

DCIF Project – Accommodation Tool 4: Protecting Confidentiality and Privacy

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Tags

Who is this for?

High priority:

- Direct managers
- Corporate cross-departmental managers

Practical information:

- HR Professionals

What guidance does it provide?

- How to protect and action for confidentiality and privacy in all accommodation processes for employees

Take home points

- Requests for accommodation may involve disclosing private or highly sensitive information. Ask people requesting accommodation only for information required to establish the foundation of the accommodation request, and to respond appropriately to the request.
- At a minimum, employers must communicate with workers what personal information will be collected, used, and disclosed. Employers should also ensure that information they collect for one purpose isn't used for an unrelated purpose without the employee's consent.
- Impart unto all employees that accommodations are a key driver of equity in the workplace.

Protecting Confidentiality and Privacy

As an employer, your need for information must be carefully balanced with workers' rights to privacy. There are many instances where you may be unsure of whether it is okay to collect information — including pay and benefit records, formal and informal personnel files, video or audio tapes, and records of web-browsing, electronic mail, keystrokes, and most importantly, requested accommodations and disclosed disability — the following checklist can help to establish and maintain that balance:¹

- ✓ Always clearly explain what personal information you need, why, and what you will do with it
- ✓ Ensure that personal information is only collected, used, and **disclosure** with the worker's consent
- ✓ Collect personal information that is completely necessary, via fair and lawful means
- ✓ Collect, use, or disclose personal information for its stated purposes only
- ✓ Keep personal information for its stated purposes only, unless the worker provides consent, or you are legally required to use or disclose it
- ✓ Keep workers' personal information accurate, complete, and up to date
- ✓ Enable workers to access their personal information and allow them to verify and change it

*Pop-Up: **Disability confident** employers will protect these aspects of confidentiality and privacy by developing clear, transparent policies and expectations about personal information.¹*

Considerations for the Accommodation Process

The Ontario Human Rights Commission provides best practice recommendations when considering privacy and policy during the accommodation process:²

- When a worker approaches you to request an accommodation, they may disclose private or sensitive information
- It is essential that managers only ask for necessary and relevant information to understand and meet the request
- Think about if you were asking for an accommodation – you would only feel comfortable doing so if you knew that your information would remain confidential.

It makes good sense to keep accommodation-related information separate from the worker's standard employment file.

“The most appropriate accommodation as one that most respects the dignity of the individual with a disability, meets individual needs, best promotes integration and full participation, and ensure confidentiality. Accommodation is to be considered along a continuum from those way that are most respectful of privacy, autonomy, integration, and other human values, to those that are least respectful of those values.” -Ontario Human Rights Commission³

Maintaining Regular Communication

Regular communication between the employer and worker with a disability is key. In certain instances, routine check-ins are beneficial to ensure the provided accommodations are working well. In the list below, you can see which occasions require the different frequencies of check ins:

- ✓ If a worker requests an accommodation that is fairly simple, low cost, and does not impact the surrounding environment or colleagues, and is approved, **the direct manager should check in early on to ensure the provided accommodation is working**
- ✓ If a worker requests an accommodation and is no longer reporting new issues, performing at the same level or better, and there is no sudden increase of absences or signs of trouble, frequent check-ins after initial follow up can be intrusive for the employee. **The direct manager should check in within 6 months to ensure the provided accommodation is working**
- ✓ If a worker requests an accommodation, and performance behaviour does not change, or there are signs of trouble, **the direct manager should check in regularly to ensure modifications of possible accommodations are provided**

Pop Up: Employers and employees should also review their privacy policy regularly to ensure that their procedures are adequate and meet their obligations to all staff. A great time for a re-fresh is during regularly scheduled performance management reviews.

The Importance of Equity and Transparency

Sometimes, colleagues may be unwelcoming of accommodations or see them as unfair advantages. It's up to you to break down these social barriers and lead with equity and transparency.

The ability to address misunderstandings, preconceived judgments, or fears amongst colleagues can be important to the employee's successful accommodation plan.

Find out what would be reasonably necessary for the colleague to move forward toward a healthier work relationship. There is a significant difference between deciding who is right or wrong and finding a way forward. It may be that colleagues do not have a specific problem with each other, but if the workplace environment is generally one of chronic stress, tension, chaos, or anxiety, you may want to recommend a broader approach to recognizing and addressing organizational or systemic issues. Speak to all employees, those with and without accommodations, to address any impact on workloads and performance issues in efforts to work together professionally and collaboratively.

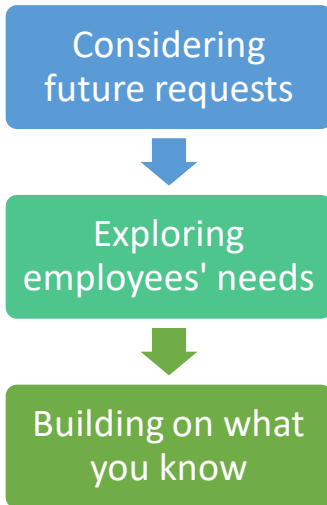
Impart unto all employees that accommodations are a key driver of equity in the workplace.

- We all have different needs and want to bring our best selves to work
- Accommodations recognize the supports those employees with disabilities may require and work to offset any unfair disadvantages they may face

Be transparent about the accommodation process and work to remove systemic barriers.

- Communicate clearly what is involved in the accommodation process
- Create awareness that the workplace adjustments are open to everyone
- Ensure all staff know that they can request an accommodation at any time

Encourage Change



Employees who not currently require accommodations, may request them in the future. As well, just because someone doesn't communicate the need for an adjustment, doesn't mean they can't benefit from one as well. Finally, it's likely that you're already implementing adjustments for all types of employees – not just those with disabilities.

On top of the business case for providing accommodations, to develop a truly inclusive workplace culture, accessibility must be for everyone. The more a business embraces accommodations across all staffing levels and departments, the less fear will exist when requesting new accommodations in the workplace. Take the time to ensure your accommodation infrastructure is focused on reflecting and encouraging this positive change, with a key focus

References

¹Office of the Privacy Commissioner of Canada (2004). Privacy in the workplace.

https://www.priv.gc.ca/en/privacy-topics/employers-and-employees/02_05_d_17/

²Ontario Human Rights Commission (2013). Accommodation policy and procedure.

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³Ontario Human Rights Commission (2008, p.18). Guidelines on developing human rights policies and procedures.

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