

Duty to Accommodate Teachers During the COVID-19 Pandemic

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 limitations¹ provided that the accommodation required does not cause the employer undue hardship².

What is different with duty to accommodate in schools pre-COVID-19 and post COVID-19?

The employer always has a duty to accommodate. The process an employee would go through before COVID is the same process they would go through now. The main difference is what would be considered undue hardship. Before COVID-19, the employer could successfully argue that it would be undue hardship for employees to work from home. During these times, teachers have been working from home and there will continue to be work from home so in many cases teachers should and can be accommodated from home without creating undue hardship for the employer.

Who might seek accommodation during COVID times?

1. Pregnancy
2. Compromised Immune System and underlying medical conditions
3. Being over the age of 60
4. Living or caregiving for someone who has a compromised immune system
5. Teachers who have lost childcare due to COVID reasons (and there is no other childcare available in the community)

¹ 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.*

² 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?

Step 1: Notify your admin that you are needing an accommodation and that you will be contacting HR

Step 2: Contact HR:

For Elementary:	Sandra.pandolfo@burnabyschools.ca
For Secondary:	Rogene.swanson@burnabyschools.ca
For District Personnel:	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 will most likely require medical documentation/note from your physician. The employer needs to know what the functional limitations are that are prevented 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 fine with them knowing these details, you may provide it in order to expedite the process. **You may use the District's extended medical leave form as a guide for your physician of what information is needed** <https://www.burnabyteachers.com/wp-content/uploads/2017/11/Extended-Medical-Leave-Form.pdf>. If the accommodation is due to medical reasons for someone in your household, you may be asked to provide a letter from a doctor explaining the situation and why you are unable to work on site.

For age:

They should have it on file and no further documentation should be required.

For childcare:

You may need to provide a letter from the daycare that proves that it is closed due to COVID-19 reasons. The employer may require that an exhaustive search for childcare take place before any accommodation take place. If childcare is available and it is a choice (understandably not an easy one) to keep the child at home, it is possible that this would not satisfy the need for an accommodation (legally).

What will my accommodation look like?

The duty to accommodate requires the cooperation of the member, the union and the employer. Every accommodation will be dealt with on an individual basis. You are entitled to a reasonable accommodation but not necessarily your ideal accommodation.

It could look like:

- Working remotely from home
- Working on site with adjustments and safeguards

Will I need to access my sick days?

You should only be accessing your sick days if you are unable to work on site or remotely due to medical reasons.

What happens if I need an accommodation starting May 25th but cannot get the medical information in before that?

The District has assured that they will be lenient for the first week. If you have contacted HR and requested an accommodation, you may work remotely from home until the documentation is provided and the accommodation is reviewed. The District will most likely need supplement information before June 1st when students are returning.

There may be circumstances where members have difficulty accessing medical information (even within a week), in which case you should notify the BTA.

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.