

## POLICY AND PROCEDURES ON EMPLOYMENT ACCOMMODATION

**Policy Number** (if applicable):

**Approved by:** Senate / Board of Governors

**Date of Most Recent Approval:** May 11, 1998 (Senate) and June 11, 1998 (Board of Governors)

**Revision Date(s):**

**Position Responsible for Developing and Maintaining the Policy:** Senate Secretariat

**Contact Department:** Senate Secretariat

### PREAMBLE

McMaster University is committed to providing equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, citizenship, creed, sex, sexual orientation, age, record of offence, marital status, family status, disability, colour or ethnic origin as required by the Ontario Human Rights Code (hereinafter referred to as "the Code"). McMaster University has a legal obligation to accommodate both employees and job applicants in a manner which respects their dignity, is equitable and which enhances their ability to compete for jobs, perform their work and fully participate in employment at the University.

To accomplish that goal, the University will work to achieve a workplace free of barriers by providing accommodation for the needs of those individuals covered by the Code, up to the point where it causes undue hardship for the University.

### WHAT IS ACCOMMODATION?

Employment accommodation is defined as services, adaptations or adjustments which enable persons who require accommodation to compete for jobs and perform employment activities. It is an ongoing process of identifying and removing or minimizing the adverse effects of barriers in the work environment or in the method of doing work, which prevent otherwise qualified persons covered by the Code from achieving expected outcomes of a job. The process is consultative involving employer and employee and results in specific adaptations and/or modifications in employment policies and/or practices.

### Accommodation is:

- understood as any temporary or permanent measure used to remove a barrier which prevents an otherwise qualified individual from performing or fulfilling the essential duties of a job;
- based on individual circumstances and can include but is not limited to recruitment, selection, training, promotion, performance appraisal, benefits provision and any other condition of employment where the need for accommodation may be identified;
- based on individual circumstances and can include, but is not limited to:
  - communication such as producing documents in other languages or alternative media formats;
  - technical aids such as software or hardware;
  - employment policy and practice modification such as modifying training policy so people with child or elder care obligations can attend courses during work hours if they make up the time;
  - job redesign which is defined as restructuring the job by re-allocating or redistributing nonessential functions;
  - human supports such as sign language interpreters, job coaches to help in the initial training and integration of persons with psychiatric or developmental disabilities;
  - workstation or building modification such as ramps for access to buildings;
  - work scheduling such as changing schedules so that individuals may participate in the rites associated with their religious faith. If the investigation of individual cases identifies systemic needs, the University will address the systemic changes needed to make the University more accessible to all employees.

### Who is eligible for accommodation?

The University will attempt to accommodate the employment needs of applicants and employees who are protected under the Code. Individuals requesting accommodation will be involved and included in the development of accommodation measures to address their need; likewise they have the responsibility to communicate any known accommodation needs and to cooperate in the accommodation process.

### Who is responsible for accommodation?

The University has a legal obligation to meet the needs of individuals requesting accommodation unless it would cause undue hardship.

The process of accommodating individuals is a joint obligation of the University, the employee, and associations and unions representing employees, where applicable. Those persons with administrative and supervisory responsibilities, such as Department Chairs, Directors, Managers and Unit Supervisors (hereinafter referred to as officers of the University) will generally be the first contact for employees requesting accommodation.

Together employees and officers, in consultation with specialists (eg. Offices of Ability and Access, Employment Equity, Human Resources and Environmental Health and Safety), will identify the most appropriate method of accommodation which meets the needs of the employee in the most equitable and financially responsible manner.

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The interests of all parties in the process will be taken into account and all parties will be treated fairly.

### PROCEDURES: INTRODUCTION

Employment accommodation makes good sense for the University. It is recognized that many of the barriers to equal participation by all people in our society exist because of inadvertence or lack of awareness of different needs, not because people have deliberately sought to discriminate. The removal of barriers has become a responsibility to be shared by everyone. Historically, those protected by the Ontario Human Rights Code have borne virtually all of the cost, both financial and personal, of their accommodation needs.

Accommodation can be understood as a means of identifying and removing barriers in the physical work environment or in the method of doing work which prevent otherwise qualified persons protected by the Ontario Human Rights Code (the Code) from enjoying equality of employment. This will be done in a way which is sensitive to their individual circumstances so that the University may benefit from their active participation in the workforce.

Employment accommodation is most often implemented in cases related to disability, family status and religious observance.

Employment accommodation for a person with disabilities is the most common form of accommodation. In order to accommodate persons with disabilities, members of the University need to understand what conditions are defined as a disability. The definition used in this policy comes from the Ontario Human Rights Code and states: "because of disability" means for the reason that a person has or has had, or is believed to have or have had:

- any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, and any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, or physical reliance on a guide dog or on a wheel chair or other remedial appliance or device;
- a condition of mental retardation or impairment;
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- a mental disorder, or
- an injury or disability for which benefits were claimed or received under the Workers' Compensation Act.

Family status is a second common ground for which accommodation is requested. Employees may seek accommodation to allow them the time to attend to family responsibilities while still devoting their full attention to their work and without having to take time off from it.

A third common request for accommodation arises from requirements around religious observance. Normally in Ontario, workers are entitled to a certain number of days off per week. Traditionally, one of the days has been a religious holiday for Christians (Sunday). Persons who celebrate their religion on other days of the week may need to be accommodated in order to practice their religion.

In addition, during the work year, two Christian holy days are given off as statutory holidays: Good Friday and Christmas Day. Hence, it is equitable that people who celebrate other religions be allowed to take equivalent time off for their religious observances in the event these fall during the work week. Where it is not practicable to have persons working on Good Friday and Christmas Day because of the closure of the University, another way of accommodating should be found.

Although disability, family status and religion are the most common grounds for accommodation requests, they may not be restricted to these three grounds alone. Requests for accommodation under any of the other eleven grounds of the Ontario Human Rights Code are possible and should be approached using the same process described herein.

### PRINCIPLES

In order to meet the needs of individuals affected, the overriding principles of approach should be those of individualization (designing accommodation to meet the specific circumstances of each employee or job applicant), partnership (involving the person requiring the accommodation, the officers of the University and other units within the University, where appropriate), consultation (involving those in the affected workplace in development of the accommodation plan), inclusion (ensuring that the person to be accommodated is involved in the process and plan design), and respect for confidentiality and dignity.

### SCOPE

This statement of Policy and Procedures applies to:

- the full-time and part-time employees who comprise the "teaching staff" and "non-teaching staff" of McMaster University as defined in The McMaster University Act (1976), and
- applicants for employment with McMaster University.

### ROLES AND RESPONSIBILITIES

When an individual makes a request for accommodation, there are many individuals who have responsibilities related to the process. In addition, although it is expected that the employee will take primary responsibility for initiating the request for accommodation, there may be some cases where the request for accommodation will be initiated by an officer of the University, the Human Resources Department, Workers Compensation

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Board (WCB), or another source. Regardless of who initiates the request there are several key players in the process of accommodating individuals and their roles are described below.

### Person Requiring Accommodation

When an employee needs accommodation, the employee will notify the Chair, Director or immediate supervisor of the need for job accommodation. The employee will identify any known employment barriers that require accommodation and participate, where appropriate, in the accommodation process.

### Chairs, Directors and Unit Supervisors

Each such officer, when approached relative to accommodation, has the responsibility to promptly and positively initiate action on the request within two weeks of becoming aware of the need and either:

- work toward resolving the accommodation issue, or forward the issue to the next level officer who has the authority to affect the accommodation.
- The Employment Equity Office, the Office of Environmental Health and Safety, the Office of Ability and Access, and other members of the Human Resources Department may be contacted for consultation and guidance.

The officer involved will prepare the accommodation plan and is responsible for indicating the number and types of accommodations made annually, including numbers of employees on flex-time for accommodation, religious days granted, etc. This information should be forwarded to the Employment Equity Office for reporting purposes.

### Deans, Directors and Managers

In the event that an accommodation request cannot be resolved within the work unit, the request for accommodation will be taken to the appropriate Dean, Director or Manager, moving subsequently to the appropriate Vice President if the individuals are unable to find a resolution for the request.

### Employment Equity Office (EEO)

The EEO, and the Employment Equity Coordinator (EEC), are available throughout the accommodation process as resources. The EEO is responsible for tracking and maintaining statistics on accommodation, including reports and statistics on the types and cost of accommodation made (without identifying individuals). These will be available in the EEO.

The EEO is responsible for educating staff and faculty about employment accommodation obligations, process and roles and for coordinating internal communications regarding employment accommodation.

The EEO is responsible for specified administrative responsibilities under the Employment Accommodation Fund Guidelines. The EEO will provide relevant information to next level officers in cases where accommodation cannot be resolved within the work unit.

### Third Parties

Other individuals may become involved in the accommodation process from time to time for many reasons and may include information resources and employee representatives. An employee may choose to contact his or her employee association or union representative, who may then participate in the process as appropriate. All such parties have a joint responsibility to facilitate accommodation. Where the only feasible accommodation conflicts with an association or union agreement, the agreement may have to be renegotiated.

In some cases, information may be requested from third parties. This is to be done in consultation with the EEO for cases such as the following:

- when the physical demands of the job are unclear the EEO will obtain a Physical Demands Analysis (PDA) for that job. Physical Demands Analysis represents a tool for understanding job requirements and is often developed with the able-bodied employee in mind. However, a person with a disability requesting an accommodation may still be able to meet these job requirements but in a different manner.
- where appropriate, information may be requested to facilitate the design and implementation of the accommodation plan; information may be required where the proposed accommodation could bear upon health and safety in the workplace;
- it may be appropriate to request verification of need for accommodation in certain limited circumstances, in which case the employee requesting accommodation shall be asked to provide the necessary consents to permit enquiries and release of information from third parties. For example, the employee may need a functional assessment when the abilities of the employee to perform the job are not clear.

## ACCOMMODATION PROCESS

The University has the duty to accommodate any employee up to the point at which it causes undue hardship for the University. The process of accommodation, the nature of accommodation plans and the outcomes for members of the teaching staff will be different from those for members of the non-teaching staff. But for both groups, the principles spelled out under Clause 14 above shall apply.

### For Members of the Teaching Staff

Members of the teaching staff, appointed to the University as Lecturers, Assistant or Associate Professors, or Professors, receive letters of appointment which state the requirements of their positions in regard to teaching, research and other activities. The accommodation process for any such person must take account of these requirements and develop a plan that involves some combination of any or all of these same activities. For

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example, a faculty member seeking accommodation may be unable to teach regularly scheduled undergraduate classes but may be able to lead graduate seminars and maintain a research program.

An accommodation plan which involves a work-load reduction may have significant implications for the academic unit(s) involved and these need to be addressed in the accommodation process through steps such as the adjustment of the teaching loads of colleagues in the unit(s) or the hiring of part-time instructors to assist in the teaching of the unit's courses.

An accommodation plan for a member of the teaching staff must address the issues of the timing and expectations of the academic assessments that are required for the granting of tenure, promotion and career-progress/merit salary awards. The plan must ensure that all such assessments will be equitable; for example, if the plan involves a workload reduction then any assessment must acknowledge this fact and evaluate only those activities for which the accommodated individual remains responsible. On these matters in the fashioning of a plan, the Provost, the Faculty Dean and the Faculty Tenure and Promotion Committee should be consulted.

The Chair or Director or other appropriate University officer is responsible for preparing a written description of the accommodation plan for any member of the teaching staff. This written agreement should follow as closely as possible the terms laid out under Clause 31 following and must address the matters referred to in Clauses 26 and 27 above. The agreement must be reviewed each year at the time of the annual performance review for the individual concerned.

### For Members of the Non-teaching Staff

In determining how to accommodate an employee, the first step is to determine essential duties as defined in the job description. In order to determine essential duties, it is necessary to identify the outcomes expected and the functions required to produce them. Flexibility in considering the way functions can be performed is necessary in order that the person being accommodated can achieve outcomes in a way which may be different from traditional methods. Accommodation of non-essential duties may be accomplished by using an alternate method for fulfilling these functions. The Human Resources Department is available for consultation in this process.

Essential functions can be determined by answering the following questions:

1. why does the job exist?
2. would removing the function fundamentally change the job?
3. is the function marginal or incidental to the job purpose?
4. is the job specialized, so that the person in the job is hired for his or her expertise to accomplish the function?
5. is the function actually accomplished by all current incumbents?  
was the function required of past incumbents?
6. does the incumbent spend a substantial amount of time accomplishing the function?
7. would the consequences be serious if the function was not accomplished?
8. is there a limited number of employees available among whom the function can be distributed?

### Recording An Accommodation Plan

For any employee, whether a member of the teaching or non-teaching staff, an accommodation plan will be prepared which will outline the nature of the accommodation and the agreement of the parties to adhere to the accommodation agreement (see Appendix A). The written agreement will specify the details of the accommodation-- who is responsible, who will be involved (including co-workers, if applicable), the time lines for putting the accommodation in place, its duration, and the nature of the follow-up evaluation. This agreement will be reviewed periodically at the request of any of the parties. A regular review should be done during the time of the annual performance review for the employee. Any concern raised relative to the accommodation must be followed up in an appropriate manner.

### ACCOMMODATION PROCESS OUTCOMES

In developing an accommodation plan there are several possible routes to take. Initially, an attempt should be made to develop a plan within the work unit. If this is not possible, then an attempt must be made to develop a plan in consultation with officers at higher levels. Both processes are described below. In rare cases, it may be impossible to accommodate an individual's needs without causing undue hardship to the University.

#### Accommodation Resolved Within The Work Unit

Accommodation can be effected within the work unit with little disruption when the present abilities of the employee to perform the job are known, the nature of the job accommodation is uncomplicated, and minor adjustments can be made to modify the employee's or co-workers' work plans or schedules.

The employee will be involved in deciding the most appropriate accommodation for his or her individual situation.

The onus is on the appropriate officer of the University to attempt to accommodate the employee within the work unit in the least disruptive manner and in a way that respects the dignity of the individual. The officer will record in writing any accommodation being made, and is responsible for indicating all accommodation plans to the EEO (see Clauses 28 and 31 above). Accommodation Which Cannot Be Resolved Within The Work Unit

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When accommodation is more complicated and/or cannot be effected under Clauses 33-35 above, a consultation process involving the employee, the Chair, Director or supervisor(s), the EEC, union/employee association representatives as requested by the employee or as otherwise appropriate, affected co-workers if any, and the next higher level of officer must occur. In the event that accommodation cannot be achieved at any particular level, the appropriate officer will provide the reasons with supporting documentation, if any. This report is to be forwarded to the EEC who will provide additional information as appropriate and forward it on to the next higher level officer.

### **When An Employee Cannot Be Accommodated In Performing Essential Duties**

In rare cases, it will not be possible to accommodate an individual's needs because no appropriate accommodation is possible or because the accommodation would cause undue hardship for the University (see Appendix B). When the underlying factors prompting a request for accommodation are long-term or permanent, such as when a medical review indicates a disability is permanent, and the employee can no longer perform essential job duties even with job accommodation, or time off cannot be granted, or duties cannot be modified that will enable the employee to perform the essential job duties, the Human Resources Department working with appropriate University officers, the employee, and association/union, will attempt to place the employee in another available position for which he or she is qualified, can be trained for, or can be accommodated in.

Human Resources will work with the employee to identify appropriate, available positions, and will prepare an accommodation plan for any position where accommodation could be possible. Use of partial disability benefits will also be explored. Such an employee will be granted the same priority as any employee made redundant by restructuring or budget cuts. However, preference will be given to the individual needing accommodation in any situation where that person and a redundant employee are considered equally qualified.

In any case involving a member of a bargaining unit, all relevant sections of the applicable collective agreement (placement rights, seniority, trial periods, etc.) shall be observed to ensure the employee's rights are protected.

The deciding factors regarding suitability of placement in an alternate position, in all cases, shall be the wishes of the employee and whether he or she can perform the essential duties of the job.

In some cases, an employee may be able to perform some, but not all, of the essential functions. Accommodation may include job redesign, such as splitting jobs (job sharing). This may result in changing status for the employee, including a change in pay.

The University will make all reasonable efforts to place an employee in an alternative position, for which he or she is qualified, over a period of one year from the date of the employee's file being referred to Human Resources for alternative placement.

### **EFFECTS OF THE ACCOMMODATION PLAN**

#### **Job Redesign**

If the accommodation for an employee results in a reduction of hours or if there is a significant re-allocation of work duties to the extent that the appointment or job has changed, the position will be reevaluated, as soon as possible, and there will be a corresponding change in pay.

The Accommodation Plan may involve long term job redesign for co-workers for the duration of the accommodation. Co-workers must be consulted regarding changes in their job. Accommodation is a requirement of the Code and tribunal rulings have indicated that third party preference cannot prevent the provision of accommodation; however, no co-worker will be disadvantaged in terms of job duties or pay because of the accommodation.

#### **Costs**

For costs beyond normal budgetary expectations, application can be made by the appropriate University officer to the McMaster University Employment Accommodation Fund for assistance in providing accommodation (Appendix C). Effect On Association and Union Agreements  
In the event the only feasible accommodation results in a conflict with an association or union agreement, the parties to the agreement will work out the solution.

A term of an agreement cannot act as a barrier to providing the kinds of accommodation an employee might require. It is the joint responsibility of the employer and the association or union to work out a solution with respect to any accommodation involving a conflict with an existing agreement. In the event the parties are unable to achieve an agreed upon solution, the employer may be required to make the accommodation in spite of the agreement.

It is understood that nothing in the procedure should preclude any association or union and the employer from negotiating accommodation improvements in their respective agreements.

Further, nothing in this policy statement shall prevent any association or union from exercising their respective negotiated appeal processes on behalf of any of their members, in the event that the association or union claims that reasonable accommodation is non-existent, or is not being adhered to properly.

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### APPEAL PROCEDURE

#### Employer Does Not Live Up To The Agreement

In the event that the employer does not live up to the agreement an appeal can be made. Any party to the accommodation may file a written appeal when they feel that accommodation is not being lived up to. The appeal is filed through the Employment Equity Office. Copies of the appeal are distributed to all parties to the accommodation. The Employment Equity Coordinator shall forward the appeal to the University's Sexual Harassment and Anti-Discrimination Officer who shall place the appeal before the Anti-Discrimination Tribunal.

An employee retains their right to file a grievance under the appropriate union/association collective agreement or policy, or to file a complaint with the Human Rights Commission.

#### Employee Does Not Live Up To The Agreement.

This is a performance issue to be dealt with as part of the normal procedures for managing employee performance. Within that context, the University has a responsibility to ensure that performance criteria, standards, and evaluation procedures do not discriminate against employees with accommodation needs (see Clause 27 above). It is the responsibility of all University officers to ensure that this general principle is respected in all performance discussions/evaluations, and that the need for accommodation does not negatively influence performance assessment.

### RELIGIOUS HOLIDAYS

Although there are many kinds of religious accommodation requests that may be made, those for time off for religious observance may be difficult to resolve; however, the employer is responsible for accommodating the employee unless it would cause undue hardship for the University to do so.

#### Accommodating Special Days Of Religious Observance:

The University will attempt to balance the number of paid days-off during the work year for employees through the use of alternative work arrangements to accommodate for special religious holiday observance (2 paid days). In some instances, the day of religious observance may be accommodated through the normal scheduling of work. If, however, the day of religious observance falls on a day the employee is scheduled to work, the employee is entitled to the day off without loss of pay. This may be considered "accommodation time".

Because in most instances these days are known in advance, the employee should notify the appropriate University officer as early as possible in order that, if necessary, alternate plans can be made in the workplace. In the case of scheduling work, the employee should notify the officer prior to the setup of whatever work schedule will be affected (this may be biweekly, monthly, or academic term).

#### Accommodating Regular Religious Observances:

- In a Work Unit Open 6 or 7 Days a Week
- In a work unit that operates 6 or 7 days a week, the need to accommodate an employee whose religion requires their regular absence from work on a particular day can be accomplished through scheduling of work.
- Where an employee requests that they never work on a particular day on religious grounds, the Chair, Director or supervisor may ask that the employee provide verification that the day off is essential in the practice of that religion. Such verification may be requested in a small unit with few employees or in a larger unit where a number of employees have requested the same day off on religious grounds.
- When work schedules are being made up, the accommodation for religious reasons will need to be considered in the light of seniority and individual preferences.
- There may need to be creative solutions for accommodating employees. Co-workers should be given information to understand the requirement for accommodation. In some events, co-workers may fill in through the scheduling of their normal work; in others, it may be necessary to provide overtime payment to co-workers for working beyond normal hours.
- The employer has a duty to accommodate. In rare instances where this is not possible without causing undue hardship for the University, the employee may not be able to meet the essential qualifications of the job (see Clauses 29-30 above), and should be assisted in identifying an alternate position as outlined in Clause 37 above.

#### In a Work Unit Open from Monday to Friday

In a work unit that operates from Monday to Friday, it is necessary to consider all options when there is a request to accommodate an employee whose religion requires their regular absence from work on a particular day.

- If the job is "full-time", the employee owes the university full hours; if the job is part-time, it may be possible to schedule the job to avoid work on the religious day. Alternative work arrangements including flex-time may be a possibility.
- Accommodation of religious observance may take precedence over seniority and personal preference in scheduling alternative work arrangement options.

For any job that is advertised as "Monday - Friday", a request for accommodation must be considered. In rare situations, it may not be possible to accommodate a regular day off during the 5-day work week without causing undue hardship for the University. In these situations, the employer may be required to show that such undue hardship would result.

The employer has a duty to accommodate. In rare instances where this is not possible without causing undue hardship for the University, the employee may not be able to meet the essential qualifications of the job (see Clauses 29-30 above), and should be assisted in identifying an alternate position as outlined in Clause 37 above

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### Role of University Officers

An officer may be more flexible than these guidelines stipulate. Some may feel they can accommodate without requiring verification or receiving significant advance notice.

The Human Resources Department will publish a Multicultural Calendar with explanation of religious holidays in order to assist officers and employees in understanding different religious observances.

### FAMILY RESPONSIBILITIES

Where necessary, employees will be allowed paid "accommodation time" to enable them to attend to family responsibilities, as specified below. Family members are defined as spouse, common-law or same sex spouse, son, daughter, brother, sister, father, mother, father-in-law, mother-in-law, son-in-law, and daughter-in-law. In extenuating circumstances, more-distant relatives may be included. An officer may be more flexible than these guidelines stipulate.

A request for accommodation of family responsibilities may be for: a planned single event: it is the responsibility of the employee to give notice of events such as medical appointments, activities, cultural observances involving family, etc. as early as possible in order for alternate plans to be made in the workplace, if necessary (an unplanned single event: e.g. a sick family member, or some other emergency.).

The following represent some possible ways in which the employee can be accommodated:

- through allowing flexible time (e.g. making up the time later or working at home)
- switching of shifts or work assignments with someone else (where applicable)
- approving an employee's request for holiday time when the employee requests it in order to attend to family responsibilities if none of the above is possible, by granting the employee "accommodation time".
- The following represent some possible ways in which the employee's accommodation can be handled within the work unit:
- co-workers can assist by filling in (either faculty or staff); e.g. departments could share the load and could develop a roster to assist in this process
- the employee can make up the work
- a replacement worker can be assigned
- a shift worker can switch shifts
- the operation ceases or the office closes.

Officers should consider the way vacation time is handled and plan to operate in a similar manner with planned time-off for accommodation. Although thought needs to be given to the continuing activities of the work unit, the fact that one employee is on vacation should not preclude another employee being allowed accommodation time off.

When the request for accommodation relates to a long term situation (e.g. family illness of a long term or a pressing need), the employee and officer should discuss how time will be made up. The officer cannot arbitrarily refuse to have time made up.

Some possible ways in which the employee can be accommodated include:

- through allowing flexible time (e.g., making up the time later or working at home); time may be made up after the period of the need for accommodation ceases
- work may be taken home
- a shift worker can switch shifts
- Some possible ways in which the employee's accommodation can be handled within the work unit:
- adjustment of working hours, e.g., closing an office for a few hours at a time and using voice-mail; rescheduling classes, if possible
- reducing an employee's work hours, either temporarily or long term, at the employee's request; such requests should be accommodated. Job sharing may be an option either with another full or part-time employee
- if none of the above options is possible, the employee shall be granted "accommodation time" of up to one hour per week, as is the case for employees taking courses.

### JOB APPLICANTS

The University has a legal responsibility to accommodate job applicants as well as employees. Applicants who possess the requisite skills to perform the essential duties of a job, and who have accommodation needs, are to be considered on an equal footing with applicants without such needs. Decisions made with respect to candidates who require accommodation should be made taking into consideration the requirements of employment equity.

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### Job Applicants Requiring Accommodation To Participate In The Selection Process

Job applicants should contact the Human Resources Department when making application to request accommodation to participate in the selection process. Human Resources will work with the hiring committee or supervisor to arrange reasonable and appropriate accommodation (e.g., translators, documents in Braille, wheelchair accessible interview room, rescheduling of interviews due to family or religious needs).

### Discussing Accommodation On The Job At The Interview Stage

The applicant may raise the issue of accommodation needed to perform the duties of the job, or the interviewer(s) may make inquiries of all candidates related to their ability to perform the essential duties of the job. Discussion may take place about the type of accommodation that may be required by any applicant in such circumstances.

The costs of accommodation will not enter into the assessment of applicants, except in the unlikely event that the University can demonstrate undue hardship or that no appropriate accommodation exists. Job applicants must be assessed solely in terms of the qualifications required for the job and their ability to perform the job (with or without accommodation). Before any decision on hiring is made, the appropriate University officer will discuss with Human Resources how accommodation could be made.

### Successful Applicants Who Require Accommodation

An applicant who has been selected during the job competition may indicate the need for accommodation at the time of job offering. Steps to be taken for accommodation will follow the procedures for employees, as outlined in the relevant sections of this Policy and Procedures document.

Approved by Senate -- May 11, 1998

Approved by Board of Governors -- June 11, 1998

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#### Appendix A

##### Employment Accommodation Process

The appropriate University officer and the job applicant/employee are the core members of the accommodation planning team. It is particularly important that they work together to establish objectives for the individuals' accommodation plan, to explore the range of accommodation options available and to develop criteria that will be used to select from among the various options.

The following are key components of the employment accommodation process for individuals. They are intended to help ensure timely and effective outcomes. The components should be interpreted with flexibility and modified according to the specific needs of each job applicant and employee:

- Identify needs
- Identify and analyze barriers to performance or participation
- Define accommodation objectives
- Provide interim accommodation
- Investigate, test and select accommodation options
- Implement accommodation
- Provide accommodation training
- Follow-up and evaluate

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#### Appendix B

##### Duty to Accommodate and Undue Hardship(1)

Our workplaces have evolved from a perspective which did not take into account the range of abilities and functional needs that people with disabilities have. Although barriers created by this "conventional way of doing things" might not be highly visible, the effect of these practices has been to exclude or limit people with disabilities from fully using their skills and abilities, and from fully participating in the workplace.

The Ontario Human Rights Code provides for the right to be free from discrimination in employment on a number of specified grounds. This right is for all stages of employment, including: recruitment and selection, testing, attendance at meetings and conferences, working conditions, training and career development opportunities, transfer and promotion.

Part of the right to be free from discrimination is recognizing an employer's duty to accommodate the individual needs of employees who are protected by the Code, e.g., persons with disabilities.

The Code provides that the employer must accommodate the disability related needs of a person, unless it can be demonstrated that no appropriate accommodation exists or that providing the accommodation would cause undue hardship to the employer. The Code designates three determinants of undue hardship: cost, outside sources of funding, if any, and health or safety factors.

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### Cost

Undue financial hardship occurs when the cost for providing accommodation is so substantial that it affects the employer's capacity to deliver services or programs within the enterprise. It is unlikely that undue hardship would occur in the University as a result of accommodating an individual employee.

In the removal of a large-scale systemic barrier, these steps may be planned for, documented, and phased in gradually, so as not to affect the delivery of services. In such cases, interim accommodation must be provided to enable individuals to meet the performance expectations of a job.

### Outside Sources of Funding

The Code requires that outside sources of funding to offset the cost of accommodation, such as grants, government subsidies and loans, be considered before an employer claims undue financial hardship.

### Health and Safety Risk

Situations may exist where health or safety requirements, legislated or not, effectively exclude a person with a disability from employment. Ministries are obliged to accommodate the individual by waiving or modifying the health and safety requirement, and providing alternative precautions where possible.

Even with alternative precautions in place, a health and safety risk to a person with a disability or to others may remain. If the remaining risk only affects the person with a disability, the department may be obliged to explain the potential risk to the individual and allow the person to decide if she or he will assume the risk.

If the remaining risk affects others and the seriousness of the risk outweighs the benefits of the equality, "undue hardship" exists according to the Code.

In determining whether an obligation to modify or waive a health and safety requirement creates a significant risk to others, consideration should be given to:

- whether the modification or waiving of the requirement is reasonably likely to result in a serious risk to the health or safety of individuals other than the person seeking accommodation;
- the other types of risks which the person responsible for providing accommodation is assuming;
- the types of risk accepted within society as a whole, reflected in legislated standards.
- Where a waiver or modification of a health and safety requirement is believed to result in a risk to others, it must be determined on the basis of objective empirical evidence whether the risk is serious.

The following factors should be considered in making this determination:

- the nature of the risk: what could happen that would be harmful?
- the severity of the risk: how serious would the harm be if it occurred?
- the probability of the risk: how likely is it that the harm will occur? Is it a real risk, or merely hypothetical or speculative? Would it occur frequently?
- the scope of the risk: who will be affected by the event if it occurs?
- In both instances of assessing risk to persons with disabilities and risk to others, it should be noted that section 47(2) of the Code requires that, in the event of a conflict between the Code and other provincial legislation, the Code requirements prevail. Therefore, in some instances, departments or units may be obliged to modify or waive health and safety requirements in order to effect accommodation.

Decisions on undue hardship due to health and safety risk are made on an individual basis. For further details on undue hardship, see the Ontario Human Rights Commission's Guidelines for Assessing Accommodation requirements for Persons with Disabilities.

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### Appendix C

#### McMaster University Employment Accommodation Fund

The McMaster University Employment Accommodation Fund (formerly known as the Guidelines for Approval of Special Measures Contingency Fund) is a central fund administered by the Office of Employment Equity in support of the University's Policy and Procedures on Employment Accommodation. The Fund is used to promote the recruitment, employment, training and promotion of persons in the workforce covered by the provisions of the appropriate legislation, and to ensure that the University's goal of a diverse and representative workforce is achieved.

### APPLICATION

#### The Fund applies to:

- full-time and part-time employees comprising the teaching and non-teaching staffs of McMaster University;
- applicants for employment with McMaster University.

## POLICY AND PROCEDURES ON EMPLOYMENT ACCOMMODATION

### CRITERIA

If the individual is a full-time or part-time employee:

- expenses must be for the benefit of a current employee who is covered by the appropriate legislation and has requested accommodation through the McMaster Accommodation Policy and Procedures in order:
  - to retain his or her current position, or
  - to be promoted into a position for which he or she is qualified and determined to be the most suitable candidate, or
  - to qualify for advancement in the workforce.

If the individual is an applicant for a position:

- Expenses must be for the benefit of a potential McMaster employee covered by the Code:
  - to be recruited for a job competition, or
  - to be interviewed, or
  - to be hired for a position, for which he or she is qualified.

A request for funding must meet the following criteria:

- where expenses can be covered through alternative sources of funding (e.g., Workers Compensation Board; Ontario Assistive Devices Program), these options should be exercised prior to any request for funds being made to the Fund;
- expenses must be of a one-time specialized nature not generally covered by departmental budgets. Funds will cover the difference in cost between regular equipment or operations and the cost to address a special need.
- money from the Fund will only be used for one-time expenditures in a fiscal year to accommodate individual employees or applicants who are covered by appropriate legislation. The Fund will be used for the purchase of goods or services to initiate, facilitate or implement the accommodation.

### The Fund does not cover:

- items or services required by departments in serving the public (eg. advertising a University program to the public in formats accessible to people who are blind)
- maintenance or repair costs
- items or services the need for which did not arise as a direct result of the job or position.
- If maintenance or replacement of accommodation goods is required, application will be made to the Vice President for the area in which the employee requiring the accommodation works.

### REQUESTS FOR FUNDING

A request for funding must be made jointly by the individual requesting the accommodation and the appropriate University officer, in accordance with the provisions of the McMaster University Policy and Procedures on Employment Accommodation. All requests for funding will be made through the Office of Employment Equity, GH-311. Requests meeting the funding criteria will be forwarded to the Assistant Vice-President Finance and the Assistant Vice-President of Human Resources, who will decide jointly whether to approve the expenditure.

All goods and services purchased hereunder shall be and remain the property of McMaster University and shall not be taken off campus without written approval of the appropriate University officer. In addition, goods or services purchased by the Fund will go with the employee in the event of transfer or promotion to another position in another department or unit. Goods or services purchased by the Fund for employment accommodation purposes return to the University when the employee no longer requires them or leaves the University's employ. The Employment Equity Office will be notified of the relocation of equipment purchased by the Fund.

### ADMINISTRATIVE PROCEDURES

The Fund was approved by the President's Budget Committee in 1990 as a \$10,000 operating one-time allocation to be reinstated to \$10,000 at the beginning of each year. In any year in which the Fund is insufficient to meet the needs identified within that year, the Director of Human Resources may make application for additional funding to the Vice President, Administration, detailing the need for additional funding.

An annual report on the Fund usage will be made by the Office of Employment Equity to the University Budget Committee through the Assistant Vice-President, Human Resources Services.

1. From Ontario Management Board Secretariat, "Human Resource Guidelines on Employment Accommodation for Persons with Disabilities," March 2, 1994, pp.2-5