

A. Accommodations – Guidelines and Process for Winter 2022.

Family Status Accommodations

1. The University will handle written requests from employees for family status accommodations for winter 2022 in accordance with Appendix “A” below (the “Family Status Accommodation Guidelines”).
2. Where an employee has received written approval for a family status accommodation for fall 2021, they may request to continue the family status accommodation for winter 2022 upon confirming in writing to EWB that the basis upon which they requested and were granted a family status accommodation for fall 2021 has not materially changed and such request shall not be unreasonably denied. In appropriate circumstances, and where the University has reasonable grounds to do so, it may request updated medical documentation or other information or documentation relevant to the continuation of the family status accommodation for winter 2022.
3. Written requests for family status accommodation will be addressed and responded to in writing as expeditiously as practicable.

Accommodation on the Basis of Disability

4. For winter 2022 the University will continue to handle requests from employees for accommodation on the basis of disability through its normal process and procedures, subject to the following:
 - (i) EWB will apply more flexible standards with respect to the documentation that may be required, including medical documentation or other evidence, in order to substantiate accommodation needs for the fall 2021 and winter 2022 semesters, with the understanding that any ongoing need for accommodation will be subject to the regular process for substantiation in summer 2022 onwards.
 - (ii) Requests for accommodation on the basis of disability from employees who are immunocompromised or have similar underlying medical conditions and are therefore at risk of more severe disease or outcomes from COVID-19 will be considered in the context of the relevant facts and circumstances of each case, medical documentation, an ongoing COVID-19 pandemic, and consistent with human rights principles.
 - (iii) Where an employee has received written approval for accommodation on the basis of disability for fall 2021, they may request to continue the accommodation on the basis of disability for winter 2022 upon confirming in writing to EWB that the basis upon which they requested and were granted accommodation on the basis of disability for fall 2021 has not materially changed and such request shall not be unreasonably denied. In appropriate circumstances, and where the University has reasonable grounds to do so, it may request updated medical documentation or other information or documentation relevant to the continuation of the accommodation on the basis of disability for winter 2022.
 - (iv) Written requests for accommodation on the basis of disability will be addressed and responded to in writing as expeditiously as practicable.

(v) The principles in 4(i) to (iv) above will be applicable to the consideration of requests for accommodation on the basis of disability for winter 2022 by EWB and any contract staff or contractors working with EWB.

B. Alternate Work Arrangements

5. The provisions below regarding alternate work arrangements are expressly without prejudice or precedent to the position of the University on the nature, scope and extent of the duty to accommodate under the *Ontario Human Rights Code*, including without limiting the generality of the foregoing, the nature, scope and extent of family status accommodation, during and in connection with the COVID-19 Pandemic during the Winter 2022 terms.

6. The provisions below regarding alternate work arrangements are applicable only to the Winter 2022 academic terms. Any extension of the provisions of this Memorandum of Settlement regarding alternate work arrangements beyond that timeframe would only be by mutual agreement in writing between the University and the union representing the employee.

7. For the purposes of this document “alternate work arrangements” refers to circumstances where an employee’s request for a family status accommodation is not approved by the University on grounds consistent with the University’s interpretation of a family status accommodation under the Ontario Human Rights Code, but where the University makes alternate work arrangements that are flexible in an effort to address the circumstances raised by the employee.

(i) Alternate Work Arrangements: Principles

8. In some cases, concerns are raised about the health of a spouse, partner, child, or another household member such that they cannot be vaccinated due to medical reasons or are vaccinated but still concerned about additional health risks. As a result, an employee may request a family status accommodation due to their concerns related to the health of a spouse, partner, child, or another household member, which in circumstances where the request is not approved as a family status accommodation may nevertheless be supported as an alternate work arrangement.

9. For clarity, in circumstances where a request is not approved as a family status accommodation for Winter 2022, the request may be approved as an alternate work arrangement on the basis of medical circumstances, including in relation to individuals who are at heightened risk from COVID-19 with whom an employee cohabitates or for whom an employee is the primary care-giver, such as employees who cohabit with someone who is immunocompromised, or employees who cohabit with someone who cannot be vaccinated for medical reasons, as distinct from children who are otherwise healthy (not immunocompromised) who aren’t yet old enough to get the vaccine. Requests for alternate work arrangements, having due regard for the process and considerations set out below, shall not be unreasonably denied.

10. In order to approve a request for such an alternate work arrangement, the employee will be required to provide substantiation, including reasonable medical documentation where necessary or appropriate, in the same manner that would be required in order to be approved for a family status accommodation.

11. These principles will be applicable to the consideration of alternate work arrangements by EWB and any contract staff or contractors working on behalf of EWB.

12. The following considerations will apply in such cases:

- (a) The University must be satisfied that the employee themselves is in compliance with the University's Vaccine Mandate policy whether by submitting proof of full vaccination or having an approved exemption.
- (b) In order to approve an alternate work arrangement (which may or may not include working remotely), the University must be reasonably satisfied, through the presentation of documentation provided to EWB, including medical documentation where necessary or appropriate, that the spouse, partner, child, other household member, or other person for whom the employee is the primary care giver, has an elevated risk of serious illness by reason of the employee working in person and returning home or providing in person support to the person to whom they are the primary care giver.
- (c) Where a case for an alternate work arrangement is considered per (b) above, EWB will discuss with the Faculty/Division, the possible forms of flexibility that are operationally feasible for the University and that meet the needs of the employee.
- (d) Where an employee has received written approval for an alternate work arrangement for fall 2021, they may request to continue the alternate work arrangement for winter 2022 upon confirming in writing to EWB that the basis upon which they requested and were granted an alternate work arrangement for fall 2021 has not materially changed. In appropriate circumstances, and where the University has reasonable grounds to do so, it may request updated medical documentation or other information or documentation relevant to the continuation of the alternate work arrangement for winter 2022. Where the basis and the circumstances upon which the employee requested and was granted an alternate work arrangement for fall 2021 has not materially changed and where operationally feasible it shall not be unreasonably denied.

(ii) Alternate Work Arrangement: Process

13. Employees should make an application using the process set out in section B of the Family Status Accommodation Guidelines which are set out below at Appendix A. In circumstances where the application is not approved for a family status accommodation, consideration (without need for a further application from the employee) will then be given to providing an alternate work arrangement in light of the circumstances of the pandemic as set out above. Such cases will be reviewed centrally through EWB in order to preserve confidentiality of personal information. Any information submitted by an employee for the purposes of the request for family status accommodation will be considered by EWB for the purposes of consideration of an alternate work arrangement. Further, the employee shall be advised by EWB if additional information is required in connection with the consideration of a potential alternate work arrangement.

14. Where EWB recommends that an alternate work arrangement should be considered, they will inform the Dean's/Principal's Office and will offer advice about options for an alternate work arrangement that may meet the employee's needs within the operational

requirements of the workplace. Decisions on whether an alternate work arrangement will be provided, and the form of the arrangement, will rest with the Dean's/Principal's Office.

(iii) Forms of Alternate Work Arrangements

15. Alternate work arrangements include a number of possible solutions, including but not limited to remote teaching, moving a class to a larger room, lowering capacity limitations, or modifying the course schedule, depending on the relevant facts and circumstances of each case.

APPENDIX "A"

Family Status Accommodations: Guidelines and Process for Winter 2022

Terminology:

Throughout the document below there will be reference to family status accommodation which refers to circumstances where an employee's request for an accommodation is approved by the Employer on grounds consistent with the Employer's interpretation of a family status accommodation under the Ontario Human Rights Code.

A. Principles of Family Status Accommodation

Ontario law prohibits discrimination based on any of the 16 grounds identified in section 5 of the *Ontario Human Rights Code* and employers have a duty to accommodate employees to avoid such discrimination. York University employees who meet the requirements for family status accommodations must be accommodated in accordance with the *Ontario Human Rights Code*, and in accordance with York University policies and procedures. The following principles should be considered in determining whether an employee is eligible for family status accommodation, and if so the nature of the required accommodations.

1. The duty to accommodate family status works according to the same principles as the duty to accommodate persons with disability.
2. This duty to accommodate covers parent/child relationships in either direction: parent responsible for childcare, or adult child responsible for eldercare.
3. There is reason to believe this right (to accommodation) would be judicially interpreted to extend to other similar relationships of dependence and care. In cases where there is not a parent/child relationship, but where there is a similar relationship of dependence and care, a service provider or employer can request evidence that is reasonable in the circumstances to confirm that the relationship would qualify, in other words that the individual's caregiving responsibilities can be seen as an immutable characteristic of their family status.
4. York will consider responsibilities in connection with relationships that are outside the traditional scope of family status such as responsibilities towards a spouse or commonlaw partner so long as there is a relationship of dependence and care.
5. It is not a precondition for accommodation that the care relationship engages an individual's legal obligations. For example, adult children are not legally required to care for their elders in the same way that parents are the legal guardians of children, but adults providing elder care are still protected by the family status provisions of the *Code*. Legal guardian status is not a requirement for engaging a duty to accommodate for family obligations.

6. The duty to accommodate family status encompasses the essential needs of the family member who requires assistance or care and does not cover preferences or conveniences.
7. Accommodation is a multi-party process that involves the university and the employee. All those involved should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.
8. The person seeking accommodation has a responsibility to inform the employer of their caregiving needs related to a parent-child relationship (or other deemed relationship), and that there is a conflict between those needs and the organization's rules, requirements, standards, processes or procedures, and to explain in some detail the specifics of the conflict.
9. Persons seeking accommodation may be asked about their reasonable efforts to obtain family help and outside supports.
10. Persons seeking accommodation are obliged to disclose relevant information and a refusal to engage with the employer in either facilitating an understanding of their needs, providing information or working to find a solution may result in there being no duty to accommodate in a given case.
11. There is no duty on the person seeking family status accommodation to self-accommodate before approaching an employer for help, however an employer can inquire into the extent to which family help or community support is available in order to assess the need for accommodation.
12. Persons seeking accommodation are in the best position to identify and evaluate such outside resources. However, it is a best practice for employers to provide assistance to individuals in locating information regarding such resources, for example, through Employee and Family Assistance Programs.
13. Employers may make reasonable requests for information that are necessary to clarify the nature and extent of the accommodation need. Employers may request documentation of the validity of the accommodation-seeker's needs, such as medical documentation related to a family member's disability, or illness. Requests for evidence or supporting documentation should be reasonable in the circumstances to verify essential facts relevant to the employment.
14. Employers may also seek reasonable information regarding any available outside resources that the individual has enquired into.
15. As information related to family needs and arrangements may be highly personal, employers should take steps to ensure that information related to accommodation requests is kept confidential and shared only with those who need it.
16. Employers should act in a timely manner and take an active role in seeking accommodation solutions. Persons seeking accommodation should cooperate in the accommodation process, provide relevant information, and meet any agreed-upon standards once accommodation has been provided.

These principles will be applicable to the consideration of family status accommodation requests by Employee Well Being (EWB) and any contract staff or contractors working on behalf of EWB, such as OSI.

B. Process for Family Status Accommodation Requests

Requests for family status accommodation should be submitted in writing using the [form](#) required for that purpose by the employee to EWB at famsacc@yorku.ca. The employee is required to have informed their Dean or Associate Dean that they are requesting a family

status accommodation prior to submitting their request to EWB. Decisions on eligibility for family status accommodation will be made centrally through EWB in order to preserve confidentiality of personal information, and to promote consistency and timely decisions across employee groups, Faculties and Divisions. Eligibility decisions will be based on York University's duty to accommodate under the Ontario Human Rights Code, with due consideration of the facts of each individual situation.

Where EWB determines that an employee is entitled to family status accommodation, they will inform the Dean's/Principal's Office and will offer advice about options for accommodation that may meet the employee's needs within the operational requirements of the workplace. Final decisions on the type of accommodation to be provided will rest with the Dean's/Principal's Office.

The following will guide institutional decision making on family status accommodation requests:

- Accommodations are provided **only** where eligibility criteria are met. This means that, for accommodation to be provided on grounds of family status, the situation must meet the legal definition of family status which **requires** a relationship of dependence and care.
- In light of the unprecedented changes in working conditions engendered by the global COVID-19 pandemic, EWB and/or OSI will apply more flexible standards for substantiation of accommodation needs for the Fall 2021 and Winter 2022 semesters only, with the understanding that any ongoing need for accommodation will be subject to the regular process for substantiation in summer 2022 onwards. As always, university policy in this regard will be informed by public health guidance as available.
- Accommodation needs will likely be time limited and decisions on both ongoing eligibility and the type of accommodation provided should build in, from the start, a review period.
- Written requests for family status accommodation will be addressed and responded to in writing as expeditiously as practicable.
- Where an employee has received written approval for a family status accommodation for fall 2021 they may request to continue the family status accommodation for winter 2022 upon confirming in writing to EWB that the basis upon which they requested and were granted a family status accommodation for fall 2021 has not materially changed, and where operationally feasible, such requests shall not be unreasonably denied. In appropriate circumstances, and where the University has reasonable grounds to do so, it may request updated medical documentation or other information or documentation relevant to the continuation of the family status accommodation for winter 2022.