



Disability Management and Accommodation Framework

Guideline:	Mental Disabilities (supplement to Complex Cases guideline)
Cross reference:	<ul style="list-style-type: none">▪ GAM Policy 3.59: Accommodating Employees with Disabilities▪ Disability Management and Accommodation Framework
Approved by:	
Review date:	

Purpose

The purpose of this supplement is to provide additional guidance for addressing some of the challenges that may arise in the course of working with and accommodating an employee with a temporary or permanent mental disability.

It is important to note that not all employees with mental disabilities require accommodation. Some employees with mental disabilities will be able to fully participate in the workplace and perform their job duties and thus, require no accommodation; while others may experience a significant impact on their ability to participate in the workplace. Some of the challenges associated with mental disabilities include:

- Memory, concentration, decision-making or other cognitive limitations that affect an employee's ability to fully perform the duties of their job;
- Behaviour issues that affect working relationships with colleagues; and
- Employee trust issues that affect an employee's ability to engage in the accommodation process because of the stigma that still attaches to mental disabilities.

In addition, employees with a mental disability may have other disabilities as well, which can exacerbate the effects of the mental disability.

Definitions

- **Mental disability** is defined in the Yukon *Human Rights Act* as “any mental or psychological disorder such as organic brain syndrome, emotional or mental illness, or learning disability.”¹
- **Mental illness** according to the Canadian Psychiatric Association, generally means “significant clinical patterns of behaviour or emotions associated with some level of distress, suffering (pain, death), or impairment in one or more areas of functioning (school, work, social and family interactions).”²
- The definitions that are provided in GAM Policy 3.59 Accommodating Employees with Disabilities, and the *Disability Management and Accommodation Framework* also apply to this supplement.

Process

Keeping in mind that the approach to and decisions made during employee accommodation are governed by the unique facts and circumstances of each employee and their disability, managers/supervisors and other members of the Case Management Team should generally follow the process outlined below.

Early identification

Mental disabilities might be disclosed by an affected employee, or identified by observing changes in or concerns with an employee’s attendance, performance or behaviour, which triggers the employer’s obligation to initiate a discussion with the employee about a possible need for accommodation of a disability (i.e. duty to inquire).

The Canadian Human Rights Commission’s publication *Policy and Procedures on the Accommodation of Mental Illness*³ identifies a number of characteristics or behaviours that may indicate an employee has a mental health problem, including:

- Consistent late arrivals or frequent absences;
- Lack of cooperation or a general inability to work with colleagues;
- Decreased productivity;
- Increased accidents or safety problems;
- Frequent complaints of fatigue or unexplained pains;
- Difficulty concentrating, making decisions or remembering things;
- Making excuses for missed deadlines or poor work;

¹ Section 37, Yukon *Human Rights Act*.

² *Mental Illness and Work*. <https://ww1.cpa-apc.org/MIAW/pamphlets/Work.asp>

³ http://www.chrc-ccdp.gc.ca/sites/default/files/policy_mental_illness_en_1.pdf

- Decreased interest or involvement in one's work;
- Working excessive overtime over a prolonged period of time;
- Expressions of strange or grandiose ideas; or
- Displays of anger or blaming others.

Generally, successful accommodation is dependent on the employee advising the employer of a disability that requires accommodation, and providing medical information verifying the disability and advising on restrictions and limitations. In the case of mental disabilities that affect employee participation in the workplace, it may not always be reasonable to expect an employee to disclose their situation. For instance:

- The employee may not be aware that they have a mental disability or that their behaviour is negatively impacting the workplace.
- The employee may not want to bring a mental disability to the attention of their supervisor because of stigma or shame, or because they fear discrimination, or fear of job loss.

Duty to Inquire

"Duty to Inquire" refers to the obligation of the employer to ask an employee about a possible need for accommodation of a disability when the employee's attendance, performance or behaviour suggests to the observer that a disability may be a factor in the attendance, performance or behavior. The employer must ask the employee for an explanation for their behavior, and consider any disability-related explanations, before making any decisions that could negatively impact the employee. However, it is not the manager/supervisor's job to diagnose a mental disability.

When an employee's workplace attendance, performance or behaviour has become problematic or concerning, the supervisor should arrange a fact-finding/investigation meeting with the employee and offer union representation. During the meeting the supervisor should:

- (a) factually describe to the employee the concerns about his/her attendance, performance or behaviour that has been observed or brought to his/her attention;
- (b) offer the employee an opportunity to explain the reasons for the attendance issues, poor performance or misconduct or change in behavior;
- (c) duty to inquire – Explain the employer's duty to accommodate all disabilities and then ask the employee if there is anything else the employee would like the employer to consider with respect to the concerns raised. Also, let the employee know about other workplace supports such as the Employee and Family Assistance Program (EFAP).

If the employee denies a disability exists, the employer will deal with the attendance, performance or other behavior issues according to workplace policies (which may include a disciplinary action). If the employee acknowledges a disability may be present, the employer may require that the employee be assessed by their physician or specialist in order to verify the presence of a disability and how best to accommodate the disability. The supervisor should consult with their departmental Human Resources

(HR) and/or their Disability Management Consultant to determine next steps. Please see the process set out in the Complex Case Management guideline.

Supervisors and managers should familiarize themselves with the topic of mental disability in the workplace. The materials presented at Great-West Life's website *Workplace Strategies for Mental Health*⁴ provide a good starting point. These materials include accommodation strategies for specific mental health issues such as memory loss and the effects of environmental stimuli or other common workplace stressors.

To the extent that the symptoms of an employee's mental disability manifest in the workplace, the employer must address this in planning the employee's accommodation. The supervisor and accommodated employee should discuss what, if any, information can be shared with co-workers with a view to developing an understanding, supportive and accommodating workplace. Sharing of specific information can only be done with the employee's express consent.

Addressing concurrent issues

It is not uncommon for employees with mental disabilities to be dealing with multiple workplace issues related to attendance, performance or behaviour. If a mental or other disability is a factor in the conduct, the employer cannot respond with discipline. However, there may be situations where an employee has a disability, but there is no causal connection to the misconduct. And there may be situations that are 'hybrid' where the disability explains part of the behavior (e.g. impaired judgment), but part of the behaviour is not connected to the disability (e.g. dishonesty) and is culpable.

Any concurrent or complicating non-disability factors (i.e. labour relations, workplace environment and/or conflict issues) should also be addressed by the supervisor and/or departmental HR to facilitate a successful stay at work, return to work and/or accommodation. Where the employee is uncomfortable speaking directly with his/her supervisor, the employee may contact departmental HR and/or their union representative for advice; or contact EFAP for support.