

Guidelines for Accommodating Family Status and Caregiving Obligations due to the COVID-19 pandemic

NOTE: These guidelines must be read in conjunction with and under the consideration of relevant legislation, including The Saskatchewan Human Rights Code (SHRC), The Saskatchewan Employment Act (SEA), applicable University policies and procedures and the terms of the Collective Agreement between the University of Saskatchewan and the University of Saskatchewan Faculty Association (USFA).

This guide has been prepared to raise awareness and assist with the fulfillment of the University's commitment and shared responsibility to accommodate caregiving obligations and ultimately, to minimize the impact that working from home to some, or the need to return to work for others, and the move to remote teaching due to the COVID-19 pandemic is placing on the professional and personal life of the faculty when faced with the need to balance work demands and caregiving obligations.

University Recognition of the Duty to Accommodate Family Care Obligations under Current Pandemic Conditions.

Employers have a legal duty to reasonably accommodate Human Rights protected characteristics, unless doing so creates an undue hardship on the employer. *The Saskatchewan Human Rights Code* includes family status (being in a parent and child relationship¹) as a prohibited ground of discrimination. The protection of family status has been interpreted to extend beyond the strict definition of the Code, to include, in a much broader sense, responsibilities that arise from the legal obligation to care for a family member or dependent.

Under the practical realities created by the COVID-19 pandemic, faculty who depend on care services and schools to assist with meeting their caregiving obligations continue to face unprecedented challenges. Although most care facilities and services have reopened and schools are resuming full time, there is still uncertainty around the formatting of the delivery and the unpredictable conditions or ability to rely on those services without interruption. Families with vulnerable members face even further and additional challenges as they will be in many cases unable to assume the risks involved in using the services that will be available or accessing the supports that could had been previously utilized. Hybrid models of returning to school, pandemic related outbreaks within the schools or spikes in community transmission of COVID-19 may impose sudden restrictions or closures that will create further and unpredictable disruption that in some instances could require urgent and timely attention.

The University has always upheld a strong commitment to support and accommodate faculty on the basis of their family status and caregiving obligations. However, the largely unprecedented circumstances and challenges imposed by the COVID-19 pandemic require the need to extend and adapt the duty to accommodate in response to pandemic related suspension and/or restriction of normal schooling and caregiving facilities and supports.

¹ "child" means son, daughter, stepson, stepdaughter, adopted child and person to whom another person stands in place of a parent; "parent" means father, mother, stepfather, stepmother, adoptive parent and person who stands in place of a parent to another person; («situation de famille»)

Accommodation Process

Under normal circumstances, a *prima facie*² case of discrimination or duty to accommodate is made out in a case involving caregiving obligations, where:

1. A child – or dependent – is under the employee’s care;
2. The obligation engages the employee’s legal responsibilities for the child – or dependent (as opposed to personal choice);
3. Reasonable efforts have been made to find reasonable alternative solutions (the analysis may include consideration of other supports available – or not – to the employee); and
4. The rule, requirement, or policy introduced by the employer interferes in a manner that is more than trivial with the fulfillment of the caregiving obligation (has an adverse effect on the employee – the negative impact must result in real disadvantage to the legal obligation of the family status and the responsibilities that flow from that relationship, and/or to the employee’s work).

Department Heads and Deans should treat every request for accommodation seriously and thoughtfully keeping in mind the applicable test triggering the duty to accommodate, however, under the current circumstances, additional flexibility is required and special attention should be placed on the unique and unprecedented needs created by the pandemic.

This may mean that different considerations apply as a result of the current COVID-19 environment. Under normal circumstances, a request for accommodation under family status will generally fail if it is based on a personal preference to care for a child at home rather than a need/obligation to do so. However, under the pandemic scenario, even with schools and daycares available, some employees may be left with no option to place their children or dependents under such care for health or other reasons.

Department Heads and Deans should facilitate and encourage faculty to bring concerns to their attention and request accommodations when the requirements of their work conflict with their caregiving obligations and should strive to work together to explore suitable alternatives to balance those demands.

The duty to accommodate under family status obligations is also subject to important limitations:

- The University is required to explore accommodation options to the point of undue hardship³.
- There is no obligation of the employer to change, remove or relax a bona-fide occupational requirement⁴.
- Does not extend to personal preferences.
- Must endeavor to provide a reasonable accommodation (not a preferred or perfect accommodation).

Accommodations can be modified in response to changing circumstances. The accommodation process and considerations placed on what accommodations may be reasonable should also consider the changing circumstances, particularly in the context of the COVID-19 pandemic:

² “*Prima facie*” case refers to the presentation of sufficient evidence to support a claim.

³ “Undue Hardship” is defined as an action requiring significant difficulty or expense when considered in light of a number of factors, including costs, outside sources of funding, health and safety requirements, considerable disruption to the workplace, or interference with others’ rights.

⁴ “Bona Fide occupational requirement” means a necessary and inflexible standard or rule that is integral to carrying out the requirements of a particular position within the workplace.

- The point of undue hardship may change over time
- The employee's circumstances can change
- The number of employee's requiring accommodation may increase
- Public health directives can change

Responsibilities in the Accommodation Process

When the duty to accommodate process is triggered, all parties are required to engage in meaningful dialogue to develop a solution.

Steps an employee should take when seeking accommodation:

- Promptly raise concerns and accommodation needs with their Department Head/Dean
- Show there is a genuine obligation to provide care as opposed to a "personal choice" (personal choice is not enough to justify accommodation)
- Provide relevant information regarding the caregiving obligations requiring the accommodation and how the obligations interfere with the work duties (this may require the disclosure of personal background information about your child or dependent, the care involved and/or your family situation that needs to be considered, and may include disclosure such as marital status, medical conditions or special health or care needs, custody orders, size of your home, particular times of the day that require special attention, the number of people in your home working or learning, the number of devices available for use, impact of the requirement to work from home, etc.)
- Show that realistic alternatives and available caregiving options have been explored, the extent to which you can readily self-accommodate and what steps you have taken to do so, and what other supports may be available (family members, friends, social programs, health care programs, community supports, etc.)
- Be willing to participate in discussions, consider alternatives, and agree to reasonable arrangements in the workplace that assist in accommodating the caregiving needs, even where the arrangement is not the preferred solution.
- Build a support system with a variety of caregiving options, practice effective time management, and plan ahead for the unexpected.
- Remain open to adjusting a previously agreed-upon accommodation if circumstances change.

University's Obligations under the duty to accommodate

The University must facilitate a process by which the employee can safely and confidently elevate their concerns and request for accommodation. Department Heads and Deans play a key role in facilitating this process.

The University must make good faith efforts to provide a reasonable accommodation to the point of undue hardship. In the assessment of what is reasonable, Department Heads and Deans must consider the impact of the requirement to work remotely on the faculty's family circumstances, any efforts the faculty has made to self-accommodate or minimize the impact (and costs), the health and safety, and the bona-fide occupational requirements of the job. All requests are to be considered on an individual and equitable basis and while it remains true that the employee is not entitled to the perfect or preferred accommodation, Deans and Department Heads are expected to ask and consider what accommodation the employee is seeking.

There is great diversity in individual caregiving circumstances and obligations (number and age of dependents, family circumstances, special needs, etc.) as well as wide variance in expectations for faculty teaching, research, supervision, clinical work, service, etc. Accommodations must therefore be individualized, and flexible over time.

Deans and Department Heads must encourage openness through the accommodation process and support honest discussions with the faculty about what reasonable accommodations they can or cannot provide and why. When a reasonable accommodation is not feasible, it will be important to continue to support the employee and explore other alternatives such as entitlement to leaves under the collective agreement or legislation and what other supports may be available through those leaves.

It will be important to document the process, the considerations, and any resulting accommodations put in place, and remain open and flexible to adapt and revisit the terms of the accommodation as the needs of the unit and the individual change.

These are uncertain times for everyone. As such, all parties involved in the accommodation process shall communicate timely, clearly, and with compassion for others involved.

Although there may be circumstances that would not strictly fall under the normal consideration of family status or be entitled to family status accommodation, under the unprecedented conditions of a global pandemic, it is recommended that a more flexible approach to accommodations is considered for those employees who have children or other dependents under their care.

Accommodations that can be explored include, but are not limited to

- Flexibility on teaching assignments, including modes of delivery and scheduling of classes, terms off, and vacation times
- Facilitate access to equipped offices or lecture halls on campus from which lectures can be delivered (as an alternative to delivering the lecture from home to avoid interruptions)
- In situations where two faculty members share responsibilities, coordinate schedules in a way that enables sharing the co-parenting and family care responsibilities
- Allow signing out any necessary items from your campus office needed to fulfill academic responsibilities from home
- Provide TA assistance with grading
- Open and facilitate access to administrative support
- Co-supervision arrangements to assist with supervisory duties
- Adjusted expectations for committee attendance (provide for asynchronous participation when possible)
- Suspension or deferral of committee service
- Extended time for, or suspension or deferral of special/non-urgent projects
- Modification or suspension of research and/or publication expectations
- Provision of tele-health platforms for clinical responsibilities
- Prioritization of office access for faculty whose family circumstances impede work at home