



# **Disability Management and Accommodation Framework**

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## I Framework Foundation

### Vision

All employees with injuries, illness or disabilities are able to remain at work or return to work in an early and safe manner and participate in meaningful and productive work that benefits both the employee and the Yukon government.

### Purpose of framework and guidelines

Yukon government (YG) departments, corporations and the unions have worked in partnership to develop and implement a corporate disability management program that encompasses: early identification and referral to YG disability management services, processes and training for managing employees with disabilities and meeting their accommodation needs, and tracking and monitoring processes for continuous quality improvement.

This framework and the associated guidelines outline the general philosophy, processes, roles and responsibilities used in YG's disability management and accommodation process. While these guidelines provide an understanding as to how YG generally manages/accommodates employees with disabilities, there is no set formula. It is recognized that facts, circumstances and needs regarding each employee are unique.

### Authority

YG's *Accommodating Employees with Disabilities* policy sets out the obligations and requirements of YG for meeting the accommodation needs of employees with disabilities. This General Administration Manual policy (No. 3.59) is based on Section 8 of the Yukon *Human Rights Act* and Section 41 of the Yukon *Workers' Compensation Act*.

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

### Application

The framework and associated guidelines apply to all YG departments, corporations and employees. Not all persons with disabilities will require accommodation. The framework and guidelines pertain only to those employees with disabilities that impact their ability to fully participate in the workplace.

### Definitions

**At Work Services (AWS)** are a suite of services offered by YG's insurer for employees who are identified with a new or changing medical condition that is affecting their work. The services provide support to employees who remain at work through vocational rehabilitation or specialist medical assessments. An AWS referral and assessment may help reduce the need for employees to use their sick leave or access their long-term disability (LTD) benefits.

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**Early Referral Services (ERS)** entail referral to a service offered by YG’s insurer during the 13-week window prior to the establishment of a long-term disability claim. ERS referrals are based on pre-established criteria set by the insurer. Employees who are referred to ERS are not at work and not on LTD. An ERS referral may help reduce the need for long-term disability support by providing timely assessment and recommended treatment to assist the employee’s medical condition or by facilitating the pre-approval of an LTD claim.

**Employee and Family Assistance Program (EFAP)** is a voluntary and confidential service provided to employees and their family members for counselling assistance regarding work and life challenges. See the government website for more information.

**Limitations** mean circumstances where exposure could increase symptoms and decrease success and/or sustainability in a workplace role. For example: following knee surgery, an employee is limited in climbing stairs. The limitation does not mean they can’t climb stairs at all, but exposure to that activity should be limited so as not to increase pain symptoms.

**Mental disability** means any mental or psychological disorder such as organic brain syndrome, emotional or mental illness, or learning disability (from the Yukon *Human rights Act*).

**Physical disability** means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a service animal or on a wheelchair or other remedial appliance or device (from the Yukon *Human rights Act*).

**Restrictions** mean activities a person should not undertake in order to avoid direct medical harm. For example: an employee with a heart condition is restricted from performing work demanding physical exertion and heavy lifting as these could trigger a heart attack.

### **Benefits of disability management and workplace accommodation**

The early identification and assistance provided to an employee who has an injury, illness or a disability benefit the employee by supporting them to either remain at work or return to work quickly and safely, thereby enhancing their mental, physical, social and economic well-being. The employer benefits by the retention of skilled and experienced employees, a reduction of lost work time and the control or reduction of costs associated with ongoing short- or long-term disability management.

There is well-documented evidence that prolonged absence from the workplace has a detrimental impact on a person’s overall health and well-being. Early and sustainable return to work is critical. Research indicates that employees who are absent from work due to an illness, injury or disability have

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only a 50% chance of returning to work after a six-month absence; a 20% chance of returning to work after a one-year absence; and a 10% chance of returning to work after two years away from work.<sup>1</sup>

In general, early identification of potential disability, early referral to services, appropriate accommodation and thoughtful return to work plans result in:

- early stabilization and control of illness, injury or disability and reduction of subsequent complications;
- a reduced risk of a chronic condition developing “co-morbid” conditions such as pain, fatigue, depression, or anxiety;
- individual resiliency and a faster return to the normal activities of daily living;
- improved psychological well-being;
- an employee being supported to remain at work or return to work earlier, resulting in reduced costs to both the employee and the employer;
- the potential to identify and address workplace health and safety issues.

Key services, assistance and policy geared toward the prevention of disability or the early identification and support for employees with disabilities affecting their work include the following:

- Employee and Family Assistance Program
- At Work Services
- Early Referral Services
- Case management
- Employee benefits
- GAM Policy 3.47: Respectful Workplace
- GAM Policy 3.48: Occupational Health and Safety
- GAM Policy 3.59: Accommodating Employees with Disabilities

### **Guiding principles**

The following general principles guide the delivery of disability management, return-to-work and accommodation services for Yukon government employees:

1. **Respect for dignity:** Dignity refers to self-worth, self-esteem, pride and self-respect. Dignity is harmed when people are marginalized, ignored, devalued or stigmatized.
2. **Individualized accommodation:** Each person’s needs are unique. Each person with a disability must be considered, assessed and accommodated based on their unique set of circumstances. Employees also have a responsibility to actively participate in the disability management and

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<sup>1</sup> National Institute of Disability Management and Research [NIDMAR]

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accommodation process and to accept a reasonable offer of accommodation (even if it is not their ideal or preferred job) as outlined in [GAM Policy 3.59: Accommodating Employees with Disabilities](#).

3. **Integration and full participation:** Disabled persons have the same rights as non-disabled persons to be treated with dignity and fully participate in their work environment. They are entitled to access their workspace free of barriers and impediments unless it can be shown that to do so would pose undue hardship.
4. **Confidentiality and protection of privacy:** Personal information of the employee seeking accommodation will be limited to that which is necessary for the identification of a disability, and preparation and implementation of an accommodation or return to work plan. Such information will only be collected with permission of the employee.
5. **Good faith:** All parties in the accommodation process will approach their responsibilities with sincere, honest intentions. In good faith, a “least intrusive” approach will be taken to address an employee’s need for accommodation. This means that supporting information for accommodation will only be sought where there is insufficient information to ensure (a) the safety of the employee and those around him/her, and/or (b) the appropriateness of an accommodation to meet the employee’s health needs.

## **II Fundamentals of Disability Management and Accommodation**

Disability management refers to the coordination of resources to support an employee with a disability that impacts their ability to fully participate in the workplace to either remain at work or achieve a safe and sustainable return to work. It is a collaborative process of assessing, planning, implementing, coordinating, monitoring and evaluating the options and services available to meet an individual’s health needs.

Accommodation is “a change to the work environment or job tasks that enables a person with an impairment to participate in workplace activities safely and productively.”<sup>2</sup> There are limits to accommodation, i.e., the employer is not required to eliminate essential functions of a position, or to lower qualitative or quantitative standards that are applied uniformly to employees with or without disabilities.

Effective disability management and accommodation rely on a clear and widespread understanding of the fundamentals – the basic concepts that drive and inform the process, and the core policy and procedures that are in place to enable stakeholders to play and coordinate their respective parts.

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<sup>2</sup> Definition from National Institute of Disability Management Research (NIDMAR)

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## **Duty to accommodate**

The duty to accommodate is a legal obligation established by section 8 of the Yukon *Human Rights Act*. It arises when a disability impedes an employee's full participation in the workplace and is most often identified when:

- An employee or someone on their behalf requests an accommodation, or
- A supervisor/manager notices changes in an employee's behavior or work habits that indicate that there may be a medical condition requiring accommodation and this becomes verified by medical information. The supervisor/manager has a duty to inquire into an employee's health when the employee's conduct, behaviour or demeanour suggest to the observer that a medical issue is at play.

The duty to accommodate an employee may be satisfied when:

- An offer of reasonable accommodation has been accepted or an offer of reasonable accommodation has been rejected by the employee.
- There is not sufficient information available to effect a reasonable accommodation.
- A determination is made that no accommodation can be offered without incurring undue hardship.

Prior to determining whether the duty to accommodate has been satisfied, departments should consult with their Disability Management (DM) Consultant – an employee of the Public Service Commission (PSC) – and a decision will be made regarding whether Labour Relations staff need to be consulted.

## **Undue hardship**

The employer is required to accommodate a disability that impacts participation in the workplace up to the point of undue hardship.

Subsection 8(2) of the Yukon *Human Rights Act* states that "undue hardship" is determined by "balancing the advantages and disadvantages of the provisions by reference to factors such as:

- a) safety;
- b) disruption to the public;
- c) effect on contractual obligations;
- d) financial cost;
- e) business efficiency."

The duty to accommodate is a YG-wide duty. When it is believed that undue hardship is reached in one department, it needs to be considered whether a reasonable accommodation can be implemented in another one. The DM Consultant and the Corporate Accommodation Staffing Consultant (CASC) – also a PSC employee – will work with departments to identify opportunities that are outside of an employee's home department.



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## Roles and responsibilities:

GAM Policy 3.59: Accommodating Employees with Disabilities describes the roles and responsibilities of the Public Service Commission, departments, and employees in accommodating employees with disabilities. Article 57 of the collective agreement between YG and the Public Service Alliance of Canada (PSAC) articulates the role of unions in this process.

- **The employer** is expected to create a barrier-free work environment by determining what barriers might affect a person needing accommodation, exploring options for removing those barriers, and ensuring information requests are constructive and respect privacy; and to identify and arrange for reasonable accommodation in a timely manner. The employer will generally be required to make adjustments and sometimes bear some of the costs and disruptions to its operations (up to undue hardship).
- **An employee** is obligated to respect and cooperate with the accommodation process. This includes notifying the employer of their need for accommodation and providing medical information and any other relevant information about their condition or disability that affects their ability to attend regular work hours, perform regular duties, or comply with the other terms and conditions of employment. Employees are also responsible for following treatment and/or rehabilitation programs recommended by attending health professionals as part of the accommodation plan. Employees must fully cooperate in the effort to find and try a reasonable accommodation, recognizing that any preferred or requested accommodation may not be possible.
- **The union**, when requested by the employee, is obligated to cooperate and work with the employer and employee in finding and supporting reasonable accommodation for the employee. Unions are also required to work with the employer for a solution when a provision of a collective agreement needs to be modified or waived, with respect to a particular employee, to permit an accommodation to proceed,

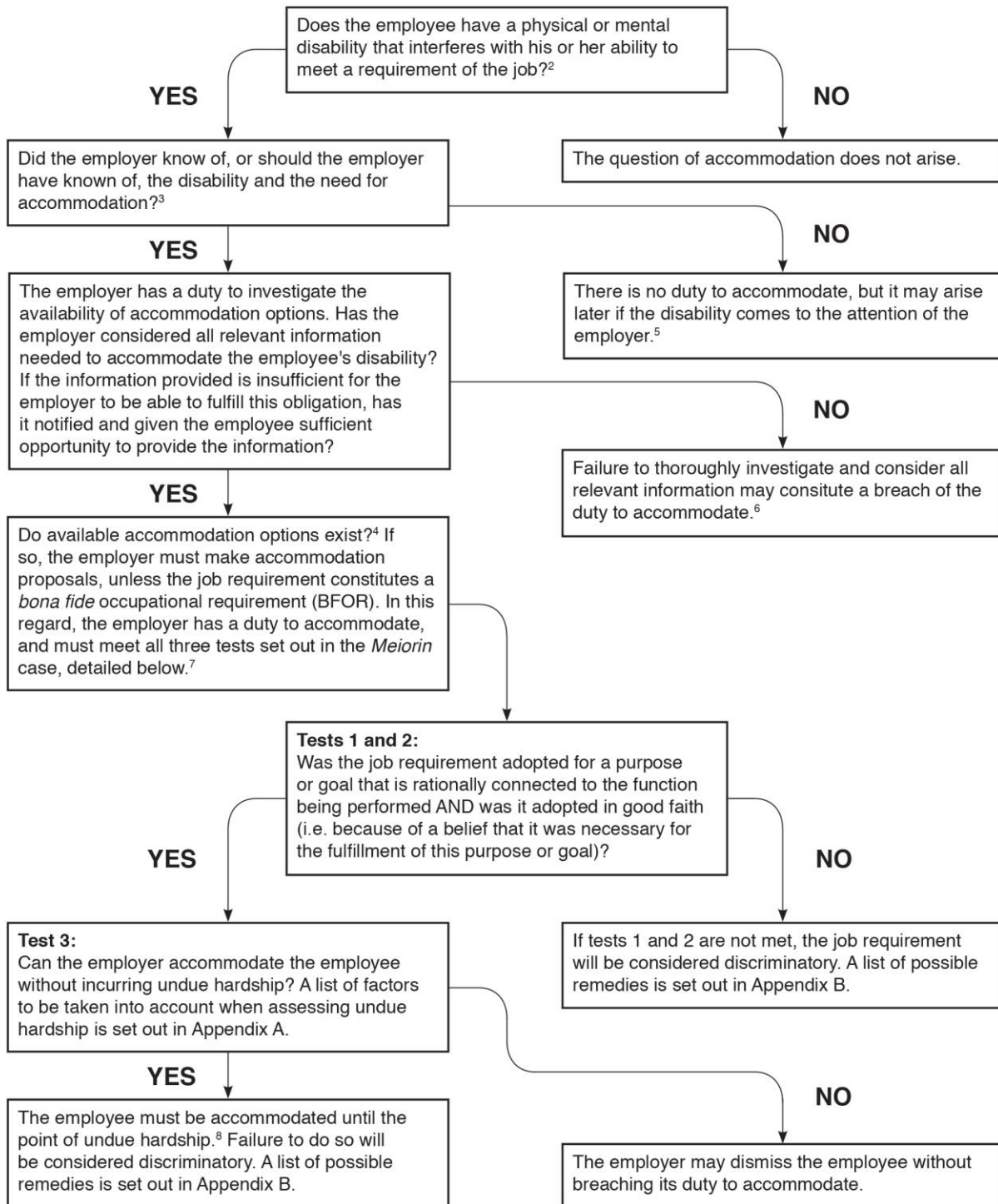
More details on the specific and additional roles and responsibilities of stakeholders are outlined in Appendix A: Roles and Responsibilities.

All YG departments share in the duty to accommodate, pursuant to the Yukon *Human Rights Act*. This includes accommodating employees who transfer to different departments within the organization and, where appropriate, providing alternate placements in the event no suitable position is available within an employee's home department.

The following flow chart maps out the process for determining the duty to accommodate. Permission for the use of this chart was granted by Lancaster House Legal Publishing, Toronto.



# LANCASTER'S ROADMAP ON DISABILITY AND THE DUTY TO ACCOMMODATE IN CANADA<sup>1</sup>



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## Decision-making authority

Under the *Public Service Act*, Deputy Ministers have the responsibility to supervise the employees and the business of their departments. They are entitled to and routinely delegate many of these authorities to unit heads or other managers. Although employees' direct supervisors have key roles to play in the accommodation process because of their knowledge of operations, the manager or unit head with delegated authority to make decisions has responsibility for accommodation processes and outcomes.

Under the *Education Act*, Principals and Vice-Principals are the direct supervisors of teachers and other educators, are in charge of most administrative matters that arise in schools, and have key roles to play in the accommodation of the staff they supervise. Where an accommodation decision will affect whether the employee remains in a particular school, the Superintendents, who perform the duties of a director for the schools in their attendance areas, must be involved in decision-making.

Departmental HR staff are the primary contacts for supervisors, managers, vice principals, principals, and superintendents for advice respecting accommodation options and approaches, and they, in turn, may consult with their respective Disability Management (DM) Consultant for more extensive advice, and when a case is identified as complex.

Generally, if an accommodation is a simple one (e.g., an employee with a broken arm can't type, or an asthmatic has a flare-up and is affected by a dusty environment), the manager and/or supervisor can make accommodation decisions. Decisions will necessarily involve conversations with the employee, and may require consultation with HR.

If accommodation is required for a complex case (see Guideline: Complex Cases in the appendices), it is the manager with delegated authority that makes decisions, in consultation with HR and the DM Consultant. Complex cases are those cases which present complexities such as the following:

- Permanent limitations and/or restrictions are identified indicating an out-of-occupation accommodation will be required;
- There have been multiple attempts at accommodation due to the evolving nature of disability;
- There is a lack of clarity about the employee's limitations and/or restrictions or accommodation requirements;
- Workplace safety risks have been identified;
- The case involves substance abuse, addictions, mental health or psychiatric illnesses; or
- The accommodation needs are concurrent with performance issues.

Decisions regarding out of occupation / out of department accommodations are more challenging. Out of occupation considerations require staff from different departments to work together to identify a suitable accommodation for an employee. DM Consultants and/or the Corporate Accommodation Staffing Consultant (CASC) will facilitate discussions between the managers and HR in order to develop agreements between the responsible managers. DM Consultants will oversee this process, ensuring

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that roles and responsibilities are understood by all parties and ensuring timeliness of decisions. Until permanently placed, employees remain “attached” to their home department; the home department must consider the “attached” employee for every possible temporary or permanent position/project that becomes available in that department. Deputy Ministers have the final decision-making authority for their department on out-of-occupation accommodation.

### **Dispute resolution**

Disputes regarding the appropriateness of an accommodation may arise from either the employee or employer during case management. The path to resolution will depend on the facts and circumstances of each individual case. A bargaining unit employee may file a grievance under his/her collective agreement at any time. Confidential or managerial employees may grieve under GAM 3.8 or Section M respectively, or may seek advice or assistance from the Human Rights Commission.

In the event of a dispute among branches or departments, which can arise where an out-of-occupation or out-of department accommodation is called for, the process will be as follows:

- The facts and circumstances will be clearly documented by the case management team with a proposed plan for resolution if possible, and reported to the Director of Health Safety and Disability Management (HSDM) by the DM Consultant.
- The Director will review the report and discuss with other senior management as appropriate (e.g., Director of Corporate Human Resource and Diversity Services (CHRDS); Director of the Respectful Workplace Office);
- If the dispute cannot be resolved with the assistance of that level, the HSDM Director will report to the Public Service Commissioner details of the case.
- The Commissioner will take whatever action he deems appropriate, including discussions with other relevant Deputy Ministers.
- Final results will be reported by the DM Consultant to the case management team.

### **Reasonable accommodation**

A variety of terms to describe an accommodation are used by stakeholders in the accommodation process such as “reasonable”, “suitable”, or “meaningful.”

The reasonableness of an accommodation is assessed against the particular facts and circumstances of each individual case. Such an accommodation meets the employee’s limitations, restrictions and abilities; is safe and does not put the employee or co-workers at risk or hinder recovery; and is meaningful in that the work makes sense, has a point, and benefits some greater good (the work is something that the employer conceivably could pay someone to perform).

Reasonable does not mean perfect. A reasonable accommodation may not be the employee’s preferred job.

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## Leave entitlements

Leave from work necessitated by the accommodation process is governed by the leave provisions in the collective agreements and the conditions of employment for managers, legal officers and Deputy Ministers (known as Section M). These provisions are summarized below.

- If a disability prevents an employee from coming to work, they are entitled to use sick leave.
- Special leave, or Personal Needs Leave (PNL) for managers, applies if the employee is attending a medical or counselling appointment (e.g. Employee and Family Assistance Program or monitoring appointments).
- Submission of a leave request is required for these absences and may be completed by the supervisor if the employee is unable to do so.
- Employees are requested, where possible, to make medical or counselling appointments outside of their regular hours of work.
- Time to attend case management meetings or other planning meetings with the employer do not require that the employee take leave, but their supervisor must be aware so that operational requirements can be managed while the employee is out of the workplace.
- Supervisors should be aware of employees' need for these appointments and do their best to facilitate an employee's time away from work for these purposes.
- When a disability keeps an employee out of work for a prolonged period, the YG Disability Claims Administrator (PSC's Health, Safety and Disability Management branch) can assist with applying for long-term disability (LTD) benefits.

## III Case Management

The goal of case management is to help employees remain at work or facilitate an early and safe return to work. It is best accomplished with an integrated team, the "case management team" (CMT), regardless of whether a case is simple and straightforward, or more complex in nature.

Successful outcomes require effective case management and include:

- Early identification – *determined through an employee's disclosure or employer observation*
- Case analysis – *whether sufficient information is available, whether simple or complex*
- Understanding of the duty to accommodate – *having clear understanding of this framework*
- Creative thinking – *when identifying accommodation options*
- Using a team approach – *shared expertise, communication and accountability*
- Timely decisions – *based on timely flow of information and communication*
- Coordinated and efficient management of workplace issues – *carried out proactively and concurrently with case management*

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## **Simple case management**

The CMT may comprise the employee, the supervisor and/or manager, and as needed Human Resources (HR) staff. The employee will be invited to include their union advisor if they wish to do so.

An example of simple case management is as follows: an employee may be absent for a few days, but can then return to work requiring a minor accommodation such as a job modification, modified duties (to accommodate a broken limb, for example) or acquisition/purchase of adaptive equipment. Generally, the employee's supervisor/manager, in consultation with the employee, will manage these cases directly and advise HR. An employee may be able to provide sufficient information regarding their needs to enable an appropriate accommodation. If the supervisor is unsure whether the information provided by the employee is sufficient for an effective accommodation, the supervisor may consult with HR. HR may contact the DM Consultant for advice on whether additional information is needed and how best to obtain the information (as described below in the section "Information to support return to work and accommodation"). The supervisor/manager will open a case file for the employee and document the need for accommodation and efforts made. (Documentation requirements are addressed elsewhere in this document.)

## **Complex case management**

Other cases may be more complex and require the leadership of a DM Consultant to oversee the case management process. A separate guideline has been developed that provides the definition of a complex case, and outlines general procedures for managing complex cases (see *Guideline: Complex Cases* in the appendices). For complex cases, the CMT comprises the employee, the employee's supervisor/manager, the employing department's HR, the DM Consultant and other parties with expertise as required. At the request of the employee, their union representative will be included on the CMT.

DM Consultants are specially trained staff (in PSC's Health, Safety and Disability Management branch) who have the responsibility and expertise to provide leadership for, and oversee the management of, complex cases. They provide (a) disability management and accommodation coordination, expertise, and assistance, and (b) medical clarification in collaboration with YG departments' HR, supervisors and employees. They ensure that the roles of each team member – including who is chairing meetings and who will be making decisions – are clearly identified and documented. The DM Consultant also ensures that team tasks and any difficulties arising during case management are addressed in a timely fashion.

## **Return to work planning**

Return to work planning is transitional and generally for a fixed duration, but is also a flexible process depending on employee needs. It provides a roadmap for supervisors/managers to proactively assist an ill, injured or recovering employee return to work in a safe and sustainable manner. Ideally the employee will return to their substantive position either with or without modifications, but if that is not

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possible, other accommodation options will be identified with the employee. See *Guideline: Return to Work and Accommodation* in the appendices.

### **Accommodation options**

A variety of options are considered when addressing an employee's accommodation needs. Possibilities include implementing changes to the physical work environment or equipment, modifying how and when tasks are performed, and exploring other job opportunities within departments. Both GAM Policy 3.59 and the *Guideline: Return to Work and Accommodation* outline accommodation options. Departmental HR may contact a DM Consultant for advice on any of these.

### **Bona fide occupational requirement (BFOR)**

One of the first steps in considering an accommodation is to determine the BFORs of the employee's substantive position. It may be that removing some tasks that are not BFORs may provide sufficient accommodation for either the short or long term.

A *bona fide* (or good faith) occupational requirement ("BFOR") is a standard, rule or requirement which must be achieved or met by employees to meet job expectations. Some examples are:

- A standard of correctness in the dispensing of medication in a health care facility.
- The rule that safety gear must be worn in dangerous worksites.
- A requirement that employees be on time for meetings held at the start of each shift to review the tasks for the day.

Some rules or standards have the effect of excluding persons with disabilities from performing the particular work. In such a case, the rule or standard could discriminate against such persons and must be reviewed to determine if it is in fact needed and, if so, whether modifications can or cannot be made that would permit the disabled employee to perform the work without sacrificing the purpose of or need for the standard.

To defend that a standard is a BFOR, the employer must show actual evidence supporting the employer assertions about the risks and consequences. Anecdotal or impressionistic evidence is, generally, insufficient. The following points must be demonstrated:

1. that the employer adopted the standard for a purpose rationally connected to the performance of the job;
2. that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose;
  - *Why was the standard developed?*
  - *When and by whom was the standard developed?*
  - *What process was used to develop the standard?*

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3. that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose.

- *Were alternatives to the standard or requirement considered?*
- *If so, why were they not adopted?*
- *Must all employees meet a single standard, or could different standards be adopted?*
- *Does the standard treat some more harshly than others?*
- *If so, was the standard designed to minimize this differential treatment?*
- *What steps were taken to find accommodation?*
- *Is there evidence of undue hardship if accommodation were to be undertaken?*

Disability Management Consultants can assist in determining whether a standard is a BFOR and he/she may consult Labour Relations for this purpose.

### **Out of department/out of occupation accommodations**

When all efforts to find accommodation in the home department have been exhausted, out of occupation or out of department accommodations will be considered. At this point, the Corporate Accommodation Staffing Consultant will join the case management team to assist with the identification and facilitation of an appropriate, out of department accommodation.

### **Assessment tools**

Some of the tools used by the employer to assist in identifying effective accommodation options include ergonomic assessments (conducted by specially trained providers and involving designing workstations, work processes, equipment and tools to suit the employee); functional capacity evaluations (which are systematic methods of measuring an individual's ability to perform meaningful tasks on a safe and dependable basis, conducted by specially trained service providers); and transferable skills analysis (tests or logic to determine what positions a person may fill if they can no longer perform their substantive position).

### **Information to support an accommodation / return to work plan**

The employer requires clear medical information regarding a disabled employee's physical or mental restrictions, limitations and prognosis in order to identify effective return to work/accommodation plans.

There are two types of medical or health-related information the employer may collect with respect to an employee who reports an illness, injury or disability:

- Information to help verify that an employee is ill and entitled to sick leave benefits, and
- Information to trigger and support an accommodation for an injury, illness or disability that impacts the employee's ability to fully participate in the workplace.



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An employee must provide sufficient, timely information to both support the need for an accommodation and allow the employer to craft an effective accommodation.

If the department's supervisor or HR does not have sufficient information to determine whether an accommodation is necessary and, if so, how best to accommodate the employee, HR will consult with a DM Consultant about what information is needed and how to obtain it. With the employee's consent, and in order to protect an employee's privacy and ensure efficient acquisition of needed medical information, the DM Consultant will be the central person to request and receive medical clarification and provide to the CMT only that information pertaining to the employee's restrictions, limitations and prognosis.

Options for obtaining medical clarification for accommodation purposes the DM Consultant and HR will consider, based on the facts and circumstances of the case and with employee consent, include the following:

- **Targeted letter to the physician** asking specific questions regarding the employee's disability (information being requested is shared with the employee who may either take the letter to their physician, or consent to the DM Consultant sending the letter to the physician).
- **Functional Abilities Forms (FAFs)** – this option relies on a request being made to the DM Consultant for clarification of medical information and agreement by the DM Consultant that this is the preferred method. The DM Consultant will send the form, with the employee's name on it to the departmental HR, who then forwards it on to the supervisor for completion of the supervisor's portion. The supervisor will then pass the form to the employee to take to their physician. The physician will provide a completed copy to the employee and also send a copy to Disability Management Unit of PSC's Health, Safety and Disability branch. The DM Consultant will then determine what information needs to be shared with the departmental HR.
- **Referral to Great West Life's At Work Services or Early Referral Services** for assessment.
- **An Independent Medical Evaluation (IME)** – a medical evaluation performed by an independent specialist qualified in the specific area of expertise related to the employee's condition (e.g., psychiatry, occupational medicine, etc.). The IME provides objective, limited reporting and does not establish a therapeutic relationship with the client or provide treatment.

Keeping in mind the principle of acquiring information by the least intrusive method possible, the DM Consultant provides advice on the above options, and develops and coordinates any required action.

### **Communication**

When an employee is going to be away from the workplace for a period of time, and the supervisor needs clear medical information to assist with return to work and/or accommodation planning, a routine for ongoing communication between the employee and their supervisor or HR must be established. The purpose of ongoing communication is twofold: to assist the employee to remain engaged in the workplace and to promote an exchange of information that enables planning for the needs of the employee upon return to take place expeditiously and with reasonable notice. A plan for ongoing communication between the supervisor/manager or HR and the employee should be documented and will include the following:

- The specific method by which the supervisor/HR and employee will stay connected.

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- The frequency of communication that works best for the individual employee in the particular situation.
  - Timely provision by the employee of information the employer requires to plan for the employee's return

### **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.

### **Timeframes**

The employee must provide details regarding a return to work date and whether an accommodation will be required, with supporting medical information as needed, with sufficient notice (at least two weeks) to allow the employer time to consider the information. It should be noted that two weeks may not be sufficient time to find suitable accommodation, especially where the employer has to obtain more detailed information from the employee's physician. The employee may be asked whether they can manage in their substantive position (with necessary modification) for a short time or are willing to take a position that meets the known limitations and restrictions until additional information is available and a better accommodation can be found. If the employer is not provided with adequate information in a timely fashion, they will not be able to provide suitable accommodation in a timely fashion.

### **Privacy**

Medical information and any other information the employer may also need about an employee (such as their education and employment history) are defined as "personal information" in the *Access to Information and Protection of Privacy Act (ATIPP Act)*. The employer is required to collect, store, retain, use, protect and disclose an employee's personal information in accordance with the requirements of the act.

When an accommodation related to a disability is required, the Disability Management Unit (DMU) handles this information on behalf of the YG in strict accordance with ATIPP requirements. The DM Consultant collects information and shares only that information which the CMT needs to identify an accommodation option. Appendix B: Privacy Management describes the types of information the DMU collects and how it meets requirements under the *ATIPP Act*.

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## Documentation

Good documentation practices are to be followed. A supervisor/manager will establish a working case file for an employee who has requested an accommodation, or for whom a duty to inquire and a duty to accommodate have been triggered. Working case files will include:

- Any request for accommodation or information about how the supervisor became aware of the need for accommodation.
- Dated notes of all efforts made to determine the extent of the employee's need for accommodation.
- Dated notes of conversations, meetings and telephone discussions held in relation to the accommodation, with notations providing the following:
  - Record of the accommodation options considered including those rejected as being unsuitable and the rationale for the rejection
  - Record of all expert advice obtained to assist in the accommodation process.
  - Record of all offers of accommodation, the employee's response to each offer and the employee's reasons for each response.

Departments must maintain records of the need to accommodate employees, and their efforts to do so, for continuity and quality improvement purposes. In order for the DMU to determine and report on the overall extent and impact of the employer's efforts to accommodate employees' disabilities, departments are also required to report to the DMU on all accommodations lasting longer than six weeks and keep records in accordance with departmental record retention schedules.

## IV Training and Support

There are a number of sources of training and support available to assist employees and management to carry out their roles and responsibilities with respect to accommodating disabilities. These include:

- HR staff
- DMU staff
- Organizational Development training
- Webinars/conferences/training from external sources
- Courses coordinated and/or provided by various branches such as the Health, Safety & Disability Management branch or the Respectful Workplace Office
- Unions who provide advice and assistance to employees

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## V Quality Improvement

### Tracking

- The DMU has worked with our Human Resource Management Systems analyst to create a tool for departments (HR and managers/supervisors) to use to produce their own Sick Leave Usage Report (a list of those employees who use 75 hours out of 150 hours monthly, or use 37.5 hours with less than 100 hours remaining in their “bank”). While the reports do not necessarily indicate a disability is present, departments should produce and review their report, raise discussion with identified employees if necessary to determine whether DMU involvement may benefit the employee and then contact the DM Consultant for that department for discussion about options.
- DMU staff meet with designated departmental staff on a regular basis to review and provide updates about their employees who are in the disability management process.
- The DMU regularly meets with YG’s insurer to review the progression and status of all cases referred to the insurer or on LTD.
- The DMU provides monthly “dashboard” reports to all Deputy Ministers which will show aggregated sick leave usage, LTD and accommodation information and trends for their department and government as a whole. The dashboards do not contain any employee-identifying information.
- The Corporate Health and Safety Unit provides monthly reports to all Deputy Ministers on worksite inspections and hazard identification to ensure departments are aware of their progress in meeting Occupational Health and Safety requirements. This awareness helps departments take measures to promote employee safety and the prevention of illness or injury while on the job.

### Evaluation of the Disability Management Program

The Corporate Disability Management Program will be assessed on the basis of the strategies and indicators described below. These are monitored both by departments and the PSC.

#### *Strategies*

- Establishing and maintaining a workplace culture that ensures a safe and healthy work environment that will enable employees to be healthy and productive while remaining at work.
- Focusing on each employee’s capacity and being flexible and innovative in providing workplace accommodations to support employees during periods of injury, illness or disability, and to facilitate their return to work.
- Creating and maintaining a proactive focus on employee absence that is due to illness, injury or disability to identify early intervention opportunities. This can not only reduce the impact of an injury, illness or a disability but can also lower long term disability costs.

#### *Performance Indicators*

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- Sick leave usage – number of employees who use 75 hours out of 150 hours monthly, or who use 37.5 hours with less than 100 hours remaining in their “bank”; average annual days of sick leave per employee;
  - Number, types and outcomes of workplace accommodations;
  - Annual incidence rate, types and costs of LTD claims; number of new LTD claims as a percentage of the average number of employees eligible for LTD coverage.

## **VI Reference Documents**

### **Key policy document**

- Government of Yukon, General Administration Manual, Volume 3: Human Resource Policies – Policy 3.59: [Accommodating Employees with Disabilities](#)

### **Other relevant documents**

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

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## Appendix A: Roles and Responsibilities

### Supervisors/Managers/Vice-Principals/Principals

- Create and maintain an inclusive, barrier-free and accessible workplace in which each employee can make an optimal contribution; take steps to remove any barriers that might prevent this.
- Understand the duty to accommodate and actively participate on Case Management Teams and all processes to facilitate an accommodation.
- Understand the duty to inquire and initiate the discussion with an employee when there are concerns that an employee has an illness, injury or disability that affects their ability to perform their work duties.
- Inform employees about the employer's duty to accommodate and procedures for obtaining accommodation.
- Consult departmental HR staff when there is a concern that an employee has an illness, injury or a disability that affects his/her ability to work, or when the employee indicates this is so.
- Collaborate with the HR staff on the need for additional information to help identify accommodation options.
- Implement an accommodation with the assistance of HR for simple cases (HR may consult with DM Consultant as needed).
- Remain open minded and consider the implementation of an accommodation for out of occupation employees.
- Provide support for employees being accommodated.
- Provide the employee with the contact information for the EFAP program or Respectful Workplace Office.
- Refrain from making a determination that a job requirement is a "bona fide occupational requirement" prior to discussing the matter with HR.
- Prepare and submit leave requests for an employee on a gradual return to work plan or when an employee is unavailable to submit a leave request due to extended or unexpected absences.
- Assist employees in accessing or tracking their sick leave
- In conjunction with HR staff, facilitate department decision-making to support accommodations and secure approval of related expenditures.
- Foster a culture of support and openness with all employees in the return to work and accommodation processes.

### Department Human Resources Staff

- Assist supervisors to implement an employee's need for accommodation.
- Actively participate in the case management processes and provide advice and support to the supervisor and employee.
- Act as primary contact for the supervisor, employee, RWO, and DMU in the case management process.
- Participate on the Case Management Team
- Identify a designated HR lead to be the DMU's primary contact for review of Sick Leave Usage Reports. Review the Sick Leave Usage Reports with supervisors in a timely way to identify patterns of leave usage that may indicate an underlying health concern. Address any identified concerns with the supervisor, provide advice on how to approach the employee and discuss with the DMU those cases where early intervention may benefit the employee.

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- In collaboration with DM Consultants, identify specific employees who may meet the criteria for early intervention through: At Work Services (AWS), Early Referral Services (ERS), Independent Medical Examination (IME) or case management.

### **Disability Management Consultants – Public Service Commission**

- Provide leadership and oversee the disability management and accommodation processes for complex cases.
- Explain and discuss with employees the purpose and nature of disability management services.
- Support HR and supervisors/managers in simple case management, as required.
- Arrange and coordinate referrals to early identification and intervention services.
- Obtain, clarify and share medical information as appropriate.
- Collaborate with Case Management Team members, providing advice, expertise and support.
- Ensure team members understand their roles and hold them accountable to these roles in a timely fashion.
- Provide expertise with respect to the duty to accommodate and the accommodation process.
- Authorize payment to the insurer and to IME providers for their services.
- Make key determinations and decisions (in collaboration with HR and the employee), such as the following:
  - That an employee may benefit from the early intervention services.
  - The type of information that is needed to determine an employee's limitations, restrictions and prognosis, and the appropriate way to get this information.
  - The type and extent of information that will be shared with the Case Management Team, respecting the principles of privacy and a least intrusive approach.
  - The appropriateness of a proposed accommodation with respect to the available medical information and the employee's skills.
  - That there is a blockage in the accommodation process and need to elevate the case for resolution.
  - That an accommodation is/isn't working and next steps

### **Corporate Accommodations Staffing Consultant**

- Conduct transferable skills assessments.
- Review available information on an employee's limitations, restrictions, abilities and prognosis to identify suitable positions.
- Review available vacancies across departments to identify suitable alternate placement opportunities, including out-of-occupation placements.
- Liaise with the Case Management Team and RWO as needed.
- Participate in dispute resolution processes as required.

### **Compensation and Classification**

- Advise employees about benefit options and ensure correct payment of benefits and pay based on leave and claims approvals.

### **Disability Claims Administrator– Health, Safety and Disability Management Branch**

- Process and manage information and files related to applications for claims, benefits and services available through the Disability Management Unit.
- Manage administration of the LTD program and claim files.

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### **Labour Relations Branch**

- Advise HR staff and DMU staff on relevant case law and accommodation, performance, discipline or collective agreement issues (interpretation, recommendations).
- Negotiate with union/association, where an employee's accommodation needs require changes to collective agreement

### **Respectful Workplace Office**

- Provide advice and support to the Case Management Team for addressing identified workplace conflict issues.
- Work with employees and supervisors to address conflict in the workplace.

### ***Other participants***

#### **Attending Physicians / Medical Professionals / Health Care Providers**

- Examine, diagnose and treat ill, injured or disabled employees and monitor their recovery.
- Complete necessary forms/reports in a timely fashion and identify the need for necessary specialist evaluations.
- Provide clear medical advice regarding an employee's limitations and restrictions (including the permanency of each), prognosis and return to work prospects.
- Provide advice to DM Consultants on a consultative basis, as needed.

#### **Insurance Carriers (LTD Provider and YWCHSB)**

- Assess and determine benefit entitlement and issue benefit payments.
- Provide assessment and rehabilitation services for AWS, ERS, LTD and Worker's Compensation cases.
- Monitor and review claims, consult with DM Consultants and HR as required, and provide regular updates to DM Consultants on individual cases.
- Advise with as much advance notice as possible when an employee is able to return to work.

#### **Medical Monitor**

- Develop with employees a monitoring and relapse prevention agreement
- With the employee's consent, communicate with health care providers/counsellors and the employer.
- Report to employer on the employee's compliance with the monitoring and relapse prevention agreement.
- Perform biologic sampling and testing.



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## Appendix B: Privacy Management

### Types of personal information

The personal information that the employer may need when considering an accommodation generally falls into the following categories:

- Medical information about:
  - Whether a medical condition disables an employee
  - The nature of the disability
  - The limitations and restrictions associated with the disability that impede the employee from participating in the workplace and meeting job requirements
  - Health history information that is relevant to accommodating the disability
  - Whether there is a treatment program in place and whether the employee is participating in the treatment
  - Any limitations and restrictions brought about by medical treatment of the disability
  - The prognosis for recovery and return to work
- Other personal information
  - Education and employment history
  - Qualifications and experience

### Requirements and practice

#### *Collection*

In accordance with subsection 29(c) of the *Access to Information and Protection of Privacy Act*, and also because of the extremely personal nature of some of the information, the DMU collects only such personal information that relates to and is necessary for carrying out the objective of finding a reasonable accommodation. The DMU typically asks for redacted reports. It does not ask for full medical reports.

In accordance with section 30 of the Act, the DMU collects this information only from the individual being accommodated or an alternate source with the individual's consent. The information sought most frequently from an alternative source is medical information as described above, sometimes from the employee's local health care providers and sometimes from independent experts (through a independent medical examination request) or other professionals (e.g., occupational or physio therapists, substance abuse professionals).

The Act, in section 31, also requires that the employer ensures the accuracy of the personal information if it will be used to make a decision that affects the employee. DMU ensures this by providing the employee with copies of any personal information it obtains from other sources. This gives the employee the opportunity to submit any corrections they consider necessary.

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### *Retention*

If the personal information will be used to make a decision that affects the employee, it must be retained for at least one year so the employee may access it, in accordance with section 34 of the Act. In practice, the DMU retains the information until the later of the following:

- the one year specified in the Act,
- when a reasonable accommodation has been found,
- when any grievances arising out of the accommodation process have been resolved, or
- three years in accordance with the Records Retention Schedule.

### *Protection*

As required by section 33 of the Act, security arrangements are in place to protect against such risks as accidental loss or alteration and unauthorized access, collection, use, disclosure or disposal. The DMU stores the information securely such that it is accessible only by those in the DMU who need to access it for accommodation purposes.

### *Use*

The personal information collected and retained by the DMU may and will only be used for the purpose of collecting it – to develop an accommodation plan – or for a consistent purpose.

### *Disclosure*

Section 36 provides guidance for a public body for disclosure of personal information. Within these limits, disclosure of an employee's personal information by the DMU is generally limited to two scenarios:

- **Disclosure to health or social services providers** – when seeking information from health or social services providers, the DMU will pose specific questions to them and provide them with relevant facts that they will need to know in order to answer the questions. This may include copies of medical information already in DMU possession and known to the employee, as well as information about the employee's job, what has been observed, etc. The questions to the providers are objective, based on all existing relevant facts and circumstances, and open-ended – that is, they are not drafted in such a way as to attempt to lead the medical or other professional toward a particular conclusion. The employee being accommodated may see these questions, discuss them with the DM Consultant to understand why they are being asked and see what is being disclosed, prior to the letter being sent.
- **Disclosure to the Case Management Team (CMT)** – to protect the privacy of employees being accommodated, the well-established practice is to share only the information that is needed to make a decision about an accommodation, and to share it only with persons who need to know it to make a decision. Medical reports may contain information that, although relevant to the medical conclusions and advice, may not be relevant to the task of accommodation, and will not

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be shared unless there is an accommodation purpose to sharing such information. Generally, the information that decision makers need to know includes the nature of the disability, the limitations and restrictions (features or characteristics of the disability that impede participation in the workplace), whether there is a treatment plan in place and whether the employee is participating; and the prognosis. The DMU selects from the medical reports or reports from other service providers the information that addresses accommodation needs and does not otherwise disclose these reports. This information cannot be disclosed to or discussed with others, with the only exception being the department's authorized decision-maker, if this person is not on the CMT.

It should be noted that, when a grievance arises out of the accommodation process, the collective agreement disclosure provisions require that the parties disclose all facts and circumstances pertinent to the grievance. Depending on the issue grieved, the DMU may be called upon to release to the employer's grievance representative any relevant information that has not been shared with the CMT. For example, if the grievance involves a dispute about the nature or extent of the disability, information contained in a report that was not relevant to the task of planning an accommodation may be relevant to the grievance. The parties to the grievance generally reach agreement on what can and must be shared, and, failing such agreement, have the recourse to ask the applicable labour board for direction or orders.