



Disability Management and Accommodation Framework

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

Purpose of Guideline

The purpose of this guideline is to describe the Yukon government's (YG) approach to the return to work and accommodation processes, inclusive of planning, implementing and monitoring the return to work and accommodation plans. Employers have a legal duty to accommodate persons presenting with disabilities that affect their ability to fully participate in the workplace, up to the point of undue hardship.

Application

This guideline applies to all YG departments, corporations and employees.

Scope of Authority

- Yukon *Human Rights Act*
- Yukon *Workers' Compensation Act*
- Yukon *Public Service Act*
- Yukon *Education Act*
- Yukon *Access To Information and Protection of Privacy (ATIPP) Act*
- GAM Policy 3.16: Employee Documentation, Oaths and Personal Information
- GAM Policy 3.59: Accommodating Employees with Disabilities
- Public Service Alliance of Canada and Yukon Teachers' Association Collective Agreements

Definitions

The definitions provided in both GAM Policy 3.59: *Accommodating Employees with Disabilities* and the *Disability Management and Accommodation Framework* apply to this guideline.

Return to Work and Accommodation

It is important for the supervisor and the employee to maintain contact during the employee's absence. This not only allows the employee to be and feel engaged in the workplace, but also affords an opportunity for the employee to provide updates on their condition so that the supervisor and employee can begin to plan for a timely return to work. Factual notes of all discussions relating to return to work should be kept in the department's employee's case file.

The employee must provide details regarding a return to work date and whether an accommodation may be required, with supporting medical information as needed. This information must be provided with sufficient notice (at least two weeks) to allow the employer time to consider the information. With the employee, the employer will determine the need for, and how best to accommodate the employee. If the information provided by the employee is insufficient to determine whether an accommodation is needed and how to accommodate, the supervisor is to contact the departmental Human Resources (HR) who will work with a Disability Management (DM) Consultant to acquire additional medical information.

The employee is expected to be a full participant in the return to work and accommodation processes – this includes providing either the needed information or consent for the DM Consultant to obtain it in a timely manner. Without this information, the employer will be unable to properly assess accommodation options.

The employee may seek the advice of their union representative at any point in the return to work process.

Planning

There are two general types of return to work planning:

1. Return to work planning primarily handled within department, and
2. Return to work planning requiring case management.

The planning and implementation of a return to work plan is specific to the employee's individual circumstances. Clearance by a medical practitioner *may* be required for an employee to return to their duties where, for example, the employee sustained an injury or had a contagious disease, or where the absence has been in excess of one month (in accordance with Article 25 of the PSAC Agreement). A medical clearance helps ensure that returning to work does not pose a risk to the employee or others (e.g., co-workers, clients, and the general public).

1. Return to work primarily handled within department;

Where the injury, illness or disability does not interfere with the employee's ability to work safely they can return to their regular duties. The majority of cases are relatively straightforward and can be managed within the department between the supervisor, the employee and HR.

In these straightforward cases:

- The absence is of short duration;
- The employee's limitations and restrictions are clear;
- The employee's return to work is predictable; and
- The employee is able to return to full duties with no accommodation or limited accommodation of either a temporary or a permanent nature.

Typical examples of these situations are:

- after a minor surgery or a medical procedure without the need for any accommodation;
- short-lived flare-up of a chronic disease;
- an injury (e.g., a broken limb, torn ligaments) or illness (e.g. chronic disease) that requires some temporary accommodation such as modified duties, adaptive equipment or reduced hours, and time for treatment or follow up appointments;
- an injury or illness that requires a modification to the worksite.

The employing department's HR and the DM Consultant are available to provide advice, as needed, about any potential workplace accommodation options related to modified duties and job or workplace modifications. Note that all accommodation attempts must be documented in the employee's case file. Accommodations lasting longer than six weeks should be documented and forwarded to the DM Consultant.

Documentation guidelines are provided in the Case Management section of the *Disability Management and Accommodation Framework*.

2. Return to work planning requiring case management

Case management ensures that the appropriate expertise and resources are involved for more complex cases. The Case Management Team (CMT) evaluates the case and develops a realistic and effective plan that addresses information needs and accommodation requirements, and identifies the responsibilities and accountabilities of all participants. **All** plans must be documented and signed off by the employee, supervisor, HR staff and the DM Consultant. If there is a change in the supervisor or HR, then the new incumbents must refer to and support the approved and documented plan.

Coordinating with the insurer

When the employee is receiving Long-term Disability (LTD) Insurance benefits the DM Consultant may coordinate with the insurer to support and assist the employee to return to work. The LTD insurance provider may also provide additional resources and options such as:

- access to rehabilitative services;
- independent medical examinations;
- vocational or functional capabilities assessments; or
- training both within YG and elsewhere (e.g., Yukon College training programs)

Workers' Compensation cases

Section 41 of the *Workers' Compensation Act* outlines the re-employment obligation that requires employers who regularly employ 20 or more workers to re-employ an injured worker, if that worker has been continuously employed with that employer for at least one year prior to the occupational injury or illness.

Employees who have claims accepted by YWCHSB that are expected to last more than 60 days are advised to submit an application for LTD benefits to ensure that they meet application deadlines in the event their claim is terminated. Should the employee's LTD application be accepted while their YWCHSB claim is active, their LTD and life insurance premiums will be waived.

The DM Consultant will not be aware of all employees who have claims accepted by YWCHSB as this information goes directly to the employee. Employees will need to advise their departmental HR consultant of an accepted claim if they are seeking accommodation, and the departmental HR will advise the DM Consultant of any "complex case" employees in the department who have accepted claims (if HR is aware of such employees).

Accommodation Options

Effective accommodation involves identifying reasonable workplace options that align both the employee's medical limitations and restrictions and the operational requirements of the job. An examination of the bona fide occupational requirements (BFORs) of any appropriate position may be necessary and helpful.

The *Accommodating Employees with Disabilities* policy outlines the hierarchy of accommodation options. In return to work and accommodation planning, the Case Management Team (CMT) must consider the following options in this specific order:

First consideration: Accommodation in the substantive position through job modifications:

This involves implementing changes to the physical work environment or to equipment, and/or modifying how and when tasks are performed to enable the employee to remain in their substantive position. The employer may also provide required assistive devices and/or adaptive equipment.

Examples of changes to the physical work environment are:

- Installation of a wheelchair accessible ramp
- Lowering of shelving to an under-shoulder height

Examples of changes to workplace equipment are:

- Sit-stand desk
- Low-vibration floor buffer

Examples of modifying how/when tasks are performed are:

- Staggering repetitive tasks with non-repetitive ones
- Scheduling the most cognitively demanding tasks before lunch.
- Being flexible with respect to hours of work (e.g., a gradual increase in hours, reduction in hours, change in hours)

Examples of assistive devices and adaptive equipment are:

- Voice recognition software
- Document scanner/magnifier

The PSC Health and Safety website provides a safe work practice called Ergonomic Guide for your Computer Workstation. This has been designed for self-assessment and the proper set up of workstations. A more formal ergonomic assessment may also be arranged to determine if the workplace set up is optimal. Generally, departments are responsible for arranging and funding ergonomic assessments for their employees; however, Disability Management Unit will fund such assessments for complex clients with whom they are working. Alternatively, a formal worksite assessment or job demands analysis may be required in certain circumstances. The supervisor, the employing department's HR staff and the employee may seek the advice of the DM Consultant about appropriate job modifications and available equipment and devices.

The cost of any required job modification or specialized equipment is the responsibility of the employee's employing department; however, under certain circumstances the employing department may request some financial assistance from the Health, Safety and Disability Management (HSDM) branch in PSC. Where the HSDM branch has provided funding to a department for specialized devices

or equipment, it is expected that the devices or equipment will “follow the employee” when the employee changes branches or departments. Departments may negotiate reimbursement or sharing of costs with each other.

Second consideration – Accommodation in the substantive position through modified duties:

This involves modifying the employee’s duties in a manner consistent with their physical and/or mental health limitations and restrictions, while meeting BFORs, to enable the employee to perform the essential tasks of their substantive position.

The medical information about the employee’s limitations and restrictions will identify those activities that the employee is unable to perform or shouldn’t perform. It is important to look not only at the restrictions and limitations but also at what the employee can do and has done in the past.

The employee’s health care provider may suggest modifications to the workplace and this information can be used as a foundation for accommodation purposes, but it is not their role to determine or prescribe specific workplace accommodations. As an example, the employee’s physician might advise, that: “This employee can’t work night shifts.” The DM Consultant may then seek clarification from the employee’s physician regarding the specific limitations and/or restrictions (and their duration) that prevent the employee from working night shifts. The follow-up clarification might then identify a limitation as in the following example: “This employee has significant limited visual acuity in the dark and this is expected to be permanent.” The difference in these two statements is that the second one identifies an actual medical limitation that the employer can use to determine a suitable and sustainable accommodation. The CMT may then explore how the job duties can be modified or bundled if possible, to suit the employee’s specific limitations and restrictions.

Examples of modifying job duties are:

- Removing a task that involves walking on uneven terrain
- Removing the necessity for night driving

Third consideration – Accommodation in a different, but suitable job in the home department:

When reasonable notice and information have been provided indicating an employee is ready to return to work (and is medically cleared to do so, if deemed necessary), but an accommodation in the employee’s substantive position is not possible, the employee’s department must identify work that meets the employee’s limitations and restrictions.

The CMT will work collaboratively to obtain information necessary to clearly identify (a) the employee’s skills, abilities, limitations and restrictions and (b) a suitable job or temporary assignment within the employing department.

All efforts to provide a reasonable accommodation in the home department will be clearly documented. Where options identified have been determined not to be suitable, the reasons for these will also be documented. It is at this point that accommodation in another department will be explored.

Fourth consideration – Accommodation in a suitable job in another department:

All YG departments share equally in the duty to accommodate. This is a legal obligation of the Yukon government. This duty to accommodate includes assisting employees to secure employment that meets their restrictions and limitations in other departments when no suitable position is available in their employing department. This requirement is detailed in the *Accommodating Employees with Disabilities* policy. The DM Consultant and Corporate Accommodation Staffing Consultant (CASC) will obtain information necessary to clearly identify the employee's transferable skills, abilities, limitations and restrictions and prognosis. In addition:

- The CASC will identify current or upcoming vacancies or temporary assignments across YG and discuss potential accommodation placements.
- The CASC may also conduct transferable skills assessments

Once a suitable option has been identified, the CMT will explore it further and implement the accommodation.

When an employee is accommodated in a position in another department, the employee's original employing department retains the responsibility for the employee until the employee is permanently placed or leaves government employment. Cost-sharing arrangements may be made between the employee's original employing department and the department that is providing the accommodation to distribute the compensation costs.

All efforts to find a reasonable accommodation in another department will be clearly documented by the department and reviewed by the Corporate Accommodation Staffing Consultant. Where options identified have been determined not to be suitable, the reasons for these will also be documented.

Fifth consideration – Special projects / training assignments:

Other options, based on individual case circumstances, for an employee requiring an accommodation may include:

- special projects;
- position under-fill
- temporary assignments; and
- training assignments either in the employee's original employing department or another department.

The employee's original employing department is to continue to actively seek an effective accommodation and permanent placement for the employee.

Facilitating the return to work

When the employee is fit to return to work and planning (including identification of any required workplace accommodations) is complete, the return to work plan can be implemented. In many cases a gradual return to work process with temporary accommodations may be all that is required for the employee to return to their original position.

Practical tip for gradual return to work

Be flexible about the length of the gradual return to work and open to adjusting the timeframe either to make it shorter based on the employee's functional readiness, or to extend it as necessary, as medical information changes.

In more complex cases that require workplace accommodation or alternative placement, more extensive effort, attention and time may be required to effectively reintegrate an employee into the workplace. The CMT creates a return to work / accommodation plan through meetings and discussions. Where there could be a possible contravention of the Collective Agreement (e.g. hours of work not listed in the Collective Agreement), DMU staff will contact Labour Relations with a request to negotiate the change with the union/association. Once the union/association has agreed to the change, the plan is then signed by both the employee and their employing department, detailing the specific terms of the return to work and/or accommodation placement arrangement and including:

- the employee's limitations and restrictions;
- job duties;
- work hours;
- roles and responsibilities of the parties;
- measures for oversight and review of the arrangement;
- a plan for ongoing communication; and
- any amendments to the terms and conditions of employment that are necessitated by the terms of the plan(s).

If the employee is in receipt of benefits from an insurance carrier while on a gradual return to work, the HR staff of the employee's original department must ensure that:

- an Accommodation Assignment Agreement is completed and signed;
- the required leave forms for the corresponding period(s) of Leave Without Pay for the accommodation are submitted to the Compensation and Benefits branch in PSC;

- time sheets are completed or leave entered into TLL and submitted to HR in a timely manner, if required; and
- the supervisor/HRC or designate reports hours worked to the insurer (the person and their contact number for reporting the employee's hours must be identified).

These steps ensure that the employee's pay and leave provisions are accurately processed.

Employees are required to submit leave requests to attend any treatment appointments to manage their injury, illness or disability.

Preparing the workplace

An important step in the return to work plan is to ensure that the employee, the supervisor and co-workers are prepared for and understand the process.

The accommodating department's HR staff and the DM Consultant are to provide information, advice and support to both the employee and supervisor about:

- the return to work process;
- the return to work roles and responsibilities (including monitoring and feedback), and expectations;
- the importance of ongoing communication between all parties to ensure a successful return to work, and
- support to ensure success.

In addition, the accommodating department's HR and the DM Consultant will support the supervisor when preparing co-workers and the workplace for the return to work. Information should be shared to help create a cooperative environment that fosters a successful outcome. The employee's consent and advice respecting information that can be shared in the workplace will be obtained. The employee's union representative, if involved, may be a valuable resource in supporting an individual's accommodation with other members in the workplace. HR, the manager and the supervisor are expected to build a culture of support in the workplace by establishing a sense of joint responsibility and commitment to making the accommodation successful.

Implementation oversight

The employee's supervisor is responsible for overseeing the actual return to work. This involves regular observation if possible, communication and check-ins with the employee. The return to work and/or accommodation plan should outline regular formal check-ins between the supervisor and the employee, and others on the CMT.

All who are involved in the return to work / accommodation plan share responsibility for its success and so need to ensure that any issues are promptly identified and addressed. The return to work /

accommodation plan can be adjusted as necessary by mutual agreement of the parties to the plan. HR, the supervisor and employee may continue to access all members of the CMT for support, expertise and advice.

At times, despite best efforts, the return to work / accommodation does not work. Depending on the individual facts and circumstances, it may then be necessary to modify the plan or develop a new one, which means beginning the accommodation process again. New medical information may be needed. This process of accommodation continues until either a reasonable accommodation is found or it becomes evident that continued efforts may impose undue hardship on the employer. The employing department should then consult with the DM Consultant and the PSC's Labour Relations branch if it believes its options are exhausted.

Observations, communication and changes to the return to work / accommodation plan, including dates, must be thoroughly documented in the employee's case file.

Limitations on the Duty to Accommodate

With respect to bona fide occupational requirements of a position (see description in the Disability Management and Accommodation Framework document) the employer must show that it cannot accommodate individual employees with particular characteristics without imposing undue hardship on the employer.

When a bona fide occupational requirement (i.e. something that is necessary in order to accomplish the essential duties of the job) cannot be met because of the nature of the disability, Yukon government would then determine if the employee can perform the essential duties of another position the employee is qualified to perform with reasonable accommodation. Before concluding that a task is a bona fide occupational requirement, supervisors and HR staff should consult a DM Consultant and possibly Labour Relations.

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* (see a description of undue hardship in the *Disability Management and Accommodation Framework*). Prior to concluding undue hardship has been reached, parties to the accommodation process must consult with the Labour Relations branch in PSC.