

Policy Statement on Academic Staff with Mental Health Disabilities

Mental health disabilities include impairments resulting from illness, injury, work-related stress, harassment, or addiction. Institutions and academic staff associations have a responsibility and a legal obligation to ensure individuals do not suffer discrimination or harassment because of mental health disabilities. All members of the academic community have a role to play in fostering a campus climate that promotes acceptance and inclusion of academic staff with mental health disabilities.

Duty to Accommodate

Employers have an ongoing legal duty to accommodate staff with mental health disabilities at the workplace. Academic staff associations have a legal duty to accommodate members in the way they represent, advocate, and administer the collective agreement. For both, accommodating means making any necessary changes, up to the point of undue hardship, to the workplace, work, or policies in order to allow the full and equal participation of an employee with a mental health disability. Undue hardship must be demonstrable.

Accommodations for mental health disabilities may include (but are not limited to) modifications to work portfolio, office space or hours, timelines; specific workplace resources and materials; modifications in reporting channels and performance and promotion processes; or the adjustment of different tasks and roles. Accommodations must be individualized to the particular staff member's needs and limitations.

Requests for accommodation should be handled pursuant to a clear policy, a centralized office, and with involvement of the academic staff association. Institutions and academic staff associations should be aware that their own policies and procedures, including those in the collective agreement, might need to be adjusted to accommodate a member's mental health disability. Failure to do so may be a violation of the duty to accommodate.

Duty to Inquire

Not everyone with a mental health condition identifies as disabled. In some cases, a person may not recognize their need for accommodation. In these circumstances, employers and academic staff associations may have a duty to inquire, if there are reasonable grounds to suspect that a member may have accommodation needs related to a mental health disability.

The duty to inquire is triggered when there are reasonably sufficient indicators of a mental health disability that is having an effect on the academic staff member's work, or the ability of the association to adequately represent them.

Requests for Medical Information

To fulfill the duty to accommodate, the employer may need medical information from a member and their medical practitioner(s). The law provides that the amount and detail of information needed by an employer increases with the length or complexity of the absence or accommodation.

In cases when an employer requests additional medical information than what was initially provided by the member, the employer should specify what additional information is required in order to accommodate. In most cases an employer should be entitled only to information directly related to the disability or illness and how it interferes with the actual tasks and responsibilities of an employee. In rare cases, a diagnosis may need to be disclosed to the employer in order to fulfill the duty to accommodate.

Academic staff should not consent to the employer directly contacting their health professionals.

Academic staff should never be required by their employer to submit to an independent medical examination without their consent. Generally, there is no legal right for an employer to demand an independent medical examination unless provided for in a collective agreement (which is not recommended). It is an act of last resort and should only be requested in rare cases where there is no other means of obtaining responsive health information, or where there is a substantive contradiction between specialized medical practitioners' opinions.

When academic staff are asked to attend an independent medical examination, and it is in their best interest to do so, the examination should be reasonable in the circumstances, be undertaken with a medical practitioner that is agreeable to the association, and be as non-intrusive as possible. Any reports arising from an independent medical examination must be provided to the member and the association.

The employer and the association are legally obligated to protect the privacy and confidentiality of all personal medical information of academic staff. This includes any documents or records that identify the specific member(s) involved, and describe the accommodation even if no health information may be found therein.

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