



# Duty to Accommodate Teachers During the COVID-19 Pandemic

Updated August 26, 2020

The employer has a duty not to discriminate against an employee on the basis of a protected ground, such as physical or mental disability or family status. As part of this prohibition on discrimination, the employer has a legal duty to accommodate employees to the point of undue hardship.

## What is Duty to Accommodate?

The duty to accommodate in the workplace is a legal requirement and obligation of the employer (the District) to adjust rules, practices and requirements to allow employees to participate fully. The employer has a duty to accommodate employees functional limitations<sup>1</sup> provided that the accommodation required does not cause the employer undue hardship<sup>2</sup>.

## What is different with duty to accommodate in schools from the June return to the September return?

The employer always has a duty to accommodate. The process an employee would go through to acquire an accommodation prior to COVID remains the same. In the previous school year, most requests for accommodations to work remotely were accepted because teachers had already been working from home. At that time there was an understanding that teachers could continue to work because students did not return to in class instruction. Given that the current ministerial guidelines are calling for a return to in class instruction, it is unclear if there will be work available for teachers to do from home. This could lead the employer to make the case of undue hardship. Therefore, an accommodation to work remotely may be unavailable to members this school year.

## My accommodation request to work remotely was accepted in June, does that automatically mean it will be accepted this time around?

No. The employer may argue undue hardship as outlined above. It is possible that the employer may find other safeguards or site adjustments to address the functional limitations outlined by your physician. **The duty to accommodate does not mean the employer must provide the member's preferred option.**

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<sup>1</sup> functional limitations: *the limitations or needs associated with the disability and whether the person can perform the essential duties or requirements of the job. For example, a member with an anxiety disorder would not need to disclose this but would need to provide information about what duties they are not able to perform and what supports would enable them to do their job functions.*

<sup>2</sup> undue hardship: *this could include but not limited to financial costs of the accommodation, potential interference with the rights of other employees or lack of cooperation of the member throughout the process.*

## How do I access an accommodation?

Contact HR:

For Elementary: [Sandra.pandolfo@burnabyschools.ca](mailto:Sandra.pandolfo@burnabyschools.ca)  
For Secondary: [Rogene.swanson@burnabyschools.ca](mailto:Rogene.swanson@burnabyschools.ca)  
For District Personnel: [Ravneet.dosanjh@burnabyschools.ca](mailto:Ravneet.dosanjh@burnabyschools.ca)

## What information do I need to provide?

Depending on the circumstance, you may need to provide more information. It is not enough to just say that an accommodation is needed. The District has a right to know enough information to be able to properly accommodate you.

### For medical related accommodations:

The District is requiring that your physician fill out the **District's extended medical leave form** <https://www.burnabyteachers.com/wp-content/uploads/2017/11/Extended-Medical-Leave-Form.pdf>. The employer needs to know what the functional limitations are that are preventing you from working on site. If you are still able to work, the medical note may say that you are still able to perform your work duties remotely. They do **not** need to know your diagnosis or details of your treatment. If you are comfortable with sharing additional information, you may provide it in order to expedite the process. If the accommodation is due to medical reasons for someone in your household, you may be asked to provide a letter from the household member's doctor confirming their immunocompromised status and clarifying why you are unable to work on site. Additionally, you may be required to get a signature or permission from the household member to have their medical information released.

## Is the August 31<sup>st</sup> deadline firm to request an accommodation?

A member may always request an accommodation anytime of the year as recommended by a physician. If an application is received after August 31<sup>st</sup>, the District may be able to argue undue hardship if they are unable to accommodate on a condensed timeline. This is of particular concern if the employer believes the accommodation request was unnecessarily delayed. If you cannot get a medical appointment until after August 31<sup>st</sup>, let the District know that you will be requesting an accommodation and that you are waiting to see your physician. Provide the employer with an approximate date of when you intend to get the medical leave form in.

## What happens if the employer has concerns or the accommodation is denied?

The BTA will have the opportunity to sit down with the District and advocate for the member. In other words, no member is going to have their request for accommodation glossed over by the employer – the union will push the employer up to the limit of undue hardship for every request that is made by teachers.

## **What happens if my accommodation to work remotely is denied but I would still like to access another leave?**

Each member's situation is different but being denied to work remotely does not prevent you from applying for another leave (i.e. sick leave, compassionate care leave, personal leave, etc.). The employer may offer an alternative leave if they are unable to offer the accommodation of working remotely.

## **If I access a medical leave, what happens when I run out of sick days?**

A member can apply for the BCTF Salary Indemnity Plan program <https://bctf.ca/salaryandbenefits.aspx?id=4782>. It is important to note though that this is a BCTF fund with some restrictions/limitations.

BCTF Salary Indemnity Plan Division:

***“(SIP) can only provide benefits to those who become ill or injured, and as such are unable to perform their normal employment duties. Members that can continue to work with appropriate accommodations should seek to do so. Members cannot collect SIP on the basis that if they return to work they may catch the virus or pass it on to someone else in their household. Additionally, SIP does not provide benefits for quarantines or self-isolation if the member does not have the infectious disease.”***