

Important ETFO Update #13: Responding to COVID-19

Special Issue Regarding Medical and Family Status Accommodations

August 10, 2020

In Update #13 on COVID-19 related issues, you will find information related to workplace accommodation regarding the government's return to school plan including: medical accommodations; age; and wearing of masks.

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The return to school in September raises a host of questions for members regarding what is expected of them and whether they are able to meet those expectations.

The *Ontario Human Rights Code* entitles members to equal treatment in employment without discrimination on the basis of protected grounds including: race; ancestry; place of origin; colour; ethnic origin; citizenship; creed; sex; sexual orientation; gender identity; gender expression; age; record of offences; marital status; family status; or disability.

If a school board directs a member to do something such as attend the workplace, perform a particular assignment, wear a mask or use hand sanitizer, but one or more of the protected grounds restricts the ability to do so, then a member may be entitled to accommodation. Accommodation is not an entitlement guaranteed on request. Typically, a worker has to provide some degree of evidence to prove their entitlement.

In some situations, there may be a range of accommodations to help a member perform the essential duties of their job and meet the employer's expectations. Sometimes school boards and workers have different perspectives about what the right accommodation should be. In general, school boards do not have to automatically accommodate an employee's preference. Boards are expected to consider the range of options and then provide reasonable accommodations. That process should include the union local and the worker and should respect the dignity of the worker.

There is also a limit on how much a school board has to accommodate. It does not have to accommodate a worker if the accommodation would be an undue hardship. Certain factors such as cost and the safety of others may be considered in determining the threshold for undue hardship.

Frequently Asked Questions

Who decides if I get a medical accommodation? What is the process?

The school board decides whether it will accommodate a member or not. All school boards should have an established accommodation process that is set out in a policy, and ETFO locals can assist members with information about the policy. The school board, local and employee are parties to the accommodation process but it starts with the member requesting accommodation and providing information to support the request. It is recommended that members consult their local and/or ETFO Professional Relations (PRS) prior to providing this information to the school board.

Do I have to provide a medical note to get accommodation(s)?

Members will have to provide medical support for a disability-related request for medical accommodation. This must reflect the member's medical condition (without providing diagnosis). It will explain what restrictions or limitations arise from the condition that impact the member's ability to meet the employer's expectation and may provide suggestions for accommodation(s). Some school boards have, or are introducing, forms for doctors to complete when considering accommodation requests.

During this COVID period, it may be more challenging to request and receive the required medical documentation to support your request. Members should make every effort to reach out to their medical practitioner to request the required information but if they are not able to see the doctor or obtain the paperwork, they are still encouraged to initiate the accommodation request.

I have a medical condition that puts me at high risk of serious illness or death if I contract COVID-19. Should I take a leave of absence rather than return to work?

Members with a medically supported condition that makes returning to work hazardous should speak with their doctor. The school board might be able to accommodate some medical restrictions and limitations for a safe return to work, or there may be a different work location or assignment (distance learning) that is more suitable to a member's medical needs. School boards are only required to accommodate to the point of undue hardship and that can include impact on the health and safety of others. Members should start by contacting their local or PRS.

I have a Kindergarten/primary assignment. With my medical condition, my doctor says that I am only safe to return to a work environment where everyone is

wearing masks and there are appropriate hygiene protocols. What do I do if others are not wearing masks?

Members with a medically supported condition that makes returning to work hazardous, either in relation to the workplace as a whole or to their specific assignment, should speak with their doctor. The school board may be able to accommodate some medical restrictions and limitations for a safe return to work or there may be an available work assignment that is more suitable. Members should contact their local or PRS for assistance.

My doctor has told me that I should not return to work given my medical condition. What do I do?

If a doctor advises that a return to work would create a significant medical risk and medical needs cannot be accommodated to substantially reduce or eliminate such risk, members may be entitled to sick leave. Members are advised to involve their local in the process as local school board policies or collective agreement provisions may be relevant to any decisions made.

I do not have a medical condition putting me at higher risk if I get COVID-19 but I have a psychological condition that is being exacerbated by my worries about going back to school. What do I do?

Members need to talk to their doctor and make sure they are getting appropriate treatment for the condition. There may be treatment that will enable a member to work despite their condition and fears, or accommodations that could allow for a safe return to work. If a doctor assesses the member as too ill to return to work and cannot be accommodated, then the member should advise the school board as soon as possible that they wish to access sick leave.

I have a chronic medical condition that consistently or recurrently mirrors the issues that raise concern in the COVID-19 screening inquiries. What do I do?

This does not mean a member is immune from COVID-19. If a member is experiencing symptoms of COVID-19 and the self-assessment tool is completed with the resulting direction that they not attend work, that advice that should be followed. If a member's doctor is in a position to distinguish the experience of the chronic condition from the possibility of COVID-19, it may be that accommodation is required for a different screening process or a different clearance to return to work other than a repeated COVID-19 test result.

I have allergies and/or multiple chemical sensitivity and am worried that heightened cleaning standards will involve more or stronger cleaning products that will exacerbate my condition. What should I do?

Members should contact their principal to assist in getting the information they need regarding what products are being used. They can then discuss this concern with their doctor to assess relevant medical restrictions and limitations should they be cleared to return to work and/or require accommodation.

I am pregnant and worried that being exposed the school environment will harm my pregnancy. What are my options?

The Government of Canada has recommended that pregnant women stay at home and work from there as much as possible. Some pregnant women may also be at high risk of complications from COVID-19 because of underlying health conditions. Members should consult with their doctor for medical advice on any restrictions and limitations. Depending on that information, the member may need to request accommodation from the school board.

I am an older worker and have been told that my age puts me at high risk of serious illness or death if I contract COVID-19. Am I entitled to remain off work or access sick leave?

The protections under the *Ontario Human Rights Code* for age are not as extensive for those 65 or older, however there is still a scope of protection available for adverse impact discrimination in employment based on age. Although age is not technically a medical condition, the medical impact of risk of exposure on an older member is a medical issue. It is recommended that members consult their doctor for medical advice specific to their health to assess whether to request accommodation and what type. Members should contact their local or PRS for advice.

I have a medical condition that prevents me from wearing a mask or is at risk of getting worse if I wear a mask. Do I have to wear one?

The Ontario government is providing masks to all staff and has stated that all staff must wear masks. It acknowledges that certain medical conditions might mean “reasonable exceptions” have to be made to this mandatory rule. The school board will assess a member’s medical restriction and limitation and decide whether the member can be reasonably accommodated. For the most part, unless a school board has provided exemption from wearing a mask, members will be expected to comply with the requirement pending resolution of any objection about the expectation through a grievance. If a member’s health concern prevents even that, concerns should be raised promptly with the local or PRS.

I have a special mask that I want to wear rather than those supplied for staff. Can I continue to wear my mask?

Whether staff will be permitted to wear their own masks is likely something that the school board will determine. If a board mandates the wearing of the government-procured masks only, accommodation may only be considered if there is a human rights-based reason such as a medical need. If members otherwise object to wearing

the provided masks, they should contact their local for advice about whether there is a collective agreement or other restriction on the board's ability to insist on this.

I have a hearing impairment. Given that masks are mandated for grades 4-8 students, it will be very difficult for me to carry out my duties if I cannot see their lips move. What should I do?

If a doctor can confirm that a member's medical condition will prevent the carrying out of duties if students are wearing masks, they should be entitled to accommodation unless this causes undue hardship. The member could be reassigned to a class where masks are not being worn or assigned to deliver distance learning. The school board will have to assess what reasonable accommodations are available.

I wear a niqab. Will I also have to wear a mask? Am I entitled to accommodation?

Religion is one of the *Ontario Human Rights Code* protected grounds regarding equal treatment without discrimination in employment. If a niqab is worn because of a sincerely held religious belief and the school board's wearing of a mask interferes with this, then a member may be entitled to religious-based accommodation. The local will know whether the school board has a particular process for religion-based accommodation requests.

I'm also a parent and concerned about potential child care issues in September. What should I do?

During the pandemic, many ETFO members have been teaching remotely while caring for children. Some may not have child care spaces upon return to school which could impact members' capacity to work. Members who are parents should plan for their return to work in September and should make every effort to ensure that child care arrangements are in place for their children. If this is not possible, members should seek advice from PRS staff or speak to their local office for information on whether they can seek accommodation on the basis of family status.

What is a family status accommodation?

"Family status" is defined in the *Ontario Human Rights Code* as being in a parent and child relationship. A member who has family status and experiences adverse treatment in the workplace where family status is a factor in that treatment, has experienced discrimination. Employers may be required to accommodate family status needs; however, an employee generally has to establish more than a negative impact on a family need. There has to be proof of real disadvantage to the parent/child relationship and the responsibilities that flow from that relationship, and/or to the employee's work. The availability of additional supports would be part of the overall discrimination or accommodation analysis. Typically, impacts resulting from personal preferences of the parent with respect to care options are not relevant. Proof of disadvantage is more likely to trigger the duty to accommodate.

What options do I have if I live with a family member who is immunocompromised?

Human rights protections in relation to family members are limited to “family status” and “marital status”. A member’s claim to accommodation based on family or marital status, where the child, parent or spouse is immunocompromised, may depend on several factors. They include: the medical circumstances concerning that family member; the range of accommodation steps that could be taken in the home when on return to work; the availability of additional supports and the proof of disadvantage involved. If there is a claim for accommodation, a range of accommodations would need to be considered.

I rely on public transportation to get to work. I fear exposure to both that and the school environment puts me in jeopardy. Can I get a new assignment to be within walking distance of my work?

Typically, members are responsible for making their own arrangement to get to work and this is not the school board’s concern. Where a member has choices about how they get to work, the fact that their preferred method is compromised by a medical condition will not necessarily be a valid basis for employer accommodation. Where an employee cannot access other commute options and cannot continue to do the commute because a medical condition, the school board may have a duty to accommodate. Changing the assignment may be one possible accommodation but the employer may consider other reasonable accommodations as well.

I submitted a request to be accommodated by my school board because of COVID-19 but my board has denied my request. What do I do now?

School boards and all employers have a duty to accommodate "unless it would amount to undue hardship based on cost, or health and safety". If a member’s school board has informed them that they are unable to accommodate, it is imperative they contact their local as soon as possible. A failure to accommodate could be a violation of collective agreement rights and a grievance may need to be initiated.