ACCOMMODATION REQUESTS

THE DUTY TO ACCOMMODATE MENTAL HEALTH

Members have the right to request workplace accommodations as per the *Ontario Human Rights Code*. The most common accommodation that arises in the workplace is regarding disability, for example, due to an illness, mental health, injury, or addiction.

Members may seek an accommodation at any time and have the right to request the support and assistance of the APUO. However, the role of the APUO in this process will ONLY be triggered when a Member approaches the union and requests the Association's support and involvement.

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Letters of Understanding

1. WHAT IS MENTAL HEALTH? WHAT IS MENTAL ILLNESS?

Disability, including mental health illnesses and addictions, are protected under federal and provincial Human Rights legislation. According to the Canadian Mental Health Association, mental health is defined as :

"The state of well-being in which the individual realizes their own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to their community".

In addition, mental illness is defined as:

" A recognized, medically diagnosable illness that results in the significant impairment of an individual's cognitive, affective or relational abilities".

However, the presence of a medical diagnosis is not determinative of whether a member is entitled to human rights protection. The focus should be on the employee's symptoms and their effects.

2. THE DUTY TO ACCOMMODATE :

The duty to accommodate is a legal obligation imposed on all employers by Human Rights legislation (*Ontario Human Rights Code*, s.17). It requires employers to adjust "rules, policies or practices to enable them to participate fully in the workplace." This adjustment is essential to reduce discrimination. Examples of accommodations include flexible work arrangements, regular meetings with a mentor or support person, access to a service animal, having additional teaching supports, etc. However, an employer is only obligated to accommodate an employee up to the point of undue hardship.

3. UNDUE HARDSHIP:

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Undue hardship is “the legal limit of the duty to accommodate”. The onus is on the Employer to prove undue hardship with objective evidence and an analysis of the circumstances of each case. The two main factors in assessing undue hardship are:

- **Financial Costs :** Meaning the financial impact of providing the accommodation would “alter the organization’s essential nature or substantially affect the viability of the workplace”.

- **Health and Safety :** The Employers must strike a balance to ensure the workplace’s health and safety with its duty to accommodate. However, if a health and safety requirement creates a barrier for a person with a disability, the employer is required to do a risk assessment to see if that requirement can be altered or waived.

4. HOW TO REQUEST AN ACCOMMODATION

The duty to accommodate is a shared responsibility. The Employer, is required to make inquiries to determine whether and how an employee can be accommodated. On their side, members are responsible for making a request for an accommodation and participating in the process. Although rare, in certain circumstances, the employer has an obligation to inquire as to whether an employee needs an accommodation.

Accommodation Process :

The University of Ottawa Health and Wellness is the unit responsible for accommodation requests. Once notified, the Health and Wellness Office will implement the following procedure: schedule a meeting with the member; ask the member to provide medical documentation (from his/her psychiatrist, specialist, treating physician, etc.), a staff nurse or supervising physician will review the medical documentation and determinewhether the accommodation request is appropriate and/or legitimate.

- **If the request is validated**, the nurse will send a letter to the member's Dean or the University Librarian listing their functional limitations and the accommodation's expected duration.
- **If the request is deemed insufficient**, the nurse may ask for additional medical information.
- **If the request is denied**, please communicate with the APUO so that we can look at what recourses are available to you.

Accommodation Plan :

An accommodation plan is a document that lists a member's limitations, how these limitations affect the workplace and related tasks, and what accommodations are possible to address these limitations. The Health and Wellness Office develops this plan. The member will receive a copy of it, and a *modified* version will be provided to your Dean or University Librarian for their review. The Dean or University Librarian is charged with implementing the accommodation plan. Since accommodation plans are often adjusted over time, both the Employer and the Employee are responsible for keeping the plan up to date.

APUO Collective Agreement :

Please consult the following articles in the APUO Collective Agreement for related information.

Absence of Discrimination : Article 8.1 (https://apuo.ca/wp-content/uploads/2020/07/Article-1-–-Definitions.pdf#page=39)

- Accommodation : Articles 8.1.2 – 8.1.5 (https://apuo.ca/wp-content/uploads/2020/07/Article-1-–-Definitions.pdf#page=40)
- Medical Information: Articles 8.1.6 – 8.1.7 (https://apuo.ca/wp-content/uploads/2020/07/Article-1-–-Definitions.pdf#page=40)

Sick Leave: Article 27 (https://apuo.ca/wp-content/uploads/2020/07/Article-1-–-Definitions.pdf#page=227)

- Mandatory test: 27.2.2 (https://apuo.ca/wp-content/uploads/2020/07/Article-1---Definitions.pdf#page=229)

Independent Medical Examination (IME)

Members are strongly encouraged to contact the APUO before consenting to an IME.

An IME refers to a medical examination conducted by a third-party, often at the Employer's request and paid by the employer. An IME can be a stressful and overwhelming experience. It can include a review of all of the member's medical history, personal relationships, and other aspects that may be deemed relevant by the IME physician. This examination should only occur in exceptional circumstances. The Employer must have a reasonable and bone fide reason to request an IME and doubt the adequacy of the medical information provided by a members treating physician or specialist.

Regarding the IME process, Article 8.1.7 of the Collective Agreement outlines that:

- The Health and Wellness Office will notify the member and the APUO (if requested) of the names of three qualified medical practitioners;
- The member will select one;
- The member and the APUO (if requested) will agree to the scope of the IME;
- The IME report will be forwarded to the member's treating physician if necessary; and
- The member and the APUO will be provided with a copy of the report, upon written request.

5. PRIVACY, CONSENT, DISCLOSURE & CONFIDENTIALITY

A member's medical information is their private information. It should only be disclosed to those who require the information to process the accommodation request. Furthermore, only the information that is reasonably necessary to process and implement the accommodation should be disclosed. Member's should only provide medical information after signing a consent form which list who will have access to the documentation and ensures its safekeeping.

APUO Medical Consent Form

Prior to accepting any discussion or disclosure of medical information, an APUO representative will ensure a medical consent form is signed as per our policy on *Confidentiality of Medical Information Policy (https://apuo.ca/wp-content/uploads/2020/07/Confidentiality-of-Medical-Information_v1.0.pdf)*. The APUO consent form will list the individuals at the APUO whose consent is being granted and permit the APUO to speak to the Health and Wellness Office on a member's behalf. Member's also have the ability to request to have their medical records destroyed and removed from the APUO office and electronic servers at any time.

6. ROLE OF THE APUO

With regard to the accommodation process, the APUO assists members by:

- Providing support, answering questions, and explaining the accommodation process;
- Representing the needs of the member and ensuring their rights are respected;
- Collaborating with the member and the Employer in finding the right accommodation;
- Protecting the privacy and confidentiality of the member's medical information; and
- Ensuring the Collective Agreement is respected.

7. KEY TAKE-AWAYS

Disability, including mental health illnesses and addictions, are protected under human rights legislation. Any member struggling or having difficulties in the workplace due to an illness, injury, or addiction has a legal right to reasonable accommodations and a right to request the involvement and support of the APUO. If you are interested in more information or require assistance with the accommodation process, please contact the APUO at apuo@uottawa.ca (mailto:apuo@uottawa.ca).

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