



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

A Guide to Balancing Work and Caregiving Obligations

Collaborative approaches for a supportive and well-performing workplace

Contact the Canadian Human Rights Commission

For more information about human rights, contact:

National Office

344 Slater Street, 8th Floor,
Ottawa, Ontario K1A 1E1
Telephone: 613-995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: 613-996-9661

National Aboriginal Initiative

175 Hargrave Street, Room 750
Winnipeg, Manitoba R3C 3R8
Telephone: (204) 983-2189
Toll Free: 1-866-772-4880
TTY: 1-866-772-4840 Fax: (204) 983-6132

For media inquiries, contact Media Relations at 613-943-9118

Note: All complaint-related inquiries will be transferred to the Commission's national office.

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Introduction

Picking a child up early from school because he or she is sick, taking your grandparent to a medical appointment, or caring for a loved one with a disability are all part of family life. For the most part, people are able to find ways to balance their work and family responsibilities. But sometimes the nature of caregiving makes this difficult.

Human rights law prohibits discrimination based on the ground of family status. The courts have determined that family status protections extend to a person's family caregiving responsibilities. This means that when an employee must care for a family member, employers have a legal obligation to accommodate that employee. This is best achieved through flexible work arrangements that enable the employee to care for a family member and continue to do their work.

To be accommodated, employees must show that they have exhausted other reasonable alternatives for care. Employees must also demonstrate that there is an *obligation* to provide care to a member of their family—a personal choice is not enough. For example, leaving work to attend a child's soccer game would be considered a personal choice. Leaving work to bring an injured child to the hospital when no other caregiver is available would be considered an obligation.

Accommodation arrangements do not have to be perfect. However, the employee, the employer, and union and/or employee representatives must cooperate to find reasonable and practical solutions.

This guide provides tips for developing accommodation solutions that are in harmony with human rights law. It outlines the rights and responsibilities of the employee, the employer, unions and/or employee representatives. The guide takes managers through the process of accommodating an employee's need to care for a family member by providing information on how to discuss the issue, how to develop solutions, and how to ensure that the solutions are effective.

While it is often necessary to accommodate people's needs on an individual basis, organizations should build accommodation into the way they do business.

Definitions of “Family”

Family is a broad and inclusive term. It includes family members who do not live in the same household, and relationships from bonds of blood or law, including common-law. It includes relationships between parents and children (including adoptive and foster children), and with spouses (marital and common law), siblings, in-laws, uncles and aunts, nephews and nieces, cousins, grandparents and grandchildren.

Families can also include relationships not defined by blood or legal bonds. This may include “chosen families,” such as strong friendships and communities where unrelated persons provide care normally provided by nuclear family members. These relationships may be particularly important for Aboriginal people or people who are gay, lesbian, bisexual, or transgender.

Caregiving

Caregiving can involve caring for a young child, supporting someone with a disability, responding to an accident or a severe illness, or attending to someone’s needs at the end of life.

At some point in their lives, millions of Canadians have provided care to a family member or friend with a long-term health condition, disability or aging needs. Many do so in addition to caring for their children. Most caregivers who are employed work full time. As Canada’s population ages, the number of people who will need to care for a family member is expected to climb.

Family caregiving is a gender equality issue. Women still provide more personal care than men, work part-time more often, and give up more hours of work from their full-time jobs in order to provide care. This negatively affects their full and equal participation in the labour force. Men may also be disadvantaged if their caregiving roles are not recognized or supported.

The challenge of balancing work and caregiving can also vary based on other characteristics such as marital status, sexual orientation, race, age, or disability. For example, single, divorced or separated parents with dual custody may face complex or strict childcare schedules.

The *Canadian Human Rights Act*

The *Canadian Human Rights Act* protects people in Canada from discrimination when they are employed by or receive services from the federal government, First Nations governments or private enterprises that are regulated by the federal government such as banks, trucking companies, broadcasters and telecommunications companies.

People can turn to the *Canadian Human Rights Act* to protect themselves against harassment or discrimination when it is based on one or more of the 11 grounds of discrimination such as race, age, sexual orientation or family status.

The courts have determined that providing care to a family member is covered under the protected ground of family status. This means that people who need to provide care to family members also have a right to participate fully in the labour force. Employers have an obligation to remove barriers that prevent people from doing so.

The duty to accommodate

Employers have an obligation to take steps to adjust rules, policies or practices that have a negative impact on individuals, or groups of individuals based on prohibited grounds of discrimination. This is called the duty to accommodate.

The duty to accommodate means that sometimes it is necessary to treat someone differently in order to prevent or reduce discrimination. For example, asking all job applicants to pass a written test may not be fair to a person with a visual disability. In such cases, the duty to accommodate may require that alternative arrangements be made to ensure that a person or group can fully participate.

Employers have a duty to accommodate when an employee's needs are based on any of the grounds of discrimination in the *Canadian Human Rights Act*.

In the case of caregiving, a duty to accommodate may arise when an employee's obligation to care for a family member, combined with the employer's existing rules or policies, make the employee unable to participate fully at work.

Undue hardship

There are some limits to the duty to accommodate. Sometimes accommodation is not possible because it would cause an organization “undue hardship.”

Under the *Canadian Human Rights Act*, an employer can claim undue hardship when adjustments to a policy, practice, by-law or physical space would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or standard formula for determining it. Each situation should be viewed as unique and assessed individually. It is not enough to claim undue hardship based on an assumption or opinion, or by simply saying there is some cost. To prove undue hardship, employers must provide evidence as to the nature and extent of the hardship.

Accommodating family caregiving needs—everybody has a role to play

When an employee comes to his or her employer with a family caregiving issue, everyone involved—the employee, the employer, and the union and/or employee representative—has a responsibility to approach the issue in a respectful, collaborative and timely manner. Everyone has a responsibility to find solutions.

The employee should:

- Bring his or her accommodation needs forward in a clear and timely way.
- Demonstrate that there is a genuine *obligation* to provide care (personal choice is not enough to justify accommodation).
- Show that he or she has explored realistic alternatives and available caregiving options such as other family members, friends, social programs, health care programs and community supports.
- Be willing to participate in discussions, consider alternatives, and agree to reasonable arrangements in the workplace that accommodate his or her needs, even where the arrangement is not his or her preferred solution.
- Build a support system with a variety of caregiving options, practice effective time management, and plan ahead for the unexpected.
- Remain open to adjusting a previously agreed-upon solution if circumstances change.

The employer should:

- Offer reasonable and dignified solutions to accommodate the employee, up to the point of undue hardship.
- Remove discriminatory barriers that may limit an employee's ability to do his or her job.
- Remain open to adjusting a previously agreed-upon solution if circumstances change.

The union/employee representative should:

- Allow exceptions to union rules and terms of collective agreements that could have a discriminatory impact.

Three steps to accommodating an employee's caregiving obligations

Step 1: Talk about it

Finding a flexible solution that balances the employee's caregiving needs and his or her work responsibilities starts with an open and honest discussion. This is the best way for the manager to gather the information that he or she will need to determine how to accommodate an employee's needs.

The manager should approach this conversation with trust, respect and compassion as the employee might be feeling pressured, guilty, or anxious. The employee may also be worried about his or her loved ones.

Respecting the employee's privacy should also be top of mind. In some cases, the manager may have to ask the employee to reveal private details about his or her family. The manager should only ask questions that are relevant to the situation and should avoid asking for "proof" of relationships or family illnesses, unless there is a specific reason, such as a reasonable suspicion of wrongdoing.

The employee should be prepared to be as open and honest as possible. In cases where the employee is reluctant to share details, he or she should be prepared to explain why.

A good policy with detailed procedures and checklists can help managers and supervisors justify why they need to ask for personal information.

There is no one-size-fits-all solution. The employee's request and specific circumstances should be considered individually. The manager should let the employee know in advance what questions will be asked to give the employee time to prepare. As a start, the employee should be ready to discuss:

- His or her relationship to the person receiving care.
- The specifics of the care that the recipient needs (e.g. what is needed, why, how often, when).
- How long the person will need care (e.g. short term, long term, indefinite).
- Why the employee should be the one to provide the care required.
- Why providing the care is an obligation and not just a personal choice.
- What realistic alternatives are available (e.g. friends and family, day care, home care, community supports).
- What efforts have been made to reconcile work and caregiving obligations.
- Why these efforts were unsuccessful.
- What accommodation is needed from the employer.

If the request for accommodation is denied, the manager should make sure to indicate the specific reasons for the decision, including information to support a claim of undue hardship.

The employee should be able to appeal the decision within the organization. The manager should inform the employee of his or her options for appealing the decision.

Step 2: Be creative. Be flexible.

Once the manager has determined that the employee needs to be accommodated, everyone involved (the employee, the employer, and other parties such as union and/or employee representatives) should work together to find reasonable and practical solutions.

Accommodation does not always result in an ideal solution, or the employee's preferred option. However, employees are entitled to a fair solution that allows them to keep their job and continue to do their work.

Demands on caregivers can change over time. An accommodation plan that meets current obligations, and is flexible enough to respond to changes in the future is the best way to ensure that the employee can continue to make a meaningful contribution at work and meet his or her caregiving obligations.

If a workplace is unionized, and there is a chance that the accommodation arrangements may conflict with the collective agreement or with union rules or practices, union and/or employee representatives should be included in the discussion.

While the manager should take the employee's preferences into account, he or she can choose to implement an option that is less costly or easier to provide but is still a meaningful response to the employee's needs. The manager should provide the employee with a clear explanation for the decision.

The value of flexible work arrangements

Establishing policies that mention caregiving and that build in flexible work arrangements give managers and supervisors the tools they need to help their employees meet their family caregiving responsibilities while remaining fully productive members of the team.

Flexible work arrangements have been shown to reduce absenteeism, foster employee loyalty, improve morale and retention, and increase productivity.

In many cases, accommodation is about finding ways for an employee to do his or her work differently. Some examples of flexible work arrangements include:

- different, or shifting start and end times
- compressed schedule
- telework
- extended maternity or parental leave
- compassionate, discretionary, or other leave to care for sick family members
- leave to provide child or elder care in unanticipated or emergency situations
- shift changes
- job sharing
- part-time work with pro-rated benefits
- shifting or sharing work duties or tasks

Of course, a manager's ability to offer flexible options will vary according to the type of industry and the nature of individual positions and job duties. The availability of technology, associated costs, and other issues such as scheduling challenges must also be considered.

Communicating and implementing an accommodation arrangement

Once all parties have agreed on an accommodation arrangement, the manager should put the agreement in writing, noting the specifics of how the accommodation arrangement will be implemented.

The manager should communicate any required changes to other managers, supervisors, or staff who will play a part in making the accommodation work smoothly. This should be done on a need-to-know basis to ensure the privacy of the employee. For example, the managers responsible for scheduling shifts would need to be aware of an accommodation arrangement that moves an employee temporarily from the night shift to the day shift.

Union and/or employee representatives should also be informed of the steps taken to implement the accommodation.

Support from co-workers

When an employee has entered into an accommodation agreement, the manager should ensure that other staff members respect the arrangement put in place for that individual.

Step 3: Follow-up and adjust

Once the accommodation arrangement is in place, the manager and the employee should stay in open communication and discuss any changes, issues, or concerns as they arise.

It is useful to plan follow-up meetings. This should be done when the accommodation arrangement is being made. Both the manager and the employee should understand the purpose of follow-up meetings, and what is expected. This can help both the employee and the manager gather their thoughts and prepare any comments or documentation.

A follow-up meeting can include:

- A standard check in meeting soon after the accommodation is implemented.
- A second scheduled follow-up meeting mid-way through an accommodation period (or at regular intervals, for a permanent accommodation).
- A follow-up meeting close to the end of any accommodation period.
- A commitment to raise any new developments or changing circumstances that might affect the need for accommodation, or the ability to provide it.

The manager should review the accommodation arrangement with the employee and the union and/or employee representative periodically to confirm that they continue to be effective and necessary. Changes should be made to the accommodation arrangement when necessary.