

TOOLKIT

Accommodation or Work Modification Requests for In-person Teaching

Preamble:

Western University has communicated its intention to return to in-person classes and on-campus activities effective September 2021.

We recognize that the return to in-person teaching may be experienced differently by our Members and that there may be unique and individual circumstances which may cause concerns about their own safety or the safety of others in their household. There are some collaborative ways to manage these circumstances while maximizing the in-person learning experience for our students.

Types of Accommodation or Work Modification Requests

It is important to distinguish between the different types of accommodation or work modification requests available to Members.

The first is where the Member them self has a medical condition which would put them at higher risk if they contract the COVID-19 virus and where they are in possession of medical documentation that identifies functional limitations which limit the Member from engaging in in-person teaching. This is referred to as a *Medical Accommodation* request.

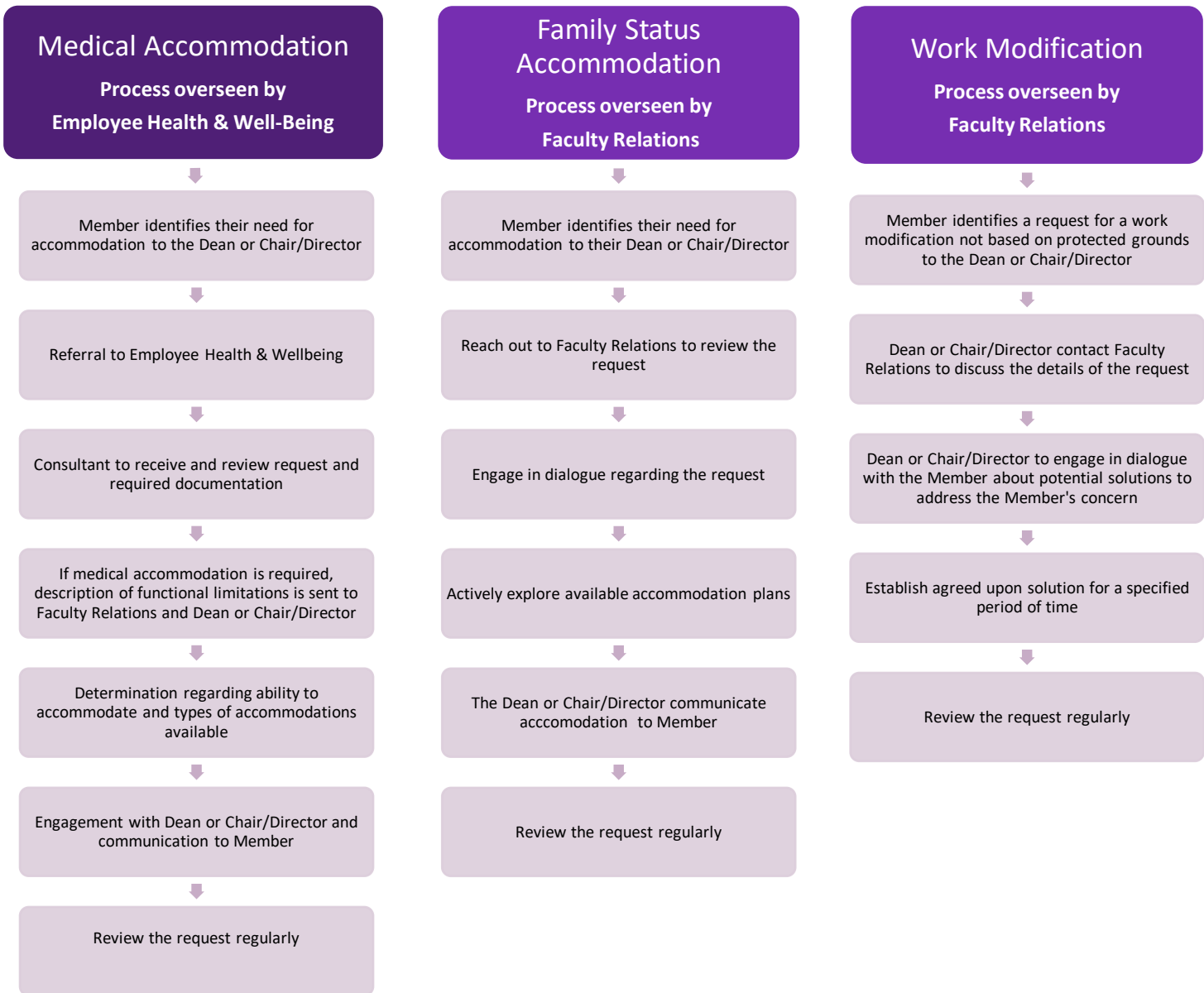
The second is where the Member is in a caregiver relationship with a family member, such as parents caring for children and people caring for aging parents or relatives with disabilities. Members who have caregiving responsibilities may be entitled to accommodation based on their individual circumstances. This is referred to as a *Family Status Accommodation* request.

Both a medical accommodation and a family status accommodation request are recognized as protected grounds under the Ontario *Human Rights Code*.

The third category is novel and is not a protected ground under the Ontario *Human Rights Code*. We are referring to these novel requests as *Work Modification* requests. These requests can be brought forward by Members with circumstances which do not easily fit under Medical or Family Status definitions, for example, where the Member lives with, but does not have caregiving responsibilities for, an independent family member who has a medical condition that places the family member at higher risk if they were to contract the COVID-19 virus.

More information about the Members' and University's obligations and how to manage these requests are outlined later in this toolkit. This toolkit is intended to provide information to assist both Leaders and Members when considering individual circumstances.

Each of these types of accommodation and work modification requests will be discussed separately.



Roles and Shared Responsibilities of Stakeholders

The Member’s role in the accommodation and work modification process includes:

1. Identifying their need for accommodation or modification to the University.
2. Providing information and documentation reasonable in the circumstances.
3. Engaging in dialogue regarding their request, alternatives, and possible solutions.

4. Accepting reasonable arrangements even if they are not perfect or the Member's ideal solution.
5. Being open to ongoing dialogue and adjustments to the arrangement as circumstances change.

The University's role in the accommodation and work modification process includes:

1. Being open and receptive to requests.
2. Addressing requests in a timely manner.
3. Engaging in dialogue regarding the request, alternatives, and possible solutions.
4. Actively exploring available accommodation or work modification options.
5. Satisfying both the procedural and substantive aspects of the duty to accommodate in accordance with the *Human Rights Code*, where accommodation is required.
6. Documenting the request, the dialogue process, and the outcome.
7. Being open to ongoing dialogue and adjustments to the arrangement as circumstances change.

Employee Health & Well-Being's role in the accommodation process includes:

1. Confidentially receive and review requests for **medical accommodation** from Members.
2. Review the Member's supporting medical documentation to ensure the required information is received, including:
 - functional limitations or needs associated with the illness/injury/disability;
 - information as to whether the person seeking the accommodation can perform the essential duties or requirements of the job with or without accommodation; and
 - estimated length, or plan of the reassessment of need.
3. Communicate the Member's functional limitations (no personal health information is shared) with the relevant Dean or Chair/Director and working with the relevant leader to discuss an accommodation plan for the Member.

The Office of Faculty Relations' role in the accommodation and work modification process includes:

1. Receiving and reviewing requests for **family status accommodations** and **work modification requests** from Members.
2. Consulting with and providing information to Members relating to their specific requests and, where required, facilitating discussions between Deans or Chairs/Directors and Members about their specific requests.
3. Consulting with Members, Deans, Chairs and/or Directors about different options available to evaluate and support Members' requests.
4. Documenting the agreements between parties.

Medical Accommodations

The health and well-being of our Members is a priority, and the University supports a collaborative, proactive approach to help Members fulfill their employment obligations in a manner that is occupationally safe and supports the University's objectives of providing a quality in-person experience.

1. A request for accommodation is usually made to the Member's Dean or Chair/Director or occasionally directly to the designated Health and Well-Being Consultant.
2. Where the member approaches their Dean or Chair/Director their request should be referred to Employee Well-Being and considered in accordance with the established Transitional Accommodation Program.
3. If the Member is medically unable to fulfil their employment obligations in a safe manner, this will be dealt with in the normal course by Employee Well-Being.
4. If the Member's functional limitations / restrictions require further clarification, Employee Well-Being may request additional information or engage the Occupational Health Physician as a referral resource to obtain clarification.
5. Once Employee Well-Being has established the Member's functional limitations support the Member's ability to perform their duties with accommodation, a request for modifications / accommodations to allow Member to engage in essential duties of the job will be made.
6. The Member / Dean / Chair / Director and Faculty Relations will be consulted to determine what accommodations are possible, based on operational need and functional limitations.
7. The decision will be documented accordingly.

Family Status Accommodations

Members with caregiving responsibilities (whether it be a minor or an elderly parent) may be entitled to a Family Status Accommodation based on the Ontario *Human Rights Code*. Persons in a parent-child type relationship have a right to equal treatment in the workplace and the University must continue to be diligent in providing reasonable and flexible accommodations.

When seeking or considering a request for family status accommodation, ensure a clear understanding of the Member's childcare or eldercare needs and what accommodation might be necessary.

1. Is the Member obliged to provide care to the child/parent? The assessment of the caregiving responsibility at stake should be grounded in the practical, lived reality of caring for children, elders, or persons with disabilities.
2. What restrictions do the Member's childcare and/or eldercare needs place on their ability to meet their regular employment obligations e.g., timelines / deliverables?
3. What accommodation is the Member seeking?
 - what would be the impact of granting the requested accommodation in full
 - what operational challenges would it pose?
4. Is the Member unable to work at all during certain periods of time?
5. Are there special needs that need to be taken into account?
 - the family member's medical needs;
 - custody arrangements; or
 - other special needs.
6. What is the likely duration of the Member's needs?
 - short-term; or
 - long-term/indefinite.

7. Seek documentation of needs where applicable and reasonable (custody orders, etc.)

Discuss and explore realistic alternative care arrangements that have been explored or could be explored that would address the need for accommodation, either whole or in part, such as:

1. Switching off with their partner or another household member to take caregiving 'shifts';
2. Adjusting hours of work to a time when the dependant(s) are asleep/engaged elsewhere;
3. Reorganizing shared child custody arrangements on an interim basis; or
4. Alternate arrangements such as paid caregivers or trusting an older child to provide care.

Provide assistance in exploring realistic alternative care arrangements

1. Provide programs through Employee Assistance Programs ("EAP") to help the Member explore alternative arrangements.
2. Encourage follow up and continue the dialogue.

Explore accommodation options, including:

1. Taking a short period of Compassionate Leave under Clause 3 of the Article *Income Security* to allow for care arrangements to be organized;
2. Taking an unpaid Leave of Absence under the Infectious Disease Emergency Leave (IDEL) provisions of the *Employment Standards Act, 2000*, if applicable;
 - ensure Members are aware of the eligibility criteria for and availability of an IDEL.
 - ensure Members are aware that the University supports those who take an IDEL.
3. Redistribution of a Full-time Member's workload in the current or subsequent academic terms under processes set out in the *Alternative Workload* article. Timelines in Clause 3.1 shall be waived;
4. Move to a Reduced Workload, using the provisions of the *Reduced Workload* article (this is accompanied by a prorated reduction in compensation);
5. If the Member wishes to seek flexible accommodations in meeting their Academic Responsibilities and achieving their career milestones without reducing workload, accommodations can be explored, i.e.,
 - different things may work in different disciplines and accommodations should address the individual circumstances;
 - use the COVID-19 related option to delay sabbaticals;
 - use the COVID-19 related option of individual extension of 1 year to the probationary period; or
 - consider whether there are ways for outputs to be achieved in different ways or different hours; (e.g. swapping teaching assignments, the timing of classes, adapting timelines for milestones, judicious reweighting of WL distribution).
6. Consider interim/transitional accommodation measures while alternative care arrangements are being made
 - implement for a defined period of time;
 - monitor and obtain periodic updates from the Member concerning any changes in his/her needs;
 - adjust accommodations as appropriate; and
 - address any behaviour which indicates lack of cooperation in seeking out a long-term solution.
7. Where the Member has a long-term or indefinite need for accommodation, consider whether accommodation can be provided without Western incurring undue hardship.
8. Generate and maintain appropriate records of accommodation dialogue and efforts.

9. Treat the accommodation process as a dialogue, not a one-time request.

Work Modification Requests

As previously mentioned, work modification requests are a broad category that has been created to encompass requests from Members that do not clearly fall within a protected ground outlined in the *Ontario Human Rights Code* (i.e., medical, family status accommodation) but share commonalities with other provincial legislation such as the *Ontario Health and Safety Act* and the *Ontario Human Rights Code*. It's important that the University takes an open and collaborative approach with matters of this nature when they arise and when possible and reasonable, to work with the Member to find a solution.

When seeking or considering a Work Modification request, ensure a clear understanding of the Member's request:

1. Who is the Member concerned about? Why is the Member concerned and how does teaching in-person exacerbate their concern?
2. Is the Member aware of all the safety protocols that Western has put in place to ensure a safe work environment for staff, Faculty & students?
3. What specifically is the Member uncomfortable with?
4. What is the duration of the request? Short term or long term? At what point will it be re-evaluated?

Discuss with the Member what realistic work modifications or adjustments have been explored or could be explored that could address the Members request for a Work Modification, either whole or in part, such as:

1. Review the physical distance requirements of the classroom, communicating the air-control information that is in place with the classroom, entrance and exit control and other measures that would limit exposure of the Member.
2. Adjust other components to minimize risk such as:
 - offering office hours virtually,
 - scheduling student group sessions and individual student meetings over Zoom, or
 - exchanging documents electronically rather than in-person.
3. Are there any additional Personal Protective Equipment (PPE) that can be provided such as face shields, screens, etc.

Explore work modification or adjustments related to the Collective Agreement, including:

1. Taking a short period of Compassionate Leave under Clause 3 of the Article *Income Security* to allow for care arrangements to be organized
2. Taking an unpaid Leave of Absence under the Infectious Disease Emergency Leave (IDEL) provisions of the *Employment Standards Act, 2000*, if applicable;
 - ensure Members are aware of the eligibility criteria for and availability of an IDEL
 - ensure Members are aware that the University supports those who take an IDEL

3. Redistributing a Full-time Member's workload in the current or subsequent academic terms under processes set out in the Article *Alternative Workload*. Timelines in Clause 3.1 shall be waived.
4. Moving to a Reduced Workload, using the provisions of the *Reduced Workload* article (this is accompanied by a prorated reduction in compensation)
5. If the Member wishes to seek flexible modifications in meeting their Academic Responsibilities and achieving their career milestones without reducing workload, modifications can be explored
 - different things may work in different disciplines and modifications should address the individual circumstances;
 - use the COVID-19 related option to delay sabbaticals;
 - use the COVID-19 related option of individual extension of 1 year to the probationary period; or
 - consider whether there are ways for outputs to be achieved in different ways or different hours; (e.g. swapping teaching assignments, the timing of classes, adapting timelines for milestones, judicious reweighting of WL distribution).
6. Consider interim/transitional measures while work modifications are being made, i.e.,
 - Implement for a defined period of time;
 - Monitor and obtain periodic updates from the Member concerning any changes in his/her needs;
 - Adjust modifications as appropriate; and
 - Address any behaviour which indicates lack of cooperation in seeking out a long-term solution.
7. Generate and maintain appropriate records of solutions to work modification request dialogue and efforts.
8. Treat the modification process as a dialogue, not a one-time request.