

DUTY TO ACCOMMODATE

A GUIDE FOR SCHOOL DIVISIONS
AND SASKATCHEWAN TEACHERS'
FEDERATION MEMBERS

A COLLABORATIVE PROJECT



NOVEMBER 2022

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TABLE OF CONTENTS

Introduction	4
1. Guiding Principles to Support Accommodation	5
Preamble	5
Principles	5
2. The Legal Foundation	6
Discrimination Prohibited	6
Meaning of Disability	7
Meaning of Accommodation	7
Understanding <i>The Saskatchewan Human Rights Code, 2018</i>	8
Obligation of the School Division to Accommodate	9
Obligation of the Teacher to Provide Medical Information	10
Medical Restrictions and Limitations	11
Undue Hardship	11
3. Roles and Responsibilities	13
School Division	13
Teacher Seeking Accommodation	14
Medical Practitioner	14
Principal/Vice-Principal	14
Colleagues of the Teacher Being Accommodated	15
Saskatchewan Teachers' Federation	15
Typical Accommodation Process	16
Summary of the Accommodation Process.	17
Appendix I Duty to Accommodate A Summary for Teachers	19
Appendix II The Accommodation Process: A Step-By-Step Guide for Teachers	27
Appendix III Frequently Asked Questions	28
Appendix IV How to Talk to Your Medical Practitioner About Accommodation – A Teachers' Guide	32
Appendix V Some Typical Restrictions/Limitations	34
Appendix VI Some Typical Teacher Activities.	35
Appendix VII Legislation (Applicable Sections)	36

INTRODUCTION

In the educational community, one of the most important areas in human resource relationships is duty to accommodate for disability. For teachers and their employers, efforts in this area were advanced through the inter-organizational (Government of Saskatchewan, Saskatchewan School Boards Association and Saskatchewan Teachers' Federation) commitments expressed in the Memorandum of Agreement to the Provincial Collective Bargaining Agreement signed in 2007.

One of the many important recommendations resulting from this initial work was the recommendation to engage all of the individuals involved in the processes to support the duty to accommodate in an educative process. It was determined that the complexity of this work would be enhanced by shared knowledge and approaches, a commitment to collaboration and good faith relationships.

As a result, the Saskatchewan School Boards Association and the Saskatchewan Teachers' Federation worked collaboratively to prepare the first edition of this document of shared understandings to better enable teachers, school divisions and their agents to meet their respective obligations and successfully respond to the unique circumstances of each accommodation relationship.

This resource has provided valuable assistance for school divisions and teachers since its introduction. It has been used by superintendents and human resource personnel of school divisions as well as by the Federation's senior administrative staff when working with teachers who require accommodation. It was intended to support processes and conversations that reflect the guiding principles to support accommodation and, ultimately, lead to sound accommodation decisions. We believe the guide has met this objective.

The Saskatchewan School Boards Association and the Saskatchewan Teachers' Federation are now pleased to provide an updated version of this resource as a guide for school divisions and teachers as they continue to engage in the work of accommodation.

This document is intended to be used as a guide for information and discussion purposes only. Each particular case and applicable law must be addressed on an individual basis.

1

GUIDING PRINCIPLES TO SUPPORT ACCOMMODATION

In 2007, parties to the Provincial Collective Bargaining Agreement signed a Memorandum of Agreement committing to study duty to accommodate. In 2009, a report was signed that contained the principles of duty to accommodate. These principles still guide the work of the parties today.

PREAMBLE

- Accommodation is a fundamental legal obligation that is informed by the applicable human rights law.
- Accommodation is one element of an interorganizational commitment to a culture of wellness.
- Accommodation is both a right and a duty.

PRINCIPLES

Responsiveness

- Accommodation is a dynamic, ongoing process that runs throughout the employment relationship.
- A commitment to a culture of wellness assumes an attitude which facilitates the presence at work for a teacher with an illness or disability.
- All parties must be attuned and alert to the needs of the workplace so as to maximize the most productive working relationship possible.

Fairness and Equity

- It is assumed that all parties engage in the accommodation process in good faith.
- Accommodation requires flexibility on the part of all parties involved in the process.
- It is recognized that each accommodation circumstance is unique and the accommodations made must be appropriate to those unique circumstances.

Shared Responsibility

- Successful accommodations result from interdependent, yet distinct responsibilities on the part of the school division, the teacher, the Saskatchewan Teachers' Federation and the medical practitioner.
- Within that interdependent relationship, the distinct roles and responsibilities must be well understood, communicated and respected by all parties.
- Education is a critical component of successful accommodations. Educational opportunities that support accommodation ought to be organized and supported by all of the educational partners and should be constructed to meet the needs of all.

Respectful Communication

- Respectful communication is marked by ethical behaviour, trust, open-mindedness and an acceptance of personal responsibility.
- The relevance and disclosure of medical information to the accommodation process should be determined within the context of the established law and legal principles, the applicable collective agreements and good practices.
- While there is recognition that the accommodation process is complex, it is important that there is a timely provision of medical information and that the related accommodation decisions are made in a timely manner.

2

THE LEGAL FOUNDATION

DISCRIMINATION PROHIBITED

The requirement to accommodate an employee who has a disability comes from the obligations of human rights and labour law. In Saskatchewan, Section 16 of *The Saskatchewan Human Rights Code, 2018* (the Code), provides that no employer can discriminate against any individual on the basis of a prohibited ground:

Discrimination in employment prohibited

16(1) No employer shall refuse to employ, refuse to continue to employ or otherwise discriminate against a person or class of persons with respect to employment, or a term or condition of employment, on the basis of a prohibited ground.

(2) No employee shall discriminate against another employee on the basis of a prohibited ground.

The prohibited grounds under the Code are listed in Section 2(1) under Definitions.

One of the prohibited grounds is “disability.”

In the case of public institutions such as school divisions, Section 15(1) in the *Canadian Charter of Rights and Freedoms* also protects against discrimination on the basis of “physical disability” unless justified under Section 1 of the Charter.

A limited requirement to accommodate is also spelled out in Section 2-41 of *The Saskatchewan Employment Act* which provides that:

Employer must reassign employee or modify employee's duties

2-41 An employer shall modify an employee's duties or reassign the employee to other duties if:

- (a) the employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties; and
- (b) it is reasonably practicable to do so.

It is to be noted that the obligation of the employer under *The Saskatchewan Employment Act* is to modify duties or reassign the employee where “reasonably practicable.” The requirement under human rights legislation is broader.

The Saskatchewan Employment Act also provides in Section 2-40 that, subject to certain limitations, an employer cannot dismiss, suspend, lay off, demote or discipline an employee because of absence due to illness:

Protection of employees for illness or injury

2-40(1) Subject to subsections (2) to (4.1), except for just cause unrelated to injury or illness, no employer shall take discriminatory action against an employee because of absence:

- (a) due to the illness or injury of the employee; or
- (b) due to the illness or injury of a member of the employee's immediate family who is dependent on the employee.

MEANING OF DISABILITY

Under *The Saskatchewan Human Rights Code, 2018*, a disability is very broadly defined. The definition in Section 2(1) includes “any degree of physical disability ...” or “intellectual disability ...” or “mental disorder” This would encompass a wide variety of medical issues including drug addiction and alcoholism. Disabilities may be of a long-term or short-term duration.

Mental disorder is given a specific definition in Section 2(1).

Definitions

2(1) In this Act:

“**disability**” means:

- (a) any degree of physical disability, infirmity, malformation or disfigurement, including:
 - (i) epilepsy;
 - (ii) any degree of paralysis;
 - (iii) amputation;
 - (iv) lack of physical coordination;
 - (v) blindness or visual impediment;
 - (vi) deafness or hearing impediment;
 - (vii) muteness or speech impediment; or
 - (viii) physical reliance on a service animal, wheelchair or other remedial appliance or device; or
- (b) any of the following disabilities:
 - (i) an intellectual disability or impairment;
 - (ii) a learning disability, or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language;
 - (iii) a mental disorder;

“**mental disorder**” means a disorder of thought, perception, feelings or behaviour that impairs a person’s:

- (a) judgment;
- (b) capacity to recognize reality;
- (c) ability to associate with others; or
- (d) ability to meet the ordinary demands of life;

The lists of matters set out in the Code definition are not exhaustive; they merely illustrate the types of conditions that will fall within the meaning of disability.

The courts have been very willing to take an expansive view of the notion of disability; they will define the term broadly, inclusively and it will continually evolve. The courts will focus on whether or not there are medically related limitations on opportunities to take part in the life of the workplace community.

Disability does not, however, extend to every physical aspect of the individual. Because the legal emphasis is on obstacles to full participation in the workplace, the immediate condition or state of the individual (having a cold) or physical characteristics (having blue eyes) are not considered disabilities.

MEANING OF ACCOMMODATION

In order to prevent discrimination, the employer has a legal obligation to seek potential accommodations in the workplace up to undue hardship.

There is no definitive or exhaustive legal definition of accommodation. It is not defined in human rights legislation. The principles applicable to accommodation come in large part from arbitration and court decisions.

In general terms, the principles of accommodation require an employer to tailor, adjust or alter the workplace environment so as to give a person with a disability an equal opportunity for employment.

UNDERSTANDING THE SASKATCHEWAN HUMAN RIGHTS CODE, 2018

The Saskatchewan Human Rights Code, 2018, applies to all employers in Saskatchewan. (There are different, but similar, laws that apply to federal employees such as the *Canadian Human Rights Code* and the *Employment Equity Act*. These statutes do not apply to school divisions.)

The Code is considered to be a “quasi-constitutional” law. This means that if other statutes in Saskatchewan, including *The Education Act, 1995*, are in conflict with the Code, then the Code will take precedence.

The Saskatchewan Human Rights Code, 2018, Section 52 states:

Act takes precedence unless expressly excluded

52 Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless:

- (a) that law falls within an exemption provided by this Act; or
- (b) that law is expressly declared by an Act to operate notwithstanding this Act.

We can gain a better understanding of the meaning of the Code by studying the jurisprudence that has interpreted its provisions. This can come from:

- The Saskatchewan Human Rights Commission – Their decisions are binding with regards to interpretation of the Code.
- Saskatchewan courts and the Supreme Court of Canada – Their decisions are binding with regard to interpretation of the Code and other relevant law.
- Saskatchewan arbitration decisions – Their decisions are not binding but are highly influential in how the Code should be interpreted.
- Courts and arbitrations from other provinces – Their decisions are not binding but they often interpret legislation which is similar to that in Saskatchewan and their reasoning will often be applied to similar situations in Saskatchewan.

In interpreting a particular fact situation, the courts or arbitrators may also take into account:

- The Provincial Collective Bargaining Agreement and locally negotiated agreements – These agreements cannot contradict the Code but can be used as a guide in determining how the parties understand that the Code should be interpreted.
- School division policies and procedures – Policies and procedures must be consistent with the Code and with the Provincial Collective Bargaining Agreement and the locally negotiated agreements (unless the agreements are in conflict with the Code).

OBLIGATION OF THE SCHOOL DIVISION TO ACCOMMODATE

The Saskatchewan Human Rights Code, 2018, does not set out details of how the accommodation process must take place. The parties will need to look to arbitration and case law to understand the duties of each of the parties.

The obligation to accommodate exists throughout the employment relationship and includes temporary contracts, replacement contracts and substitute teachers. The accommodation can be initiated by either the school division or the employee.

Teachers will have the right to accommodation if they are experiencing physical and/or mental health restrictions resulting from a disability as defined in *The Saskatchewan Human Rights Code, 2018*.

Accommodation might occur before, during or after an employee is on sick leave.

Accommodation can be initiated by either the employee or the employer in a variety of ways, including, but not limited to the following:

- The employee advises the employer that the employee has a restriction or limitation caused by a disability that requires accommodation and:
 - The employee continues to work during the period of time the accommodation process is carried out; or
 - The employee is absent from work and requires a return-to-work process as part of the accommodation.
- The employer observes the employee having difficulty meeting the requirements of employment and has reasonable grounds to believe that the difficulty might be due to a disability that requires accommodation.
 - In cases where safety of the employee or others is in jeopardy, there may be a positive duty on the employer to inquire and, if necessary, take action. For example, courts and arbitrators have found such a duty to exist when an employer becomes aware that an employee appears to be suffering from addictions.

The employee has the legal obligation to provide the employer with medical information that sets out the restrictions or limitations that may be preventing the employee from fully participating in the workplace.

The employer has the legal obligation to determine what can be done in the workplace to accommodate the identified medical restrictions of the employee. Consultation with the employee and the Federation is advisable, although the ultimate responsibility to find an appropriate accommodation rests with the employer.

The employer must accommodate to the point of undue hardship.

How each individual employee will be accommodated will depend upon the unique facts of each situation.

Section 16(2) of the Code specifically provides that, "No employee shall discriminate against another employee on the basis of a prohibited ground." This will require employees to cooperate with the employer in any changes or adaptations required in the workplace to accommodate the person with a disability.

There are some limited exceptions when discrimination on the basis of ability is allowed and those are set out in the Code. The most likely exception in relation to disability would be a situation where the employer can show that ability is a reasonable occupational qualification and requirement for the position or employment.

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- The school division must be flexible and creative in determining what accommodations might be possible.
 - The teacher must be flexible, cooperative and willing to consider diverse options for accommodation.
 - The teacher must also cooperate in a reasonable way with the accommodation.

Once the school division has received the medical information, it must create an accommodation plan that will address the specific medical restrictions of the teacher. There is no one plan that fits all situations. Some plans may be very short-term in nature, other plans might continue for the complete working life of the teacher.

OBLIGATION OF THE TEACHER TO PROVIDE MEDICAL INFORMATION

An employee is required to provide medical information to the employer that is appropriate and sufficient to show:

- Employee has a disability within the meaning of the Code; and
- Specific medical restrictions or limitations that prevent the employee from full participation in the workplace.

Article 7.2 of the Provincial Collective Bargaining Agreement provides that the school division can require that medical information must be provided by a “duly qualified medical practitioner.”

The school division may, in its discretion, consider medical information from other duly qualified, registered medical professionals. These other medical professionals also may include, but are not limited to, chiropractors, physiotherapists, occupational therapists, nurse practitioners, psychologists and others who have specialized training in identifying medical restrictions or limitations and who are registered or licensed to practice their profession pursuant to Saskatchewan legislation.

Provision of medical information usually does not require a disclosure of the diagnosis of the condition. In a case where a medical practitioner provides more information than is required, the school division should not take such information into account and should dispose of the information in a secure manner.

The role of the medical practitioner is to provide information concerning the medical restrictions or limitations of the employee. The medical practitioner should not be asked to recommend what types of accommodations might be required.

The information is provided through the teacher. The school division does not have direct contact with the medical practitioner unless there are exceptional circumstances and all parties agree.

In some cases, the parties may agree to use a functional assessment service. The service will provide an assessment by a team of medical

professionals chosen according to the particular needs of the teacher. The school division will generally be responsible for the costs of such assessments.

Once the school division has appropriate and sufficient medical information, the school division must determine what adaptations will be required in the workplace to meet the restrictions or limitations. The school division will do this by creating the accommodation plan.

All medical information supplied by the teacher must be treated in confidence by all parties and in accordance with *The Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIP) and with the terms of the Provincial Collective Bargaining Agreement. The Provincial Collective Bargaining Agreement provides in Article 7.5.4 that the collection, use, disclosure, storage and retention of personal information must comply with LAFOIP. The Article also states that personal medical information collected by the school division will not be retained in the personnel file. It will be retained in a teacher-specific file available only to the teacher and to the official designated by the school division.

The information must be retained only as long as it is required for the purpose for which it was collected. Information that is no longer required must be disposed of in a safe and secure manner. The medical information will only be shared with those who require it to meet their employer requirements with regards to accommodation.

Medical information provided to the school division can only be shared with those employees who require the information in order to perform their duties of employment.

If the teacher is unable to provide information due to their medical condition, the accommodation will be put on hold.

If the teacher refuses to provide the required medical information, the school division’s duty to accommodate the teacher ends or is suspended until such time as the teacher provides the required medical information.

MEDICAL RESTRICTIONS AND LIMITATIONS

Definition

Restrictions are the limitations of skills and abilities due to a disability preventing the employee from performing essential duties of their job. Restrictions can be broadly characterized as physical or mental in nature. An employee may have restrictions in one or both categories.

Physical Restrictions

A physical restriction is a broad term that reflects activity limitations due to impairment in body function or structure. Physical restrictions **may include but are not exclusive to:**

Motor or Mobility Impairments

- Limited ability in standing and sitting.
- Limited ability in bending to assist students or obtain materials.
- Limited ability in moving around room, building or grounds.
- Limited ability in writing on whiteboard/SMART Board, paper or keyboard.

Sensory Impairments

- Difficulty viewing due to low vision or no vision.
- Difficulty communicating with others due to hearing loss or no hearing.
- Difficulty speaking loudly enough for others to hear.

Allergies or Multiple Chemical Sensitivities

- Allergies to teaching tools such as chalk, markers, glue, etc.
- Sensitivities to cleaning agents, smoke, pesticides, perfumes, paint, carpet and other building furnishings.

Mental Restrictions

A mental restriction is a broad term that reflects limitations due to cognitive or psychological restrictions. Mental restrictions **may include but are not exclusive to:**

Cognitive Impairments

- Limited ability to think logically, concentrate, formulate ideas, reason, remain focused and remember.
- Learning disability.
- Acquired later in life as a result of an accident or illness.

Limited Ability to Respond Appropriately to Everyday Situations

- Difficulty handling stress, emotions or change.
- Difficulty with organization, staying on task or managing time.

Please refer to Appendix V for further information.

UNDUE HARDSHIP

The law recognizes that accommodation requires a balancing act between the right of an employee to equal treatment and the right of the employer to a productive workplace. An employer is required to accommodate an employee to the point of undue hardship.

Undue hardship exists when the steps required to accommodate the employee are so extreme, onerous or difficult that it is clear it is unreasonable to expect the employer to implement them.

The onus will be on the employer to show undue hardship and it is often difficult for an employer to be able to show that it has reached the point of intolerable cost or disruption of business (as per Section 2(1) of *The Saskatchewan Human Rights Code, 2018.*)

There are, however, many other aspects to undue hardship other than financial.

Factors that can be considered in determining whether or not the point of undue hardship has been reached may include:

- Financial cost to the employer.
 - Financial cost alone is not usually sufficient to show undue hardship.
 - The size and financial resources of the employer will be significant.
 - External sources of funding may limit the financial ability of the employer.
 - The availability of suitable assignments.
 - Disruption to other employees.
 - Impact on students.
 - It is not merely sufficient for the employer to simply allege that a possible accommodation is not “in the best interest of students.”
 - The onus will be on the employer to show that, from a pedagogical perspective based on objective information, the accommodation will result in a negative impact on students.
 - The impact on students must be balanced with the accommodation obligation taking into account the employee’s obligation to cooperate.
 - The employee’s return to work poses a real and immediate risk of relapse or aggravation.
 - The nature of the work.
 - The number of employees and their interchangeability.
 - The impact of accommodation on the collective agreement.
 - The need to replace someone with special skills.
 - A significantly increased workload for other employees.
 - The need for a major reorganization of the work unit.
 - The demonstration of the specific safety concerns.
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For example, if the presence of another teacher in the classroom was required for a couple of weeks to help a teacher return to work, then that would not be undue hardship. However, if the accommodation would require the continued presence of another teacher in the classroom on a permanent ongoing basis that may be undue hardship.

In the case of employment, undue hardship will generally be reached when the employer is able to show that:

- There is no reasonable chance the employee will be able to return to work within the reasonably foreseeable future.
- All reasonable efforts at accommodation have been tried and found unsuccessful.

This conclusion must be based on appropriate and up-to-date medical information. The information should be relevant, reliable, significant and provable.

If the employer can show undue hardship, the employer does not have to provide accommodation.

The employer can, in the appropriate circumstances, terminate the contract of employment for “frustration of contract;” a legal term meaning that, through no fault of the employee, the employee is not able to perform the essential tasks of teaching and the contract is therefore “frustrated.”

Before starting to look at termination of the contract, the employer will require up-to-date and appropriate information on medical restrictions. The employer will have to exhaust all possible efforts, to the point of undue hardship, to accommodate the medical restrictions before being in a position to consider termination of employment due to frustration of contract. The onus will be on the employer to prove that undue hardship has been reached.

3

ROLES AND RESPONSIBILITIES

The school division, teacher, other staff members, medical practitioner and the Federation share in the responsibility of managing a successful accommodation. Below are summaries of the main roles and responsibilities that each party has in the process.

SCHOOL DIVISION

Statutory Obligations

Section 16 of *The Saskatchewan Human Rights Code, 2018*, requires the accommodation of an employee who suffers from a disability. Section 2-41 of *The Saskatchewan Employment Act* requires the employer, where reasonably practicable, to modify duties or reassign if the employee becomes disabled and cannot perform job duties. A school division is required to make every reasonable effort, short of undue hardship, to accommodate an employee who comes under a protected ground of discrimination under the Code.

Duty to Inquire – Initiate Accommodation Process Where Appropriate

The school division must investigate where evidence suggests the need for an accommodation. This may involve a meeting with the teacher. It may involve asking the teacher to provide medical information.

Gather Information

School divisions are required to:

- Gather appropriate information to make informed decisions around accommodation. This will include medical information, information regarding the workplace and options available for accommodation.
- Document the accommodation process and keep appropriate records while observing all requirements for the collection, use, disclosure, storage and retention of records as set by *The*

Local Authority Freedom of Information and Protection of Privacy Act.

Both the school division and teacher are required to act in a timely manner. Both parties must, however, recognize that various factors, such as availability of external providers, may delay the process.

Incur Some Hardship

It is the role of the school division to incur some hardship as part of accommodation obligations. While the school division is not expected to provide accommodation when it causes undue hardship, it is expected to tolerate some difficulties and challenges.

Create the Accommodation Plan

It is the role of the school division to decide the accommodation that it will offer the employee.

The school division:

- Has the inherent management right to propose the accommodation and determine the teaching assignment.
- Must consult with the teacher and should discuss proposed accommodations with the teacher and the senior administrative staff advising the teacher.
- Although the school division should consider the teacher's preferences and/or medical practitioner's recommendations, the school division is not required to grant such preferences.

Followup

- It is the school division's role to implement and monitor the accommodation including medical followup as necessary.
- Accommodation is to be based on identified restrictions in place at the time the accommodation is being provided. Medical restrictions may change over time and in such situations, additional medical information may be required.

Support and Educate

School divisions are encouraged to:

- Ensure that supervisors are aware of and apply the principles of accommodation.
- Be supportive of the teacher. This includes providing a positive workplace, viable return-to-work process and assistance in meeting appropriate performance standards.
- Educate all employees in the duty to accommodate process.

TEACHER SEEKING ACCOMMODATION

Initiate Accommodation Process When Appropriate

- The teacher has an obligation to set the accommodation process in motion as soon as the teacher is aware of medical restrictions that may be preventing them from completing their assigned duties. It is critical that the teacher identify the need for an accommodation as soon as possible, which will trigger the employer's duty to accommodate. Teachers do not have to wait until they are completely unable to work. In many cases, accommodations can be put in place while the teacher continues to work.
- The teacher has a duty to cooperate in the process with all concerned parties in a timely fashion.

Provide Appropriate Medical Information

The teacher is required to:

- Provide information from their medical practitioner about medical restrictions that may be preventing them from fulfilling their teaching duties and comply with reasonable requests for further or more detailed information.
- Demonstrate there is a disability verified by a medical practitioner.
- Provide regular medical information as reasonably requested throughout the accommodation process.

Seek Rehabilitation

The teacher is required to comply with medical directives regarding rehabilitation and self-improvement. This may include medication, physiotherapy or other prescribed therapies.

Try the Accommodation

The teacher is required to:

- Try a reasonable accommodation before it is refused.
- Try the proposed reasonable accommodation even on a trial basis.
- Participate in finding an appropriate workplace accommodation.

MEDICAL PRACTITIONER

According to the Saskatchewan College of Physicians and Surgeons, "the responsibility of the physician is to do an objective evaluation and to report the impact of an injury/illness and the limitations that the patient/worker's injury/illness places on their ability to perform certain functions."

The role of the medical practitioner is to provide medical restrictions **not** specific recommendations regarding accommodations.

PRINCIPAL/VICE-PRINCIPAL

School-based administrators must provide information to the school division with respect to information about the school environment that may be required to facilitate an accommodation.

Depending on the accommodation that is required, a principal may need to be given specific personal information about the teacher being accommodated. Any information shared with the principal must be the **minimum** required in order for the principal to facilitate the accommodation.

Principals and vice-principals are also encouraged to:

- Exercise leadership to ensure confidentiality of any medical information that may be disclosed by the teacher with sickness or disability.
- Exercise, through leadership and support of the school division and the Federation, flexibility in assignments and duties in respect to the teacher seeking an accommodation.

COLLEAGUES OF THE TEACHER BEING ACCOMMODATED

In accordance with *The Saskatchewan Human Rights Code, 2018*, (Section 16), colleagues, both teachers and other staff, must not discriminate against an employee who is being accommodated.

Colleagues are encouraged to be:

- Aware that there may be some modifications to assignments that teacher colleagues may have to undertake as part of the overall duty to accommodate.
- Cognizant of the confidential nature of medical information and respect the legitimacy of the confidential medical needs of a colleague.
- Aware that a colleague may not always be cognizant of the existence or impact of their disability and should provide professional support to their colleague as needed.

SASKATCHEWAN TEACHERS' FEDERATION

It is strongly recommended that teachers involve the Federation when dealing with accommodation. While, unlike with disciplinary matters, there is no **right** for a teacher to have a Federation staff member present, school divisions recognize that employees are likely to need support and assistance when working through medical issues. This is particularly true in cases involving mental health issues. In each case, it will be the choice of the teacher whether or not to use the services of the Federation.

Senior Administrative Staff

Senior administrative staff may:

- Work with individual teachers to support them through the accommodation process.
- Work with the teacher to propose alternatives as part of the search for an accommodation.

- Provide educational supports and information to members of the profession in the accommodation process.

The usual practice is for the school division to advise the teacher to contact the Federation for support and advice in the process. In some cases where there is concern that the teacher may not be well enough to understand the seriousness of the situation, the school division may contact the Federation to let them know their member might need assistance. The school division will share only minimal information at this stage.

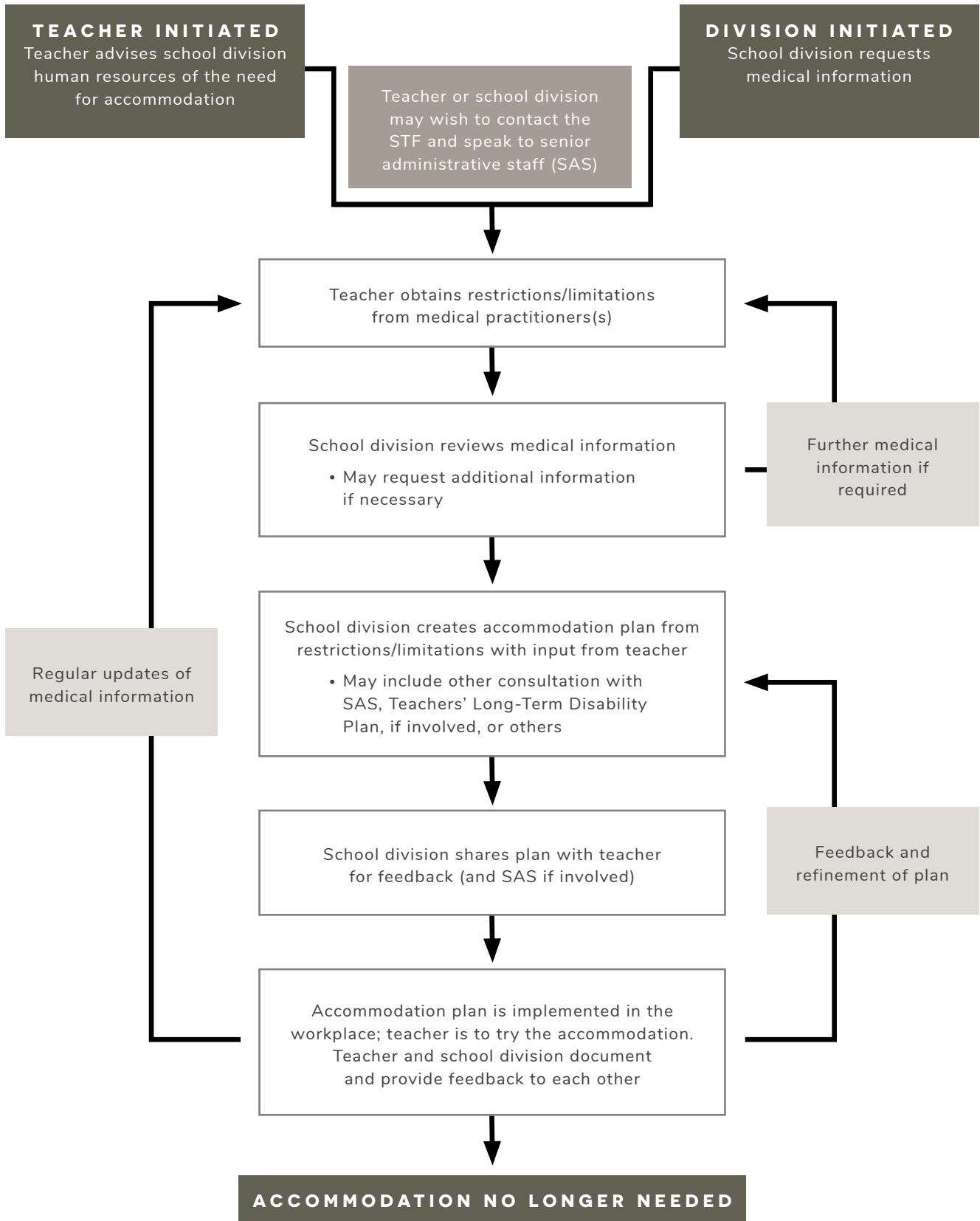
Long-Term Disability Case Consultant

When a teacher is in receipt of long-term disability, the case consultant may work with the teacher and the senior administrative staff to:

- Provide ongoing case management for the teacher accommodation while the teacher is being transitioned from long-term disability to return to work.
- Provide medical information to the school division.
- Provide suggestions to the school division for accommodations.
- Work with the school division to provide supports to the teacher, especially when accommodation requires part-time work for the teacher.

Organizations of employees, including unions and professional associations such as the Saskatchewan Teachers' Federation, must cooperate with the accommodation process.

TYPICAL ACCOMMODATION PROCESS



SUMMARY OF THE ACCOMMODATION PROCESS

Initiation of the Process

1. A teacher may initiate a request for an accommodation either while on sick leave or while at work in cases where the teacher can continue to work but has a disability that requires some form of accommodation.

The teacher can make the request to their principal, superintendent or to the human resources superintendent depending on the processes used in the school division.

2. The school division may be able to initiate an accommodation process while a teacher is at work if it has objective information from persons who have observed behaviours that indicate the teacher is not able to complete all the tasks of a teacher and there is evidence to indicate that this inability may be linked to a disability.

In some cases, usually where the nature of the disability is such that the teacher may have no awareness of the issue or is denying its existence, the school division will have a positive duty to initiate action. Examples might be some types of mental disorders including alcoholism and other addictions.

The school division may decide to temporarily assign the teacher to home, with pay, in order to allow the teacher to seek medical information in situations where the evidence indicates the:

- Teacher is not performing the essential duties of teaching and that it may be related to a disability.
 - Safety of the teacher or others is in question and the teacher needs time to consult with a medical practitioner.
3. When a teacher is on sick leave, usually for an extended period of time of more than just a few weeks, the school division may ask for information about medical restrictions in order to determine if there is any way in which it can accommodate the teacher and assist the teacher to return to work.

Collection of Information

4. After initiating the process, the next step is for the teacher to provide information from their medical practitioner to the school division about any medical restrictions which might be affecting the ability of the teacher to perform all the essential duties of a teacher.
5. It is vital that the medical report clearly sets out the medical restrictions that require accommodation. If the medical information is not clear, relevant or sufficient, the school division will ask for further medical information.
 - The school division will usually ask the teacher to go back to the teacher's own medical practitioner or to a specialist consulted by the teacher for further information.
 - In some cases, the school division can ask for a second opinion from another medical practitioner agreeable to both parties.
 - In some cases, the school division will offer to pay to send the teacher to an agency or organization that specializes in functional and/or cognitive assessments. A variety of professionals such as medical doctors, physiotherapists, occupational therapists, etc., will provide a comprehensive assessment and confirmation of the medical restrictions that need to be accommodated, as well as recommendations on how a return-to-work program might be achieved.

Creating the Accommodation Plan

6. After reviewing the medical information, the school division will look at possible options for accommodation.
 - The school division will look at the workplace and what might be required for the accommodation in terms of equipment, schedules, classroom adaptations, etc.
 - The school division will consult with the teacher and the Federation in order to ensure the creation of a relevant and achievable accommodation and return-to-work program.
 - This may involve one or more meetings with the teacher and other parties, and may include communication by email or phone.
 - All parties are encouraged to make suggestions for possible accommodations, **but it is the responsibility of the school division to create an appropriate accommodation and return-to-work plan.**

Feedback and Updates

7. The accommodation plan should include arrangements for communication and feedback on a regular basis between the teacher and their supervisors.

The teacher should provide feedback to their supervisor as soon as possible whenever there is a significant change, whether positive or negative, to the teacher's medical condition or ability to work.

Adjustments will often have to be made as the plan is implemented and as time passes.

8. The school division will ask at periodic intervals for updates to the information on medical restrictions.

The accommodation plan will be adjusted as medical restrictions change.

APPENDIX I

DUTY TO ACCOMMODATE A SUMMARY FOR TEACHERS

WHAT IS ACCOMMODATION?

The Saskatchewan Human Rights Code, 2018, prevents employers from discriminating on the basis of disability. This creates an obligation on the school division to accommodate throughout the employment relationship. Accommodation obligations apply to all teaching contracts, including temporary contracts, replacement contracts and substitute teachers.

Accommodation can be initiated by either the employer or the employee. The employer has a duty to inquire if there are indications accommodation might be required.

It is the duty of the school division to provide an appropriate accommodation and it is the duty of the teacher to cooperate in the accommodation process.

TALKING TO YOUR MEDICAL PRACTITIONER

- Before going to your medical practitioner, review the list of restrictions and the list of typical teacher activities so that you can share the information that is relevant to you and your job.
- You can let your medical practitioner know that you require a written report to show medical restrictions for workplace accommodation purposes and that you want the report to cover your medical restrictions, not symptoms or diagnosis.
- The medical practitioner can use the form provided by the school division or can use their own format.
- Let your medical practitioner know about any timelines and ask whether your medical practitioner will need any extra time to complete the report (if so, let the school division know).
- If you are seeing a specialist, ask your medical practitioner if it would be more appropriate to have your specialist complete the report.

WHAT ABOUT CONFIDENTIALITY?

Medical information and any other personal information shared by the teacher with the school division must be kept in confidence by the school division. Information will be shared **only** with the people who need to know. Information that is essential for the implementation of accommodation plans may be shared with the principal or other staff who need to know.

Confidentiality applies to both medical information and personal information shared by the teacher. In some cases, teachers may wish to share background information, history or other personal information to help give a clearer picture of the situation. However, there is no legal obligation to share personal information other than medical restrictions.

The Local Authority Freedom of Information and Protection of Privacy Act applies to all information collected by the school division.



NOVEMBER 2022

OBTAINING MEDICAL INFORMATION

What kind of medical information will be required?

You will be required to provide a report from your medical practitioner giving details of your medical restrictions.

Restrictions are the limitations of skills and abilities resulting from disability that prevent you from carrying out some aspects of your work.

The employer's efforts to accommodate you are based on those specific restrictions identified by your medical practitioner.

Your medical practitioner will need to confirm in writing the nature and extent of your restrictions along with the expected duration of each, unless the duration is unknown.

To help identify the limitations to your work skills, consider your role as a teacher and the tasks which you believe will be challenging for you. Now, consider the functions necessary to carry out those tasks (i.e., concentration is required for planning and assessment, being able to prioritize tasks and organize activities are required for instruction and classroom management, mobility may be required for responding to student needs, etc.).

- A list of Some Typical Restrictions/Limitations is located on page 6.
- A list of Some Typical Teacher Activities is located on page 7.

You have the right to have changes made to the employment environment in order to have full access to the work environment.

What is the difference between my symptoms and my restrictions?

Restrictions and symptoms are different concepts.

- **Symptoms** are physical or mental features apparent to you and your medical practitioner regarded as indicating a disability.
- **Restrictions** describe the impact of a symptom on a function of your ability to do your job.

For example, fatigue and pain are both symptoms an employee is experiencing. The restrictions associated with those symptoms may be reduced concentration or maintaining stamina. **It is critical your medical practitioner describes the restrictions, not the symptoms, you are experiencing.**

You may want to work with your medical practitioner to answer the question, "Is what is being described a reflection of how I feel or a reflection of what I need to do in the workplace?"

- If it answers the question, "How and what am I feeling?", then it is a symptom.
- If it describes how it impacts your capacity to function at work, then it is likely to be a restriction.

Put another way, symptoms describe the illness or the disability; restrictions describe the implications for work.

What if my medical practitioner makes recommendations?

Restrictions and recommendations are different concepts. The employer has a legal obligation to make modifications in the workplace based on the medically identified restrictions, not recommendations.

While your medical practitioner might have ideas or recommendations about those workplace modifications, your medical practitioner's recommendations are only that, possible ideas for consideration. They are not binding on the employer. If your medical practitioner provides a list of recommendations without restrictions, you may be asked to return to your medical practitioner to have the restrictions identified.

What if I am seeing multiple medical practitioners?

It is not unusual for a teacher to receive treatment from multiple medical practitioners. Let the school division know if this is the case. The school division may suggest a specific practitioner provide a report. You and your doctor should discuss which medical practitioner is the most appropriate depending on the medical information required.

If the school division has not specified which medical practitioner, then provide a report from the medical practitioner you think is best able to provide the required information.

Information from a nurse practitioner will be acceptable if the information provided is within the professional responsibilities of the nurse practitioner.

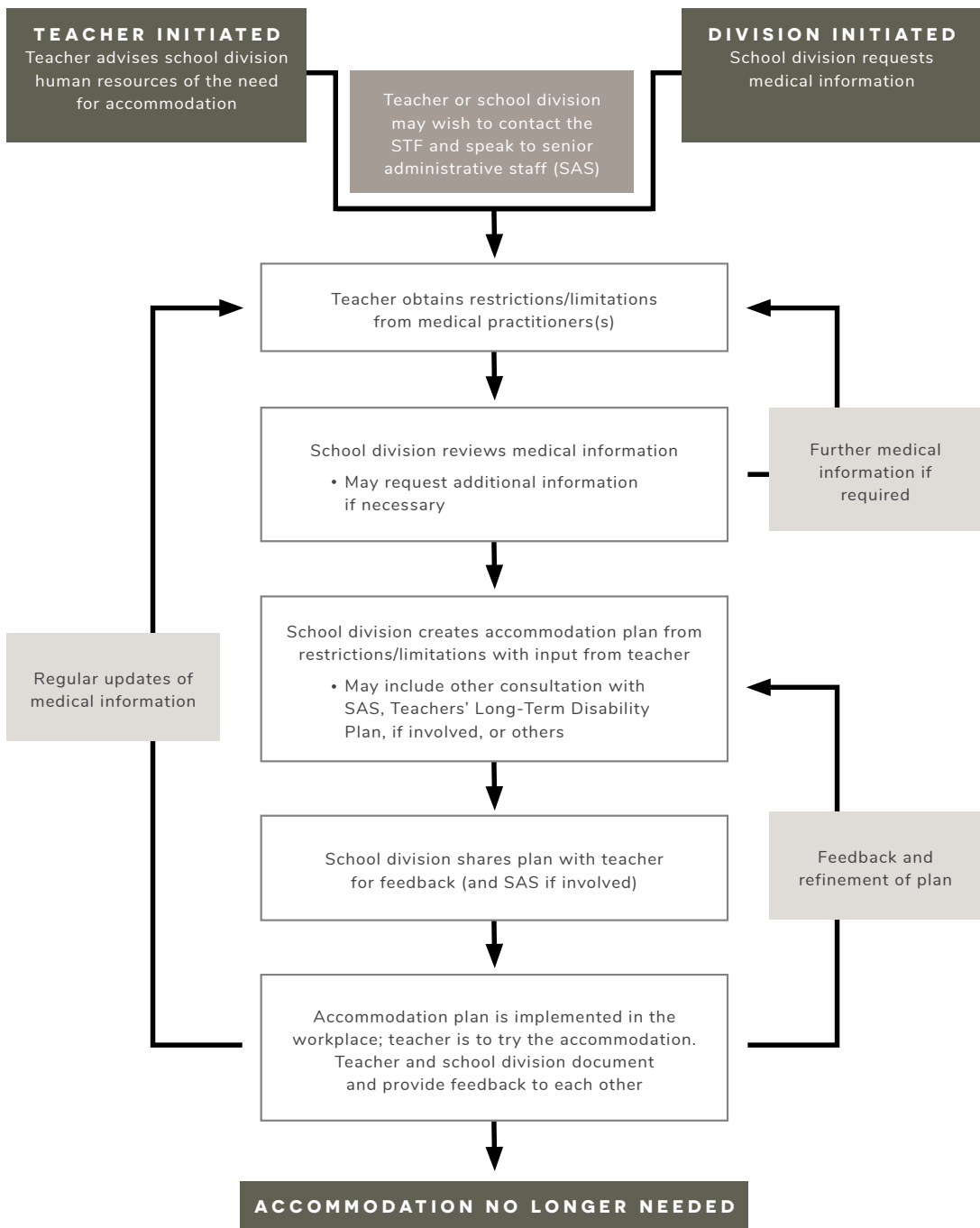
When appropriate, the school division may also accept information from other health professionals such as dentists, chiropractors, optometrists, psychologists, occupational therapists, physical therapists, nurses or any other person who is registered or licensed pursuant to any Act to practice in Saskatchewan. They must only give medical information which falls within their area of practice.

What does the school division do once they know the medical restrictions?

The school division must identify appropriate duties that address your medical restrictions. They will consult with you and review the information provided by your medical practitioner. The school division will try to put in place measures to enable you to continue with the duties of your job. In some cases, the duties will need to be modified and equipment or programs may need to be purchased. In other cases, the length of the day or week might have to be modified. Each accommodation will be unique to each situation.

The school division must accommodate you to the point of undue hardship. Undue hardship exists when the steps required to accommodate the employee are so extreme, onerous or difficult that it is clear it is unreasonable to expect the employer to implement them.

TYPICAL ACCOMMODATION PROCESS



ROLES AND RESPONSIBILITIES

The teacher, medical practitioner, Federation staff and school division share in the responsibility of managing a successful accommodation. Below are summaries of the main roles and responsibilities each party has in the process.

Teacher

- May initiate an accommodation process by informing the school division.
- Has a duty to cooperate in the process with all concerned parties in a timely fashion.
- Is required to:
 - Provide the appropriate initial medical information about restrictions.
 - Comply with reasonable requests for additional medical information.
 - Demonstrate there is a disability verified by a medical practitioner (not required to disclose diagnosis).
 - Provide regular medical information as reasonably requested throughout the accommodation process.
 - Try a reasonable accommodation, even on a temporary basis, unless there is a legitimate safety concern (i.e., risk of re-injury or exacerbating the condition).
 - Maintain regular, ongoing communication with the school division regarding how the accommodation is working.
 - Participate in finding an appropriate workplace accommodation.

Medical Practitioner

- Is required to provide medical restrictions/limitations.
- It is vital the medical report clearly set out the medical restrictions requiring accommodation. If the medical information is not clear, relevant or sufficient, the school division will ask for further medical information.

Senior Administrative Staff

- Work with individual teachers to support them through the accommodation process.
- Work with the teacher to propose alternatives as part of the search for an accommodation.
- Provide educational supports and information to members of the profession in the accommodation process.

School Division

- Has the obligation to investigate and/or initiate accommodation where evidence suggests there is a medical condition that may require the need for an accommodation.
- Is required to make every reasonable effort, short of undue hardship, to accommodate a teacher who comes under a protected ground of discrimination under *The Saskatchewan Human Rights Code, 2018*.
- Has the right and authority to propose the accommodation and determine the teaching assignment.
- The accommodation must be both reasonable and consistent with the teacher's identified medical restrictions.
- After reviewing the medical information, the school division will look at possible options for accommodation. All parties are encouraged to make suggestions for possible accommodations, but it is the responsibility of the school division to create an appropriate written accommodation plan.
- Must consult with the teacher and consider the teacher's preferences but is not required to grant such preferences.
- Implement and monitor the accommodation including medical followup as necessary.

Teachers' Long-Term Disability Plan

- Teachers may be eligible for benefits (contact senior administrative staff at the Federation for further information).
- LTD staff may cooperate with the school division in providing information and proposing appropriate accommodation measures. It remains the school division's duty to determine the appropriate accommodation plan.

SOME TYPICAL RESTRICTIONS/LIMITATIONS

Definition

Restrictions are the limitations of skills and abilities due to a disability that are preventing the person from performing essential duties of their job. Restrictions can be broadly characterized as physical or mental in nature. An individual may have restrictions in one or both categories.

Examples of Possible Restrictions (not an exhaustive list)

MOTOR OR MOBILITY RESTRICTION

Limited ability to:

- Stand in front of class
 - Write on whiteboard/SMART Board
 - Bend to assist students
 - Bend to access materials or files
 - Lift more than recommended by medical practitioner
 - Sit for long periods of time at a table or desk
 - Move around room, school or grounds
 - Write on papers
 - Work at a keyboard
-

SENSORY RESTRICTION - VISION

Difficulty to view:

- Information on computer screen or other devices
 - Papers
-

SENSORY RESTRICTION - HEARING/SPEAKING

Difficulty to:

- Communicate with others due to hearing loss or no hearing
 - Access information from devices
 - Speak in voice appropriate for others
 - Communicate using telephone, Internet, etc.
 - Respond to fire and emergency signals
-

MENTAL HEALTH RESTRICTION

Difficulty to:

- Maintain stamina
 - Concentrate
 - Retain memory
 - Organize, stay on task or manage time
 - Handle stress, emotions or change
 - Interact with co-workers
-

ALLERGIES OR MULTIPLE CHEMICAL SENSITIVITIES

Restriction

- Allergies/chemical sensitivities to products used in school (i.e., chalk, markers, glue, perfume, etc.)
-

Referenced from United States Department of Labor's Office of Disability Employment Policy. Job Accommodation Network (JAN). Accommodating Educators with Disabilities. Morgantown WV.

SOME TYPICAL TEACHER ACTIVITIES

The following list can be used by teachers and school divisions to help identify activities that will be affected by a teacher's disability and that should be considered in an accommodation plan. (There may, of course, be other activities performed by individual teachers, such as voluntary activities and not all teachers will perform all activities listed.)

Plan Lessons

- Create written daily plans for all classes taught
- Create written weekly plan
- Change and adapt plans at last minute
- Find and organize resources needed for plans (books, videos, speakers, activities, materials, etc.)

Deliver Lesson Plans

- Instruct and demonstrate lessons
 - Use electronic devices
 - Use whiteboard/SMART Board
 - Use books and printed materials
 - Use keyboards
 - Lift equipment
 - View computer screen
 - View projected images
 - Bend or sit to work with students or use equipment
 - Verbal communications at classroom level
- Monitor student learning activity in classroom – verbal, visual and written
- One-on-one discussion and individual instruction with students

Classroom Management

- Complete daily attendance reports
- Complete other administrative reports required
- Create routines and set procedures for the classroom
 - Maintain routines and procedures
- Follow and model adherence to school schedule
- Administer direction/discipline to students
- Supervise students in classroom and hallways
 - Stand and move around the classroom and school
 - Sit for period of time
 - Climb stairs
- Supervise students outdoors
- Travel with students on field trips
- Respond to fire and other emergency alarms

Assess and Evaluate Students

- Create written evaluation plans
- Review agendas of students
- Provide verbal feedback to students on daily basis
- Provide written feedback to students on assignments and exams
- Calculate marks in accordance with evaluation plans
- Record marks in accordance with school policy and Ministry directives including creating formal progress reports for individual students

Communicate Effectively With Parents and Colleagues

Methods of Communication

- Use phone (verbal)
- Use email and text (written)
- In-person meetings

Types of Communications

- In-person discussions with classroom educational assistant
- Discussions with consultants
 - Provide information and complete reports
 - Receive written and verbal information
- Discussions with caregivers
- Staff meetings
- Professional collaborations with parties outside the school
- Make professional presentations to groups

Professional Activities

- Attend professional development events at:
 - School level
 - School division level
 - Provincial level
- Participate in collaborative work projects within and outside the school division
- Research to remain current on professional issues relating to curriculum, methodologies, etc.

Co-Curricular Activities (Voluntary)

- Coaching sports
- Working with school clubs

APPENDIX II

THE ACCOMMODATION PROCESS: A STEP-BY-STEP GUIDE FOR TEACHERS

As a teacher you have the right to accommodation if you are experiencing physical and/or mental health restrictions caused by a disability as defined in *The Saskatchewan Human Rights Code, 2018*.

Step 1 – Seek assistance from your school division and the Federation.

- Contact your human resources department or superintendent to let the school division know that you would like to initiate an accommodation process.
- Contact one of the senior administrative staff at the Federation who will:
 - Seek to understand the issues. They will ask a number of questions to help clarify matters such as:
 - What about your work is particularly difficult right now?
 - If you went back to work tomorrow, what would be different?
 - Describe the accommodation process to you and discuss:
 - Broad categories of functions that might be affected by disability such as physical and/or mental health.
 - Meaning of “medical restrictions.”
 - Medical information required to initiate the process.
 - Assist you to identify the expectations relating to your current teaching assignment.
 - Discuss potential accommodations to help support conversations with the school division.
 - Provide a copy of the Duty to Accommodate Guide and suggest that you take the Guide when going to your medical appointment.

(Note: In some cases, the school division may initiate the accommodation process where there is objective information that a disability is affecting work performance.)

Step 2 – Visit your medical practitioner to obtain medical information (even if a Form 7-I has already been submitted).

- Discuss your mental and/or physical health with your medical practitioner.
- Discuss your teaching assignment expectations and possible difficulties you may have.
- Request a letter from your medical practitioner outlining the medical restrictions, including estimated duration of those restrictions.

(Note: You are **not** required to provide a diagnosis or treatment plan in order for your employer to provide a suitable accommodation.)

Step 3 – Provide information and consult with the school division.

- Provide the letter of medical restrictions from your medical practitioner, including estimated duration.
- The school division will:
 - Review medical information and may ask for further information if medical restrictions are not clear.
 - Consider possible accommodations based on the restrictions.
 - Consult with you and the senior administrative staff regarding the possible accommodations.
 - Confirm the accommodation plan based on restrictions.

Step 4 – Implement and monitor the accommodation plan.

- You will cooperate and work with the school division to implement the accommodation plan.
- You and the school division will both monitor progress as appropriate for the particular accommodation. Amendments to the plan will be made as required from time to time.
- You will provide updated medical information as requested on a reasonable basis.

APPENDIX III

FREQUENTLY ASKED QUESTIONS

Q: I am a teacher and my school division sent me a letter when I was on sick leave asking me to provide information about accommodation. How should I provide this information?

First of all, be reassured that your employer is likely requesting this information to ensure that it is meeting its obligation to accommodate you. In other words, the school division is requesting information that will allow it to assist you to return to work, despite limitations related to your medical condition.

You will need to meet with your medical practitioner to respond appropriately to the request. Please see “How to Talk to Your Medical Practitioner About Accommodation” found in Appendix IV. The essential information that is required is a description of the medical restrictions or limitations or barriers that you face that affect your ability to work. The medical practitioner can provide this information in the form sent by the school division, or the medical practitioner can create their own report. The school division does not require a diagnosis or recommendations for accommodation.

You may wish to contact the Federation for further guidance in providing this information.

Q: What is the difference between a “restriction” and a “recommendation?”

Your medical practitioner is required to provide information about restrictions or limitations. Essentially, a restriction describes the limitation of skills and abilities due to a disability; those things that prevent a person from performing essential duties of their job. Restrictions can be broadly characterized into physical and mental limitations.

Recommendations, on the other hand, are possible ideas for how the restrictions might be addressed. These recommendations are not binding on the employer.

Q: As a teacher, my school division has asked me to provide medical restrictions related to my health issues. Who should provide this information? What is the best way to do this?

The medical information required should be from your medical practitioner, which is usually your family doctor. If your restrictions relate to medical issues which are being treated by a specialist, then the specialist could provide the medical information. In some cases, the school division might agree

that the information should be provided by a nurse practitioner, physiotherapist or some other type of registered health professional.

The school division will give you the form and a letter for your medical practitioner. Once the medical practitioner completes the form or report, it should be returned to you unless you have specifically agreed that they can send it directly to the school division.

Once you receive the report or form, you should then provide it to the appropriate official at the school division. Direct contact between the employer and the medical practitioner can only occur when the teacher has provided explicit consent for that communication. It is very unusual for direct communication to occur and typically is unnecessary.

Q: Can the school division refuse to accommodate me because it might be too complicated or expensive?

It is a legal requirement that an employer must accommodate an employee with a disability “to the point of undue hardship.”

Undue hardship exists when the steps required to accommodate the employee are so extreme, onerous or difficult that it is clearly unreasonable to expect the employer to implement them. The onus will be on the employer to show that there was an intolerable cost or disruption of business.

Q: What if I don’t like the accommodation plan?

As the accommodation plan is developed, you will have the opportunity to provide input into the plan. Although your ideas and the recommendations of your medical practitioner or the Federation do not have to be accepted by the school division, they must at least consider them.

If you do not wish to accept a particular accommodation proposed by the employer, you must provide a reasonable explanation for the refusal. If the proposed accommodation is reasonable and does not impose an excessive burden on you, then you must accept it. A reasonable plan will be one that addresses all the restrictions raised by your medical practitioner, even if the way in which they are addressed is not your preferred way.

If you refuse to try an acceptable accommodation plan, you may lose the possibility of accommodation. As an example, if no permanent position is available that meets a teacher's needs, the teacher must be prepared to accept training or an offer of temporary work – if they don't, they may be left with no option but to resign.

Once you start the accommodation plan, you should provide feedback to the school division – both what is working and what is not working. The school division can use this information to adjust the plan if necessary. You should also advise the school division as soon as possible if anything changes with respect to your medical condition, whether positive or negative. This too might result in a need to adjust the accommodation plan.

Q: Should I also apply for teachers' long-term disability?

To avoid experiencing a gap in financial support during a medical leave, it is important to apply for disability benefits as soon as you know you may not be able to return to work when your sick leave runs out. If your application package is completed in a timely manner and your disability claim is approved, disability payments will begin when your accumulated sick leave payments end.

The application process is detailed on the Federation website. To apply for disability benefits, follow these four steps:

Step 1: Call a rehabilitation case consultant at the Federation, 306-373-1660 or 1-800-667-7762, and ask for an application package. The rehabilitation case consultant will explain the application process and send you an application package, which includes the following forms:

1. Statement of Claimant
2. Direct Deposit form
3. Physician's Report
4. Statement of Employer

The support provided by our rehabilitation case consultants helps to ensure all forms are completed correctly and in a timely manner. **These forms are not available online.**

Step 2: Fill in the Statement of Claimant and Direct Deposit forms.

Step 3: Take the Physician's Report to your medical practitioner for completion and have your school division complete the Statement of Employer. Many school divisions have an electronic copy of this form.

Step 4: Submit all four completed forms to the Teachers' Long-Term Disability Plan for review by the Claims Committee. Feel free to submit them as they are ready. No need to submit them all at once.

Review of your claim by the Claims Committee could take several weeks, depending on when you submit your forms. You will be notified of the Committee's decision by letter within two weeks after their meeting date.

Q: Does my accumulated sick leave get credited while I am on long-term disability?

Accumulated sick leave benefits must be depleted prior to the initial commencement of a long-term disability benefit. Thereafter, if you are receiving a total long-term disability benefit, you do not accumulate sick leave benefits. However, if you are receiving a partial long-term disability benefit and are continuing to teach part-time, you will be credited with ASL benefits from your employer at the commencement of each school year. These ASL credits will be available for you to draw upon should you miss any of your part-time teaching days due to sickness, and (with claim approval) long-term disability benefits will continue for the disabled portion of time.

Q: What role do I as a principal play when a teacher needs an accommodation?

Principals are often called on to support accommodations. Many accommodations are simple and do not require extensive supports to be put in place. They might be achieved at the school level. The complexity of an accommodation circumstance will influence the decision making. You will need to assess the complexity of the situation and if it seems to require decision making that extends beyond your duties as a principal, you should consult with your superintendent as soon as possible.

If a teacher in your school requires a more complex accommodation, you may be asked by your superintendent or human resources to provide information about the school, such as physical limitations, equipment available, scheduling flexibility, etc. This information may be necessary to help create the accommodation plan.

In addition, in your role you may find that you are made aware of medical information related to a staff member. It is critical for you and for any other staff who may require personal information of the teacher being accommodated to keep this information confidential and disclose it to another person only with explicit permission.

Principals also have a duty to alert the superintendent if it appears that accommodation might be required. This is particularly important in cases where mental health or addiction might be involved. The sooner support is made available, the better it is for all concerned. You might first speak to the teacher, but this may not be successful. Unfortunately, people often deny needing help. This should not deter you from discussing the matter with your superintendent.

Q: As a professional I am very concerned about the well-being of a colleague. I have observed significant behavioural changes and I am worried about what might happen. What should I do?

You will need to make some determination about the severity of the situation and an appropriate response. It may be that a disclosure of your observations is appropriate and necessary. If it is not possible to have a conversation with your colleague, it will still be necessary to disclose your concerns to your supervisor.

It may be helpful to seek advice from the Federation about how to proceed. In doing so, you must take care not to share identifiable personal information you have learned about your colleague through your work with the Federation.

If, in fact, there is a medical issue that is contributing to these behavioural changes (i.e., an addiction or another mental health issue), the employer may need to initiate the accommodation process if the teacher's decision making and judgment is affected by the disability.

Q: How might drug or alcohol dependency be accommodated?

Drug or alcohol dependency is regarded as a disability and employers must accommodate this disability. Because denial is often a symptom of the condition, an employer who has reason to believe an employee is suffering from a dependency must raise the issue with the employee when there is objective evidence to indicate a problem exists. The employer must then offer the employee a chance to deal with the issue.

The school division cannot terminate the employment of a teacher simply because the teacher has a dependency. The school division must offer accommodation. If, however, the teacher with a dependency refuses help and allows their work to be affected, the school division may have no choice but to take disciplinary action.

The accommodation required for dependency is often time off to enter a rehabilitation program and obtain medical support. This may include sick leave or unpaid medical leave, or a combination of both. The existence of the disability and eligibility for sick leave will have to be confirmed by medical evidence in the same way as any other disability.

Since the relapse rate after treatment is high, an employer will sometimes have to allow the employee a second or, in some exceptional cases, a third course of treatment.

Q: How might mental disorders be accommodated?

A number of mental disorders such as depression or chronic anxiety are considered to be disabilities. In many cases, the disability itself makes it difficult for an employee to clearly assess the situation. In these cases, the employer will have a duty to determine whether accommodation might be required before disciplining or dismissing the employee. Discipline can only be given if the actions involved were within the control of the employee.

Medical evidence will be required, as with any other case, and should be used as the basis for determining the accommodation required.

Once the medical restrictions are identified, accommodation will be made to address the specific restrictions experienced by the teacher. This can include an initial period of sick leave followed by a plan for return including allowing extra breaks, reducing classroom clutter, help with keeping notes at meetings, etc.

Q: How can I work with the school division to be proactive in addressing accommodation issues?

Employers are encouraged to monitor and manage absences of employees on a consistent basis. This is important so that issues concerning medical absences can be identified early. This will enable a return-to-work program to be utilized or accommodation to be considered.

As an employee you can be sensitive to the possible needs of your colleagues. You can first try and talk with them, if that is comfortable for you and if it does not involve behaviour of a highly concerning nature. The assistance of the Federation in this case may be very helpful. You should not share the name of the individual, but you can describe the situation.

If you are not comfortable talking with your colleague or if you have done so and the perceived need or concerning behaviour continues, then you must bring the matter to the attention of your principal (or to the superintendent if the principal is the person you are concerned about). The sooner support is made available the better it is for all concerned.

APPENDIX IV

HOW TO TALK TO YOUR MEDICAL PRACTITIONER ABOUT ACCOMMODATION – A TEACHER’S GUIDE

I am affected by a disability and it is impacting my work. What do I need to know?

Sometimes injury or illness can result in a change in how we function. For instance, someone experiencing a mental health challenge may have a reduced ability to concentrate or someone whose back is injured may not be able to stand for prolonged periods of time.

Changes in function can be temporary, fluctuating (cyclical) or permanent.

If, due to disability, you are experiencing a change in function, it may be necessary to consider doing your work in different ways.

Duty to accommodate describes the employer’s legal obligation to make modifications to the work environment so as to give a person with a disability an equal opportunity for employment. This means that the employer, working with information related to the medical restrictions of the employee, will implement appropriate measures necessary to allow the employee to continue to teach.

What medical information does the school division need?

Communication of medical information between a medical practitioner and a patient is confidential unless the patient specifically consents to it being shared. Your medical practitioner will ask you for written consent to share any of your medical information with the school division.

The letter from the school division and any forms they have given you will describe the information they require. In almost all cases, a list of the restrictions and the expected duration of those limitations is all that is required. The school division might also ask for other relevant information such as the circumstance of the medical report (i.e., whether it is based on an examination, etc.) or whether you are taking any medicine that might affect you while at work.

Your medical practitioner does not have to use the form supplied by the school division but can complete a report in their own format. The report should contain the information requested by the school division unless the request is inappropriate. For example, an employer should not request the diagnosis of an employee, your symptoms or the therapies being used to treat you.

Recommendations for specific accommodations are not required from the medical practitioner, although the school division will usually invite the medical practitioner to provide any other information that they might think is helpful. Recommendations do not have to be followed by the school division; however, they may provide useful information when the school division is creating the accommodation plan.

It is important to let your medical practitioner know if there are any time limits for getting the medical information to the school division. If your medical practitioner cannot meet the deadline suggested by the school division, ask your medical practitioner how long the report might take. Let the school division know as soon as possible if there will be a delay in obtaining the report.

What are restrictions and why do I need to know about them?

Restrictions describe those limitations of skills and abilities that result from disability and prevent some employees from carrying out some aspects of their work. The employer’s efforts to accommodate you are based on those specific restrictions that have been identified by your medical practitioner.

You will need to discuss your restrictions with your medical practitioner and your medical practitioner will need to confirm in writing the nature and extent of your restrictions along with the expected duration of each.

To help identify the limitations to your work skills, consider your role as a teacher and the tasks which you believe will be challenging for you. Now, consider the functions necessary to carry out those tasks (i.e., concentration is required for planning and assessment, being able to prioritize tasks and organize activities are required for instruction and classroom management, mobility may be required for responding to some student needs, etc.).

Examples of Some Typical Teacher Activities can be found in Appendix VI.

Examples of Some Typical Restrictions/Limitations can be found in Appendix V.

What is the difference between my symptoms and my restrictions?

Restrictions and symptoms are different concepts. While symptoms describe the manifestation of a particular disease, injury or disability, a restriction describes the impact of a symptom on a function.

For example, fatigue and pain are both symptoms that an employee is experiencing. The restrictions associated with those symptoms may be reduced concentration or maintaining stamina. It is critical that your medical practitioner describe the restrictions, not the symptoms, that you are experiencing.

You may want to work with your medical practitioner to answer the question, "Is what is being described a reflection of how I feel or a reflection of what I need to do in the workplace?" If it answers the question, "How and what am I feeling?", then it is a symptom. If it describes how it impacts your capacity to function at work, then it is likely to be a restriction. Put another way, symptoms describe the illness or the disability; restrictions describe the implications for work.

My medical practitioner and I discussed what we think is best for me at work. Can I make sure that my medical practitioner's recommendations are followed?

Restrictions and recommendations are different concepts. The employer has a legal obligation to make modifications in the workplace based on the identified restrictions.

While your medical practitioner might have ideas or recommendations about those workplace modifications, the medical practitioner's recommendations are only that, possible ideas for consideration which are not binding on the employer. If your medical practitioner provides a list of recommendations without restrictions, you will be asked to return to your medical practitioner to have the restrictions identified.

My medical practitioner has completed the medical report. What should I do next?

Once you have received the medical report and you are confident that the medical information is appropriately set out, you should deliver the report to the school division. Specifically, there will be a designated official in the school division who safeguards medical information. This will be the person who has requested the report from you. You can direct your information to that person.

The medical report will not be sent by the medical practitioner directly to the school division unless you specifically request the medical practitioner to do so.

How do I manage information from multiple medical practitioners?

It is not unusual for a teacher to be receiving treatment from multiple medical practitioners. You may want to consult with your treatment team to determine which medical practitioner is best positioned to address the need for accommodation information. While this is often your family physician, the team may determine otherwise.

APPENDIX V

SOME TYPICAL RESTRICTIONS/LIMITATIONS

Definition

Restrictions are the limitations of skills and abilities due to a disability that are preventing the person from performing essential duties of their job. Restrictions can be broadly characterized as physical or mental in nature. An individual may have restrictions in one or both categories.

Examples of Possible Restrictions (not an exhaustive list)

MOTOR OR MOBILITY RESTRICTION

Limited ability to:

- Stand in front of class
 - Write on whiteboard/SMART Board
 - Bend to assist students
 - Bend to access materials or files
 - Lift more than recommended by medical practitioner
 - Sit for long periods of time at a table or desk
 - Move around room, school or grounds
 - Write on papers
 - Work at a keyboard
-

SENSORY RESTRICTION - VISION

Difficulty to view:

- Information on computer screen or other devices
 - Papers
-

SENSORY RESTRICTION - HEARING/SPEAKING

Difficulty to:

- Communicate with others due to hearing loss or no hearing
 - Access information from devices
 - Speak in voice appropriate for others
 - Communicate using telephone, Internet, etc.
 - Respond to fire and emergency signals
-

MENTAL HEALTH RESTRICTION

Difficulty to:

- Maintain stamina
 - Concentrate
 - Retain memory
 - Organize, stay on task or manage time
 - Handle stress, emotions or change
 - Interact with co-workers
-

ALLERGIES OR MULTIPLE CHEMICAL SENSITIVITIES

Restriction

- Allergies/chemical sensitivities to products used in school (i.e., chalk, markers, glue, perfume, etc.)
-

Referenced from United States Department of Labor's Office of Disability Employment Policy. Job Accommodation Network (JAN). Accommodating Educators with Disabilities. Morgantown WV.

APPENDIX VI

SOME TYPICAL TEACHER ACTIVITIES

The following list can be used by teachers and school divisions to help identify activities that will be affected by a teacher's disability and that should be considered in an accommodation plan. (There may, of course, be other activities performed by individual teachers, such as voluntary activities and not all teachers will perform all activities listed.)

Plan Lessons

- Create written daily plans for all classes taught
- Create written weekly plan
- Change and adapt plans at last minute
- Find and organize resources needed for plans (books, videos, speakers, activities, materials, etc.)

Deliver Lesson Plans

- Instruct and demonstrate lessons
 - Use electronic devices
 - Use whiteboard/SMART Board
 - Use books and printed materials
 - Use keyboards
 - Lift equipment
 - View computer screen
 - View projected images
 - Bend or sit to work with students or use equipment
 - Verbal communications at classroom level
- Monitor student learning activity in classroom – verbal, visual and written
- One-on-one discussion and individual instruction with students

Classroom Management

- Complete daily attendance reports
- Complete other administrative reports required
- Create routines and set procedures for the classroom
 - Maintain routines and procedures
- Follow and model adherence to school schedule
- Administer direction/discipline to students
- Supervise students in classroom and hallways
 - Stand and move around the classroom and school
 - Sit for period of time
 - Climb stairs
- Supervise students outdoors
- Travel with students on field trips
- Respond to fire and other emergency alarms

Assess and Evaluate Students

- Create written evaluation plans
- Review agendas of students
- Provide verbal feedback to students on daily basis
- Provide written feedback to students on assignments and exams
- Calculate marks in accordance with evaluation plans
- Record marks in accordance with school policy and Ministry directives including creating formal progress reports for individual students

Communicate Effectively With Parents and Colleagues

Methods of Communication

- Use phone (verbal)
- Use email and text (written)
- In-person meetings

Types of Communications

- In-person discussions with classroom educational assistant
- Discussions with consultants
 - Provide information and complete reports
 - Receive written and verbal information
- Discussions with caregivers
- Staff meetings
- Professional collaborations with parties outside the school
- Make professional presentations to groups

Professional Activities

- Attend professional development events at:
 - School level
 - School division level
 - Provincial level
- Participate in collaborative work projects within and outside the school division
- Research to remain current on professional issues relating to curriculum, methodologies, etc.

Co-Curricular Activities (Voluntary)

- Coaching sports
- Working with school clubs

APPENDIX VII

LEGISLATION (APPLICABLE SECTIONS)

The Saskatchewan Human Rights Code, 2018

Definitions

2(1) In this Act:

“disability” means:

- (a) any degree of physical disability, infirmity, malformation or disfigurement, including:
 - (i) epilepsy;
 - (ii) any degree of paralysis;
 - (iii) amputation;
 - (iv) lack of physical coordination;
 - (v) blindness or visual impediment;
 - (vi) deafness or hearing impediment;
 - (vii) muteness or speech impediment; or
 - (viii) physical reliance on a service animal, wheelchair or other remedial appliance or device; or
- (b) any of the following disabilities:
 - (i) an intellectual disability or impairment;
 - (ii) a learning disability, or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language;
 - (iii) a mental disorder;

“mental disorder” means a disorder of thought, perception, feelings or behaviour that impairs a person’s:

- (a) judgment;
- (b) capacity to recognize reality;
- (c) ability to associate with others; or
- (d) ability to meet the ordinary demands of life;

“undue hardship”, for the purposes of sections 38 and 39, means intolerable financial cost or disruption to business having regard to the effect on:

- (a) the financial stability and profitability of the business undertaking;
- (b) the value of existing amenities, structures and premises as compared to the cost of providing proper amenities or physical access;
- (c) the essence or purpose of the business undertaking; and
- (d) the employees, customers or clients of the business undertaking, disregarding personal preferences;

but does not include the cost or business inconvenience of providing washroom facilities, living quarters or other facilities for persons with physical disabilities if those facilities must be provided by law for persons of both sexes.

“prohibited ground” means one of the following prohibited grounds of discrimination:

- (a) religion;
- (b) creed;
- (c) marital status;
- (d) family status;
- (e) sex;
- (f) sexual orientation;
- (g) disability;
- (h) age;
- (i) colour;
- (j) ancestry;
- (k) nationality;
- (l) place of origin;
- (m) race or perceived race;
- (n) receipt of public assistance;
- (o) gender identity;

Discrimination in employment prohibited

16(1) No employer shall refuse to employ, refuse to continue to employ or otherwise discriminate against a person or class of persons with respect to employment, or a term or condition of employment, on the basis of a prohibited ground.

(2) No employee shall discriminate against another employee on the basis of a prohibited ground.

Act takes precedence unless expressly excluded

52 Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless:

- (a) that law falls within an exemption provided by this Act; or
- (b) that law is expressly declared by an Act to operate notwithstanding this Act.

The Saskatchewan Employment Act**Protection of employees for illness or injury**

2-40(1) Subject to subsections (2) to (4.1), except for just cause unrelated to injury or illness, no employer shall take discriminatory action against an employee because of absence:

- (a) due to the illness or injury of the employee; or
- (b) due to the illness or injury of a member of the employee's immediate family who is dependent on the employee.




Employer must reassign employee or modify employee's duties

2-41 An employer shall modify an employee's duties or reassign the employee to other duties if:

- (a) the employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties; and
- (b) it is reasonably practicable to do so.



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