24 October 2022

Hubert Lai
University Counsel
The University of British Columbia

Sent via email

Re: Draft Workplace Accommodation Policy for UBC Employees

Dear Mr. Lai:

The Faculty Association wishes to take this opportunity to comment on and seek clarification regarding the proposed policy HR13 (hereinafter the “Draft Policy”). In general, the Association supports the University’s efforts to clarify the roles, responsibilities, and processes involved in accommodations. Our members frequently express confusion regarding these steps, particularly from our members with disability, who have found navigating UBC’s existing systems challenging and the processes at times opaque. Despite our general support for the spirit of the Draft Policy, the Association is concerned that the proposed policy may further confuse our members, dissuade them from requesting appropriate accommodations in a timely manner, and dictates the Association’s representational responsibilities. The following is not an exhaustive list of our concerns, and we look forward to further discussion with the University so that together we may develop a policy that will help alleviate barriers to the full and fair participation of all our members who seek accommodation in the workplace.

Limiting Employer Responsibility

The Draft Policy begins with a broad commitment to “promoting equity, diversity, and inclusion, and removing barriers for Employees who require workplace Accommodations.” This laudable goal is thereafter undermined by the University’s seeming preoccupation with the limits of its responsibilities, as indicated by the unnecessarily frequent and pointed references to undue hardship.

There are 6 different references in the 5-page document, where a simple paragraph explaining the concept would have sufficed. The Faculty Association does not disagree that there are limits to the responsibilities of employers to accommodate every and all requests. However, the current emphasis in the Draft Policy suggests that the employer is more concerned with advising its employees of the cases in which accommodations will not be offered, than in providing a safe, respectful and inclusive process for faculty to disclose sensitive information that can have profound implications for their self-respect and self-confidence in the workplace.

There appears to be an underlying assumption that employees will consistently ask for too much and that denials will be frequent. This approach will likely discourage vulnerable individuals from requesting assistance in fear that they will either be our-right denied or wind up in a complex, bureaucratic process for which they neither have time, nor energy. Again, rather than developing an environment in which diversity and equity are safeguarded, the Draft Policy will likely reinforce existing barriers.
The University is well aware that meeting the point of undue hardship is onerous and requires evidence that the employer has taken all reasonable and practical steps to accommodate the employee. If UBC is truly committed to the principles of DEI, it should emphasize its goal to work creatively and compassionately with employees to remove barriers and promote a truly inclusive work environment.

Many Canadian Universities define their responsibilities surrounding human rights broadly, to fully capture the employer’s duties under Canadian and Provincial legislation. However, the Employers Responsibilities in the Draft Policy are cursory. As further elaborated below, the Draft Policy suggests that it is the responsibility of Bargaining Agents to “help educate their members about matters relating to Accommodations,” “collaborate with all parties and participate reasonably in the Accommodation process, and to “support their members in the Accommodation process”. The Draft Policy does not give the employer the same obligations.

In contrast, McGill University’s responsibilities include “addressing barriers that prevent employees from accessing, or being included in, the workplace and working to eliminate or reduce such barriers,” and to minimize “the need for individual accommodations by reviewing regulations, policies, and practices that promote inclusion and universal accessibility.” In contrast, UBC’s policy not only stresses the limits to its efforts to accommodate but also perpetuates an individualistic approach to addressing inequality, ignoring the systemic origin of many of these requests.

To foster an environment of inclusiveness and equality, the Faculty Association suggests that UBC adopt an approach that emphasizes its commitment to maintaining the dignity of those who request assistance and to working cooperatively with employees. Suitable language could be found at Queen’s, which directs its administration to “accept requests for accommodation in good faith,” and “manage the accommodation process by encouraging co-operation, dialogue, consideration of all options, monitoring and evaluations of employment accommodation solutions.” Without such changes, the Faculty Association is concerned that Policy HR13 will only further indicate to our members that the University’s EDI commitments are nothing more than castles in the air.

Role of the Faculty Association (and other Bargaining Agents)

The University has no right to determine, suggest or otherwise prescribe the responsibilities of the Faculty Association in the accommodation process. To do so borders on interference in the actions of a trade union. In particular, the Association takes issue with the University’s suggestion that it is the Union’s responsibility to educate members regarding accommodations. If UBC’s goal is to encourage faculty members to seek necessary assistance in the workplace, it would be better to focus on creating a welcoming and safe environment for such disclosures as discussed above. It is not the Union’s responsibility to create that environment for the employer.

Faculty Association members have the right to request representation during the accommodation process, which we encourage. However, there is no requirement that the FA be involved, and some members do not wish to include the Union, particularly when the accommodation is simple or short. Our members often have collaborative relationships with their Heads, and we encourage collegial conversations on such matters. We are committed to assisting members and working collaboratively with the University to remove individual and systemic barriers to participation and we welcome language that encourages members to seek out representation when needed. Therefore, we request that section 6, the pre-amble and paragraph 3.1 be revised accordingly.
Who Is Human Resources?

The Draft policy is unclear regarding who or what is meant by Human Resources. We understand that the Policy is meant to address multiple employee groups with different labour relations processes at UBC. Nevertheless, there is an important distinction between HR and Faculty Relations that is currently obscured. For disability related requests, paragraph 2.2 directs faculty to the WRAP program or the Stay at Work/Return to Work program (which is misnamed Workplace Health Services). For all other requests faculty are advised to speak with their departmental Human Resources manager. For the purposes of short-term accommodations, however, Supervisors are advised to consult and collaborate with HR. Is the University referring to the Case Managers in the accommodation programs and/or the department-level HR representative? Current practice would be for Heads or Deans to consult directly with Faculty Relations regarding questions and concerns. Is the University intending to alter this arrangement? If so, the Faculty Association requests further consultation on this matter as we do not engage in labour relations discussions directly with UBC administrators or department-level HR managers as per the agreement between the Parties. If this is not the intent, we suggest that the Policy be revised to clarify with whom consultation occurs in the case of faculty.

Protection of Privacy

The Draft Policy reaffirms the University’s legal obligation to maintaining the privacy and confidentiality of accommodation-related information. However, paragraph 4.3 of the Procedures appears to grant Human Resources carte blanche to “consult with subject matter experts internal or external to UBC to assist with assessing a request for Accommodation.” There is no specification that the employer seek agreement from the employee regarding this disclosure, nor is there any limitation on what might be disclosed or who might constitute a subject matter expert. While it is understood that some accommodation-related information may be discussion on a need-to-know basis, our understanding is that this generally refers to individuals involved in the implementation or decision-making process. If the University requires further information to assess an accommodation the employee and their Bargaining Agent, if relevant, should be consulted about the specific questions that will be asked, and the advice received should be shared with the employee and the Union.

Centre for Workplace Accessibility

In March 2022 the University launched the Centre for Workplace Accessibility, the purpose of which we have been advised is to provide assistance to faculty, students and staff with disabilities. Faculty requiring simple accommodations have been directed to contact the Centre and advised that they will not need to provide medical information through that process. The Association applauded the University’s move to remove what can be a difficult barrier to requesting help. Simple, obvious accommodations for faculty with disabilities should not necessarily require medical support. For example, our visually-impaired members should not need to seek out and pay for medical documentation to prove that they need documents translated into braille or audio recorded.

In accordance with the University’s stated goal of fostering an inclusive environment and promoting equity, the Association suggests that the relationship and role of the Centre be clarified in the Draft Policy.
Define Disability

Disability is the largest class of accommodations at UBC, as it is in most workplaces. However, the legal definition of disability is not well-known. To many lay-people a disability is limited to lengthy or permanent impairments, not transitory illnesses or mental health concerns. Therefore, the Draft would be strengthened by including a specific reference to the definition of disability with reference to possible examples.

Short Term Accommodation

The Draft Policy’s distinction between short and long-term accommodations appears somewhat arbitrary. Time is not generally determinative of the ability of Heads to address accommodation requests. Rather, it is the complexity of the request and underlying restrictions and limitations that normally require input from the Stay at Work/Return to Work or WRAP programs. For example, it is reasonable for a Head to be able to manage a long-term reduced appointment or scheduling needs without intervention from other areas of the University. Therefore, we ask, what is so special about 4 months?

Furthermore, the Draft Policy is silent on what constitutes significant UBC resources. While employees are impelled to consider this criteria, they are provided no guidance on the University’s perspective. Similar to the Draft Policy’s over-emphasis on undue hardship, the Association fears that referencing an opaque standard will discourage faculty from requesting assistance. Many of our members do not wish to place a burden on their colleagues or the institution and are thus already reluctant to ask for the help they need. Rather they struggle silently, in the best scenarios elevating their symptoms and, in the worst, resulting in hospitalization and medical leave. The University has committed to removing barriers; these must include the psychological barriers that exist in an environment marked by collegial governance and shared work.

Standardizing Campus Differences?

Currently, the UBCO and UBCV campuses have different approaches to disability-related accommodations with the former requiring all requests to be processed through WRAP. Is the intention of the Policy to alter this practice? If it is, the Faculty Association requests that Heads at UBCO be provided additional training and resources as they take on this new responsibility.

Relationship to Policy HR4

There is no indication of the intended relationship between Policy HR13 and the University’s sick leave policy. Medical leave can form part of an accommodation and in those cases, which policy takes precedence? What procedures will be followed?

Review and Consultation

Accommodations are a collaborative processes, involving the employer, employee and often the Union. However, the Draft Policy, as written, appears to remove the University’s responsibility to have regular collaborative conversations with faculty regarding the modifications to their duties. Assessment of an accommodation cannot occur without input from the employee, nor is this the current practice at UBC. Therefore, we request that paragraph 6.4 be amended to include the employee, and Bargaining Agent, if relevant.
In closing, the Association appreciates this opportunity to provide feedback to the University on the proposed Policy HR13. We wish to confirm our commitment to working with UBC to remove barriers to equity, diversity and inclusion and our comments are offered in this collaborative spirit. We are concerned that our members already perceive the University’s words as hollow and the draft, as written, will reinforce this belief.

The comments and recommendations offered in this letter are made on a without prejudice basis to any position we may take with respect to the Policy in the future. The Association therefore reserves our right to challenge the Policy and its application, in whole or in part, as we see fit, including through the grievance and arbitration process.

Sincerely,

Dory Nason
President

C Deena Rubuliak, Executive Director, UBCFA