

## **ACCOMMODATION IN EMPLOYMENT OF PERSONS WITH DISABILITIES**

### **Objective**

The objective of these guidelines is to:

- Ensure conformity with the Ontario Workplace Safety and Insurance Act (1997) in the provision of work accommodation to persons with disabilities:
- Facilitate the return to work of employees who become disabled, or who have medical restrictions

### **Applications and Scope**

These guidelines apply to all employees at Victoria University who have a disability.

### **Definitions for the Purposes of these Guidelines**

Accommodation is an adaptation or adjustment to enable the person with a disability to perform the essential duties of the job. The period of accommodation may be temporary or permanent depending on the particular circumstances.

Disability is an injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act.

## **IMPLEMENTATION GUIDELINES**

Since the Workplace Safety and Insurance Act provides specific legal requirements for re-employment and accommodation of disabled workers these guidelines differentiate between employees with workplace compensable injuries and other individuals who may require accommodation under the Human Rights Code.

The key phrases with respect to accommodation are that the accommodation must be **reasonable**, and with such accommodation, the individual could perform the essential duties of the job. Situations may therefore arise where accommodation is not possible within a particular job or work unit. In such cases it is essential that the Bursar's Office be consulted.

### **The basic principles to be considered are as follows:**

- Under no circumstances should employees suffer any penalty because they have sought or require accommodation:
- Successful accommodation requires a partnership between the individual requiring accommodation and the accommodating work unit:
- The early return to work of an employee with a disability under appropriate medical supervision is beneficial both to the employee and to the University. Statistics show that the longer the return to work is delayed, the less likely the employee is to ever return.

- Accommodation needs are addressed in a way that is consistent with responsible financial management, with the maintenance of the essential operations of the work unit, and the health and safety of all employees, students and the public.
- The primary responsibility for accommodating the needs of an employee with a disability lies with the employing work unit working in partnership with the employee and the Personnel Officer.

**Guidelines applicable to every person with a disability are as follows:**

1. Any person with a disability who requires accommodation to perform the essential duties of the job should discuss this need at the earliest possible time with their supervisor. Medical documentation may be required to determine the appropriate accommodation requirements.
2. The supervisor or manager of the work unit should make every reasonable effort to provide the accommodation to the extent that it does not cause undue hardship.
3. In determining the ability of the unit to provide accommodation, the unit head should consult with the individual with the disability, and should take into account the following factors:
  - The ability to reassign tasks on a temporary or permanent basis to other employees;
  - The impact of the accommodation on other employees in the department;
  - The impact of the accommodation on the health and safety of the person being accommodated and on other persons;

If accommodating an employee would, in the manager's view, cause undue hardship, the manager **must** consult with the Personnel Officer.

**Legal Requirements for Employees with WSIB-Compensable Disabilities**

The Workplace Safety and Insurance Act places specific legal requirements on employers to re-employ workers who have been injured as a result of a work-related injury. These are summarized as follows:

**Extent of Obligation to Re-Employ**

The re-employment obligation is subject to the following conditions:

1. The injury must have occurred after January 2, 1990.
2. The employee must have been employed continuously for one year on the date of the injury.
3. The obligation extends to the date which is the earliest of: (a) two years after the date of the injury; (b) one year after the date that the WSIB notifies the employer that the worker is medically able to perform the essential duties of the worker's pre-injury employment; and (c) the date the worker reaches sixty-five years of age,
4. Where employment is terminated within six months of the re-employment, the employer is presumed, unless the contrary is shown, not to have complied with the re-employment obligations,
5. The re-employment provisions prevail over the terms of a collective agreement, with the exception of the seniority provisions.

**Workers Able to Perform Essential Duties of Pre-Injury Job**

Where the WSIB determines that the employee is able to perform the essential duties of the pre-injury job the employee shall be offered reinstatement in the pre-injury job or offered alternative employment of a nature and at earnings comparable to the pre-injury job or offered alternative employment of a nature and at earnings comparable to the pre-injury job. WSIB has issued a policy and guidelines for determining what constitutes acceptable alternative employment and these are available from the Personnel Officer.

Accommodation may be an issue in facilitating the employee's return to work in these situations.

### **Worker Unable to Perform Essential Duties of Pre-Injury Job**

Where the WSIB determines that the employee is unable to perform the essential duties of the pre-injury job but is medically able to perform suitable work, the employee shall be offered the first opportunity to accept suitable employment which may become available. Since this may involve positions external to the employing unit, the Bursar's office may be involved.

Accommodation may be an issue in facilitating the employee's return to work in these situations.

### **Guidelines for Accommodation of Employees with WSIB-Compensable Disabilities**

Supervisors and managers must make every reasonable attempt to provide the accommodation necessary to reintegrate the injured worker back into the workplace and preferably into the pre-injury job.

### **RESPONSIBILITIES**

**The Bursar** is responsible for approving the guidelines and procedures for Accommodation in Employment of Persons with Disabilities and revising them from time to time as warranted.

#### **Employing Departments are responsible for:**

- Facilitating health assessments of employees with disabilities, determining work restrictions or limitations and participating in the development of a modified work program for the employee where appropriate;
- Facilitating physical demands/environmental/task analyses of jobs;
- Monitoring the implementation of the modified work program and recommending changes as appropriate;
- Working in partnership with the employee to identify and implement accommodation requirements;
- Providing accommodation to the extent that it does not cause undue hardship; in particular the employing department is responsible for accommodations relating to job design and scheduling;

#### **Persons with disabilities who may require accommodation are responsible for:**

- Making known the needs and accommodation requirements of which they are aware; initial discussions may be held in confidence with the Personnel Officer or Department Manager;
- Working in partnership with the Personnel Officer and the employing work unit to identify and implement accommodation requirements.

### **Accommodation in Employment of Persons with Disabilities Guidelines**

Suitable employment is any work that;

- the worker has the necessary skills to perform, or
- the worker is able to acquire the necessary skills to perform, and
- does not pose a health or safety risk to the worker or co-workers.

To evaluate the suitability of the job, the decision-maker considers whether

- the worker has the necessary skills to perform the job, or
- the worker is capable of acquiring the necessary skills to perform the job, and
- there is a health or safety risk to the worker or his/her co-workers, if the worker performs the job.

Other factors the decision-maker may consider when reviewing the suitability of the job are the

- worker's functional abilities
- degree of the worker's impairment and medical prognosis of the injury, and
- worker's aptitude.

The Board must also consider any potential accommodations to the work or workplace when determining if a worker can perform the job.

### **Application date**

This policy applies to all claims (regardless of accident date) effective January 1, 1998.

### **Alternative Work Comparable to the Pre-injury Job**

If the pre-injury job is not available, the workplace parties (employer and worker) have primary responsibility to determine whether the alternative employment offered is comparable in nature to the pre-injury job. If there is a dispute between the workplace parties about this, the Board makes the final determination.

**When comparing pre-injury employment to alternative employment, the workplace parties and/or decision-maker consider all factors, not one factor in isolation. The decision-maker compares the**

- duties performed
- skills, qualifications, and experience required
- degree of physical and mental effort
- level of responsibility and supervision of other employees
- rights, privileges, and prerequisites associated with the position
- wages and employee benefits
- working conditions, hours of work, and right to work overtime
- geographic location of the work site
- opportunities for advancement and promotion, and
- whether the jobs are covered by the same collective agreement.

Earnings that are as close as possible to the pre-injury earnings are considered comparable. In no case are earnings less than 90% of pre-injury earnings considered comparable.

Earnings are both the wages and benefits to which a dollar value can be attached. Benefits include vacation time, dental and medical plans, and pension plan contributions.

#### REFERENCES

Workers' Compensation Act RSO 1990 Section 54

Workplace Safety and Insurance Act Sections 41,102