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// Workplace Accommodation (member with medical condition)

Individuals with certain underlying medical conditions may be at greater risk of severe and permanent complications should they contract COVID-19. Teachers in such circumstances should request an accommodation with respect to returning to school in September. Such matters must be addressed individually, on a case by case basis, so the facts and medical documentation will be critically important. The school districts, as employers, have a duty to accommodate an employee's disability, to the point of undue hardship. There are two main ways in which employees are accommodated: by varying their duties (the employee does the same work, just in a different way or with certain supports/protections in place); or, by re-assignment to a different position (the employer changes some or all of the employee's job duties and replaces them with different, available work that is compatible with their functional limitations).

The first step is always to consider whether a teacher requiring accommodation can be accommodated within their usual workplace, by doing the same work, in a different way. If a teacher feels they need an accommodation due to increased risks from potential exposure to COVID-19, they must obtain medical documentation regarding their condition and functional limitations, including particular risk factors (a family doctor or treating specialist note would be a good starting place), and provide this to the Health and Wellness Coordinator of their school district along with a request for accommodation. The employer may request additional medical information, which should be done in a timely manner. To support a request for accommodation, the documentation must establish a medical need – convenience or preferences, even legitimate ones, will not trigger the employer's duty to accommodate to the point of undue hardship.

Further, if measures taken by the employer are sufficient to allow the teacher to work within their functional limitations, further or different accommodation will not be required – an employee is not entitled to insist upon a particular or preferred accommodation.

The following general advice is provided for teachers who are considering seeking a workplace accommodation:

1. The teacher must identify to the employer, in writing, that they are requesting a medical accommodation. In many cases, the employer may not be aware that a particular teacher suffers from a medical condition if they did not need an accommodation prior to COVID-19.



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2. In most cases, the employer will require medical documentation to both substantiate the request for accommodation and to assist in determining the teacher's functional abilities and how those limits will impact upon their usual work. In the case of teachers who face increased risk due to COVID-19, documentation should confirm a high-risk condition (details of diagnosis are not required) and the nature and seriousness of repercussions should they contract COVID-19. Here is the form that can be filed out by your physician: [Fitness to Work Form](#)
3. Medical documentation in support of a request for accommodation should provide as much detail as possible on functional abilities and limitations. The school district may seek further medical information, including identifying safety measures implemented at the workplace and requesting the physician's input on what additional adjustments may be needed, if any.
4. The school district will initially consider whether a return to the workplace with specific health and safety protocols ensured will meet the teacher's medical needs. This could include the provision of personal protective equipment (PPE) for the teacher. If a return to the workplace is not an option for the teacher at that time, alternative arrangements will be explored.
5. The employer's duty to accommodate is to the point of undue hardship. It is important to note that the employer does not have an obligation to create a position to accommodate the medical needs of an employee. Therefore, if there is no available alternative work, or the teacher is not capable of such work, accommodation may not be possible. If the District is unable to accommodate, the teacher may be required to access sick leave or take unpaid leave unless and until an accommodation is possible or circumstances change.

// Accommodation and Family Responsibility

Teachers may also request accommodation because of family responsibilities. For example, such an accommodation might be granted if a close family member with whom a teacher lives or for whom they are legally required to provide in-person care is at greater risk of severe and permanent complications or death



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should they contract COVID-19, and the family member's doctor states that the teacher must take every possible precaution to avoid exposure to COVID-19, and therefore cannot return to school. The process and advice for seeking accommodation when a family member is affected is similar to that described above; however, the family member's medical providers must provide the requisite documentation, not the teacher's physician. As well, it is important to note that for these types of accommodations, a teacher must be able to demonstrate that they have thoroughly investigated the availability of other reasonable alternatives, apart from employer accommodation, for providing care for the family member.

Again, only requirements supported by appropriate medical documentation will trigger the duty to accommodate, and the employer is only required to accommodate to the point of undue hardship. Generally, in response to a request for accommodation, the employer will either request additional information, will propose an accommodation, or will refuse to accommodate. The teacher, in consultation with NBTF, will decide if a proposed accommodation is appropriate and meets their medical needs.

If a teacher has to stay home with a child who is experiencing COVID 19 symptoms and cannot go to school until they receive a negative test result, it is the NBTF's position that the teacher should be granted a leave under Article 34.01.

// Occupational Health and Safety

Government and school district re-entry plans identify the health and safety of students and staff as a priority and guiding principle. Under the New Brunswick Occupational Health and Safety Act (the Act), employers must take every "reasonable precaution" to ensure workers' health and safety. Employees also have the right to refuse unsafe work where they have reasonable grounds for believing that the work is likely to endanger his health or safety or the health or safety of any other employee, and this right applies to schools and teachers in the context of COVID-19 and pandemic response measures. However, there can be disputes as to whether the bar of "unsafe work" is met in certain circumstances. The standard is not one of perfection or elimination of all risk in the workplace.

The procedure to be followed when exercising one's right to refuse is very specific and must be communicated clearly to the employer. The refusal must be accompanied by an explanation of why the employee believes the work is unsafe, and must be communicated on an individual basis by each employee who feels they are being exposed to the danger (for instance, refusals by a group of employees in solidarity with one individual who believes they are endangered is not permitted). Employees who exercise their right to refuse do not lose pay or benefits, but can be reassigned to other work, if possible, while their refusal is being investigated/addressed.



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With respect to teachers, it must also be remembered that they have a statutory duty under Regulations taken under the Education Act (Reg. 97-150) to supervise students at school. This duty may mean that a member planning to exercise their right to refuse unsafe work will need to do so prior to the start or at the end of a school day, as a teacher cannot simply walk out of the workplace if that would leave students unsupervised.

The procedure for teachers to refuse unsafe work is as follows (note: the province has changed the process under Act for Covid-19 based refusals):

1. Immediately report the dangerous situation, including an explanation/rationale, to your principal. This should be done prior to starting or at the end of a work day in order to avoid issues related to the required supervision of students. Here is the form that should be filed out:
<https://nbtffnb.ca/media/Right-to-Refuse-Form-Mar-2020-EN.pdf>
We recommend that a copy be sent to the NBTF.
2. If the situation is resolved to your satisfaction by the principal, return to work. Principals should seek guidance/support in this regard from school district HR staff.
3. If the situation is not resolved to your satisfaction, the matter will be referred to the school's Joint Health and Safety Committee for investigation.
4. If the school joint committee does not resolve the matter to your satisfaction, the provincial joint health and safety committee will investigate the situation and share its findings and a decision with you. If the provincial committee agrees with you, they will make recommendations to the employer so that corrective action can be taken to resolve the situation.
5. If the provincial joint committee does not resolve the matter to your satisfaction, you should contact a WorkSafe NB health and safety officer, who will investigate. If the agent agrees with you, they will give the employer an order to correct the situation. As soon as the situation is corrected, you will be required to return to the workplace. If the officer disagrees, he or she will advise you to return to work. If you still refuse, you will be placed on unpaid leave. You may appeal this decision to the Chief Compliance Officer.