

MANAGERS' GUIDE TO REASONABLE ACCOMMODATION

April 2019

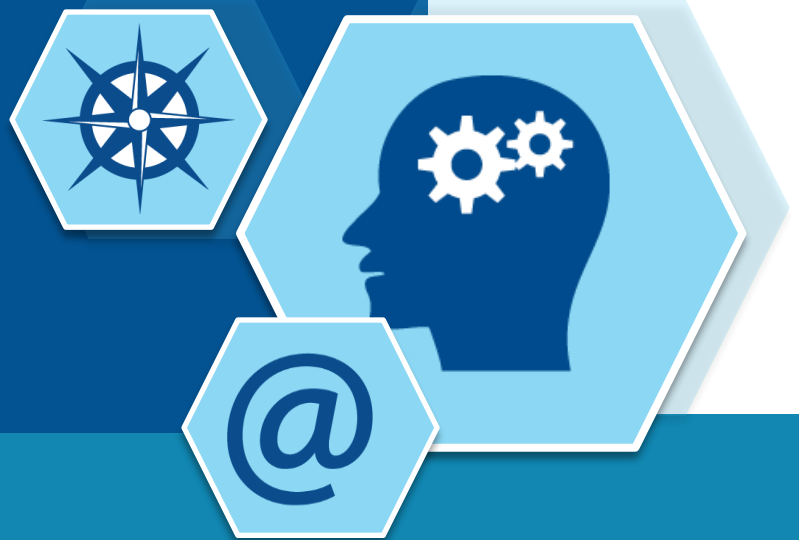


Table of Contents

Managers' Guide to Reasonable Accommodation	1
Introduction and Purpose	3
Background and Context.....	5
Responsibilities	6
Deputy Minister Responsibilities	6
BC Public Service Agency (BCPSA) Responsibilities	6
Manager and Supervisor Responsibilities.....	7
Employee Responsibilities	8
Union Responsibilities.....	9
A General Process for Managers	10
Step 1: Recognize the Need for Accommodation.....	10
Step 2: Gather Relevant Information and Assess Needs	10
Step 3: Make an Informed Decision.....	11
Step 4: Implement the Decision.....	12
Step 5: Follow Up and Keep Records	12
The Importance of Documentation	13
Discretion: Balancing Privacy and the Right to Information.....	14
Conclusion.....	16
Examples	17

Introduction and Purpose

The *Managers' Guide to Reasonable Accommodation* is intended for managers and supervisors of the BC Public Service. The guide is key to being an inclusive employer, to respond effectively to individual accommodation needs, fulfill responsibilities and meet [Corporate Plan](#) goals.

The [BC Human Rights Code](#) (the “Code”) protects and promotes human rights in British Columbia. The Code recognizes that all persons are equal in dignity, rights and responsibilities. Under the Code, discrimination refers to treatment of an individual, or a group of individuals, who are singled out and treated adversely or differently than others based on one or more of the protected grounds.

In the employment context, the protected grounds are:

- race
- colour
- ancestry
- place of origin
- age
- political belief
- religion
- marital status
- family status
- sex
- sexual orientation
- physical or mental disability
- gender identity or expression
- criminal or summary conviction offences unrelated to the employment or the intended employment of that person

Managers and supervisors should keep in mind that there are various avenues to support employees other than the formal accommodation process described in this guide. The BC Public Service promotes work arrangements such as flexible workplaces and flexible schedules. [Work Arrangements](#) provide the flexibility that may attract and retain valuable workers by informally accommodating diversity, providing work/life balance and boosting employee morale and productivity.

Protection is intended to ensure equitable access to employment opportunities and fair treatment in the workplace. Accommodation refers to modifying employment requirements, rules or policies that could be considered discriminatory because they have a negative effect on an individual or protected group. Satisfying this legal duty¹ requires managers to be respectful, attentive, flexible and comprehensive. Employers must accommodate employees with a demonstrated need up to the point of undue hardship.

¹ This document does not constitute legal advice but is intended for use as a decision-making tool for managers to meet their legal duty to accommodate while acknowledging that accommodation is always decided on a case-by-case basis.

Note: As a service provider, the BC government is also required to provide services to clients free of discrimination. However, services-related issues are beyond the scope of this guide. This guide only addresses discrimination and accommodation in the context of employment in the BC Public Service.

The duty to accommodate can arise at any point in the employment relationship: it may apply to hiring and dismissal decisions and terms and conditions of employment, including job duties, and general workplace rules and policies. This document can assist managers and supervisors in:

1. Identifying when a duty to accommodate arises.
2. Following a reasonable and appropriate accommodation process.
3. Determining when the duty has been met.

When individuals are able to be themselves at work, they engage fully in their work and as part of the team. Managers and supervisors play an important role in setting the tone at the workplace and promoting a positive work culture. A supportive environment can significantly impact an individual's engagement in the organization. **Open, effective communication, as well as clear channels for feedback**, optimize the opportunity for discussion of issues related to inclusion and accommodation.

Background and Context

The BC Public Service is committed to “recruit and develop a well-qualified and efficient public service that is representative of the diversity of the people of British Columbia” ([Public Service Act](#)). As outlined in the [Corporate Plan](#), which sets out strategic context and priorities for building a strong public service, the BC Public Service has a unique responsibility to be inclusive as one of the largest employers in the province and to set an example for other employers. It is an opportunity and responsibility to consistently demonstrate our commitment to inclusiveness and embrace diversity.

Our legislation, collective agreements and human resource policy statements require employees to treat each other with respect and dignity, to refrain from discriminatory conduct protected by the *Code*, to work in ways consistent with the corporate values of the BC Public Service and to ensure that we recognize unique styles, perspectives, beliefs and creativity that support a diverse, respectful, inclusive and collaborative work environment. These policy statements and collective agreements include:

- [Standards of Conduct](#)
- [Accountability Framework for Human Resource Management](#)
- [Discrimination and Harassment in the Workplace](#)
- [Occupational Safety and Health](#)
- [Managing Health-Related Absences](#)
- [BCGEU Collective Agreement](#)
- [PEA Collective Agreement](#)
- Legislation
 - [Public Service Act](#)
 - [BC Human Rights Code](#)
 - [Canadian Charter of Rights and Freedoms](#)
 - [Workers’ Compensation Act](#)
 - [Information Management Act](#)
 - [Freedom of Information and Privacy Protection Act](#)

Responsibilities

Every employee is unique and has diverse needs in the workplace; however, managers and supervisors are legally required to accommodate if the request is linked to a characteristic that is protected by the *Code*.

In most cases, accommodating employees is not a complicated process. Many situations can be resolved informally through conversation and open communication. Employees value communication not just about their roles and responsibilities but also about what happens in their lives outside of work. The best managers get to know their employees and help them feel comfortable talking about any subject. An inclusive workplace is one in which people feel safe and supported.

Deputy Minister Responsibilities

Deputy Ministers carry primary responsibility for people management in the public service. As such, their role is to create and maintain a supportive culture which is committed to the principles and spirit of diversity and inclusion that recognizes the value and importance of accommodation. It is the responsibility of Deputy Ministers or their delegates to:

- Ensure that human resource management responsibilities are carried out in a manner consistent with applicable policy, legislation, and collective agreements.
- Support the integrity of the principles and process.
- Ensure the necessary structure and resources are in place to support the process.
- Ensure the fulfillment of the employer's obligation to accommodate an employee, up to the point of undue hardship.

Public Service Agency (PSA) Responsibilities

While accommodating most employees is not a complicated process, workplace accommodation can be a complex matter and may require the input of multiple service lines within the PSA. Do not hesitate to reach out for support and guidance. The responsibilities of the PSA include:

- Ensure accommodation is incorporated into human resources policies, processes, practices, etc. (e.g. strategic recruitment).
- Provide consultation, guidance, training and coaching to support managers and supervisors in the assessment and implementation of accommodation.
- Provide accommodation guidance related to collective agreements and working with the public services' unions to address potential collective agreement barriers.
- Develop and implement best practices consistent with policy and procedures, collective agreements, human rights legislation and case law.

- Maintain the integrity of the principles and the process.
- Maintain a public, service-wide perspective.
- Investigate allegations/complaints of harassment/discrimination regarding the employer's duty to accommodate.

Manager and Supervisor Responsibilities

Managers and supervisors represent the employer in the workplace, and therefore, any action taken with respect to accommodation in the workplace is a priority. Managers are required to understand and accept the responsibility to:

- Assess each request for accommodation on its own merit.
- Initiate the process as soon as there is awareness that there may be a need to accommodate.
- Seek information from the employee regarding the accommodation.
- Ensure that information requests are constructive and respectful of employee privacy and maintain confidentiality.
- Determine what barriers might affect the employee requesting the accommodation.
- Explore options for removing these barriers.
- Be prepared to evaluate options outside the norm – this is the essence of accommodation.
- Share only necessary information with participants (e.g. employee, possibly the union) and involve them in the process.
- Make the process a priority, so that accommodation is provided in a timely manner.
- Explore possible reasonable accommodations.
- Offer the employee an accommodation that is reasonable considering the employee's needs. Managers need to explore options to the point of undue hardship.
- Document the process.
- Ensure staff are treated equitably wherever possible.
- Ensure all accommodations protect the right for privacy and confidentiality while respecting the dignity, individuality and self-esteem of the employee.
- Participate in the process in good faith.
- Ensure all work assigned is meaningful, productive and has value to the organization.
- Check in with the employee to understand if accommodation measures need to be changed or if the agreed-upon solution has not worked as it was intended and explore ways to modify the arrangements (remember that accommodations are not always a one-time provision; changes in employee needs or the job itself can trigger the need for new solutions).

Even when you have the necessary knowledge, training and experience to be a competent supervisor, you may need assistance with an accommodation request. Support and advice is available. Contact [MyHR](#).

Employee Responsibilities

When employees clearly understand accommodation, they are likely to have realistic expectations and to provide helpful, timely information. Employees are expected to do the following:

- Communicate the request for accommodation and do not assume that the manager knows or should have known about their circumstances.
- Discuss the work-related request for accommodation and explain the impact on ability to perform work (as applicable).
- Cooperate by providing relevant and appropriate information to support the request for accommodation.
- Work with the manager to find the appropriate solution.
- Cooperate in the effort to find a reasonable accommodation, while recognizing that the result may not be the preferred accommodation.
- Consider all proposals that effectively respond to the request for accommodation. An employee is not entitled to a “perfect accommodation”, but one that is reasonable.
- Advise the manager if accommodation measures need to be changed or if the agreed-upon solution has not worked as it was intended and explore ways to modify the arrangements.
- Participate in the process in good faith.
- Take actions that are reasonably necessary to achieve a reasonable accommodation.

If employees do not fulfill their responsibilities and this effectively impedes the process, the employer may not be required to accommodate them further. Contact [MyHR](#) for advice and guidance.

Job Candidate Responsibilities

During the assessment stage of a selection process, accommodation can be designed to remove obstacles that are presented by the method of testing, without modifying the nature or level of the qualification that is being evaluated. Accommodation can include such things as provision of sign language interpreters, information in alternative formats, and adjusting the time allowed for taking a written test.

Job candidates have an essential role to play in the process of determining assessment accommodation. They have responsibilities in the following areas:

- Communicate the request for assessment accommodation.
- Discuss accommodation requests with the hiring manager to assist in determining the accommodation for the assessment. More specifically:
 - Provide relevant and appropriate information on the nature and extent of the assessment-related accommodation; and

- Provide input on any experience with the appropriateness of any past accommodation.

Information on the nature and extent of the accommodation is essential to establishing proper assessment accommodation. In a situation where a candidate is unwilling to share this essential information, it may not be possible to provide the most appropriate accommodation.

Union Responsibilities

For bargaining unit employees, the union has a role and an obligation in the accommodation process and can provide valuable input to the collaborative process of finding a reasonable accommodation by working with the employer to address barriers in collective agreements. If applicable, this may mean that the union will be required to agree to some modification of the collective agreement. If it does not act reasonably, the union may be faced with a complaint of discrimination.

A General Process for Managers

The purpose of accommodation is to provide an opportunity for an employee to participate in meaningful, productive work that respects the employee's abilities and limitations, while contributing to the business of the ministry or organization. It means handling each request for accommodation individually and exploring all possible options so people with different needs can do their jobs.

There is no set formula for accommodation. Managers and supervisors are responsible for considering the requests from employees and job applicants for accommodation of work-related needs. The following sets out a general process for managers and supervisors.

Step 1: Recognize the Need for Accommodation

The duty to accommodate is not about employee preferences; it is about removing discriminatory barriers that are protected by the *Code* and supporting an inclusive workplace. The process may begin when:

- An employee or job candidate requests accommodation;
- A supervisor/manager is aware that accommodation may be needed; or
- A third party acting on behalf of the employee or candidate requests accommodation.

Note: A request does not have to be in writing, and self-identification or disclosure is not required to receive accommodation. Once a need has been identified, either by the employee, the manager, or someone else, the onus is on the manager or supervisor to follow the accommodation process set out below.

Step 2: Gather Relevant Information and Assess Needs

All accommodation documents must be kept confidential. Copies of accommodation documents should be provided to the employee and placed in [ARCS 1480-20 Employer-Employee Relations](#).

- Assess each request on its own merit. What is needed or works in one situation may not be appropriate for another.
- Ask the employee or candidate what type of accommodation is needed. If applicable, ask the individual to provide supporting documentation in writing. The information sought should pertain specifically to the arrangements needed for the accommodation, not the individual's personal information (e.g. a medical diagnosis). This is not usually necessary when the nature of the request for accommodation is visible (e.g. employee is in a wheelchair and requires adjustments to the physical work environment).
- Assess the employee's work environment to determine the best way to meet the request.
- If applicable, identify any implications or issues for the rest of your team.

- Contact [MyHR](#) for advice and support.
- Document all the steps in the process.

Step 3: Make an Informed Decision

Given that each employee has unique needs, work in partnership with the individual to explore options and choose the best solution.

- Take the time to review the request, understand the needs and review supporting documentation to find the most effective, practical, reasonable and cost-efficient solution.
- Work with the employee to successfully implement accommodation. Often, they will know what adjustments are needed to perform more effectively.
- Document the accommodation.

Options to Consider

A. Accommodate Employees in their Existing Position

Workplace accommodation may involve a service, adaptation or adjustment in the work environment that enable individuals to compete for jobs and perform employment activities without discrimination on a protected ground. It can include, but is not limited to, recruitment, selection, employment and separation processes, including training and career development. It may be short or long-term, with the goal of enabling individuals to compete for jobs and perform the essential duties of their employment. The first option to consider should always be accommodating the employee in their existing position:

- Can the position be modified, hours changed, or other considerations be made?
- Can some job responsibilities be shifted amongst employees to accommodate the employee's request?
- Can the candidate assessment be modified without changing the nature or level of the qualification that is being evaluated?

B. Consider Alternate Placement

Where it is not reasonable to modify an employee's responsibilities to accommodate their needs, you may be required to consider alternate placement after all means have been fully exhausted in the current role. When considering alternate placement, vacancies within the employee's ministry and geographic location, and with other ministries within the employee's geographic locations should be considered. You may need to enlist the assistance of more senior management and/or contact [MyHR](#) to assist in these efforts. Employers are not required to create and fund a new position to meet the duty to accommodate.

Step 4: Implement the Decision

Accommodation is about removing barriers to enable an employee to perform and contribute fully to the organization.

- Advise the employee of the decision, as well as the rationale behind it,
- Consult with the employee regarding the best approach to explain the accommodation to anyone affected by the measures, if necessary.
- Put in place the appropriate mechanisms to implement the agreed-upon accommodation.
- Document the accommodation.

Step 5: Follow Up and Keep Records

It is important to respect the dignity and privacy of the person being accommodated. Communicate only what is necessary to those who need to know.

- Regularly follow up with the individual and modify the accommodation, if necessary.
- Document any changes.
- Continue to respect privacy and confidentiality.
- Integrate accommodation needs into future human resources and business planning.

Additional Considerations

Include relevant parties: you should meet with, or at least exchange information with the employee (and union, where appropriate) on a regular basis. It is very important to keep the employee “in the loop” so that the employee both feels included and that the accommodation is important to the employer.

Timeliness: The employer may fail to meet its duty to accommodate if there is an undue delay or inaction on the part of supervisors or management. Courts and tribunals place a high value on the promptness of the employer’s response to a demonstrated need for accommodation.

The Importance of Documentation

Accommodation issues can be contentious. To demonstrate that the duty to accommodate has been fulfilled, managers must fully document the considerations and actions taken in relation to any accommodation process.

The importance of comprehensive documentation of the entire accommodation process cannot be over-emphasized. All involved should be aware of the need to record their efforts and that third-party scrutiny is a possibility. At a minimum, the following should be documented:

- Record any request for accommodation or how the manager or supervisor became aware of the request for accommodation, including all information provided by the employee or other person about the characteristic requesting accommodation.
- Keep dated notes of all efforts made to determine the extent of the employee's request for accommodation that, if met, would allow the employee to fully participate in their employment. Where it is determined that a need does not exist or that the request for accommodation can be met in a less intrusive manner than requested, notes of the rationale for the decision must be kept.
- Keep dated notes of all conversations, meetings and telephone discussions held in relation to the matter.
- Record the accommodation options considered including those rejected as being unsuitable or as constituting undue hardship, including the rationale for the rejection.
- Record all expert advice obtained to assist in the accommodation process.
- All offers of accommodation and the employee's response should be in writing. Where an employee rejects an offer of accommodation, the refusal must be documented. In appropriate circumstances, provide written advice to the employee stating that the employer discharged its duty to accommodate by making a reasonable offer of accommodation. Contact [MyHR](#) prior to the issuance of any such letter.
- This documentation should be made available to others on a need-to-know basis only: (e.g. a new supervisor after consulting with the employee).

Discretion: Balancing Privacy and the Right to Information

It is 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 is appropriate to ask for supporting information or documentation. Contact [MyHR](#) 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; and
- 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 is 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 and 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 (e.g. 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 is 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 MyHR 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.

Conclusion

Every employee is an individual with their own personal strengths and issues. Employees and managers must work together for the accommodation process to work effectively. Effective accommodation is most often the result of strong communication, creativity and flexibility. While the accommodation process may involve challenges and costs, it helps to create an inclusive culture that respects diversity and human rights.

Examples

In practical terms, providing accommodation means considering various options to assist another person in meeting their needs and goals in the workplace without compromising the needs and goals of the employer. Job accommodation can take different shapes and may respond to a range of requirements. The following are a few examples of what a successful accommodation might look like.

Example 1

Situation: An employee has difficulty getting up in the morning because of their medication.

Possible Solution: The employer changes the employee's working hours to allow the employee to travel to and from work during the off hours of the day and modify their lunch hour from one hour to a half-hour, so they can arrive at work at 10:00 am and leave at 5:30 pm.

Example 2

Situation: An employee has a medical condition that requires routine visits to his physician and finds it difficult to schedule appointments outside regular working hours.

Possible Solution: The employer provides the employee regular time off each week, so the employee can plan to see his physician regularly and work at home for the remainder of the day.

Example 3

Situation: An employee needs to eat regularly to control the side effects of medication and to ensure optimal energy throughout the day. The worksite employee handbook prohibits eating and drinking at the workstation.

Possible Solution: The employer modifies the workplace policy regarding food and drink to allow the employee to have the necessary food/drink items at their workstation. Alternatively, the employee could be allowed more frequent, shorter breaks to eat.

Example 4

Situation: An employee experiences visual difficulties and can no longer benefit from increasing the font on their computer to view and edit documents.

Possible Solution: The employer purchases screen magnification software to enhance or enlarge all applications on the computer and allow the employee to choose the amount of magnification.

Example 5

Situation: An employee experiences eye sensitivity due to fluorescent light in their office. As a result, they are unable to clearly view the computer screen or written materials due to glare.

Possible Solution: The employer lowers the wattage in the overhead lights and provides task lighting and installs a computer screen glare guard.

Example 6

Situation: An employee experiences difficulty remembering the steps involved in a new process for completing a task.

Possible Solution: The employer provides the employee with a step-by-step checklist and directions explaining how to complete the task.

Example 7

Situation: An employee seeks prayer time and space during work hours.

Possible Solution: The employer identifies a suitable room for the employee to have a separate, private place for prayer to use if it is not needed for other operational requirements at the time. Break schedules may be modified to coincide with prayer times or to accommodate religious fasting.

Example 8

Situation: An employee asserts their right to use a washroom that corresponds to their expressed gender identity which is different than their sex assigned at birth.

Possible Solution*: The employer recognizes that gender identity is based on self-identification as the only measure required to determine which washroom people use and understands that medical documentation or any other form of "proof" to establish gender identity is not necessary or appropriate.

*If people raise concerns about trans or gender non-conforming people's use of a multi-stall washroom, kindly suggest to those who raise the concerns that they may use a single-stall washroom if one is available. When possible, create and/or offer an accessible gender-neutral washroom (see [Supporting Transgender and Gender Diverse Employees in the Workplace](#)).

Example 9

Situation: An employee, who works shift work, is a single parent with no family in town. The early shift is from at 7:00 am - 3:00 pm. The employee's child's daycare does not open until 7:30 am. The employee is unable to make alternate arrangements for daycare.

Possible Solution: The employer modifies the schedule so that when the employee is scheduled to work the early shift, the hours of work to start at 8:00 am and end at 4:00 pm. The employer confirms this change does not impact operational requirements, safety requirements or cause other employees to be working alone if not appropriate.

Example 10

Situation: After surgery, an employee finds a physically demanding task challenging.

Possible Solution: The employer confirms the task is not one of the essential duties of the position and assigns it to someone else. If it is an essential duty, the employer seeks other ways to accommodate the employee to the point of undue hardship.

Example 11

Situation: A diverse worksite has employees who are Seventh Day Adventists and members of the Jewish faith. These employees observe a Sabbath from sundown Friday to sundown Saturday. Observant members of these religions cannot work at these times.

Possible Solution: The employer introduces flexible scheduling to accommodate these employees.

Example 12

Situation: An employee indicates that loud noise in the busy open plan office are the root problem that cause panic attacks.

Possible Solution: After determining the work does not require the employee to be in the office and does not impact operational requirements, the employer initiates a tele-work agreement with the employee.

Example 13

Situation: An employee working at a call centre experiences progressive hearing loss, and as a result, has difficulty communicating with clients.

Possible Solution: The employer provides the employee with a headset amplifier.

Example 14

Situation: A job applicant is asked to do a short oral test. The applicant has a speech impairment, which worsens under stress.

Possible Solution: The employer chooses to give everyone the test in written form instead since oral communication is not relevant to the job, nor the purpose of the test.

Example 15

Situation: An employee requests to work from home due to chronic pain and the inability to sit for any length of time.

Possible Solution: The employer agrees to a tele-work agreement as it does not impact operational requirements.

Example 16

Situation: A job applicant has limited mobility and the interviews have been scheduled in a non-accessible location.

Possible Solution: The interview location is changed to a more accessible location.



Where ideas work