

PROVINCE OF NEW BRUNSWICK <b>ADMINISTRATION MANUAL SYSTEM</b>		<b>AD – 2921</b>
<b>Section</b>  <b>OTHER PERSONNEL MATTERS AND TRANSACTIONS</b>	<b>Subject</b>  <b>WORKPLACE ACCOMMODATION</b>	

## 1. APPLICATION

This policy applies to all employees in Parts I, II and III of the New Brunswick Public Service. Although the overall principles of the policy are applied, the approach to achieving return to work may vary within Parts I, II and III.

## 2. POLICY STATEMENT

The Government of New Brunswick will ensure it meets its obligations under the [New Brunswick Human Rights Act](#) with respect to accommodation in the workplace by ensuring employees with physical and mental disabilities are accommodated up to the point of undue hardship.

GNB is committed to ensuring a workplace where all employees are treated with respect and dignity.

## 3. DEFINITIONS

**3.1 Accommodation** - means to take steps to remove or adjust current job duties or job tasks to allow an employee to remain actively employed.

**3.2 Undue hardship** - Undue hardship occurs when accommodating an employee's physical or mental disability would be extremely difficult for an employer. The determination of undue hardship depends entirely on the circumstances of each specific case.

Examples of undue hardship may include:

- extremely high financial costs;
- a serious disruption to the business;
- health and safety considerations;
- a very long absence of indefinite duration;
- a substantial interference with the rights of other employees;
- inability to renovate the facilities to accommodate an employee;
- inability to interchange, alter or substitute duties within the workforce; or
- the extent to which the inconvenience would prevent the employer from carrying out the purpose of its business.

**3.3 Duty to Inquire** - in some instances, the duty to accommodate will arise without an accommodation request being made by an employee. If the employer has reason to believe an employee is experiencing difficulties because of a disability, the employer has a duty to inquire about the situation.

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**3.4 Bona Fide Qualification (BFQ)** - is an essential job requirement and is considered necessary for business operations.

#### **4. GUIDING PRINCIPLES**

**4.1** Government of New Brunswick (GNB) will provide a workplace that ensures equal opportunity free from discrimination based on age; marital status; family status; creed or religion; physical disability; mental disability; race; color; ancestry; place of origin; national origin; social condition; political belief or activity; sexual orientation; gender identity or expression; and sex (including pregnancy). This policy relates specifically to the accommodation of physical and mental disabilities.

**4.2** GNB will provide reasonable workplace accommodation, to the point of undue hardship. The purpose of the accommodation is to ensure that individuals with physical and mental disabilities, who are otherwise able to work, are not excluded from doing so when working conditions can be adjusted without causing undue hardship.

**4.3** All parties (employer, employee, supervisor, manager, union representative) work together to facilitate accommodation by identifying and removing barriers to employment of persons requiring accommodation unless doing so would result in undue hardship.

**4.4** The employee is included and involved in the accommodation process.

**4.5** Decisions are based on the current work environment and not on the employee's ideal/preferred job placement.

**4.6** Every case is reviewed fairly and equitably and on an individual basis.

**4.7** Accommodation can include, but is not limited to: technical aids, job redesign, workplace modification, work scheduling, or alternate job placement.

**4.8** Employment systems, processes and facilities are designed to be accessible by integrating accommodation as a workplace standard.

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## 5. ROLES AND RESPONSIBILITIES

Accommodation is a shared responsibility between employees, supervisors, managers, unions, and GNB as the employer for Parts I, II and III.

### 5.1 Employer Responsibilities

As the employer, GNB has responsibility to:

- treat employees with respect and dignity;
- communicate information to employees regarding the accommodation process;
- provide accommodation to the point of undue hardship;
- ensure that this policy is effectively implemented and monitored;
- establish records management practices for the collection, use, disclosure, retention, destruction and protection of employee information;
- initiate a discussion about the accommodation process when they are aware that an employee may have a need for accommodation, as per duty to inquire responsibility;
- work, collaboratively with unions, to respond to requests for accommodation in a timely, confidential and sensitive manner;
- work, in conjunction with unions, to support employee accommodation to the point of undue hardship;
- work, collaboratively with unions, to eliminate barriers that prevent inclusion or access to the workplace; and,
- conduct regular communication with unions to review rules, policies, and practices to ensure that they are not discriminatory.

### 5.2 Supervisor and Manager and/or Designated Coordinator, Health Authority or School District Responsibilities

Supervisors and Managers have a responsibility to:

- inform employees requiring accommodation of the process;
- address requests for accommodation in a timely, confidential and sensitive manner;
- initiate a discussion about the accommodation process when they are aware that an employee may have a need for accommodation, as per duty to inquire responsibility;

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- identify and eliminate barriers that prevent employees from accessing or being included in the workplace;
- involve employees requiring accommodation in the search for accommodation;
- conduct regular and consistent monitoring of the accommodation arrangement;
- document the accommodation request, including the employee’s name, position and date of the request, include any details provided by the employee and any accommodation options suggested by the employee;
- inform employees of the reason if their accommodation request is denied;
- consider accommodation options, as appropriate, based on bona fide qualification (BFQ) to the point of undue hardship; and,
- comply with records management practices for the collection, use, disclosure, retention, destruction and protection of an employee’s personal information as established by the employer.

**5.3 Human Resources Staff and/or Designated Coordinator, Health Authority or School District Responsibilities**

Human Resources staff have a responsibility to:

- inform individuals requiring accommodation of the process;
- respond to requests for accommodation in a timely, confidential and sensitive manner;
- respect the privacy of the person requesting accommodation as per the [Right to Information and Protection of Privacy Act](#);
- take a lead role in the accommodation process and collaborate with key stakeholders including unions, third party providers, etc.;
- participate in determining modified or alternate tasks identified through the accommodation process;
- recommend and test alternative approaches, and collaborate with all parties when solutions are proposed, including unions, managers and employees;
- support accommodation measures to the point of undue hardship;
- monitor the accommodation process; and
- comply with records management practices for the collection, use, disclosure, retention, destruction and protection of employee information established by the employer.

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#### 5.4 Unions

Unions have a responsibility to:

- take an active role as partners in the accommodation process;
- regularly review rules, policies, practices and articles of collective agreements to ensure that they are not discriminatory;
- ensure that employees are advised of their right to be accommodated;
- respond to requests for accommodation in a timely, confidential and sensitive manner;
- participate in determining modified or alternate tasks identified through the accommodation process;
- provide individual accommodation to the point of undue hardship; and
- initiate a discussion about the accommodation process when they are aware that an employee may have a need for accommodation as per duty to inquire responsibility.

#### 5.5 Employee Responsibilities

Employees are responsible to:

- communicate, at the earliest possible opportunity and in sufficient detail, their need for accommodation;
- provide documentation in support of the request for accommodation including information about any restrictions or limitations;
- actively participate in the accommodation process;
- assist in identifying potential accommodation options;
- accept an offer of accommodation that meets their needs. All accommodation options will consider reasonable distance and location options as an inherent part of alternate work placement process;
- communicate changes to their accommodation needs to the appropriate parties; and
- provide regular accommodation updates to the employer, when required.

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An employee will be requested to provide the following information to Human Resources staff when requesting an accommodation:

- a completed [Fitness for Work Form](#);
- additional information about the extent of restrictions and the nature of accommodation needed;
- voluntarily provide written consent to release medical information relevant to the accommodation as required - the information requested pertains to the physical and mental limitations only;
- changes in circumstances which would impact the availability of accommodation; and
- updated accommodation information when changes in circumstances occur.

## 6. ACCOMMODATION

GNB is committed to ensuring employees are treated with respect and dignity during the accommodation process. The following factors will be considered when accommodating an employee in their current role:

- accommodation will be based on the employee's individual physical and mental limitations;
- confidentiality and privacy rights will be maintained at all times;
- identification of any proposed modifications will be evaluated;
- workplace redesign and reconfiguration of tasks will be reviewed;
- alternative schedules and hours will be considered;
- impact on other individuals in the workplace will be reviewed;
- assessment of any collective agreement restrictions will be determined;
- use of equipment and/ or assistive devices will be considered; and
- temporary rehabilitative assignments such as modified job duties, will be considered where possible.

When the above options have been thoroughly reviewed and the employer is not able to make adjustments to the employee's current job through a formal internal review then an alternate job placement will be considered.

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**7. ACCOMMODATION – ALTERNATE JOB PLACEMENTS**

Alternate job placement processes apply to non-bargaining and bargaining employees, and should be explored, in most cases, in the order shown in the chart below:

<b>Non-Bargaining Employees</b>	<b>Bargaining Employees</b>
Return to work full duties in current job within the department, organization, health authority or school district.	Return to work full duties in current job within the bargaining unit; and within the department, organization, health authority or school district.
Return to work modified duties in current job within the department, organization, health authority or school district.	Return to work modified duties in current job within the bargaining unit; and within the department, organization, health authority or school district.
Return to work to different job within the department, organization, health authority or school district.	Return to work to different job within the bargaining unit; and within the department, organization, health authority or school district.
Return to work to different job with modified or temporary duties within the department, organization, health authority or school district.	Return to work to different job with modified or temporary duties within the bargaining unit; and within the department, organization, health authority or school district.
Return to work to a different job outside the current department, organization, health authority or school district.	Return to work to a different job outside the bargaining unit; and outside the current department, organization, health authority or school district.

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**8. UNDUE HARDSHIP**

In the context of this policy, undue hardship must be determined by the employer in the circumstances of each case, but the following must be considered:

- When there is a risk to the safety of others or a substantial risk of personal safety to the employee seeking accommodation.
- When financial costs are such that a program or service would cease to exist due to the financial burden of the accommodation.
- After consultation with the union, when accommodation alternatives would be unduly disruptive to provisions of a collective agreement or cause a substantial detrimental effect on other employees.
- Where it is not possible to accommodate the employee in their current job, every reasonable effort to the point of undue hardship will be made to place the employee in a suitable vacant position, for which the employee is qualified, within the department, school district, or health authority.
- When it is not possible to accommodate the employee within their own department and all options have been clearly exhausted, every reasonable effort will be made to place the employee in a suitable vacant position, for which the employee is qualified within GNB Parts I, II, and III.

**9. PROCESS FOR FILING REQUESTS**

**9.1** An employee must inform their immediate supervisor, school district, health authority, Human Resources representative or designated coordinator of a request for accommodation and provide adequate medical information to Human Resources using the [Fitness for Work Form](#). Medical evidence about the nature and restrictions/limitations is required to facilitate an accommodation request made by an employee.

**9.2** The following process will assist employees in filing a request:

- Employee communicates with immediate supervisor to advise that an accommodation may be required.
- Supervisor notifies Human Resources staff of potential request.
- Human Resources staff reviews accommodation process with employee.
- Human Resources staff provides a [Fitness for Work Form](#) along with additional information regarding job duties to employee. i.e. a functional job description may accompany the form.



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- Employee and their attending physician/ treatment provider complete the required information.
- The completed [Fitness for Work Form](#) is returned to Human Resources staff for review and consideration.
- The employer may initiate a follow-up if medical evidence is inadequate.
- Accommodation options are identified through the employer’s established accommodation processes in conjunction with the employee, manager and/or supervisor and union representative.

**10. PRIVACY AND CONFIDENTIALITY**

Personal information and personal health information, required pursuant to the policy, will be collected, used, disclosed (shared), retained, destroyed and protected by parties in accordance with the [Right to Information and Protection of Privacy Act \(RTIPPA\)](#), the [Personal Health Information Privacy and Access Act \(PHIPAA\)](#) and any other applicable legislation.

**11. AUTHORITY**

- [Financial Administration Act](#)
- [Human Rights Act](#)
- [Right to Information and Protection of Privacy Act \(RTIPPA\)](#)
- [Workers’ Compensation Act](#)
- [Personal Health Information Privacy and Access Act \(PHIPAA\)](#)

Treasury Board JM2019-06-04-01-01

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Appendix A

[Fitness for Work Form](#)