

Policies, Procedures and Guidelines

Complete Procedure Title:
McMaster University Guide and Procedures
On Workplace Accommodation

Procedure Number:

Approved by:
Senate
Board of Governors

Date of Most Recent Approval:
June 3, 2015
June 4, 2015

Date of Original Approval:
May 11, 1998

Supersedes/Amends Procedure dated:
May 11, 1998

Responsible Executive:
Assistant Vice-President, Human Resources Services

Enquiries:
[University Secretariat](#)

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1. PURPOSE

The University has developed the McMaster University Guide and Procedures on Workplace Accommodation (the “Accommodation Guide”) that provides information with respect to the application of the Workplace Accommodation Policy. As provided in the Policy, the Accommodation Guide may be updated as required by the AVP HR under approval of the VP Administration, and in consultation with the Office of Human Rights & Equity Services.

2. GUIDE TO ACCOMMODATION

Under human rights law, employers are required to provide reasonable workplace accommodation, to the point of "undue hardship", to individuals and groups where the requirement for accommodation arises out of one or more of the protected grounds of discrimination, such as creed, disability, race, ethnic origin, marital status, or family status, among others.

a. General Principles

i. Workplace Accommodation

Workplace accommodation may involve a service, adaptation or adjustment in the work environment that enable individuals to compete for jobs and perform employment activities without discrimination on a prohibited ground. It can include, but is not limited to, recruitment, selection, employment and separation processes, including training and career development. It may be short or long-term, with the goal of enabling individuals to compete for jobs and perform the essential duties of their employment.

Workplace accommodation is based on individual circumstances and can include, but is not limited to, technical aids, job redesign, and modifications to workstations, work scheduling, evaluation timelines, and employment policies and practices.

The process of identifying an appropriate workplace accommodation is consultative involving the employer, the individual, the union/employee representative, and other parties as needed, such as the employee’s physician, the University Occupational Health Consultant and Occupational Health Nurse, and third party medical consultants or religious leaders.

ii. Undue Hardship: When an Accommodation Arrangement Cannot be Reached

Once a need for workplace accommodation based on one or more of the prohibited grounds has been identified, employers have a duty to accommodate the needs of the employee unless to do so would cause undue hardship. Whether an accommodation will result in "undue hardship" will depend on the circumstances present in each individual case. Evidence to demonstrate undue hardship must be objective, real, direct and, in the case of cost, quantifiable.

In some cases, it will not be possible to accommodate an employee’s needs because such accommodation will cause undue hardship to the University. For example, the duty to accommodate does not extend so far as to require employers to create a position for an employee who is otherwise incapable of performing the essential duties of his or her own job or of some other existing position; this would amount to undue hardship.

If it is believed that undue hardship would occur, please contact Human Resources Services. In addition to providing other assistance, Human Resources Services can assist in the identification of alternative accommodation solutions.

b. Types of Accommodation

Recognizing that an appropriate workplace accommodation must be informed by the particular circumstances present in each individual case, set out below are the most common types of requests; namely, accommodation due to disability, religious or spiritual observance and family status.

i. Disability

"Disability" is broadly defined under the Code and includes virtually all forms of physical injury or illness and conditions of mental impairment. The right to equal treatment without discrimination because of disability extends to a person who has or has had a disability or is believed (or perceived) to have or have had a disability.

Recognizing that each employee with a disability will have unique requirements, workplace accommodation options may include, but are not limited to: modification of job duties, technical aids & devices, workplace/process modifications etc. A physical demands analysis of the job may be of assistance with respect to the accommodation of an employee's disability.

Accommodation requirements must be supported by medical documentation. It is the responsibility of employees with work restrictions due to a disability to ensure that their medical documentation is up-to-date, and to advise the employer if additional accommodations supported by updated medical documentation are necessary.

ii. Religious or Spiritual Observance

When an employee seeks accommodation for a sincere religious or spiritual observance for which a day of observance is not provided by statute, employers are expected to make every reasonable effort to the point of undue hardship to reasonably accommodate the employee.

Accommodation options may include, but are not limited to: flextime, use of float days, use of vacation, schedule changes, exchange of duties with other employees, modifications with respect to dress codes, break policies, e.g. to provide time for prayer, etc. Since such observances are usually known well in advance, the employee should notify his or her supervisor as early as possible so that alternate plans can be made in the workplace. In the case of scheduling work, where possible, the employee should notify his or her supervisor prior to the setting of the work schedule that will be affected.

iii. Family Status

The Code defines "family status" as "being in a parent and child relationship." This can also mean a parent and child "type" of relationship, that may not be based on blood ties, but that is based on care and responsibility such as parents caring for adopted, foster, or step children, people caring for aging parents or relatives with disabilities, and families headed by lesbian, gay, bisexual or transgender persons. An employee may have a right to workplace accommodation, up to the point of undue hardship, where employment interferes with the ability to fulfill a substantial parental obligation. Accommodation measures may include, but are not limited to: leaves, alternative work or pay arrangements and flexible hours.

Also with respect to leaves, generally, the Ontario *Employment Standards Act, 2000* provides a limited right to unpaid, but job protected, leave to attend to certain family responsibilities. An employee may be eligible for employment insurance benefits in certain situations; please refer to Service Canada for further details.

iv. Other Prohibited Grounds

Although disability, religious or spiritual observance and family status are common grounds for accommodation requests, such requests may not be restricted to these grounds alone. Requests for workplace accommodation under any of the other prohibited grounds listed in the Code are possible and should be approached using the same process described herein. The prohibited grounds of discrimination under the Code are: "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."

3. ROLES & RESPONSIBILITIES

There are several key players in the accommodation process and their roles are described below.

a. Job Applicants

Job applicants who apply for positions at the University are eligible for accommodation during the selection process. Job applicants have the responsibility to communicate any known accommodation needs to the University and to participate in the accommodation process. Job applicants should contact the hiring manager or hiring committee when making an accommodation request.

Human Resources Services will work with the hiring committee or hiring manager to arrange reasonable and appropriate accommodation for the job applicant (e.g., translators, wheelchair accessible interview room, rescheduling of interviews due to religious needs, etc.). Human Resources Services' guidance may include advice with respect to the appropriate nature of pre-employment testing.

The University is committed to ensuring that job applicants are only asked to respond to questions during the selection process that relate to their skills, abilities and qualifications for the position. The University may, as a pre-condition of employment and with a candidate's consent, conduct appropriate background checks where necessary and appropriate to do so.

b. Employees Requesting Workplace Accommodation

Employees have the responsibility to:

- communicate any known workplace accommodation needs to their immediate supervisor at the earliest possible opportunity;
- provide the University with sufficient information to enable the assessment of workplace accommodation requirements; and
- participate and cooperate in the accommodation process, including participating in discussions regarding possible workplace accommodation solutions and co-operating with

any experts whose assistance or consultation is required in the University's management of the accommodation process.

Although it is expected that the employee and/or an association or union representative on the employee's behalf will take primary responsibility for initiating the request for accommodation, there may be some cases where an officer or agent of the University will initiate the request for accommodation, such as Human Resources Services. Third parties may also initiate the request for accommodation, such as the Workplace Safety and Insurance Board (WSIB).

c. Supervisor/University Officer

Persons with administrative and supervisory responsibilities, such as Department Chairs, Directors, Managers and Unit Supervisors (hereinafter referred to as "Officers of the University") will generally be the first contact for employees requesting accommodation.

Officers of the University are responsible for:

- Accepting requests for accommodation in good faith;
- Dealing with accommodation requests as quickly as possible;
- Identifying the essential duties of the position;
- Managing the accommodation process by encouraging co-operation, dialogue; consideration of all options, monitoring and evaluation of employment accommodation solutions;
- Keeping a written record of the accommodation request and action taken; and
- Maintaining confidentiality and adhering to privacy legislation (PIPEDA, PHIPA and FIPPA).

The duty to accommodate is ultimately an institutional obligation. Accordingly, any department may be called upon to facilitate a reasonable accommodation and has a duty to cooperate in that regard. The onus is on the employer to establish that it has fulfilled the duty to accommodate.

d. Employee Associations and Unions

Employee associations and unions are expected to take an active role as partners in the accommodation process and share joint responsibility with the University to promote accommodation.

Where an employee requiring workplace accommodation is represented by a Union or Association, the Union or Association, as the case may be, and University should attempt to arrive at an agreement with respect to the appropriate workplace accommodation. Failing such an agreement, the University may determine that it must provide the accommodation without such an agreement, or until a mutually acceptable agreement can be implemented.

Where an employee association or union has negotiated an agreement with the University that has a discriminatory impact, it has a joint responsibility with the University to find a reasonable accommodation. In situations where the employee association or union is not a party to a discriminatory work arrangement, it must not hinder the reasonable efforts of the University to provide reasonable accommodation to an employee.

An association or union representative has an obligation to participate in the accommodation process as appropriate. The employee representative will participate in the accommodation solutions of members and work with the employer to address existing barriers.

Co-workers who would be affected by any accommodation plan being considered may need to be consulted to participate in the workplace accommodation process.

e. Human Resources Services

Human Resources Services (HRS) is available for consultation, and is responsible to:

- Provide advice, guidelines, and resources to employees and supervisors regarding Policy interpretation and procedures for workplace accommodation;
- Ensure the Policy is interpreted and applied to promote the University's interest in building an inclusive community with a shared purpose;
- Ensure employment information is available and processes established to enhance accessibility for employees and job applicants;
- Assist with disability management including facilitating employment accommodation for employees with disabilities and return to work;
- Request documentation as appropriate to support a request for workplace accommodation. Medical documentation may be requested to confirm accommodation needs. Employee Health Services maintains such medical documentation separate from an employee's personnel file and claim file held by the Occupational Health Nurse. In some cases, HRS may request information from third parties for expert opinions to facilitate the accommodation process (e.g. disability management professionals, rehabilitation specialists, attending physicians, special equipment suppliers); and
- Maintain confidentiality as required under the Policy and ensure that accommodation requests are managed in a manner that is consistent with privacy legislation PIPEDA, PHIPA and FIPPA.

f. Office of Human Rights & Equity Services

The Office of Human Rights & Equity Services (HRES) is available for confidential consultation regarding human rights concerns and/or complaints about employment-related accommodations, including information regarding informal and formal processes for complaint resolution.

4. PRIVACY & CONFIDENTIALITY

An individual's personal information will only be collected, used and disclosed in accordance with the applicable privacy legislation. Where such activity requires the individual's consent, consent will not be unreasonably withheld in order to facilitate the accommodation process. Where the accommodation process requires the release of confidential information to a third party, that third party and any person or department delegated by that third party, will be required to ensure that confidentiality is protected, that the information obtained is kept in a secure location, and used solely for the purpose for which the release was required

5. INTERNAL APPEAL PROCESS

Where an employee or job applicant is dissatisfied with the accommodation process, or believes that their request for accommodation has not been handled in accordance with the Policy or this Accommodation Guide, the employee or job applicant may discuss the situation with:

- their supervisor;
- Union /employee association (if applicable);
- Human Resources Services; or
- Office of Human Rights & Equity Services.

Further discussion can help ensure that the employees' or job applicants' concerns are addressed and can assist in the identification of alternative solutions, where appropriate, and within the University's operational requirements.

Resolution processes are available to employees and job applicants who remain dissatisfied with the accommodation process or who wish to pursue other steps, including:

- employees represented by a union or association: in accordance with the provisions of the applicable collective agreement or association agreement;
- All other University employees or job applicants: The McMaster University Policy on Discrimination, Harassment & Sexual Harassment: Prevention & Response provides a resolution process, informal and formal, wherein members of the University community who believe that they have encountered discrimination may seek resolution. The resolution procedures are equally available to members of the University community who believe that they were entitled to and have been denied reasonable accommodation. The Office of Human Rights & Equity Services remains available to assist in the resolution of human rights concerns and/or complaints pertaining to employment-related accommodation and to provide consultation and guidance.

Appendix A – WORKPLACE ACCOMMODATION PROCESS

a. Requesting a Workplace Accommodation

To initiate the workplace accommodation process, an employee or job applicant may be required by the supervisor or hiring manager/committee, as the case may be, to provide a written accommodation request (and appropriate supporting documentation) as soon as possible. If required, the written accommodation request must include the following information:

- the requested workplace accommodation;
- the reasons for which workplace accommodation is being sought, including the applicable prohibited ground(s) of discrimination underlying the request (e.g. race, disability, family status);
- in the case of disability, medical documentation satisfactory to the University (i.e. for the purpose of implementing an accommodation request); in no case shall an employee or job applicant be required to provide medical information disclosing diagnosis except as may be permitted by an applicable collective agreement or association agreement. All employee medical documentation disclosing diagnosis is kept in a separate employee file with the Occupational Health Consultant and Occupational Health Nurse for confidentiality purposes in accordance with the PHIPA and FIPPA. If medical documentation is incomplete or requires clarification, the University will request further information from the employee's treating physician. The University's Occupational Physician and Occupational Health Nurse will review this information. On occasion, further medical evaluation may be required.

b. Consideration of Accommodation Requirements

Based on individual circumstances, a workplace accommodation may include, but is not limited to:

- Technical aids such as software and hardware (e.g. Zoom text, Jaws etc.);
- Workstation or building modification such as ramps for access to buildings;
- Work scheduling adjustments, e.g. so that individuals may participate in the rites associated with their religious faith or spiritual practices;
- Communication such as producing documents in alternative media formats;
- Modification of non-essential job duties (i.e. restructuring the job by re-allocating or re-distributing non-essential functions);
- Policy and practice modification such as modifying training times so that individuals can attend courses during work hours; and
- Human support such as sign language interpreters, job coaches to help in the initial training and integration of persons with psychiatric or developmental disabilities.

Any request for the purchase of items necessary to the implementation of an accommodation should be made to the direct supervisor. The faculty/department is responsible for funding any such purchase. If the cost exceeds the ability of the faculty/department, the request should be forwarded in writing for consideration under, and in accordance with, the Workplace Accommodation Fund (refer to Appendix D).

When considering a workplace accommodation for an employee, the working needs of the employee, as well as any possible adverse effects of work barriers to job performance/participation

must be identified by direct consultation with the employee. Should such barriers be identified, workplace rules/standards may need to be reviewed and/or the job's essential duties determined.

Only where workplace accommodation cannot occur within the employee's work unit will accommodation outside the employee's work unit be considered; namely, placement of the employee in a vacant position for which the employee is qualified. Such a determination must be made only following an exhaustive accommodation review within the work unit. Any accommodation outside the work unit should be attempted in consultation with University officers and HRS, who will work with the employee and the association/union, where appropriate.

- **Workplace Rules/Standard – Bona Fide Occupational Requirement:**

Where an employee cannot perform the job because of a workplace rule/standard (i.e. a work barrier for the employee) then it must be determined if the rule/standard is a “bona fide occupational requirement” (BFOR). A BFOR is a rule/standard that is deemed to be reasonably necessary to executing the functions of the specific position. To rely on a BFOR in denying a requested workplace accommodation, an employer must establish that any changes to, or modification of, the BFOR would cause undue hardship.

- **Essential Job Duties:**

The essential job duties of a position are determined by the University through an assessment of what the job is supposed to accomplish (i.e. the outcomes) and what needs to be done by the employee to achieve those outcomes (i.e. the functions required to produce the outcomes). Once the essential job duties have been identified, workplace accommodation may be required to enable the employee to perform them. An employee may be required to perform the essential job duties with workplace accommodation, or without workplace accommodation, if the required workplace accommodation would cause undue hardship.

c. Implementing an Accommodation Plan

In some cases, a written and signed accommodation plan (which signals the agreement of all relevant parties to adhere to the plan) may be prepared to outline the nature of the accommodation and the attendant processes. When engaging in the accommodation process, a discussion regarding the employee's needs and the University's operational requirements should occur to determine the best course of action. This is a collaborative process and the discussion will involve the employee and supervisor along with some of the following workplace parties: union/employee representative (if applicable); Human Resources Services; the attending physician. The content of an accommodation plan will depend on the complexity of the accommodation request(s) and/or the individual circumstances of each case.

Once the Officer of the University and the employee reach a mutually agreed upon arrangement regarding the workplace accommodation, the written and signed accommodation plan will specify the details of the accommodation including:

- person(s) responsible;
- person(s) who will be involved (including medical experts, co-workers, if applicable);
- the decision making process used to develop the plan;
- the timelines for putting the accommodation in place;
- its duration and the nature of the follow-up evaluation; and
- signatures of workplace parties, confirming that each party understands and agrees to its/their obligations.

In the event that an employee's accommodation requires adjustment, the plan will be revised accordingly. Also, the employee and supervisor should review the accommodation plan on a pre-determined regular basis. Any concern raised relative to the accommodation must be followed up in an appropriate manner. Where the accommodation is for a disability, required adjustments should be supported by medical documentation.

Where performance assessments are conducted, the accommodation plan requirements are to be taken into account.

Where the accommodation plan for an employee results in a permanent reduction of hours or there is a significant and permanent re-allocation of work duties to the extent that the appointment or job has changed, the position will be re-evaluated and a change in pay may occur, subject to any applicable collective agreement or association agreement. In such cases Human Resources Services should be consulted for advice and guidance.

For documentation purposes, the final accommodation plan will be created in consultation with Human Resources Services and any subsequent revisions will be provided to the employee and any representative associations or unions, as applicable.

Appendix B - ACCOMMODATION PLANNING CHECKLIST

Because accommodation is a shared responsibility, parties are expected to cooperate in the accommodation process, which includes exchanging relevant information (discretely and on an as needed basis) in order to explore accommodation-related solutions together. Recognizing that individuals' needs are unique and must be considered afresh when accommodation requests are made, the following are key elements of the accommodation planning process:

- i. identify requirements (either by employee or University);
 - medical limitations
 - religious observance
 - family obligations

- ii. identify person(s) responsible for handling request and members of the accommodation planning team;
 - Individual requesting accommodation
 - Supervisor/University Officer or Agent
 - Union / Employee Association
 - Human Resources Services

- iii. determine workplace standards and essential duties;

- iv. identify, analyze and remove barriers to workplace participation and/or performance;
 - determine if professional assessment is necessary
 - consider option of work redesign
 - consider alternative schedules/hours
 - consider use of equipment, assistive devices
 - consider temporary rehabilitative assignments

- v. determine accommodation goals and work plan;
 - job modifications short of undue hardship
 - is plan consistent with accommodation principles (dignity, individualization, partnership, consultation, employment equity)

- vi. prepare and submit accommodation work plan for approval and agreement;

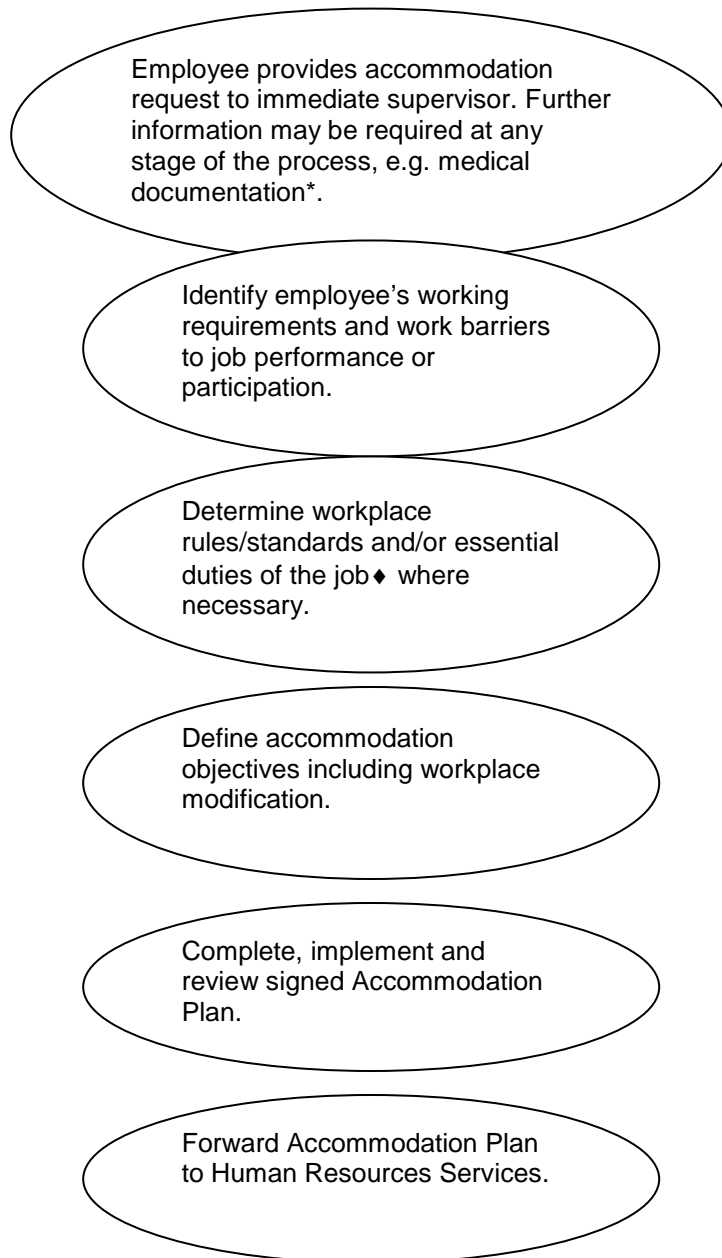
- vii. implement and document agreed-upon accommodation plan;

- viii. provide training for accommodation if necessary; and

- ix. review and evaluate accommodation agreement plan after implementation (if necessary, revise plan preparation and implement return-to-work / work-hardening process).

Appendix C – WORKPLACE ACCOMMODATION FLOW CHART

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There should be some HRS consultation prior to agreement on the accommodation plan.

* Medical documentation – see Guidelines – Accommodation – Disability
♦ Workplace rules/standards, essential duties – see Appendix A

Appendix D – WORKPLACE ACCOMMODATION FUND

The McMaster University Workplace Accommodation Fund (formerly known as the Guidelines for Approval of Special Measures Contingency Fund) is a central fund administered by Human Resources Services in support of the University's compliance with the Ontario Human Rights *Code* and the University's Policy on Workplace Accommodation. The Fund is used to promote the recruitment, employment, training and promotion of persons in the workforce covered by the provisions of the appropriate legislation, and to ensure that the University's goal of building an inclusive community with a shared purpose is achieved.

Scope

The Fund applies to:

- all employees of the University;
- job applicants of McMaster University.

Criteria

If the individual is an employee:

- expenses must be for the benefit of a current employee who is covered by the appropriate legislation or policies and has requested accommodation through the McMaster Workplace Accommodation Policy in order to:
 1. retain their current position, or
 2. be promoted into a position for which they are qualified and determined to be the most suitable candidate, or
 3. qualify for advancement in the workforce.

If the individual is an applicant for a position:

- expenses must be for the benefit of a potential McMaster employee covered by the Code to:
 1. be recruited for a job competition, or
 2. be interviewed, or
 3. be hired for a position, for which he or she is qualified.

A request for funding must meet the following criteria:

- where expenses can be covered through alternative sources of funding (e.g., Workplace Safety & Insurance Board; Extended Health Care Insurer; Ontario Assistive Devices Program), these options should be exercised prior to any request for funds being made to the Fund;
- expenses must be of a one-time specialized nature not generally covered by departmental budgets. Funds will cover the difference in cost between regular equipment or operations and the cost to address a special requirement.
- money from the Fund will only be used for one-time expenditures in a fiscal year to accommodate individual employees or applicants who are covered by appropriate legislation or policies. The Fund will be used for the purchase of goods or services to initiate, facilitate or implement the accommodation.

The Fund does not cover:

- items or services required by departments in serving the public (e.g. advertising a University program to the public in formats accessible to people who are blind)
- maintenance or repair costs, and
- items or services the need for which did not arise as a direct result of the job or position.

If maintenance or replacement of accommodation goods is required, application will be made to the Vice President for the area in which the employee requiring the accommodation works.

Requests for Funding

A request for funding must be made to the appropriate University Officer or Agent, in accordance with the provisions of the McMaster University Policy on Workplace Accommodation. All requests for funding will be made through Employee Health Services. Requests meeting the funding criteria will be forwarded to the Assistant Vice-President Finance and the Assistant Vice-President Human Resources, who will decide jointly whether to approve the expenditure.

All goods and services purchased hereunder shall be, and remain the property of, McMaster University and shall not be removed from campus without written approval of the appropriate University Officer or Agent. In addition, goods or services purchased by the Fund will go with the employee in the event of transfer or promotion to another position in another department or unit. Goods or services purchased by the Fund for employment accommodation purposes must be returned to the University when the employee no longer requires them or when the employee leaves the University's employ. Human Resources Services will be notified of the relocation of equipment purchased by the Fund.

Administrative Procedures

An annual allocation of \$10,000 is provided within the Administration Division envelope to support Workplace Accommodation Fund requests. In any year in which the Fund is insufficient to meet the needs identified within that year, the Assistant Vice-President Human Resources may make application for additional funding to the Vice-President, Administration, detailing the need for additional funding.