Disability Management and Accommodating Employees with Disabilities

Framework

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Table of Contents

DISABILITY MANAGEMENT AND ACCOMMODATING EMPLOYEES WITH DISABILITIES 1

FRAMEWORK .......................................................................................................................... 1

EFFECTIVE DATE: FEBRUARY 24, 2012 (WITH REVISIONS JUNE 26, 2014, FEBRUARY 2, 2015) .................................................................................................................................................. 1

TABLE OF CONTENTS ............................................................................................................. 1

PREAMBLE .............................................................................................................................. 2

VISION ....................................................................................................................................... 2

BENEFITS OF DISABILITY MANAGEMENT AND WORKPLACE ACCOMMODATION ..................... 2

STRATEGIC CONTEXT ........................................................................................................... 3

GUIDING PRINCIPLES ........................................................................................................... 3

1.0 SCOPE OF PROCEDURE ................................................................................................. 5

1.1 AUTHORITY ....................................................................................................................... 5

1.2 APPLICATION .................................................................................................................... 5

1.3 DEFINITIONS .................................................................................................................... 5

2.0 PURPOSE OF PROCEDURES ......................................................................................... 6

3.0 DISABILITY MANAGEMENT AND ACCOMMODATION ................................................. 7

3.1 DISABILITY CASE MANAGEMENT .................................................................................. 7

3.1.1 Case Management Team Approach .............................................................................. 8

3.1.2 Identification and Initiation .......................................................................................... 8

3.1.3 Communicating with Employee .................................................................................. 11

3.1.4 Case Evaluation and Planning .................................................................................... 14

3.2. RETURN TO WORK AND ACCOMMODATING EMPLOYEES WITH DISABILITIES ...... 17

3.2.1 Return to Work Planning ............................................................................................ 17

3.2.2 Accommodation Planning .......................................................................................... 18

3.2.3 Limitations on Duty to Accommodate ....................................................................... 20

3.2.4 Return to Work/Accommodation Implementation ...................................................... 21

3.2.5 Implementation Oversight .......................................................................................... 22

3.3 WORKERS’ COMPENSATION AND LONG-TERM DISABILITY CLAIMS ................. 23

4.0 ROLES AND RESPONSIBILITIES ................................................................................. 23

5.0 INFORMATION SHARING AND CONFIDENTIALITY ............................................. 27

5.1 Information Sharing ........................................................................................................ 27

5.2 Confidentiality ................................................................................................................ 28

6.0 TRACKING, REPORTING AND ASSESSING RETURN TO WORK ......................... 28

6.1 Tracking and Reporting .................................................................................................. 28

6.2 Recording and Assessing Return to Work/Disability Accommodation .................... 29

7.0 ASSOCIATED MATERIALS ......................................................................................... 30
Preamble

Vision

...ensure that employees with injuries or illness or disabilities are able to remain at work or return to work in an early and safe way, that respects the dignity of the employee, and that results in meaningful and productive work benefiting both the employee and the Yukon government.

Benefits of Disability Management and Workplace Accommodation

Workplace accommodation enables employees with injuries or illnesses or disabilities to be productive members of the public service benefiting both the Yukon Government and the employee.

Assisting employees with injuries or illnesses or disabilities to stay at work or return to work is a “win-win” situation. The employee benefits through early engagement that supports them in remaining at work or returning to work quickly thus enhancing their mental, physical and social well-being. The employer benefits by retaining skilled and experienced employees and reducing lost time and overall disability management and claims costs. Evidence is irrefutable that prolonged absence from the workplace has a detrimental impact on a person’s overall health and welfare.

Accommodating employees with disabilities also ensures that the Yukon Government, as an employer, upholds its duty to accommodate under the Yukon Human Rights Act, the Yukon Workers’ Compensation Act, Collective Agreements, and Policy.

In general, early intervention and referral results in:

- early stabilization and control of illness or injury;
- a reduced risk of a chronic condition developing co-morbid conditions such as pain, fatigue, depression, anxiety or other complications;
- individual resiliency and a faster return to normal activities of daily living;
- Staying in or earlier return to work with less financial costs to the employee, employer and tax payers.
**Strategic Context**

The Yukon Government’s Corporate Human Resource Strategy for 2011-2014 outlines that the implications of an aging workforce and more retirements are increasing costs of benefit plans, including disability insurance. The Strategy includes activities related to wellness and disability management to support the role of the employer, as well as the responsibility of individual employees in promoting health and well-being.

The Public Service Commission’s Strategic Plan for 2011 – 16 includes a goal related to the implementation of a corporate approach to wellness, health, safety, and disability management, focused on prevention of illness and injuries and on early and safe return to work.

**Guiding Principles**

As set out in the *Accommodating Employees With Disabilities* Policy, the Public Service Commission plays a leadership role by providing expertise and assistance to departments with respect to the duty to accommodate and the disability management process. Departments in collaboration with the Disability Management Unit (DMU) in turn are responsible for ensuring that the disability management and accommodation process is handled in a timely, consistent and effective manner.

The following principles guide the delivery of disability management, return to work and accommodation services in the Yukon Government:

- Early intervention to support employees with injuries or illnesses or disabilities remaining at work or returning to work in a safe and sustainable way;

- Shared commitment of all parties to the process of disability management and accommodation commensurate with the mutual benefit to the employee and the employer;

- Shared responsibility of all Yukon Government departments to uphold their duty to accommodate the needs of employees with disabilities;

- Responsibility of employees to actively participate in the disability management and accommodation process, and accept reasonable offers of accommodation;

- Effective coordination of activities to ensure that the right people are involved at the right time and with the right resources and expertise;

- Respect for the roles and interests of all individuals involved;
• All parties will act in good faith demonstrating integrity, honesty, reliability and accountability for actions, behaviours, and decisions.

• All parties will maintain confidentiality. Timely, efficient and accurate benefit decisions, including on disability insurance eligibility and claims administration;

• Monitoring and data collection and analysis support successful disability management and accommodation programs;

• Effective human resource management includes the management of health related absences.
1.0 Scope of Procedure

1.1 Authority

The Yukon Government Policy, *Accommodating Employees with Disabilities*, sets out the obligations and requirements of the Yukon Government for meeting the accommodation needs of employees with disabilities. Section 8 of the Yukon Human Rights Act establishes the responsibility of every person to make reasonable provision, in connection with employment, for the special needs of others if those needs arise from a disability. Section 41 of the Yukon Workers’ Compensation Act sets out the employer’s re-employment obligations for employees with work-related injuries.

The Yukon Government is committed to upholding the duty to accommodate the needs of employees with disabilities in a manner that respects the dignity of each employee.

1.2 Application

These procedures apply to all Yukon Government departments and all employees of the Yukon Government.

1.3 Definitions

- “Accommodation” - A job accommodation is “a change to the work environment or job tasks that enable a person with an impairment to participate in workplace activities safely and productively”\(^1\).

- “Employees with disabilities” includes all Yukon Government employees who, for employment purposes, need accommodation because of a physical or mental disability as defined in section 37 of the Yukon Human Rights Act;

- “Disability Management Consultant” refers to staff in the Health, Safety and Disability Management Branch who are responsible for providing disability management and accommodation expertise, assistance, advice and case management services to Yukon Government departments and employees;

- “Early Intervention” is a process of YG to facilitate clarification of medical information (may include Independent Medical Examinations, Functional Capacity Evaluations) and access to appropriate resources, to help employees stay at work or return to work early and safely.

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\(^1\) Definition from National Institute of Disability Management Research (NIDMAR)
“Early Referral Services” (ERS) is a referral to Great West Life occurring pre-long term disability (13 week window) based on pre-established criteria. These efforts may help reduce the need for long-term disability.

“Health, Safety and Disability Management Branch” means the branch of the Public Service Commission responsible for providing expertise and assistance to Yukon Government departments and employees 1) generally on disability management and accommodation policies, procedures and practices and how to provide effective disability management and accommodation services; and 2) specifically, with regard to individual cases;

“Department Human Resource staff” means a human resource staff person from the employee’s or supervisor’s own Department;

“Limitations and restrictions” are work activities that an employee cannot or should not physically or mentally perform because of a disability;

“Medical Form” means the standardized form outlining the medical information to be provided by a physician on the employee’s limitations and restrictions related to an injury or illness;

“Occupational injury or illness” means an injury or illness that is work-related, arising out of and in the course of employment;

“Non-occupational injury or illness” means an injury or illness that is not work-related; examples of non-occupational injury or illnesses include: a broken limb occurring outside of work, acute conditions such as cancer, chronic illnesses such as diabetes or high-blood pressure, addictions or substance abuse, and psychological illnesses such as depression;

“Labour Relations Branch” means the Labour Relations Branch of the Public Service Commission.

2.0 Purpose of Procedures

The purpose of these procedures is to outline the standardized processes, practices and forms to be used in meeting the requirements of the Accommodating Employees with Disabilities Policy. It also outlines the roles and responsibilities of all those involved in the disability management and accommodation process.

These procedures outline a fair and consistent corporate approach to disability management and accommodation and to responding to and tracking requests for disability accommodation, as well as recording and monitoring accommodations provided.
3.0 Disability Management and Accommodation

Disability Management is about how the organization responds when an employee with a disability requires accommodation assistance to remain at work or to return to work. It is about the co-ordination of activities related to employee absence, benefits management, accommodation and return to work planning and implementation. The focus is on a continuum of support that reflects a strong emphasis on keeping an employee at work and supporting early, safe and sustainable return to work.

The following chart provides a high level overview of the accommodation and disability management process.

Disability Management Process Overview
3.1 Disability Case Management

3.1.1 Case Management Team Approach

The Yukon government’s approach to accommodation and disability management is based on a team approach. Regardless of whether the case arises out of an occupational or non-occupational illness or injury, the same case management approach is used.

The case management team is typically composed of the employee’s supervisor, the Department Human Resource staff, the Disability Management Consultant and other expertise as required who provide case management, benefits administration, and accommodation and return to work planning services for employees with disabilities. The employee plays an active role in the management of their case and participating and cooperating in the return to work and accommodation process. The employee’s union representative may be included as part of the disability case management team at the request of the employee.

3.1.2 Identification and Initiation

Early Awareness and Intervention

Early intervention is critical. Effective accommodation and disability case management requires timely response and action. Early identification and open communication and interaction between the employee, the employee’s supervisor, and others involved in the accommodation and disability management process is critical to effective case management.

Timely awareness by the employer of the employee’s disability or injury or illness will facilitate an early response ensuring the accommodation or return to work process is started, and that there are no unnecessary delays in benefit entitlements, if applicable.

Where a supervisor becomes concerned that an employee may have an illness or injury or disability that is affecting the employee’s ability to perform his or her work duties the supervisor should approach the employee and in an open and supportive manner inquire about the situation. Where an employee has a disability or an illness or injury, he or she should communicate this to the employer as soon as possible.

The employee is encouraged to begin the process by contacting their supervisor, but the employee may also approach a Department Human Resource staff or a Disability Management Consultant.
Note: Where the employee notifies a Department Human Resource staff or Disability Management Consultant that they have an injury or illness, the Human Resource staff, or Disability Management Consultant will notify the employee’s supervisor of the situation as soon as possible.

**Reporting Illness or Injury or a Disability**

An employee who is absent from work due to a non-occupational illness or injury or disability is required by Policy to notify their supervisor immediately; and in the case of an occupational injury or illness must report the illness or injury within the timelines required under the Yukon Workers’ Compensation Act.

In the case of a non-occupational injury or illness, if verbal authorization of a request for sick leave is initially given, the employee must confirm this in writing as soon as possible through completion of an Application for Leave Form indicating the dates and nature of the his or her absence.

At any time, an employee with a disability may report this to his or her employer and request a workplace accommodation.

**Identifying Employees in Need of Support or Accommodation**

To assist in the identification of employees who may require disability management support, a ‘Sick Leave Usage Report’ will be prepared by Disability Management Unit at least monthly and forwarded to Directors of HR in all YG departments. The report will provide information on those employees who have met the set thresholds including: a: 75 hours of sick leave in the previous 150 hours of work time; or b: 37.5 hours of sick leave in the previous 150 hours of work time and with less than 100 hours of accrued sick leave remaining in their bank. Time off is prorated based on the workweek for groups such as teachers.

**Initiating Disability Case Management**

*Cases not requiring formal case management*

In most cases, an employee will be absent on sick leave for a few days and return to work with no requirement for case management or accommodation; for example, where the employee has had the flu, a cold, or minor surgery or procedure. In other cases, an employee will be absent for a few days, but can return to work with some accommodation; for example, job modification, or modified duties to accommodate a broken limb. Generally, the employee’s supervisor, in consultation with the employee, will manage these cases directly. The supervisor may consult with the Department Human Resource staff or Disability Management Consultant on such temporary accommodations.
Cases requiring case management

In other cases, more formal case management may be required. Situations requiring some degree of case management, depending on the specific circumstances, include:

- Where an employee is absent due to illness or injury and the employee or someone representing the employee (union representative, co-worker, family member) indicates to the employer that they are not sure when they will be able to return to work;

- Where an employee or someone representing the employee notifies the employer that they will be absent from workplace for an extended period of time because of an illness or injury;

- Where an employee or someone representing the employee identifies to the employer that repeated absences are caused by a recurring or chronic illness or injury that may lead to future absences and that may require immediate or future accommodation;

- Where along with the disability management issue there are “concurrent” or complicating non-disability factors (a staff relation or workplace environment and/or conflict issue) impacting the management of the employee’s illness or injury, or disability.

For these types of cases, a more detailed case management process is set out below in these procedures (some cases may also require the involvement of additional expertise and resources - see the section below on “Complex Cases”).
3.1.3 **Communicating with Employee**

Beginning a conversation and maintaining a connection with the employee is essential to the effective management of the case and ensuring that the employee is either able to stay at work or return to work in an early and safe way.

**Initial Meeting**

Where a situation requiring more formal case management, as described above, is identified, the supervisor, Department Human Resource staff, or Disability Management Consultant (whoever has had contact with the employee) will arrange for an initial meeting with the employee and the other members of the team, as appropriate (this may include the employee’s union advisor), based on the nature of the case and other influencing factors.

The purpose of the initial meeting is to offer and provide support and assistance in a timely and effective manner and support the identification and development of options and solutions to support the employee to manage their condition,
including providing needed accommodations, to stay at work and facilitate an early and safe return to work.

Depending on the case, issues and matters covered in the meeting may include:

- A discussion of the employee’s circumstances and situation, and the potential impact of his or her disability or illness or injury on their ability to perform their job duties;

  Note: Information on the employee’s diagnosis is private and the employee may choose not to disclose the nature of their illness or injury, but information about the employee’s prognosis – restrictions and limitations, capabilities, expected recovery date – must be disclosed for effective management of the case [see section 5.0, Information Sharing and Confidentiality for more Information].

- An outline of the objectives and limitations of the disability management program, including the roles and responsibilities of all parties in the disability management and accommodation process;

- An outline of the supports and accommodations that could enable the employee to stay at work;

- An outline of the sick leave and disability benefit entitlements that the employee may be eligible for, important deadlines, and the need for timely submission of leave and disability insurance application forms, as required and if applicable;

Good Practice Tip – Sick Leave Management:
- When an employee has been away from work for more than five (5) days with a non-occupational injury or illness and has been unable to complete a leave form, the supervisor should submit and complete the form on the employee’s behalf.
- Where an employee is away on extended sick leave, the supervisor, with assistance of the Department Human Resource branch, should keep track of an employee’s available sick time and be able to notify the employee in advance when sick time is used and their benefit entitlement options. All forms should be processed in a timely and efficient way to prevent an interruption in the employee’s benefits, and to prevent overpayment situations when the employee’s sick leave credits have been exhausted.
- A discussion of any other factors potentially impacting the employee and the accommodation and return to work process, including work performance or other issues.

**Employee Assistance Program**
- The Employee Assistance Program (EAP) is a professional counseling and consulting service designed to assist employees and their immediate family members to deal with problems that are affecting their workplace and/or personal lives.
- An employee may self-refer by simply contacting the EAP service. Employees are responsible for arranging time off with their supervisors to attend the EAP. A supervisor may recommend the EAP to an employee; it is up to the employee to then make contact with the EAP.
- Additional information about the EAP can be found at http://www.psc.gov.yk.ca/eap.html

**Ongoing Communication**
Where an employee is going to be away from the workplace for a period of time, arrangements need to be made outlining how the supervisor and employee will stay connected, and determining the method and frequency of communication that works best for the individual employee and in the particular situation;

*Best Practice:* Ongoing communication is a key method for maintaining a positive, open and trust-based relationship between employee and employer. In addition to regular communication to inquire about the employee’s welfare, progress and to indicate the employer’s continued support, ways to maintain that connection and keep employees engaged in the workplace include: notifying the employee about social and informal events in the workplace, sending them newsletters and public news about co-worker events such as births, marriages and retirements.
3.1.4 Case Evaluation and Planning

Accurate and timely information is required to support case evaluation and planning. All information relevant to the employee’s situation and circumstances including a solid understanding of the employee’s restrictions and limitations and his or her job requirements and workplace situation is critical in moving forward to efficiently and effectively plan for employees with disabilities to remain at work or return to work.

Identifying, gathering and obtaining the information required from all sources and then considering and assessing that information in the context of the employee’s individual circumstances and the workplace requirements, situation and environment is key.

The resources necessary to ensure the efficient and effective management of the case should be pulled in from the outset. As part of the case evaluation process, the team members required to support planning and management of the specific case should be identified and brought into the process. In all cases, the employee’s supervisor should be part of the disability management team.

Complex Cases

Some cases will be identified from the outset as “complex” cases requiring extra attention, effort and management (see above). Other cases may become progressively more complex over time as issues are identified or as the case develops.

The goal in managing a complex case is to ensure that the necessary expertise is brought to bear to address all of the issues involved in the case in an integrated way in order to facilitate its effective management and resolution. The key to developing an effective accommodation in these cases is to be open and direct about identifying and addressing the issues.

Some of the circumstances or situations where a case may be considered complex, include:

- Where the case involves an employee who has a prolonged absence from work due to an illness or injury (more than 30 days in duration);
- Permanent restrictions or limitations are identified early in the employee’s absence which indicate that an out-of-occupation accommodation will likely be required;
• There is lack of clarity and/or understanding about the restrictions and limitations imposed by the employee’s disability, and the nature of any required accommodation, impeding progress on the case;

• There are known specific workplace safety risk issues associated with the employee’s illness or injury as disclosed by the employee or identified by the supervisor (i.e., medication affecting ability to operate machinery);

• The case involves substance abuse or addictions, or a mental health or psychiatric illness;

• An illness or injury or disability accommodation issue is concurrent with a staff relation issue (e.g. performance management issue, discipline issue), poor or non-existent communication or relations between the supervisor and the employee, or other workplace issue (interpersonal conflict, work environment).

In complex cases, a plan for all of the relevant people and resources necessary to address these issues (including the roles and responsibilities of the various parties) will be identified and discussed. The disability management component of complex cases will be led by the Disability Management Consultant.

**Obtaining Medical Information**

Medical information is required to:

1) identify an employee’s limitations and restrictions in order to guide the appropriate management of the employee’s return to work plan; and

2) establish the employer’s duty to accommodate and

3) design and develop reasonable workplace accommodation options based on the employee’s capabilities.

In many cases, the employee’s medical restrictions and limitations are clear and agreed upon and the steps to be taken to accommodate the employee can be readily taken in the employee’s workplace.

In other cases, the medical restrictions and limitations may be unclear or unknown.

**Medical Form – Functional Abilities**

When it is determined that medical information or further medical information is needed, the Departmental Human Resource contact will request that the employee obtain a Medical Form - Functional Abilities Form - completed by the
employee’s health care provider to clarify the employee’s medical restrictions and limitations.

The employee is expected to submit the Functional Abilities Form from their health care provider within fourteen (14) calendar days of request. Once completed, the health care provider will provide a copy of the form to the employee who is expected to share a copy with their supervisor or Department Human Resource branch staff who will send a copy to the Disability Management Unit, Health, Safety, and Disability Management Branch. The health care provider will be reimbursed for completing the form by Government of Yukon.

On receipt of the Functional Abilities Form, Departmental HR will immediately forward a copy to the Disability Management Unit. Departmental HR will review the form with the supervisor to determine whether modified work may be appropriate in order to facilitate an earlier return to work or whether the absence is supported by medical evidence. If the medical information provided in the Functional Abilities Form is considered insufficient (vague or contradictory and not specific to identifying limitations and restrictions), Departmental HR will advise the employee that further medical information is required and request medical consent from employee within two (2) business days. The Disability Management Unit, with the signed consent of the employee, will contact the employee’s health care provider to obtain clarity on the employee’s medical restrictions and limitations. Under Yukon Government G.A.M Policy 3.59 – Accommodating Employees with Disabilities, employees are responsible for cooperating and participating in the accommodation process by providing medical information and any other relevant information about their limitations.

**Independent Medical Examination**

Where the information on the employee’s restrictions and limitations remains insufficient, not providing the clarity to appropriately plan for the employee or the employee’s recovery is not progressing and a second opinion may be warranted, the Disability Management Unit may determine that an Independent Medical Examination (IME) is required. The Disability Management Unit is responsible for working with the employee to identify the IME provider, arrange the IME and to pay for the IME.

The employee will receive a copy of the independent medical examination and from their assigned Disability Management Consultant. On receipt of the findings of the IME, the employee’s assigned Disability Management Consultant will discuss the examination report with the employee, and will extract, summarize and share only the necessary information about the employee’s restrictions and
limitations with the employee’s supervisor and Departmental Human Resource staff.

3.2. Return to Work and Accommodating Employees with Disabilities

3.2.1 Return to Work Planning

Return to work planning and return to work will depend on the individual facts and circumstances of the case.

As noted earlier, in most cases, effective return to work is negotiated and managed by the supervisor and the employee. The majority of absences require little or no return to work planning since they are of short duration, the employee’s return to work is predictable and the employee is able to return to full duties.

Where it is safe and appropriate to do so, accommodation and return to work may be arranged while an employee is recovering from their illness or injury. In other cases, the medical situation may call for the treatment and return to work process to occur in consecutively.

In some cases, the employee’s illness or injury may be so severe that early planning is premature or unnecessary, and the plan is confined to determining how monitoring of the case will be carried out and maintaining the appropriate level of contact with the employee.

Benefit administration including initial and ongoing eligibility entitlement determination, benefit calculations and payments will also occur during the recovery and return to work process.

Most of the time spent on return to work planning involves the more complex cases. As noted above, the team assigned to deal with the case will communicate and collaborate in an organized, systematic, problem-solving way to evaluate the case and develop a realistic and effective return to work plan that effectively addresses all of the identified issues.

In those cases where the employee’s disability results in the alteration of their work capacity, accommodation may be required and the return to work plan will need to include reasonable accommodations to the job structure, job assignment, work schedules, modification of equipment etc.

The Disability Management Consultant will provide advice to the employee and the department, based on the medical and other relevant information, as to whether these or other types of accommodation are required in order for the employee to be able to return to work.
3.2.2 Accommodation Planning

Where it has been determined that an employee with a disability needs to be accommodated to remain at work or return to work, the Disability Management Consultant will lead the case management team in planning a reasonable accommodation and return to work. The goal is to align the employee’s medical restrictions and limitations with the operational demands of the job in order to identify possibilities that meet both the employer’s and employee’s needs and keep the employee at work, or get the employee back to work as quickly and safely as possible.

Departments are expected to develop innovative options in devising accommodation plans that are appropriate, effective and suitable given an employee’s specific needs.

Employees are expected to follow treatment and rehabilitation recommendations made by attending health professionals as part of the accommodation plan, and accept reasonable offers of accommodation.

Accommodation Options

Consistent with the Accommodating Employees with Disabilities Policy, accommodation options must be considered in the following order:

a) implementing changes to the physical work environment or equipment and/or modifying how and when tasks are preformed to enable the employee to remain in their substantive position (job modifications);

b) modifying the employee’s job duties in a manner consistent with his/her individual capabilities in order for the employee to perform the essential tasks of his/her substantive position (modified duties);

c) exploring other available job opportunities within the employee’s home department in which he/she would be capable of performing the essential tasks of the position, with or without modifications;

d) exploring available job opportunities in other departments in which the employee would be capable of performing the essential tasks of the position, with or without modifications.

Accommodation in the Substantive Position

The priority is to maintain the employee in his or her own position and occupation through job modifications or modified duties. The employee will remain at work in their substantive position, or return to work in their substantive position as soon as it has been determined that he or she is fit to perform the essential duties of the position, subject to appropriate, reasonable accommodations (if any) required to support them in that position.
Job modifications could include work environment and equipment alterations and access to assistive devices and technology. The cost of an ergonomic assessment, purchase of ergonomic equipment and assistive devices will be covered by the employee’s department, and cost sharing options with the Health, Safety and Disability Management Branch are available for expenditures in excess of $1000.

**Accommodation in Other Positions**

In planning for an employee with a disability to remain at work, or when an employee is capable of returning to suitable employment, but accommodation in their substantive position is not possible due to the employee’s restrictions and limitations, the employee’s Department must explore other job opportunities within the Department.

In these circumstances, as long as reasonable notice of the employee’s fitness for work has been provided, the employee’s Department must allow the employee to return to work in a suitable vacant position or in some other appropriate capacity until a suitable vacant position has been identified.

The Disability Management Consultant and other appropriate Public Service Commission staff or services will work with the employee and Department Human Resources staff to document the employee’s skills, abilities, and restrictions and limitations. This will be provided to the Corporate Human Resource Staffing branch to identify any job or temporary assignment vacancies that may fit with the employee’s skills, abilities, and restrictions and limitations.

**Other Position in Same Department**

Where a potential vacant position in the same department is identified that could be a match for the employee needing accommodation, the employee’s supervisor and Department Human Resource staff, with the support of the Disability Management Consultant (who provides information on the restrictions and limitations and the need for accommodation) will consult with the supervisor of the new position about placing the employee in the position.

Where it appears that the vacancy is suitable, but the supervisor is unwilling to accept the alternative placement of an employee for the purpose of accommodation, the Deputy Head of the department (or designate) will ultimately come to a decision on the placement of the employee.

**Other Position in Different Department**

Under the *Accommodating Employees with Disabilities* Policy, all Yukon Government departments share in the duty to accommodate including accommodating employees from other departments and providing suitable
employment in the event no suitable position is available within an employee’s home Department.

Where a potential vacant position is identified in another department that could be a match for the employee needing accommodation, the employee’s supervisor and Department Human Resource staff will, with the support of the Disability Management Consultant (who provides information on the restrictions and limitations and the need for accommodation), consult with the Human Resources branch in the department in which the vacant position is located.

Where it appears that there is a suitable vacancy in another department, and the other department is unwilling to accept the alternative placement of an employee for the purpose of accommodation, the Public Service Commissioner, the Deputy Head of the employee’s home Department and the Deputy Head of the department with the vacancy will ultimately come to a decision on the placement of the employee.

The home department of the employee retains responsibility for the employee, including covering the cost of the accommodation placement, until the employee obtains a permanent position or they leave government employment. Arrangements may be made between the employee’s home department and the other department to share in the compensation costs of the employee.

**Special Projects/Training Assignments**

If no vacancies exist at the time or there is no appropriate match between the employee and a vacant position, other options for an employee needing accommodation include special projects, temporary assignments, and training assignments in the employee’s home or other department. In these cases, cost-sharing options with the Health, Safety and Disability Management Branch may be considered. The employee’s supervisor will continue to be responsible for the employee and actively work to support an effective accommodation for the employee.

### 3.2.3 Limitations on Duty to Accommodate

**Undue Hardship**

The Yukon Government’s responsibility to make reasonable accommodations to meet the needs of employees’ with disabilities will be fulfilled up to the point of undue hardship as defined in the Yukon Human Rights Act.

The criteria for determining undue hardship under the Act include, but are not limited to, such factors as:

- Safety risks that may impact the employee, or other employees or the public;
Framework – Disability Management and Accommodating Employees with Disabilities
Updated February 2, 2015

- Disruption to the public;
- Effect on contractual obligations (collective agreements);
- Financial cost;
- Business efficiency.

**Bona Fide Occupational Requirement**
The duty to accommodate is also limited where a bona fide occupational requirement (something that is necessary in order to accomplish the essential duties of the job) cannot be met because of the proposed accommodation. (Examples may include a requirement for firefighters to lift and carry a minimum amount of weight or a seizure disorder that inhibits obtaining a driver’s license required to drive a school bus.)

A bona fide occupational requirement is one that is:

- Adopted for a purpose connected to the performance of the essential duties of the job;
- Adopted in an honest and good faith belief that the requirement is necessary to fulfill the essential duties of the job; and
- Necessary to the accomplishment of the essential duties of the job.

Where there is a question as to whether either of these two limitations apply to a particular case, the Department shall consult with both the Disability Management Consultant and the Labour Relations Branch, and inform the case management team.

**Where Return to Work/Accommodation is Not Possible**
At times, despite best efforts to provide a reasonable accommodation, because of the employee’s identified restrictions and limitations an accommodation placement is not possible. In these cases, the employee’s Department should consult with the Disability Management Consultant and the Labour Relations Branch about the options for both the employee and the employer (e.g. medical retirement, termination of the employment relationship etc.).

**3.2.4 Return to Work/Accommodation Implementation**
Depending on the complexity of the case, the case management team may establish a Return to Work / Accommodation Plan (template attached) that outlines the terms of the return to work and/or accommodation placement arrangement, including such matters as the employee’s job duties and work hours, roles and responsibilities of other parties, oversight and review of the arrangement, and ongoing communication.
The supervisor of the employee who is returning to work or in an accommodation placement is critical to ensuring that the return to work or placement is successful. The supervisor facilitates the return to work and accommodation and supports the employee throughout the process. This includes obtaining the views of the employee as to what and how information about the employee’s accommodation will be shared in the workplace in order to give the employee a sense of control of and comfort in their situation.

The supervisor also plays a key role in preparing the workplace for the accommodation, including ensuring support and services to the other employees in the workplace to facilitate the placement, and sharing as much information as possible about the accommodation while respecting the wishes of the employee being accommodated. The supervisor will make efforts to build support in the workplace for the accommodation and a sense of joint responsibility and commitment to making it work.

The Department Human Resource staff and Disability Management Consultant continue to play a role by supporting and providing advice and support, as needed, to the supervisor and the employee on the return to work and accommodation.

Where an employee is returning to work in an accommodation placement and is in receipt of part-time benefits from an insurance carrier, the Human Resource staff of the employee’s home Department must ensure that an Accommodation Assignment Agreement (form attached) is completed as well as the required leave forms for the corresponding period to ensure that the employee’s pay and leave provisions are accurately processed.

### 3.2.5 Implementation Oversight

The employee’s supervisor will oversee the implementation of the accommodation through regular observation, communication and check-ins with the employee (the Return to Work/Accommodation Plan may outline regular, periodic formal check-ins between the supervisor and the employee, and others).

The Department Human Resource staff and the Disability Management Consultant will be available to support the implementation of the accommodation throughout the process.

Everyone involved in the return to work and accommodation is responsible for its success and need to ensure that any issues are promptly identified and addressed. The return to work and accommodation placement can be adjusted
and the supervisor and employee may continue to access the team for expertise and advice in terms of addressing identified issues and making required changes.

At times, despite everyone’s best efforts a return to work and/or accommodation does not work. In these cases, it may be necessary to develop a new accommodation plan and begin the accommodation process again. The process of accommodation continues until a reasonable fit is found, or where continued efforts may impose undue hardship to the employer (in which case the home Department of the employee should consult with the Disability Management Consultant and the Labour Relations Branch).

3.3 Workers’ Compensation and Long-term Disability Claims

Where an employee has a non-occupational injury or illness or disability he or she may be entitled to long-term disability (LTD) benefits. Similarly, where an employee suffers an occupational injury or illness he or she may be entitled to workers’ compensation benefits. The rules/regulations governing entitlement to such benefits are spelled out in the Yukon Government’s insurer’s (Great West Life) website (http://www.greatwestlife.com/001/Home/Group_Products/Group_Benefits/index.htm) and the Yukon Worker’s Compensation Health and Safety Board website (https://wcb.yk.ca/).

The case management model for employees receiving LTD benefits or workers’ compensation benefits is the same, and return to work planning and accommodation for employees receiving such benefits will be consistent with other employees, although the process may also include case management and other resources made available by the insurance provider (e.g. rehabilitative services, independent medical examinations, and vocational or functional capabilities assessments).

Note: Section 41 of the Workers’ Compensation Act sets out a new re-employment obligation requiring employers who regularly employ 20 or more workers to re-employ an injured worker if that injured worker has been continuously employed with that employer for at least one year prior to the occupational injury or illness.

4.0 Roles and Responsibilities

Deputy Ministers
- Support and provide leadership in the department for the goals and principles of integrated disability management;
- Facilitate, as needed, placement of employees within the department;
• Facilitate and authorize placement of employees from other departments.

**Employees**
• Report illness or injury when it occurs;
• Provide relevant and sufficient medical information;
• Participate in treatment program as appropriate;
• Participate in benefit administration and case management processes;
• Maintain contact with supervisor and employer representatives;
• Cooperate in return to work and accommodation process, and accept reasonable offers of accommodation;
• Communicate with all parties as required.

**Supervisor**
• Review and approve appropriate leave and ensure leave forms are submitted;
• Follow-up with employees with disabilities about options to stay at work and for early and safe return to work;
• Maintain contact and relationship with employee;
• Assist with completion of benefit forms, as required;
• Liaise and keep in contact with Department Human Resource staff and Health, Safety Disability Management branch staff as required to assist with benefit administration and case management process;
• Active support for return to work and accommodation including arranging and facilitating job modifications, modified duties, and alternate placements;
• Provide support and oversight to employees under a return to work / accommodation program.

**Department Human Resources staff**
• Primary contact for supervisor;
• Advice to supervisor and employee;
• Provide information on employee sick leave usage;
• Notify employee and Pay and Benefits if sick leave benefit is denied.
• Collaborate with a Disability Management Consultant and/or other Public Service Commission staff on complex cases.
• Advice to team members as case requires;
• Participate as team member in case management, return to work planning and accommodation.
Public Service Commission

Disability Management Consultant

- Collaborate with HR Department Leads to identify candidates for Early Referral Services;
- General advice on disability management and accommodation;
- Advice and assistance on specific disability management cases, particularly complex cases;
- Participate as a team member in case management, and lead and coordinate case management in complex cases;
- Gather initial medical information;
- With employee consent consult with medical professional on medical information, when required;
- Review and discuss the medical information received with the employee;
- Review and discuss restrictions and limitations with supervisor and Department Human Resource staff;
- Consult with all parties about the implications of the employee’s restrictions and limitations on the workplace;
- Identify requirement for accommodation and lead/coordinate development of return to work / accommodation plan;
- Support and advice to supervisor and employee in return to work / accommodation program.

Disability Claims Administrator, Health, Safety and Disability Management Branch

- Gather and Distribute ‘Sick Leave Usage Report’ to Departments.
- Submit Employer Statement for Early Referral Service;
- Notify Pay and Benefits of employees approved for LTD;
- Manage administration of the LTD program;
- Process LTD claim applications;
- Provide claim management advice and program information to claimants;
- Liaise with insurance carrier and health professionals regarding employee’s claim status and progress;
- Maintain claim file.

Labour Relations Branch

- Advise on identified staff relations issues.
Compensation and Classification
- Make changes to employee’s pay based on submitted leave forms and upon advice from supervisor and Department Human Resources staff;
- Advise employees on their benefit options;
- Ensure correct payment of benefits.

Corporate Human Resource Staffing
- Provide advice and assistance to supervisor and employee’s home Department on vacancies in Yukon government for alternate placement opportunities.

Respectful Workplace Services Office
- Provide advice on and support to addressing identified workplace conflict issues.

Insurance Carrier (LTD Provider and WCHSB)
- Assess and determine benefit entitlement;
- Issue benefit payments;
- Advise with as much advance notice as possible when an employee is capable of returning to work;
- Monitor and review claims; consult with Disability Management Consultants, as required;
- Provide assessment and rehabilitation services for LTD and WCB cases.

Unions
- Represent members’ interests through the application of collective agreement provisions;
- May act as representative or agent of employee.

Attending Physician/Medical Professional
- Examine, diagnose and treat ill or injured employees;
- Complete necessary forms/reports in a timely fashion;
- Identify the need for necessary specialist evaluations;
- Provide medical advice regarding employee limitations, restrictions and return to work;
- May provide advice to Disability Management Consultants on a consultative basis;
- Monitor employee’s recovery.
5.0 Information Sharing and Confidentiality

5.1 Information Sharing

Information about an employee’s mental or physical health and health related absence is personal information which is subject to personal privacy considerations. Such information is collected, used and disclosed within the Government of Yukon in accordance with the Access to Information and Protection of Privacy Act, R.S.Y. 2002, c.1 (“ATIPP”). ATIPP sets out the rules about when personal information may be collected, when it may be used and when it may be disclosed. Other privacy legislation applies to medical practitioners and organizations which may become involved in the accommodation process.

Principles to Guide Personal Information Sharing in the Disability Management Process

♦ Personal Information should only be collected if it is necessary.
♦ Helpful information or useful information should not be collected unless it can be shown to be necessary.
♦ People must be told what legal authority allows the collection of their personal information and why it is being collected (the purpose for it) and who they can contact if they have questions about that collection.
♦ Personal information can only be used or disclosed for a purpose consistent with the law.

ATIPP allows a Government of Yukon collector to use or disclose personal information

♦ for a purpose that is consistent with its original collection;
♦ where it is necessary for the performance of a program;
♦ If the person whose information it is consents to the use or disclosure;
♦ to the government’s lawyers;
♦ if compelling circumstances exist that affect anyone’s health or safety.

Employees should be actively engaged in conversations about how to accommodate their disability. Personal information about their disability that is necessary to share for that purpose may be shared, generally with the employee’s consent.
5.2 **Confidentiality**

The provision of up to date medical information from employees is a necessary component of effective disability management. Employee confidence in the appropriate handling of their medical information is a key to enabling effective decision-making based on individual circumstances.

To comply with the law and to ensure the privacy and security of the employee’s personal information, the employee’s medical information contained on the Functional Abilities Form is received from the physician by the employee. The employee is then expected to consent to the sharing of the Functional Abilities Form with their supervisor and (if necessary) the Health, Safety & Disability Management Branch. The IME report (if any) is received and retained in the Health, Safety and Disability Management Branch. The Health, Safety and Disability Management Branch will consult, as necessary, with the employee, the employee’s supervisor, Departmental Human Resource staff and other members of the employee’s case management team about the information contained in the forms, reports and correspondence as it relates to an employee’s restrictions and limitations and the potential implications on return to work and accommodation planning, as well any required follow-up action.

Employee’s medical information required for the purpose of granting sick leave or LWOP (medical certificate or employee affidavit) is retained by the employee’s Departmental Human Resource branch.

6.0 **Tracking, Reporting and Assessing Return to Work**

6.1 **Tracking and Reporting**

Supervisors, supported by the Department Human Resource branch, will monitor and track sick leave absence for employees (see section 3.1.2).

The Health, Safety and Disability Management Branch will provide a Claims Administration Report for each department on a monthly basis to the appropriate Department Human Resource staff. This report will provide information on the claims and work status of employees with disabilities and the next steps required in the management of the case.\(^2\)

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\(^2\) This includes employee receiving workers’ compensation benefits where known.
Disability Management staff will also meet with appointed departmental staff on a regular basis to review and provide updates about employees from the department who are actively participating in disability management.

6.2 **Recording and Assessing Return to Work/Disability Accommodation**

The Health, Safety and Disability Management Branch will track and record the result of the case and the status of any return to work or disability accommodations (“case closed/completion status” column in Claims Administration Report).

The corporate disability management and accommodation program will be assessed on the basis of the following strategies and indicators that will be monitored and reported on by both departments and the Public Service Commission:

**Strategies:**
- Create and maintain an active focus on employee absence due to illness/injury, in order to identify early intervention opportunities to reduce the impact of injury and illness and lower LTD costs.
- Build and maintain a workplace culture that ensures a safe and healthy work environment and that supports the role of the employer and individual employee in promoting health and wellbeing enabling employees to remain at work healthy and productive.
- Focus on the employee’s capacity and be flexible and innovative in providing work accommodations to support employees in periods of injury or illness and to facilitate their return to work.

**Performance Indicators**
- Sick Leave Usage (75 hours in 150 hours or 37.5 hours with less than 100 hours in back, average annual days of sick leave per employee);
- Annual LTD Claims Incidence rate (number of new LTD claims by average number of employees eligible for LTD coverage); and
- Annual WCB Claims Incidence rate (number of new WCB claims by average number of employees eligible for WCB coverage).
7.0 Associated Materials


- Other Policies:

- YG/PSAC Collective Agreement, Article 25 – YEU employees; Section “M” – Managers; Article 25 and GAM Policy 3.8 – Confidential Employees; and Yukon Teachers’ Association Collective Agreement, Article 20 – YTA employees

- Reports:
  - Claims Administration Report

- Guidelines:
  - Early Identification Guideline
  - Complex Cases Guideline
  - Medical Information – Functional Abilities Guideline
  - Independent Medical Examination Guideline
  - Return to Work Guideline

- Forms:
  - Sick Leave Usage Report (and Instructions Guide for Department Human Resource branches)
  - Medical Information - Functional Abilities Form
  - Functional Abilities Information Sheet
  - Employee Consent to Release of Information
- Return to Work / Accommodation Planning Checklist
- Return to Work / Accommodation Plan
- Accommodation Assignment Agreement