

Duty to Accommodate Policy

Original Implementation Date: October 1, 2024

Approved by: Cathie O'Toole, CAO

Date of Last Revision:

Approved by:

Effective Date of Last Revision:

Approved by:

1. Policy Name

Duty to Accommodate Policy

2. Purpose

Halifax Regional Municipality is committed to fostering an inclusive workplace that is free from employment discrimination in a manner consistent with its legal obligations under the Nova Scotia *Human Rights Act*.

3. Objectives

The objectives of this Policy are:

- 3.1. To foster a diverse and inclusive work environment through increasing Employee and Job Applicant awareness of, and accessibility to, the Accommodation process.
- 3.2. To define roles and responsibilities for Leaders, Employees, Job Applicants, and all other parties engaged in the Accommodation process.
- 3.3. To promote procedural consistency in the Accommodation process.
- 3.4. To ensure that individuals who are otherwise able to work, are not discriminated against by being excluded from doing so, when working conditions can be adjusted.

4. Scope

This Policy applies to all current Employees of Halifax Regional Municipality and Job Applicants for employment with Halifax Regional Municipality. Where specific provisions of this Policy conflict with specific articles in any of the Municipality's Collective Agreements, the Collective Agreement provisions will apply, unless those provisions conflict with the Nova Scotia *Human Rights Act* or other applicable legislation, in which case the legislation will apply.

5. Definitions

For the purposes of this Policy, the following definitions apply:

Accommodation: An arrangement that involves the removal or alleviation of barriers that prevent an Employee from fully participating in the workplace or a Job Applicant from fully participating in the hiring process, in accordance with a Protected Ground under the Nova Scotia *Human Rights Act*.

Accommodation Request Form: A standardized Employer form that may be required to request an Accommodation.

Bona Fide Occupational Requirements: The requirements of the job which cannot be modified through Accommodation. They are the necessary requirements essential for safe, proper and reliable performance of the job and which are objectively and reasonably necessary for such performance.

CAO: The Chief Administrative Officer of Halifax Regional Municipality.

Disability: For the purpose of this policy, disability is a “physical disability or mental disability” as defined, or as updated, in s. 3(l) of the Nova Scotia *Human Rights Act*.

Duty to Accommodate: A legal obligation to accommodate the needs of Employees or Job Applicants who are adversely affected by an employment requirement, rule or standard, or an application process, due to a Protected Ground, as defined by the Nova Scotia *Human Rights Act*.

Employee: Includes any person categorized as permanent, term, casual, temporary, part-time, seasonal or student directly or actively employed by the Municipality.

Employer: Halifax Regional Municipality, or The Municipality, including Leaders who have delegated authority to control and direct the work activities of Employees and Human Resources staff involved in any part of the Accommodation process.

Functional Limitations: The limitations associated with a Protected Ground which prevent the Employee or Job Applicant from performing certain parts of a job, or from participating in an employment-related process.

Inclusive Workplace: A workplace where all Employees have the opportunity to contribute and participate in a barrier free environment.

Job Applicant: An individual applying for a job with The Municipality, including Employees already employed by The Municipality.

Leaders: Refers to any Supervisor, Manager, Director, Executive Director or any other HRM Employee with direct reports.

Protected Grounds: Grounds set out in subsection 5(1) of the Nova Scotia *Human Rights Act*: (h) age; (i) race; (j) colour; (k) religion; (l) creed; (m) sex; (n) sexual orientation; (na) gender identity; (nb) gender expression; (o) physical disability or mental disability; (p) an irrational fear of contracting an illness or disease; (q) ethnic, national or aboriginal origin; (r) family status; (s) marital status; (t) source of income; (u) political belief, affiliation or activity.

The Nova Scotia Human Rights Act: The statute in Nova Scotia that prohibits discrimination in Employment on Protected Grounds subject to prescribed exemptions.

Undue Hardship: Undue hardship describes the limit of an Employer's obligation to accommodate an Employee or a Job Applicant in the application process. While there is no exhaustive list of factors to consider, Undue Hardship may be reached when factors such as safety, financial costs or impact to service delivery make the employer's burden in accommodating an Employee excessive.

6. Roles, Responsibilities and Expectations

6.1. The CAO is responsible for:

- 6.1.1. Ensuring that all Leaders are aware of their roles and responsibilities in the Accommodation process.
- 6.1.2. Holding Leaders accountable to organizational expectations with respect to employment related accommodations.

6.2. Leaders and Human Resources are responsible for:

- 6.2.1. Ensuring that all Employees and Job Applicants are advised of their right to be accommodated.
- 6.2.2. Ensuring that individuals with a substantiated need for Accommodation are accommodated to the point of Undue Hardship.
- 6.2.3. Fostering an inclusive work environment by treating all Employees and Job Applicants with respect and dignity.
- 6.2.4. Minimizing the need for individual Accommodation by regularly reviewing rules, policies, practices and job descriptions.
- 6.2.5. Respecting the dignity and privacy of the person requesting Accommodation.
- 6.2.6. Processing or facilitating requests for Accommodation in a timely, and sensitive manner.
- 6.2.7. Keeping information provided by those seeking Accommodation confidential, except to the extent necessary to assess an Accommodation request, implement the terms of an Accommodation or to inform any

grievance or other legal proceeding associated with the request for Accommodation.

- 6.2.8. Informing individuals who are requesting Accommodation what information they need to provide and providing Employees with any supporting documents needed to request an Accommodation.
- 6.2.9. Treating each Accommodation request as unique and assessing on an individual basis.
- 6.2.10. Providing written reasons when an Accommodation request has been denied.
- 6.2.11. Ensuring that accommodations are formalized in writing.
- 6.2.12. Participating in the process in good faith.
- 6.2.13. Reporting and/or tracking Accommodation requests and outcomes.

6.3. Employees and Job Applicants can expect:

- 6.3.1. To be treated with respect and dignity.
- 6.3.2. To have their needs accommodated up to the point of Undue Hardship, in accordance with the *Nova Scotia Human Rights Act* and related jurisprudence.
- 6.3.3. To be informed of the reasons if their Accommodation request is denied.

6.4. Employees and Job Applicants are responsible for:

- 6.4.1. Informing the Municipality, at the earliest possible opportunity, about the need for an Accommodation.
- 6.4.2. Maintaining timely communication with the Employer. This may include the hiring Manager, an Employee's current Manager, a Workplace Health Specialist, and/or other Human Resources member.
- 6.4.3. Providing documentation necessary to assess the request for Accommodation including information about any restriction or limitations.
- 6.4.4. Helping to identify potential Accommodation options.
- 6.4.5. Accepting a reasonable Accommodation offer, even if it is not their preferred Accommodation option.
- 6.4.6. Advising the Employer if there are changes to their needs, including if their need for an Accommodation ends.
- 6.4.7. Cooperating and assisting in the Accommodation process. Failure to cooperate may end the Employer's Accommodation obligations.
- 6.4.8. Participating in the process in good faith.

7. Policy Regulations and Procedures

Job Applicants may be entitled to Accommodation in the job competition process.

7.1. Job Applicant Accommodations Related to the Hiring Process

- 7.1.1. Job postings shall include language that informs Job Applicants of their right to request an Accommodation with respect to the hiring process, and the process for making that request.
- 7.1.2. Job Applicants whose Functional Limitations impact their ability to apply for a job, or participate in the hiring process, shall make their accommodation request known at the point in the hiring process, that the accommodation may be required, by directly contacting the Hiring Manager or Human Resources staff involved in the hiring process, or by emailing jobs@halifax.ca.
- 7.1.3. Hiring Managers, and/or Human Resources, where appropriate, will evaluate the Job Applicant's request for Accommodation with respect to the hiring process and, if needed, may request more information from the Job Applicant. Requests must be evaluated considering the Employer's Accommodation obligations.
- 7.1.4. Human Resources will attempt to grant and facilitate required Accommodation requests with respect to the hiring process, wherever possible, without requiring additional information. There may be times when granting an Accommodation request is not possible, including when granting the request would impact the ability to assess a Job Applicant's skills and abilities. Alternative accommodations that meet the Job Applicant's needs may be identified by the Hiring Manager or Human Resources and offered to the Job Applicant.
- 7.1.5. If a request for Accommodation is denied, the reason(s) will be clearly communicated to the Job Applicant.

7.2. Employee Accommodation

- 7.2.1. An Employee may request an Accommodation when their Functional Limitations related to a Protected Ground prevent them from fulfilling and/or complying with the duties, functions, conditions or terms of their current position.

- 7.2.2. The Employee will inform their Supervisor or Manager of the potential need for Accommodation. Potential Accommodation needs may also be identified by others, including, the Workers' Compensation Board of Nova Scotia, a Long-Term Disability Benefits provider, the Employee's treatment provider or in response to concerns raised by a Supervisor.
- 7.2.3. The Employee may be required to submit supporting documentation including an Accommodation Request Form. The Employee must provide information and documentation supporting their need for Accommodation, when requested. The Employer needs to know what Protected Ground the Employee is seeking Accommodation under, what parts of the job an Employee can and cannot do (Functional Limitations), as well as other information, including but not limited to the expected duration of such limitations.
- 7.2.4. If the Employer does not have enough information to proceed with the Accommodation request, additional information may be requested from the Employee. If the Employee does not provide sufficient information, as requested by the Employer, the request for Accommodation will not be approved. The Employer may request this information through the Employee or through a treatment provider where consent has been given. For non-disability Accommodation requests, Employees may be asked to submit other types of documentation to help substantiate and assess their request.
- 7.2.5. Employees who are still in the workplace, will be required to continue fulfilling the regular duties of their current position while their Accommodation request is being assessed, except in rare circumstances as determined by the Employer. Although some temporary work modifications may be approved while a formal Accommodation request is being processed, some situations will require Employees to use their leave banks, as appropriate, while their Accommodation request is being assessed if they are unable to fulfill the normal duties of their job.
- 7.2.6. Formal Accommodation arrangements will not be implemented by the Employer until the Employee's need for Accommodation is substantiated.
- 7.2.7. If the need for Accommodation is substantiated, and to the extent that the Employer is obligated to accommodate an employee, the Leaders, with

assistance from Human Resources, when required, will determine whether the employee can be accommodated, without Undue Hardship, with the following arrangements and order of priority:

- 7.2.7.1. in the Employee's current position, with reasonable modifications, which may include workstation adjustments, reassignment of job tasks, changes to scheduling or hours of work, or leaves of absence.
- 7.2.7.2. in the Employee's current classification;
- 7.2.7.3. in another classification with similar hours/rate of pay, but for which the Employee possesses the requisite qualifications, knowledge, skills and abilities;
- 7.2.7.4. for unionized Employees, in another classification in the same bargaining unit which does not have the equivalent hours/rate of pay, but for which the employee possesses the requisite qualifications, knowledge, skills, and abilities;
- 7.2.7.5. in another position (outside of the bargaining unit for unionized Employees), but with the Employer, for which the Employee possesses the requisite qualifications, knowledge, skills, and abilities.
- 7.2.8. Human Resources will lead in searching for positions in accordance with 7.3.6.2 to 7.3.6.5 above. Leaders must engage Human Resources before accommodating an Employee outside of the Employee's current position.
- 7.2.9. The Employee is also expected to participate in the job search by applying for any Municipal positions they believe best fit their needs. This will help to identify positions that the Employer may not have been aware the Employee was qualified for. The Employee must notify Human Resources, via either the Human Resources Business Partner (HRBP) or jobs@halifax.ca, when they have applied for a position, so their job application is assessed considering any Accommodation obligations of the Employer. This notification must happen as soon as the application is made to manage any potential impacts to the job competition process.
- 7.2.10. When assessing whether an Accommodation option is appropriate for an Employee, the Employee may be required to demonstrate they have the required skills for the position, through testing, interviews or other means.

- 7.2.11. The Employer shall take the Accommodation preferences of the Employee into account; however, the Employer will also consider other factors in assessing Accommodation options, and ultimately may choose to proceed with an option that is not the Employee's ideal or preferred Accommodation, so long as the Accommodation meets the employee's Accommodation needs.
- 7.2.12. If the Employer can accommodate the Employee in another position without Undue Hardship, it will consult other parties, as necessary, before offering the position to the Employee. This may include an Employee's current union for unionized Employees, a Worker's Compensation Board of Long-Term Disability caseworker, treatment providers, the Manager of the incoming position, and/or the union associated with the incoming position if that position is unionized.
- 7.2.13. The final decision on whether a specific Accommodation will be offered to an Employee, rests with the Employer.
- 7.2.14. All Accommodation arrangements shall be formalized, in writing, and may require signature from the Employer, the Employee, and the applicable Union(s).
- 7.2.15. Due to the changing nature of certain Accommodation needs, certain Accommodation arrangements may be granted for a limited period of time and may require the Employee to submit a new request and updated supporting documentation on an annual (or on another specified time interval) basis.
- 7.2.16. Employees shall be paid the rate of pay associated with the position in which they are accommodated.
- 7.2.17. Human Resources and Leaders will ensure that all reasonable Accommodation options short of Undue Hardship have been considered prior to denying a substantiated Accommodation request. If a request for Accommodation is denied, or the need cannot be accommodated without Undue Hardship to the Employer, the reasons will be clearly communicated to the Employee.

- 7.2.18. The Leader will revisit the terms of the Accommodation from time to time, to ensure the Accommodation is meeting the needs of the Employee and the Employer.
- 7.2.19. The Employee will notify the Employer if their condition or situation changes to the point that their Accommodation needs modification.
- 7.2.20. Leaders will continue to monitor the workplace and review rules, policies, and practices to ensure that they do not create unnecessary barriers that prevent employees from accessing or being included in the workplace.
- 7.2.21. Leaders will inform Human Resources of all Accommodation requests, and outcomes for Municipal tracking purposes. Human Resources shall be responsible for tracking Accommodation requests and outcomes.

7.3. Denied Accommodation Requests

- 7.3.1. Requests for Accommodation may be denied for a variety of reasons, including, but not limited to, the following:
 - 7.3.1.1. the request is not linked to a protected ground in the Nova Scotia *Human Rights Act*.
 - 7.3.1.2. the requester refuses to provide supporting documentation.
 - 7.3.1.3. the individual's functional limitations do not activate the need for Accommodation.
 - 7.3.1.4. the information received does not support the need for Accommodation.
 - 7.3.1.5. the request cannot be accommodated without Undue Hardship to the Employer, including but not limited to when the Job Applicant or Employee does not meet the Bona Fide Occupational Requirements of a job.

7.4. End of Employer's Accommodation Obligations

- 7.4.1. The Employer's Accommodation obligations will have been met, or will end, when:
 - 7.4.1.1. The Employee is successfully accommodated.
 - 7.4.1.2. An Accommodation is no longer required by the Employee.
 - 7.4.1.3. The Employee's employment with The Municipality ends.
 - 7.4.1.4. The Employer is unable to accommodate without Undue Hardship.
 - 7.4.1.5. The Employee rejects a reasonable Accommodation offer.

7.4.1.6. The Employee fails to cooperate with the Accommodation process, including when the Employee fails to provide the information required to substantiate an Accommodation need.

8. Repeal

N/A

9. Effective Date

October 1, 2024

10. Related Policies, Practices, and Legislation

- Fair Hiring Policy
- Employment Equity Policy
- *Employment Equity Act S.C. 1995, c 44*
- *Nova Scotia Human Rights Act, RSNS 1989, c 214*
- *The Nova Scotia Accessibility Act*

11. Policy Review

This policy will be reviewed every two years by Human Resources or as required.

12. Contact

Human Resources Business Partner

13. Attachments

Accommodation Request Form