

Dear Colleagues,

In these extraordinary times, we may be asked to deal with unusual work-related requests. In response to the need for social distancing, the University is recommending work from home. As access to family care becomes limited, some of our faculty and librarians may experience challenges in managing the competing demands of work and family care in the home environment.

As leaders, this may trigger requests for work accommodation on the basis of family status. This email is intended to provide information for you in relation to your consideration of such requests.

Generally speaking, faculty and librarians are expected to undertake their Academic and Professional Responsibilities unless they are on an approved Leave under the Collective Agreement. As it relates to teaching, the Collective Agreement notes:

12.5 In fulfilling Academic or Professional Responsibilities, Members shall: ... b) adhere to Teaching schedules and fulfil Teaching obligations in all but exceptional circumstances and, in case of sudden illness or emergency, make all reasonable effort to notify the Department Chair or Dean, as applicable. In the case of planned absences, the Member shall seek advance approval from the Department Chair or Dean, as applicable, for any necessary cancellation and make mutually acceptable arrangements for dealing with the situation;

However, the BC Human Rights Code protects against discrimination in employment on the basis of the protected ground of “family status” (s. 13(1)). The law requires an employer to provide accommodation *to the point of undue hardship* to enable a person to do their work (i.e. not face discrimination in relation to a protected ground). Specific to COVID related accommodations on the basis of family status, the BC Office of the Human Rights Commissioner notes in their Policy Statement on COVID-19 Pandemic (excerpt p. 7) (https://bchumanrights.ca/wp-content/uploads/2020/03/BC-OHRC_COVID19_Policy-V3.pdf)

Employers are entitled to expect that employees will continue to perform their work unless they have a legitimate reason for why they cannot, including current public health guidance to socially distance or self-isolate.

Employers may also need to accommodate employees with increased child care obligations due to the pandemic. Protections related to family status may require employers to take all actions short of undue hardship to accommodate family care giving responsibilities where an employee is unable to cover the necessary care through other means. Accommodations may include allowing for flexible work hours, working from home or taking paid leave time. The same may be true for employees who are required to care for sick family members at home.

In British Columbia, the test for family status discrimination was established in *Health Sciences Assoc. of B.C. v. Campbell River and North Island Transition Society*, 2004 BCCA 260 (“*Campbell River*”). In order to establish discrimination or claim an accommodation on the basis of family status, *the employee must establish* that there has been a change in a term or condition of employment imposed by the employer that results in a serious interference with a substantial parental or other family duty or obligation. Normally, this would entail the employee providing evidence that they did everything reasonable to procure alternative family care that would have enabled them to do their work without accommodation in the face of the employer imposed change.

Like medical accommodations, each accommodation request needs to be considered on its own merits, giving due regard to the circumstances and the needs of the requestor.

Should you receive a request for accommodation from a faculty member or librarian (or from any other staff member reporting to you) on the basis of family status, please do the following:

1. Ask the person requesting the accommodation to outline the request to you in writing, including:
 - a. all of the efforts they have made to seek alternative family care (this includes outlining the family care contributions of their partner, other family members and friends, or why they can't contribute; and what efforts have been made to seek publicly available family care services) and any barriers to seeking alternative family care (this may include COVID-19 related restrictions);
 - b. the specific impact on the work that is expected of them (i.e. why they cannot do the work or require modification to the work);
 - c. the requested accommodation which will enable them to do the work (e.g. deferral of a deadline, delaying an assignment (including a course), doing the work differently; providing access to equipment or an environment to enable completion of work, allowing for a leave under the Collective Agreement to be taken, etc.)
2. Consider the request. If you are able to meet the request without operational difficulty and without reducing the overall amount of work assigned to the employee, you may recommend to your Dean that it be granted. Seek the assistance of your Faculty Relations Consultant (for faculty and librarians) or Human Resources Consultant (for staff) in documenting the agreement as a formal accommodation for a specified period.
3. If you are unable to meet the request without operational difficulty and without reducing the overall amount of work assigned to the employee, *please consult first with your Faculty Relations Consultant/Human Resources Consultant* before responding to the employee to ensure there are no other options and your decision meets the legal tests.

On a related note, employees with current *medical accommodations* may advise you they require adjustment to those accommodations if they have changed their working environment. In the event you receive a request to adjust a medical accommodation plan, please consult with a Work Life Consultant.

Your Faculty Relations/Human Resources Consultants are happy to respond to any questions.

Regards,
Michele



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