



ADMINISTRATION POLICY:

Duty to Accommodate in Employment

Policy number:	HR-EMP-001 (A)
ALT report:	N/A
Approved by:	Administrative Leadership Team (ALT)
Effective date:	2007 / 04 / 01
Next revision due:	2013 / 04 / 01
Department/BU:	Corporate Services / Human Resources

BACKGROUND

The Corporation of The City of Calgary ("The City") is committed to:

- Creating, providing and maintaining an equitable, positive, safe and rewarding work environment for all of its employees and external applicants, and
- Working collaboratively with its employees, unions and associations, external applicants and other key stakeholders throughout the accommodation process to identify, assess, evaluate and implement solutions that
 - a. Respect the employee's or external applicant's dignity, worth, and right to privacy in the workplace.
 - b. Reasonably accommodate the needs of the employee or external applicant.
 - c. Are possible to implement without resulting in undue hardship for the Employer.

This commitment is supported by The City's:

- Corporate Goals, Vision, Mission and Values statements; and
- Respectful Workplace Policy.

The purpose of this policy is to ensure that The City of Calgary, as the "Employer":

1. Fulfills its legal obligations regarding the duty to accommodate as required by the Alberta Human Rights Act (the Act).
 - a. The Act prohibits discrimination on the grounds of race, religious beliefs, colour, gender, sexual orientation, physical disability, mental disability, age, ancestry, place of origin, marital status, and source of income or family status of that person or of any other person.
 - b. In a situation where a workplace standard, practice, policy or term and condition of employment negatively impacts an employee on the basis of a

protected ground of discrimination, The City must establish that it is impossible to accommodate the employee without imposing undue hardship on The City.

2. Designs, develops, evaluates, implements, negotiates, applies, interprets or modifies all employment-related rules, policies, practices, standards, expectations, agreements, terms and conditions of employment in a manner consistent with and that meets the compliance requirements of the duty to accommodate under the Act.
3. Demonstrates that it has used and consistently applied a legally defensible process throughout The Corporation that has balanced:
 - a. The right of an employee or external applicant to be provided an equal opportunity for employment;
 - b. The right of The City, as the “Employer”, to operate a productive and safe workplace; and
 - c. The City’s compliance with all other employment related legislation, regulation or codes as enacted by the governments of Alberta or Canada and other legal obligations as may be ordered by a court of law.

The City of Calgary Accommodation Guidelines have been developed to support the interpretation and application of this policy.

PURPOSE

The purpose of this policy is to outline The City of Calgary’s policies with respect to reasonably accommodating the needs of the employee or external applicant.

DEFINITIONS

1. Reasonable Accommodation – The modification or relaxation of an employment rule, practice, condition or requirement in order to meet the specific needs of an individual or group based on one of the prohibited grounds of the Alberta Human Rights Act. Reasonable accommodation can take many forms including: modifying job duties, altering a building or job site to make it accessible, providing technical aids, finding an alternate placement, or varying job requirements or schedule.

POLICY

1. Scope

1. This policy covers all:
 - a) City of Calgary employees whose need for accommodation relates to:
 - i. Their current position; or
 - ii. Another internal position or work assignment for which they are applying, or for which they are being considered for placement.

- b) External applicants applying for employment with The City whose need for accommodation relates to the specific position for which they have applied.

2. Consequences of Non-Compliance

If an individual is of the opinion that his / her need for accommodation has not been properly addressed by The City as described by this policy, it is important to invite him / her to express his / her concerns with those directly involved. If that individual is not satisfied with the outcome, there are a variety of avenues available to provide further support.

- Business unit Director/division Manager/Supervisor
- Human Resources contact for business unit
- Human Resources business unit (responsible for administration of The City's "Respectful Workplace" policy which covers all grounds of discrimination as prohibited by the Act)
- Union or association representative
- The Alberta Human Rights Commission.

3. Process Steps

3.1 Requests for Accommodation

1. The City of Calgary is a large and complex organization. The "Employer's" responsibility to accommodate can exist at different levels in The Corporation. To ensure a thorough and logical examination of alternatives, requests for accommodation will be moved through the organization as follows.

Stage 1: The immediate work area or division within a business unit (includes modifying existing job)

Stage 2: Other work areas or divisions within the same business unit

Stage 3: Other business units within the same department

Stage 4: Other business units in all other departments across The Corporation

Stage 5: Alternatives beyond the initial union jurisdiction or non-union / exempt positions

2. Movement from Stage 1 through to Stage 5 will depend on the circumstances of each specific situation. Alternatives in the employee's own bargaining unit must be

exhausted before considering options in other union jurisdictions or non-union and exempt positions.

3. At Stages 1 through to 5, it is the responsibility of the leader of the work area, division or business unit, to implement a reasonable solution that does not result in undue hardship.
4. Throughout any stage of the process, Human Resources will provide support to assist all parties in dealing with a matter through to its final disposition.

3.2 Limitation on the Duty to Accommodate – Point of Undue Hardship

1. The Act does not require The City, as the “Employer”, to implement a solution that would result in undue hardship.
2. The Supreme Court of Canada has ruled that:
 - a. Some level of hardship on an “Employer” will be expected; and
 - b. The employer meets its obligation if it can demonstrate that it is impossible to accommodate the employee without imposing undue hardship on the employer.
3. Some factors that the Courts have identified as being relevant to establish undue hardship are:
 - a. Significant financial cost to The City, as the “Employer”
 - b. Hazards to the safety of the employee, external applicant, their co-workers or the public
 - c. Disruption to the provisions of a collective agreement
 - d. Problems of morale amongst other employees
 - e. Significant interference with the legitimate operational requirements of a City business unit, division or work area.
4. The above list is not exhaustive and there may be other factors that can be objectively demonstrated as causing undue hardship for The City.
5. Ultimately, it is The City, as the “Employer”, that bears the onus of proving it is impossible to accommodate without resulting in undue hardship
6. A City business unit, division or work area may be able to demonstrate that the accommodation would cause it significant interference with its legitimate operational requirements. This will then require The City to explore all other possible accommodation options throughout the Corporation to determine if there is a reasonable solution, short of undue hardship, that can be implemented.

3.3 Exception to the Duty to Accommodate – Bona Fide Occupational Requirement (BFOR)

1. The Act allows, in specific circumstances, for an employer to justify an otherwise discriminatory practice prohibited by the Act as a BFOR.

2. A BFOR can relate to any of The City's employment-related rules, policies, practices, process, standards, expectations, agreements, programs, terms or conditions.
3. To legally defend an employment-related rule, policy, practice, process, standard, expectation, agreement, program, term or condition as a BFOR, The City would have to objectively demonstrate that the requirement is absolutely necessary for the safe, economic and efficient performance by meeting all three parts of the following test::
 - a. The requirement was adopted for a purpose rationally connected to the performance of the job; and
 - b. That it was adopted in an honest and good-faith belief that it is necessary to fulfill the legitimate work-related purpose; and
 - c. To show that the requirement is reasonably necessary for the accomplishment of a legitimate work-related purpose, the employer must demonstrate that it is impossible to accommodate the individual without imposing undue hardship on the "Employer".

3.4 Impact on Collective Agreements and the Role of Unions in the Duty to Accommodate

1. The Supreme Court of Canada has ruled that a union, like an employer, has a legal duty to accommodate to the point of undue hardship.
2. The Court has ruled that a union's duty to accommodate may arise in one of two ways:
 - a. By participating in negotiations with an "Employer" that results in collective agreement language that has a discriminatory impact on a union member as prohibited by the Act; or
 - b. By impeding the efforts of the employer to implement a reasonable solution that will accommodate the needs of the employee.
3. If a City employee is represented by a union, the "Union" is the exclusive bargaining agent through which all terms and conditions of employment for that employee must be negotiated, which would include any proposed accommodations.
4. Before implementing any proposed solution that may interfere, disrupt or be perceived as being contrary to the express language of The City's collective agreements, Leaders and Human Resources staff will:
 - a. Discuss with representatives of the "Union(s)" the option being considered;
 - b. If necessary, be able to objectively demonstrate that all other options have been exhausted that do not interfere or disrupt the express language within the collective agreement;
 - c. Welcome and / or invite the "Union's" representatives to identify any other options that they feel could be reasonable in the circumstances;

- d. Actively and collaboratively work with the “Union’s” representatives, on how best to resolve the situation so that both parties can meet all of their respective legal obligations.
- 5) Before The City will consider transferring an employee from one bargaining unit to another, The City must first exhaust its accommodation efforts in the bargaining unit where the employee is currently employed.
- 6) Union representatives are welcomed and encouraged to participate with the “Employer’s” representatives at all stages of the process by suggesting options that they feel could be a reasonable solution to accommodate their member’s needs.

4. Responsibilities

1. The duty to accommodate is a shared responsibility which involves obligations on the part of the employer, employee, applicant, and the bargaining unit or association (if applicable). Everyone involved should cooperatively engage in the process, share information, and avail themselves of potential accommodation solutions.

- a. Employer – as represented by a manager or a supervisor bears the primary responsibility to find available resolutions so that an applicant or employee is accommodated in the workplace. Managers or supervisors best know the operational requirements, and how those requirements can be adjusted and met while accommodating an employee.
- b. Unions – the law also imposes obligations on unions to participate in the accommodation process. A union may be liable for failure to accommodate if it impedes efforts in identifying and implementing reasonable alternatives. It is important to consult with the union when a proposed solution may interfere, disrupt, or be perceived as being contrary to the express language of a collective agreement or substantially interfere with the rights of other employees.
- c. Employee – has a duty to participate and cooperate in the accommodation process and to accept a reasonable offer of accommodation. Generally speaking employees are responsible for making their needs known to the “Employer”. The employee may also be required to provide satisfactory medical information and / or relevant documentation to establish the need for accommodation.
- d. External applicant – when applying for employment with The City of Calgary must identify the need for accommodation during the interview stage.
 - i) In cases where an applicant requests accommodation, the “Employer’s” responsibility is limited to determining whether the request can be accommodated in relation to the position for which they have applied. There is no requirement to search for other positions within The Corporation if the needs of the applicant cannot be accommodated in the job for which they applied.
 - ii) Once an applicant has been hired they are considered an “employee” for the purposes of the Duty to Accommodate.

SUPPORTING REFERENCES AND RESOURCES

Please note that some of the items listed below may not be publicly available.

References to related corporate-wide procedures, forms and resources

- [My HR](#) intranet website
- Accommodation Guidelines (contact HR for copy)

References to related [Council policies](#), bylaws and [administration policies](#)

- Respectful Workplace Policy (Administration Policy HR-031)

Other references and resources

- [Alberta Human Rights Act](#)

REVISION HISTORY

Review Date	Description
2010 10 01	Minor revisions
2007 04 01	New policy
2006 12 07	Revision
1998 03 31	New policy