



# Practice Resource

## Model policy

### Workplace accommodation<sup>1</sup>

#### Preface

The legal duty on employers respecting accommodation of employees with disabilities is very high. This policy is intended to assist British Columbia law firms to understand the nature of the duty owed to employees and partners and implement processes to assist Firms in complying with their obligations.

Law firms may have differing abilities in administering accommodation. For smaller firms it is recognized that certain aspects of the model policy may be impractical or impossible to implement. For this reason, this model policy is intended to serve as a guide only and may be adapted in whole or in part as suits the circumstances but in keeping with the legal duty to accommodate. As such, Firms may wish to adopt, at a minimum, the first three sections of this Model Policy<sup>2</sup>.

#### Statement of commitment

The Firm recognizes the diversity of its workforce and is committed to ensuring that all employees are able to effectively and efficiently use their skills and experience to contribute to the Firm's performance and service delivery. This includes the opportunity to participate, without discrimination, in both work-related and other activities conducted in a work context.

The Firm will establish and maintain an effective system to ensure an inclusive workplace and to provide reasonable workplace accommodation.

The Firm will ensure that its corporate activities, including all policies, practices, and procedures will not result in discrimination.

The Firm will ensure that procurements and the construction or renovation of facilities will not result in discrimination.

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<sup>1</sup> This Policy is based on the framework and sample policy statements of the Canadian Human Rights Commission ("Preventing Discrimination"). Please see <http://www.chrc-ccdp.ca> for more information.

<sup>2</sup> In 1999, the Law Society of British Columbia established a Disability Research Working Group which reported to the Equity and Diversity Committee of the Law Society. As part of its activities, the Working Group developed a Model Policy for Law Firms Regarding Lawyers with Disabilities. Recognizing that many of the issues dealt with in that policy and which lawyers with Disabilities face relate to workplace equality and workplace discrimination, the matters raised in the Model Policy developed by the Working Group were subsequently used to inform various Model Policies.

The Firm will respond in a timely, confidential and sensitive manner to requests for individual workplace accommodation.

## **Purpose**

The purpose of this policy is to make the work environment inclusive and non-discriminatory and to establish effective mechanisms for responding to accommodations needed by firm members.

This policy applies to all Firm members, being all those working for [name of firm] including secretarial, support, professional and administrative staff, articling and summer students, associates and partners (“Firm Members”). This policy will also apply to applicants for positions with the Firm as appropriate.

## **Legal framework**

This policy addresses the Firm’s responsibilities under the British Columbia Human Rights Code. Section 13 of the Code states that it is unlawful to refuse to employ or refuse to continue to employ a person, or to discriminate against a person regarding employment or any term or condition of employment because of, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person. A refusal, limitation, specification or preference based on a bona fide occupational requirement is not unlawful<sup>3</sup>.

Discrimination is any conduct or term or condition of employment that has a detrimental impact, whether that impact is intentional or unintentional, and is based on a prohibited ground of discrimination.

This policy acknowledges the Firm’s duty as an employer in circumstances where there is discrimination as set out above, to provide individual accommodation up to the point of undue hardship. In meeting this duty, the Firm will minimize the need for individual accommodation by ensuring that any rules, policies, standards or practices are not discriminatory.

## **Activities covered by this policy**

The Firm recognizes that its programs and activities may have the potential to create or maintain discriminatory barriers. The Firm is committed to ensuring that activities are reviewed to remove discriminatory effects and invites communication of any concerns or suggestions respecting all Firm activities including: **[NOTE: add to or remove from this list as appropriate.]**

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<sup>3</sup> See *Human Rights Code*, R.S.B.C. 1996, c.210, as amended, s. 13.

- staff, student and lawyer recruitment activities
- all employment – related policies including recruitment, selection, training, promotion, retention and flexible work arrangements;
- purchase, development, management and use of information technology systems and information services;
- decisions related to firm premises including design, layout and internal fittings (including work station access and adjustments);
- decisions relating to special events, social activities, conferences, seminars and training.

The Firm will make reasonable efforts to ensure that before deciding on or engaging in such activities, it will analyze options so as to identify and eliminate potential barriers. Further, it will review all existing policies and procedures to identify and remove discriminatory elements. This may involve permanent or ongoing changes to facilities, practices, policies and procedures.

### **Individual accommodation**

The Firm will ensure that it provides, in a timely and effective way, accommodation specific to an individual's needs. This could include but is not limited to:

- hours of work
- work station access and adjustments
- hiring practices
- work procedure adjustments
- provision of specific services, facilities, aids or equipment
- reassignment [of duties]

The Firm recognizes that the need for accommodation may arise during the employment selection process, at the commencement of employment or at some time after employment has commenced<sup>4</sup>.

### **Responsibility**

The Firm and Firm Members are responsible for:

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<sup>4</sup> For more information about recommended procedures respecting individual accommodation, please see the Canadian Human Rights Commission "A Place For All: A Guide to Creating an Inclusive Workplace" which includes a general procedures guide, an individual accommodation procedures guide, suggested forms and reference to other valuable resources. See: [http://www.chrc-ccdp.ca/discrimination/place\\_for\\_all-en.asp](http://www.chrc-ccdp.ca/discrimination/place_for_all-en.asp)

- implementing this policy
- ensuring that all existing policies, rules, practices and procedures are reviewed to identify and eliminate barriers to access and inclusion
- ensuring that action is taken on all notifications of barriers to access or inclusion
- providing individual accommodation in keeping with the legal duty
- advising Firm Members about their right to accommodation
- identifying suitable accommodations
- initiating the accommodation where the Firm is aware that a Firm Member has a need for accommodation, but is unable for any reason to state that need
- maintaining the privacy of Firm Members to the extent possible by treating confidentially and sharing only as necessary, information provided to afford appropriate accommodation
- developing Firm activities that are in keeping with the purpose and spirit of this policy in order to prevent discriminatory barriers to access and inclusion
- notifying the Firm of any barriers they believe may prevent access or inclusion

A Firm Member making a request for accommodation is responsible for:

- requesting, in a timely manner, accommodation including by identifying abilities, limitations and restrictions related to the request for accommodation
- providing, in a timely manner, adequate information including reports or medical information specifically relevant to the process of identifying appropriate accommodation
- facilitating and cooperating with the accommodation process, including by following any rehabilitation or treatment plan as recommended by the treating physician
- sharing the responsibility for ensuring that an individual accommodation is identified
- accepting a reasonable accommodation<sup>5</sup>

## Undue hardship

Where a term, condition or standard of employment results in discrimination against a Firm member, the Firm will ensure that all effective options to accommodate, short of undue

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<sup>5</sup> See *Health Employers Assn. Of B.C. (Kootenay Boundary Regional Hospital) v. B.C. Nurses' Union*, 2006 BCCA 57 in which the Court held at para. 52 that "[t]he employer's duty to accommodate ... was matched by [the employee's] duty to facilitate the accommodation process." See also *Kemess Mines Ltd. v. International Union of Operating Engineers, Local 115*, 2006 BCCA 58 at para. 44: "An addicted employee does have a duty to facilitate accommodation through rehabilitation.... And once the employee is aware of his addiction, there is no doubt that he must do all he can to facilitate the success of his rehabilitation and treatment."

hardship<sup>6</sup>, are considered. If it results in undue hardship, the Firm is not required to make changes to workplace policies, rules, practices, and operations or provide accommodation.

Where a particular means of accommodation is requested and it has been found that it cannot be implemented without incurring undue hardship, every effort will be made to provide alternative accommodation up to the point of undue hardship.

The accompanying procedure document provides guidance on the issues that may be considered in relation to whether or not the provision of a particular accommodation will result in undue hardship. It also sets out the delegation of authority respecting approval of financial or other allocations for accommodation purposes.<sup>7</sup>

## Privacy and confidentiality

All documents relating to specific requests for accommodation will be kept confidential and will only be disclosed:

- with the consent of the Firm Member,
- as necessary to assist in the provision of the accommodation, or
- as required by law.

The Firm will comply with all requirements of the Firm's Privacy Policy and privacy legislation to protect personal information.

## Recourse rights

Where a Firm Member believes that her or his request for accommodation has not been handled in accordance with this policy or the accompanying procedure, or is not satisfied with the type of accommodation offered, the Firm Member has the right to have the circumstances reviewed.

**[The review process is set out in the accompanying procedure document.]<sup>8</sup>**

In the event that a request for accommodation is denied on the grounds of undue hardship or any other ground, the Firm recognizes the right of Firm Members to make a complaint under the

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<sup>6</sup> The unified analysis that is applied by Tribunals and Courts in assessing the reasonableness of accommodation and determining whether undue hardship arises is set out in the Supreme Court of Canada decision in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* (1999), 176 D.L.R. (4<sup>th</sup>) 1. The approach involves a three step test such that an employer may justify an impugned standard as a bona fide occupational requirement or qualification by establishing the following on a balance of probabilities:

- 1) that the employer adopted the standards for a purpose rationally connected to the performance of the job;
- 2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; and
- 3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

<sup>7</sup> The Individual Accommodation Procedures Guide available through the Canadian Human Rights Commission includes information about assessing undue hardship. See "Undue Hardship" at <http://www.chrc-ccdp.ca/discrimination/individual-en.asp#3>.

<sup>8</sup> The Individual Accommodation Procedures Guide available through the Canadian Human Rights Commission includes information about internal appeal processes. See "Appeal Process" at <http://www.chrc-ccdp.ca/discrimination/individual-en.asp#3>.

British Columbia Human Rights Code, under which there is a 6 month time limit to bring complaints.

## Communication

The Firm will ensure that this Policy is made available to all Firm Members.

## Monitoring and reporting

The Firm will monitor all requests for accommodation to ensure this Policy has been correctly implemented.

The Firm will keep records of all information related to the accommodation process [**in accordance with the Firm Privacy Policy and Procedures or for a period of at least one year or for the relevant timeframe**].<sup>9</sup>

## Enquiries

Enquiries about this policy and procedure should be addressed to <\*>.

The Firm has designated a senior lawyer in the Firm as an Equality and Diversity Advisor who will answer questions about the Firm's policies that may be applicable to equality and diversity issues, monitor compliance, assist in the coordination of accommodation efforts, and advocate on behalf of Firm Members as appropriate in order to address concerns raised. The Equality and Diversity Advisor's name and contact information is \_\_\_\_\_.<sup>10</sup>

## Review

The Firm will review this policy and the accompanying procedure bi-annually. All current Firm Members are invited to contribute to the review.

## Related Policies

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<sup>9</sup> Sections 34 and 35 of the British Columbia Personal Information Protection Act, S.B.C. 2003, c. 63, as amended are applicable to the retention of "personal information". These sections require an organization to protect personal information that is in its custody or control by making reasonable security arrangements. Section 35 states: "(1) Despite subsection (2), if an organization uses an individual's personal information to make a decision that directly affects the individual, the organization must retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it. (2) An organization must destroy its documents containing personal information, or remove the means by which the personal information can be associated with particular individuals, as soon as it is reasonable to assume that (a) the purpose for which that personal information was collected is no longer being served by retention of the personal information, and (b) retention is no longer necessary for legal or business purposes."

<sup>10</sup> The appointment of an Equality and Diversity Advisor is included in various Model Policies of the Law Society of British Columbia.