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By Email Only

Dear Mr. Twyford,

On November 24, 2022, at the Multi-Bargaining Agent meeting, we were informed of the employer's work to update the OPS Disability Accommodation Policy ("Policy") and subsequently invited all bargaining units to comment on the revisions. We have reviewed this Policy and consulted with AMAPCEO's Disability Caucus¹, and can share with you the following comments and recommendations. We provide this feedback without prejudice to AMAPCEO's future comments or position regarding any part of the finalized policy and / or its implementation by employer representatives.

Policy Reads More Accessibly

Firstly, and importantly, some positive feedback. It appears the Policy has been reordered and reorganized in an effort to make it more accessible. Plainer language has also been used. We have previously noted the importance of plain language for this kind of policy, and we commend efforts in this regard.

Another welcome change we note is the addition of transition plans to ensure accommodation plans will be easily transferred between ministries in instances of employees moving to another position on a temporary or permanent basis. This is something AMAPCEO has long advocated for, and our members have noted has been missing. Finally, we also appreciate the new oversight role the

¹ AMAPCEO's Disability Caucus is comprised of members who self-identify with a disability. The group's mission is to advocate and champion for the rights and accommodations and full participation of members with disabilities.

Deputy Minister will be playing and hope this leads to more thoughtful, appropriate and timely accommodations for OPS employees.

Rushed Policy Consultations are an Opportunity Missed

As you know, the Duty to Accommodate requires that unions and employees work together cooperatively throughout the accommodation process.

In order for AMAPCEO to provide meaningful feedback on disability policy and practices, where possible, we consult our members to ensure that feedback is grounded in their lived experience. The tight timelines given to us to provide feedback on this particular policy update were so short that we have not had time to properly conduct internal consultations. Our members have been left feeling disrespected and question the sincerity of the Employer's interest in consultation. One of our members said this of the tight turnaround, "For all the talk about support and transparency, the approach that the employer is using to amend the Accommodation Policy is neither supportive nor transparent. It does not make me feel proud to be an OPSer when we are not given a voice in this process. As I said in an earlier email, it appears that the employer reaching out to AMAPCEO was perfunctory in nature and comes across as a slap in disabled employees' faces as it came just before the International Day of People with Disabilities (Dec 3rd)".

Every time a policy is opened for review, an opportunity is presented to introduce meaningful change. While we may have been able to work quickly to respond to the request for feedback this time, the absence of ample time to generate feedback erodes trust and deflates motivated employees; ultimately impacting employee productivity. When an employer demonstrates trust with its employees and treats them with dignity and respect, they thrive.

On December 6, 2022, the Secretary of Cabinet formally announced the newly created Task Force to improve accommodation processes for OPSers with disability: The Disability Employment Accommodation Task Force ("Task Force"). The Task Force appears to be focused initially on three priority areas: improving the Disability Accommodation Policy; making changes to streamline the program and processes; and creating a broad training and awareness campaign with a variety of tools to support managers and employees. In her announcement, the Secretary of Cabinet touts' consultation with bargaining agents and employee stakeholders as an element of this review process.

We strongly request that, in the future, an appropriate consultation timeframe be provided to all bargaining agents to allow each to consult with their membership

and provide meaningful feedback grounded in our members' experiences. Doing so will improve the quality of feedback being sought and ensures employees feel respected and dignified – all of which aligns with the leadership pledge to foster an inclusive, diverse, equitable, anti-racist and accessible workplace.

In the time we have been permitted, we have reviewed your Policy amendments and recommend the following:

1. Imbed Dignity

In implementing the changes to this Policy, the need for a culture shift in how the accommodation process is rolled out should be acknowledged. The Leadership Pledge specifically seeks to create a more inclusive workplace. We also understand the Task Force will be looking at this in the near future. We recommend all participants involved dedicate sufficient time and resources to fixing this problem.

Dignity must be at the forefront of everything the OPS does with respect to accommodation. Respect for dignity is one of the three fundamental principles of the Duty to Accommodate.^[1] Dignifying employees refers to empowering them, encouraging one's self esteem, offering respect for and demonstrating an employee's value, and providing ease of process and comfort.^[2]

Our members advise us that the current accommodation process makes them feel like they are burdensome. Too often employees feel like they're being grilled on the validity of their request and made to feel like they're trying to "get away" with something when they seek accommodation. Some even describe feeling akin to criminals or malingerers; as if by requesting assistance they have done something horribly wrong and need to be punished for it.

Employer representatives, in many of our member's view, seek to discredit their doctor's advice and poke holes in their requests for the removal of barriers. People also feel there is very little emotional intelligence employed across the board.

Much of what is mentioned here has to do with the implementation of the Policy, however, implementation starts with a Policy based on good reason, which is streamlined and integrated, and ensures accountability of all those with a role in the process. This Policy should include requirements that training in demonstrating empathy is required. It should state that a request for accommodation should be approached with acceptance and an open mind. It should be required in this Policy that accommodations be developed collaboratively and in good faith.

2. Add Meaningful Timelines

We hear from our members and AMAPCEO Workplace Representatives, as well as our staff who support our members through the accommodation process, that often employees are required to wait excessive periods of time for accommodations to be implemented.

Looking to the Ontario Human Right Commission for guidance, we can see that, “In Ontario, it is clear that a failure in the procedural duty to accommodate can lead to a finding of a breach of the *Code* even if there was no substantive accommodation that could have been provided short of undue hardship. Failure to perform either component of the duty is a failure to carry out the duty to accommodate.”²

The Duty to Accommodate requires accommodation be implemented in a reasonable period of time. By explicitly stating a timeline for the employer to work to in implementing an accommodation, the member would be able to both: return to work safely; and in a reasonable amount of time.

As mentioned, the employer does not always implement accommodations in a reasonable amount of time which impacts the employee in a number of negative ways including a loss of income and a loss of dignity. If a timeline cannot be adhered to, a paid leave should be provided until a fully implemented accommodation plan is achieved.

3. Implement the provision of automatic interim accommodations where timelines are not or cannot be adhered to

The Policy does not speak to interim accommodation / return to work arrangements such as temporary assignments, work-from-home, work from satellite government office, change in reporting relationships, etc. that could be undertaken while the parties go through the exercise of obtaining relevant medical / health information, or developing an accommodation or a return-to-work plan. It is necessary that this Policy update include direction regarding the availability of these interim accommodations during this period.

²In *Lane*, the HRTO held at para. 150 that a failure to meet the procedural dimensions of the duty to accommodate is a form of discrimination in itself because it “denies the affected person the benefit of what the law requires: a recognition of the obligation not to discriminate and to act in such a way as to ensure that discrimination does not take place.” The HRTO’s decision was confirmed on appeal: *ADGA*

4. Broaden Data Tracking

We commend the inclusion of data tracking of accommodations and recommend that it also include intersectional data. Employee questionnaires about their experience with the accommodation process should also be included. We also recommend that in addition to having a Deputy Minister oversee ministerial data, one Deputy Minister should be tasked with the role of reviewing all of the OPS data. This would help identify comparative trends within a ministry that may be problematic. The metrics that will be developed for data analysis should also be made available publicly.

5. Align medical requirements with the minimum legal necessary requirement

The medical acquisition component of the accommodation process is routinely brought to AMAPCEO's attention by our membership. Obtaining medical documentation is often overly cumbersome, overly intrusive, and as an overly used tool to justify an employee's accommodation needs. The OPS Health Information Program Guide states: "The employer will seek to gather only that information necessary to meet the need. Health information sought by the employer will be initiated through the least intrusive manner necessary to meet the requirement." In practice, employees are often asked to fill form after form in an attempt to seek necessary accommodations. This guidance must be re-iterated and emphasized throughout the accommodation process.

Examples of the many problems our members are encountering with this process right now include:

- The Employer is asking more intrusive questions than they once did. We have approached management within the Disability Accommodation Specialty area to discuss the issue and have not seen any improvements. Our staff are seeing what appears to be a new requirement for objective medical evidence in health questionnaires; a requirement that does not appear in the caselaw as necessary to justify an accommodation request. These requests are being made recklessly including where the information sought is not appropriate or available. For example, some medical conditions (such as high blood pressure, cholesterol, white blood cell count, etc.) lend themselves to empirical, objective testing. Other conditions such as anxiety disorders and depression do not lend themselves to empirical testing and often rely on self-reporting by the patient.
- Unnecessary legal language is referenced in medical acquisition letters to employees. For example, using the term "bona fide" where "real" or

“genuine” would suffice.

- Irrelevant and unrelated questions are referenced that don't apply in many cases and cause our members undue stress including their practitioners being asked whether the member is unable to work after medical documentation has been provided which indicates they are able to work with an accommodation(s).
- The Employer has also been referencing American Medical Association definitions in medical questionnaires, which are not consistent with our workplace context or established caselaw.
- Too often medical questionnaires are not individualized and inappropriately target information related to private medical information including specific medications that are being taken, diagnosis, rather than prognosis or identifying restrictions and limitations. The goal of these questions to the health practitioner should be to help the employer to better understand what it can do to accommodate the employee in the workplace due to the employee's illness, injury, or disability. Outside of this intrusive line of questioning, employees are harmed when receiving these questions from the employer for the health practitioner as this is typically perceived as challenging the member's honesty, as well as and challenging the qualifications and medical authority of their health practitioner. Only relevant questions targeted to obtaining information on prognosis, restrictions, and limitations should be asked.
- Management not taking the time to sit with their employee to explain the process and answer questions. Doing so may lead to increased buy-in from employees towards the process.
- The Health Information Program is not mentioned in the Policy but should be referenced. While Health Information Program (HIP) forms are permissible, often they are not individualized appropriately. Our members comment receiving HIP questionnaires with the same questions a second and third time after a health practitioner's response to those questions has already been provided. While sometimes the rationale for asking for the same information again is clearly provided on the questionnaire, other times it is not. This repeat questioning is not received well by our members nor their health practitioners.

6. Remove the requirement for employees to sign over permission for the employer to speak directly with their medical practitioner

Employees, by and large, do not want to sign off allowing the employer to contact their doctors directly. When they refuse to sign off on this they are made to feel

as if they are doing something wrong. The doctor patient relationship is an incredibly personal relationship. Practically, there is no need for this as managers can request that an employee obtain medical documentation and employees can then decide from whom to obtain that documentation. This practice denies employees dignity, is unnecessarily invasive and should be stopped.

Our members consistently report being made to feel akin to criminals when they seek accommodations. They seek the elimination of barriers to be their best and perform their jobs with excellence and many wish they never had to go through this demoralizing, dehumanizing process at all.

7. Request Independent Medical Assessments *ONLY* when existing medical information is not objectively clear or sufficient

While we agree independent medical assessments can be useful in the accommodation process, this process is overused and becomes unnecessarily cumbersome to the employee, delaying the implementation of accommodation plans.

8. Members with chronic conditions and / or permanent disabilities, should be excused from having their Accommodation Plans reviewed annually

The OPS needs to acknowledge the additional burden placed on individuals with permanent disabilities and / or chronic illnesses who have permanent accommodations. The employer should minimize unnecessary updates to individual accommodation plans. Our members cite these continual medical revisions are time consuming, exhausting, demoralizing, and demotivating.

Accommodation plans will still be able to be updated at the request of the person being accommodated.

9. Update the Policy Language to be Further Inclusive

In an effort to be more inclusive, the Policy should reference the different self-identities preferred by individuals with disabilities and injuries. Such self-identities include but are not limited to: employee with a disability, injured worker; individual with age-related accommodation needs; and neurodivergent employee. OPSers should be encouraged to refer to individuals by their names and where not possible, reference their preferred self-identity.

References to “equal participation” should be reviewed and “equitable”

participation included where it is more appropriate, including in the definition of Employment Accommodation on page 23.

10. Mandate Training Requirements with established timelines

Appropriate training for all OPS employees around the Duty to Accommodate, emotional intelligence and how to be empathetic and the accommodation process should be mandated on a regular basis. The Task Force has prioritized training and education as one of their 3 priorities; specific training and timelines should be imbedded in the Policy to ensure it is carried out.

When a subject matter expert is required to be involved to provide advice and guidance to the parties in the accommodation process, something has gone awry with the provision of Disability Accommodation Specialist (DAS) services. DAS must be trained to understand the context – workplace accommodation, not insurance claim denials. The culture of the DAS support seems to begin from a point of mistrust and rigid disallowance rather than empathy, trust, a commitment to ensuring dignity for the employee, and a keen problem-solving approach. Where possible, preferred accommodations should be accepted, medical recommendations should be accepted and the process should start from a point of trust, empathy, encouragement rather than distrust, disallowance and discouragement. A line our members often receive is: “The Employer doesn't have to follow all of the medical recommendations.”

We hear from our members that beneficial DAS involvement highly depends on the individual involved. Conversely, some DAS, we are informed, boast about their high Workplace Safety and Insurance Board (WSIB) denial rates as an accomplishment. Other DAS have tried to establish different definitions of terms such as ‘limitations and restrictions’ that do not align with the workplace context or established caselaw.

The overwhelming feeling from our membership is that although the intention of including a DAS in the disability accommodation process is something we support, there appears to be a culture problem in that area which discourages flexibility, empathy. This role and its accountabilities and responsibilities should be reviewed.

11. Confidentiality - Balancing the Right to Information with Employee Rights to Privacy

The Policy should be bolstered to include detailed information about how

employee information will be maintained and stored. Should OPS staff be permitted to keep copies of medical records in their email inbox, for example? Will documents be stored on SharePoint sites? For how long will the documents remain in these locations? Answering these questions will assist in assuring everyone has a clear, shared understanding of how confidentiality will be maintained.

In addition, to achieve the Leadership Pledge goal of fostering a more inclusive workplace and making the accommodation process more streamlined and integrated, it should be stated that when seeking medical information to support an accommodation request, the employer's right to medical information should be balanced against an employee's right to privacy. We have attached a sample government policy from another Canadian jurisdiction that provides an example for how this can be done as **Appendix A** to this letter.

12. Add Clarity around Accommodation plans for employees who are working versus Return-to-Work plans

Our members have shared with us that there is no clear delineation in the Policy between accommodations provided while one is working versus new accommodations that are provided upon a return to work following a lengthy absence from the workplace. This makes the Policy unclear and difficult to understand in parts and further compounds some of the difficulties our members report in establishing an accommodation plan. We recommend that a definition for "return to work" be added.

13. Include accommodations based on other protected grounds or develop other Policy(ies) to include these grounds.

Accommodating employees with disabilities in a dignified manner is crucial. The Duty to Accommodate encompasses more, however, than removing barriers to ensure full participation. Employees may seek accommodation with respect to any or all of the Code protected grounds. These include:

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin
- Place of origin
- Creed

- Disability
- Family status
- Marital status (including single status)
- Gender identity, gender expression
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation.^[4]

Other provinces have broadened their accommodation policies to include all grounds protected by their respective Human Rights Codes: British Columbia and Manitoba. The British Columbia Government has published their guidelines on reasonable accommodation which covers all prohibited grounds of discrimination as described in the BC Human Rights Code: [Managers' Guide to Reasonable Accommodation in the BC Public Service \(gov.bc.ca\)](#)

The Manitoba Civil Service Commission has also published their guidelines on reasonable accommodation and this guideline includes all of the grounds identified by the Manitoba Human Rights Code as prohibited for discrimination: [Public Service Commission | Policy | Reasonable Accommodation \(gov.mb.ca\)](#).

Some examples of situations that arise in the OPS requiring accommodation based on protected grounds other than disability include:

- female staff who require space to pump breast milk and store it, and
- family status accommodations which may require, amongst other things, providing time off to allow employees to take dependents to medical appointments, and flexible schedules to account for children's school and day care schedules.

We look forward to continuing to engage on how we can improve the Disability Accommodation Policy and practices so that the OPS is truly an inclusive employer.

Sincerely,



Dave Bulmer
President & CEO



Cynthia Watt
Vice-President & Chair, Equity Committee

cc. Deborah Richardson, Deputy Minister, TBS
Marc Rondeau, Associate Deputy Minister, CPSLRC, TBS
AMAPCEO Disability Caucus

Appendix A – BC Government Manager’s Guide to Reasonable Accommodation. (Accessed on December 8, 2023): [Managers' guide to reasonable accommodation - Province of British Columbia \(gov.bc.ca\)](#)

Balancing Right to Information with Employee’s Right to Privacy.

It's important to respect an employee’s privacy.

Each individual situation must be evaluated on its own merits and managers should exercise discretion.

Privacy legislation supports the collection, use and disclosure of personal information that is necessary to meet a public servant’s duty to accommodate.

Managers are responsible for respecting the employee's right to privacy and confidentiality while fulfilling obligations regarding the duty to accommodate.

Consider when it's appropriate to ask for supporting information or documentation.

Contact the [BC Public Service Agency](#) for guidance.

The collection and documentation of personal information is governed by the [Freedom of Information and Protection of Privacy Act \(FOIPPA\)](#).

Employees may be reluctant to share information or request accommodation for reasons such as the following:

- Fear of being singled out and treated differently than others
- Discomfort about asking for help
- Fear that disclosing a problem or asking for accommodation will have negative consequences, such as losing their position, being refused future promotions or career benefits, being demoted, receiving fewer hours, or being humiliated by co-workers
- Belief that a protected ground is not relevant to performance
- Concern that confidential and sensitive information will become common knowledge in the workplace
- Embarrassment over requesting accommodation because of the stigma and indignity which may be associated with accommodation

Sensitivity about how the employee might be feeling about their disclosure and request will go a long way to building trust.

To support employees who experience these challenges, it's important to take the time to get to know them as people, show a real appreciation for them, their personalities, wants, needs, and work styles.

The employer is entitled to receive sufficient information to provide effective accommodation.

Such information may include details about:

- Religious observances
- Childcare needs
- Eldercare needs
- Medical restrictions or limitations
- Mental health issues.

For requests based on disability:

- Information sought must focus on the request for accommodation, the limitations or restrictions and safety issues to determine the appropriate accommodation. The employer is not entitled to know an employee's medical diagnosis
- Obtain information from specialists or professionals, including a description of the limitations or restrictions and, if appropriate, an estimate of how long the employee will need to be accommodated
- Only the information that is necessary for determining the accommodation should be shared, and it should be shared with only the people who need to know
- When gathering and sharing information, adhere to privacy principles such as only collecting as much information as is required for an accommodation and only disclosing personal information when necessary for the performance of duties of the individual (such as to a new supervisor to ensure the accommodation is respected)
- If the employee decides not to cooperate by refusing to provide adequate information, the employee should be informed that appropriate accommodation may not be provided. It's important to document what actions have been taken to try to accommodate the individual's needs

For requests related to religious/cultural practices, supporting documentation is not usually needed.

However, if unfamiliar with the religion or the specific religious practice, it may be appropriate to request additional information from the employee or a designated official within the employee's religious community.

You may wish to contact the [BC Public Service Agency](#) for guidance regarding respectful ways to obtain the necessary information.

The information you seek should focus on the accommodation requested, rather than on personal information about the employee.

This is true for all protected grounds that must be accommodated by the employer.