

# Human Resources Policy

## Reasonable adjustment

**Policy Number:** G3 (QH-POL-210)

**Publication date:** July 2020

**Purpose:** To support employees, including those participating in a return to work program, by applying principles of reasonable adjustment within Queensland Health.

This policy also provides for consideration of reasonable adjustment as part of a recruitment process.

**Application:** This policy applies to all Queensland Health employees.

**Delegation:** The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Services Human Resource (HR) Delegations Manual, as amended from time to time.

### Legislative or other authority:

- *Anti-Discrimination Act 1991*
- *Human Rights Act 2019*
- *Public Service Act 2008*
- *Work Health and Safety Act 2011*
- *Workers' Compensation and Rehabilitation Act 2003*

### Related policy or documents:

- Anti-Discrimination and Vilification HR Policy E2 (QH-POL-101)
- Grievance resolution HR Policy E12 (QH-POL-104)
- Diversity and inclusion HR Policy G2 (QH-POL-132)

### Policy subject:

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## 1 Reasonable adjustment

Reasonable adjustment is where an employer takes account of a person's impairment and makes appropriate and reasonable adjustments to the workplace (including the employee's role) to lessen the impact of the impairment or enable the employee to commence employment or return to work. Refer Attachment One for examples.

The identification of the need for reasonable adjustment may occur in a number of situations including but not limited to, recruitment processes, during the course of employment, as required by legislation or to determine suitability of working arrangements and employment practices.

Managers are responsible for ensuring work environments do not unreasonably prevent employment for people. Managers must also ensure reasonable adjustment solutions are fair and equitable to all employees.

## 2 Requirement to provide reasonable adjustment

The employer should, where it is necessary and reasonably practicable to do so, make modifications and adjustments to the workplace or the role to meet the individual needs of an employee.

Queensland Health managers are required to facilitate appropriate and reasonable changes to organisational practices to facilitate the employment of an individual, unless this imposes unjustifiable hardship for the workplace.

Failure to provide reasonable adjustment may constitute unlawful discrimination against the person. Further, claims of unjustifiable hardship may be challenged in the Queensland Human Rights Commission.

## 3 Reasonable adjustment assessment

Upon identification of the need for reasonable adjustment, and with the consent of the employee, an appropriately qualified person should be engaged to determine the needs of the person and offer possible solutions for reasonable adjustment.

The assessment should consider the physical and organisational barriers impacting the person's employment, work performance or inhibiting advancement within the organisation.

## 4 Grievance and dispute resolution

Where an employee is dissatisfied with the reasonable adjustment provided, or the lack of reasonable adjustment provided, they are entitled to lodge an employee complaint in accordance with Grievance resolution HR Policy E12.

An employee could also lodge a complaint with the Queensland Human Rights Commission.

## 5 Relationship to legislation

Queensland Health has an obligation under the *Work Health and Safety Act 2011* to provide a healthy and safe work environment. This obligation extends to preventing the recurrence, aggravation, acceleration, exacerbation or deterioration of any existing injury in a person as a result of the person's work.

Reasonable adjustment solutions are part of Queensland Health's obligation to provide a safe workplace for all people.

## 6 Cost of reasonable adjustment

The Department of Health/Hospital and Health Services are responsible for financial costs of the implementation of reasonable adjustment solutions.

## 7 Confidentiality

Managers and employees must respect that a person with an impairment has a right to confidentiality and privacy.

### Definitions:

Impairment	<p>An impairment is defined as:</p> <ul style="list-style-type: none"> <li>• the total or partial loss of the person's bodily functions, including the loss of a part of a person's body; or</li> <li>• the malfunction, malformation or disfigurement of a part of a person's body; or</li> <li>• a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or</li> <li>• a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgement or results in disturbed behaviour; or</li> <li>• reliance on a guide dog, wheelchair or other remedial device.</li> </ul> <p><b>Note:</b> The above definition is drawn from the <i>Anti-Discrimination Act 1991</i> which is similar, although not identical, to the meaning of "disability" in the <i>Disability Discrimination Act 1992</i> (Cth).</p>
Unjustifiable Hardship	<p>The Anti-Discrimination Act indicates the issue of whether the supply of special services or facilities would impose "unjustifiable hardship" on an employer depends on all the relevant circumstances of the case, including the:</p> <ul style="list-style-type: none"> <li>• nature of the special services or facilities</li> <li>• cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged</li> <li>• financial circumstances of the employer;</li> <li>• disruption that supplying the special services or facilities might cause</li> <li>• nature of any benefit or detriment to all people concerned.</li> </ul> <p>If the Commission believes reasonable adjustment solutions were warranted and overturns an employer's claim of unjustifiable hardship, they may impose a variety of remedies including reinstatement where applicable, or monetary compensation for the complainant.</p>

Vicarious liability	Vicarious Liability applies to reasonable adjustment principles. Should employees or agents contravene the Anti-Discrimination Act and/or other applicable legislation, both the employer and the employee or agent may be jointly and severally liable for the contravention.
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### History:

July 2020	<ul style="list-style-type: none"> <li>• Policy: <ul style="list-style-type: none"> <li>– amended to update references and naming conventions</li> <li>– application amended as a result of changes outlined in the Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019.</li> </ul> </li> </ul>
January 2014	<ul style="list-style-type: none"> <li>• Policy formatted as part of the HR Policy Simplification project.</li> <li>• Policy amended to: <ul style="list-style-type: none"> <li>– limit application to employees working in and for the Department of Health</li> <li>– remove grievance and dispute resolutions sections that are already contained in the Employee Complaints HR Policy E12</li> <li>– identify the party that is required to pay the costs of the reasonable adjustment</li> <li>– update definition section to remove definitions for “reasonable adjustment” and include definition for “vicarious liability”</li> <li>– update references and naming conventions.</li> </ul> </li> </ul>
July 2008	<ul style="list-style-type: none"> <li>• Amended to reflect the <i>Public Service Act 2008</i>.</li> </ul>
April 2008	<ul style="list-style-type: none"> <li>• Developed as a result of the HR Policy Consolidation Project.</li> </ul>

## Attachment One – Reasonable adjustment examples

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and standard practice and ensure employee entitlements continue to be met.

### 1 Examples of Reasonable Adjustment

Examples of reasonable adjustment in respective circumstances may include:

- *Recruitment and Selection (of potential and existing employees):* Providing assistance to facilitate the interviewing process, e.g. wheelchair access, sign language interpreter.
- *Training and Career Advancement:* Providing training information in alternative formats, and making adjustments to allow opportunities to act in other positions.
- *Workplace Design:* Providing access to the workplace, and the provision of specialist equipment where required and reasonable to do so, to allow the person to undertake the duties of the position, e.g. larger screens/font for visual impairment.
- *Temporary Disability:* Providing a return to work or workplace rehabilitation program e.g. provision of equipment for the elevation of an injured ankle - refer to the Occupational Health and Workplace Implementation Standards and Guidelines.
- *Deployment/Redeployment:* Relocating an employee from one work environment to another.

Each situation should be assessed on a case by case basis. During a reasonable adjustment process, employees should be treated with respect and allocated duties which are commensurate with their classification, experience and abilities.

### 2 Reasonable adjustment assessment

Managers can arrange for an appropriately skilled person such as an occupational therapist, physiotherapist, rehabilitation consultant or other qualified health professional to undertake an assessment to assess the requirement for reasonable adjustment.

A manager may choose to consult with the local Occupational Health and Safety (OHS) unit before arranging for the reasonable adjustment assessment, including a risk assessment, where an employee has an impairment.

### 3 Advising of reasonable adjustment

The *Work Health and Safety Act 2011* provides that elected Workplace Health and Safety Representatives may be informed and consulted on workplace changes including issues of reasonable adjustment.