue hardship" exists according to the Code.

## Accommodation Policy

### Policy Number: 08-003

---

In determining whether an obligation to modify or waive a health and safety requirement creates a significant risk to others, consideration should be given to:

- Whether the modification or waiving of the requirement is reasonably likely to result in a serious risk to the health or safety of individuals other than the person seeking accommodation;
- The other types of risks which the person responsible for providing accommodation is assuming;
- The types of risk accepted within society as a whole, reflected in legislated standards. Therefore, in some circumstances, departments may be obliged to modify or waive health and safety requirements in order to effect accommodation, where this does not cause undue hardship.

Where a waiver or modification of a health and safety requirement is believed to result in a risk to others, it must be determined on the basis of objective empirical evidence whether the risk is serious. The following factors should be considered in making this determination:

- The nature of the risk: what could happen that would be harmful?
- The severity of the risk: how serious would the harm be if it occurred?
- The probability of the risk: how likely is it that the harm will occur? Is it a real risk, or merely hypothetical or speculative? Could it occur frequently?
- The scope of the risk: who will be affected by the event if it occurs?

In both instances of assessing risk to persons with disabilities and risk to others, it should be noted that section 47(2) of the Code requires that, in the event of a conflict between the Code and other provincial legislation, the Code requirements prevail. Therefore, in some instances, departments or units may be obliged to modify or waive health and safety requirements in order to effect accommodation.

Decisions on undue hardship due to health and safety risk are made on an individual basis. For further details on undue hardship, see the Ontario

## Accommodation Policy

**Policy Number: 08-003**

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Human Rights Commission's Policy and Guidelines on Disability and Duty to Accommodate, 2001.