Responding to Return to Campus Hesitancy – Guidance for Leaders

On March 8, 2021, B.C.’s Provincial Health Officer, Dr. Bonnie Henry, advised public post-secondary institutions to begin planning for a full return to on-campus teaching, learning and research in September 2021 (see Attachment 1). Dr. Henry expressed deep confidence that the combination of mass immunization contributing to community immunity, the application of revised health and safety protocols in the COVID-19 Go-Forward Guidelines for B.C.’s Post-Secondary Sector, and the regular review and updating of multilayered institutional safety plans will support the safe resumption of on-campus activities.

As we return to campus, some employees may express concerns about coming on campus for fear of COVID-19 exposure. When an employee refuses work based on safety, managers should meaningfully engage with employees to address their concerns. This document is intended to guide leaders through those conversations and the processes we have established to support employees who are hesitant about returning to campus.

This document is to be used in conjunction with Instructions for Unit Heads and Supervisors in Administrative, Support, Academic and Ancillary Units: Return to Campus.

An Overview:
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Once it is expected that an employee will return to work on campus, and the employee expresses return to campus hesitancy and requests to adjust their work responsibilities or work from a remote location (outside of formalized remote working arrangements for staff) the leader should:

1. Ensure the employee understands the PHO guidance and the university’s COVID-19 Safe Work Plan and how it protects them in the workplace.

2. Seek to understand the exact nature of the concern. What makes them feel hesitant to return to work? If it is a safety concern, find out what the concern relates to (e.g. hand and surface hygiene; use of masks and other PPE; physical distancing; protective barriers; shift adjustments, unsafe work condition, etc.). For assistance in determining the most appropriate response towards a solution, based on the circumstances, please consult with your Occupational Health and Safety Consultant.

3. If the employee’s concern is that they themselves are medically vulnerable to COVID-19 and their doctor indicates they cannot risk exposures that may occur on campus (even with community and self-vaccination, the unit’s Safe Work Plan and any additional measures noted above), or if their safety concern is related to a mental health issue that meets the threshold for a DSM-5 medical disorder, they may be eligible for a medical accommodation. Refer staff to the process outlined at https://www.uvic.ca/hr/manager-support/return-to-work/managing-complex-sick-leave/index.php and faculty/librarians to https://www.uvic.ca/vpacademic/resources/howto/medical-leave/index.php. As a leader, refer to and implement Process for COVID-19 related Medical Leave/Accommodation.

4. If the return to campus seriously interferes with a substantial parental or family obligation of an employee, they may be eligible for a family status accommodation or personal leave. Examples of COVID-19 related circumstances in which a family status accommodation may be warranted include, but are not limited to: the employee is a caregiver to family member and must be available to provide care, or the employee’s family member is medically vulnerable and transmission of COVID-19 cannot be risked. The employee will have to provide evidence that they have taken all other reasonable steps to make alternate arrangements for the care of the family member. Employees can find information on Family Status Accommodation at: https://www.uvic.ca/hr/assets/docs/rtw/Family%20Status%20Accommodation.pdf. As a leader, refer to and implement Process for Family Status Accommodation or Personal Leave.

5. If the employee believes that the workplace remains unsafe, after the above-noted options have been exhausted, the employee may undertake a work refusal under s. 3.12(1) of WorkSafe BC, OH&S regulations – Refusal of Unsafe Work Process. Refer the employee to https://www.worksafebc.com/en/health-safety/create-manage/rights-responsibilities/refusing-
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[Unsafe work](https://www.uvic.ca/ohse/assets/docs/refusalprocess.pdf) and to [https://www.uvic.ca/ohse/assets/docs/refusalprocess.pdf](https://www.uvic.ca/ohse/assets/docs/refusalprocess.pdf). Seek the support of your [Occupational Health and Safety Consultant](https://www.uvic.ca/ohse/assets/docs/refusalprocess.pdf) for guidance in dealing with the complaint.
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Appendix A - Process for COVID-19 related Medical Leave/Accommodation

FOR FACULTY, LIBRARIANS AND SESSIONAL INSTRUCTORS:

1. The employee makes the accommodation request to their Academic Unit Head (Chair/Director, Dean for non-departmentalized Faculties)
2. The employee takes the abbreviated COVID-19 Medical Form/Physician Statement to their treating physician, together with a description of their duties for completion.
3. Once the Physician Statement is completed, the employee submits it, their description of duties and Unit’s Safe Work Plan to their Worklife Consultant.
4. Your Worklife Consultant will review the Physician Statement, confer with the Academic Unit Head and will propose an accommodation to the employee (if justified), or seek further information if necessary.
5. Once the Accommodation Plan is agreed-to, it will be drafted by the Worklife Consultant and signed by the employee and the Academic Unit Head (for faculty) or Return to Work Steward/Officer (for sessional instructors), subject to requirements for additional approvals under the relevant collective agreement.
6. Please ensure you adhere to all relevant collective agreement requirements in working with the employee on accommodation related matters.
7. As needed, consult with your Human Resources Consultant or Faculty Relations Consultant.

FOR STAFF:

1. The employee makes the accommodation request to their Supervisor
2. The employee takes the abbreviated COVID-19 Medical Form/Physician Statement to their treating physician, together with a description of their duties for completion.
3. Once the Physician Statement is completed, the employee submits it, their description of duties and Safe Work Plan to Human Resources, Worklife Consultant.
4. The Worklife Consultant will review the Physician Statement, confer with the supervisor and will propose an accommodation to the employee (if justified), or seek further information if necessary.
5. Once the Accommodation Plan is agreed-to, it will be drafted by the Worklife Consultant and signed by the employee, supervisor or Return to Work Steward/Officer subject to requirements for additional approvals under the relevant collective agreement.
6. Please ensure you adhere to all relevant collective agreement requirements in working with the employee on accommodation related matters.
7. As needed, consult with your Human Resources Consultant.
ACCOMODATION REVIEW PROCESS:

Medical Accommodations should be in place only for as long as the conditions underlying the accommodation (fact of disability or context of work) continue to exist. Medical accommodations providing for remote work in the context of COVID-19 will be reviewed regularly to ensure the underlying conditions supporting the accommodation continue to exist. The Review date will be identified on the Accommodation Plan.

In the absence of an ability to accommodate a functional disability (accommodation is not feasible while keeping the employee on active duty), please refer to the sick leave entitlements of the relevant collective agreement/policy.

See also:

Medical Accommodation for Faculty and Librarians

Return to Work - Stay At Work
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Appendix B - Process for Family Status Accommodation or Personal Leave

The BC Human Rights Code protects against discrimination in employment on the basis of the protected ground of “family status” (s. 13(1)). The law requires an employer to provide accommodation to the point of undue hardship to enable a person to do their work (i.e. not face discrimination in relation to a protected ground). Specific to COVID related accommodations on the basis of family status, the BC Office of the Human Rights Commissioner note in their early Policy Statement on COVID-19 Pandemic.

Employers are entitled to expect that employees will continue to perform their work unless they have a legitimate reason for why they cannot, including current public health guidance to socially distance or self-isolate.

Employers may also need to accommodate employees with increased child care obligations due to the pandemic. Protections related to family status may require employers to take all actions short of undue hardship to accommodate family care giving responsibilities where an employee is unable to cover the necessary care through other means. Accommodations may include allowing for flexible work hours, working from home or taking paid leave time. The same may be true for employees who are required to care for sick family members at home.

In British Columbia, the test for family status discrimination was established in Health Sciences Assoc. of B.C. v. Campbell River and North Island Transition Society, 2004 BCCA 260 (“Campbell River”). In order to establish discrimination or claim an accommodation on the basis of family status, the employee must establish that there has been a change in a term or condition of employment imposed by the employer that results in a serious interference with a substantial parental or other family duty or obligation. Normally, this would entail the employee providing evidence that they did everything reasonable to procure alternative family care that would have enabled them to do their work without accommodation in the face of the employer imposed change.

An employee wanting to work remotely in order to avoid “bringing COVID home” to a medically vulnerable family member may have a family-status accommodation claim, if the Campbell River test is met. The employee must show that being asked to work face-to-face constitutes a change to a condition of employment in the context of COVID-19, based on objective evidence. The employee must also establish a “serious interference with a substantial family obligation” (to care for their family member in a manner that maintains their safety). Part of the consideration is what alternative measures were explored by the individual to resolve the conflict between the requirement to return to campus and their obligations to their vulnerable family member. Considerations include the individual employee’s employment duties, risk of exposure (based on objective scientific evidence), severity of vulnerability of the family member (based on their medical evidence) and the living situation. You may make reasonable requests for sufficient information from the employee about their circumstances, including the medical situation of their family member and risks posed, their housing arrangements and what alternative arrangements could be made. The employee would have to show that there are no alternative arrangements to mitigate the risk of exposure and take reasonable steps at home to limit the family
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member’s exposure. Employees are entitled to reasonable accommodation, not the accommodation of their choice, so consideration may be given to what steps can be taken to further minimize the risk of exposure within the campus environment (e.g. larger classroom to allow for more social distancing etc.)

Teaching or working from home is not the only possible solution/accommodation. In some circumstances, UVic may have a duty to accommodate by allowing remote teaching. (Note: Before making commitments to accommodation measures requiring work by persons you do not supervise (e.g. installation of barriers or enhanced cleaning schedules by Facilities Management personnel, etc.) please confer with those units to ensure the support can be provided. An accommodation plan must be operationally feasible for all involved.

As UVic is complying with all of the PHO and other regulatory requirements, and each unit has a robust safety plan, then a family-status based accommodation may not arise merely because an employee has unvaccinated children who are otherwise not medically vulnerable.

Like medical accommodations, each accommodation request needs to be considered on its own merits, giving due regard to the circumstances and the needs of the requestor. Family Status Accommodations should be in place only for as long as the conditions underlying the accommodation (need for care or protection or the changed work condition) continue to exist.

Should you receive a request for accommodation from an employee on the basis of family status, please do the following:

1. Refer the employee seeking Family Status Accommodation for information on how to make their request. See the website to understand the information they are to provide to you in writing.
2. Consider the request. If the employee has established a change in working conditions that serious interferes with a substantial family obligation, and if you are able to meet the request without operational difficulty and without reducing the overall amount of work assigned to the employee, you may grant it for a temporary period ending no later than April 30, 2022. Seek the assistance of your Human Resources Consultant in documenting the agreement as a formal accommodation for a specified period.
3. If you are unable to meet the request without operational difficulty and without reducing the overall amount of work assigned to the employee, please consult first with your Faculty Relations Consultant/Human Resources Consultant (contact list) before responding to the employee to ensure there are no other options and your decision meets the legal tests.
4. If an accommodation cannot be made, the employee may be eligible for a personal leave under their collective agreement.
5. Please ensure you adhere to all relevant collective agreement requirements in working with the employee on accommodation related matters.
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Appendix C – Institutional Support Contacts

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## Responding to Return to Campus Hesitancy – Guidance for Leaders

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<td><strong>Purchasing</strong></td>
<td>Tine Lathouwers</td>
<td>Graham Rhodes</td>
<td>Melanie Gillespie</td>
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<td></td>
<td><a href="mailto:tinelath@uvic.ca">tinelath@uvic.ca</a></td>
<td><a href="mailto:grhodes@uvic.ca">grhodes@uvic.ca</a></td>
<td><a href="mailto:mgillesp@uvic.ca">mgillesp@uvic.ca</a></td>
<td><a href="mailto:mgillesp@uvic.ca">mgillesp@uvic.ca</a></td>
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<tr>
<td><strong>University Systems</strong></td>
<td>Lynn Meyers</td>
<td>Graham Rhodes</td>
<td>Melanie Gillespie</td>
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<td></td>
<td><a href="mailto:meyersl@uvic.ca">meyersl@uvic.ca</a></td>
<td><a href="mailto:grhodes@uvic.ca">grhodes@uvic.ca</a></td>
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