

# [“How Can We Help?” Considering Accommodation For Persons With Disabilities In Workplace Investigations](#)



In my previous blog post, [You Ought to Know? Rethinking the ‘Reasonable Person’ Standard When Disability Is a Factor](#), I shared my experiences applying the reasonable person standard in investigations where the respondents identified as having cognitive, intellectual, or psychological disabilities that may have affected their ability to understand that their behaviour may be unwelcome.

In this blog post, I will discuss a further consideration that arises in these types of investigations – the question of accommodation. Specifically, I will look at what accommodation in investigation processes can look like and share some suggestions on how to approach this issue. As an illustration, I will share how I modified the process of one of my investigations to accommodate a respondent with cognitive, intellectual, and psychological disabilities.

Organizations are becoming more inclusive of people with cognitive, intellectual, and psychological disabilities. Therefore, as part of that inclusion, it is critical that organizations and workplace investigators proactively consider how to accommodate individuals with such disabilities to facilitate their participation in investigations.

## **What is an accommodation in the context of a workplace investigation?**

In a workplace investigation, the goal of an accommodation is to reduce barriers to participation for a party or participant.

Some examples of accommodations in a workplace investigation include:

- Providing a respondent with a language processing disorder the opportunity to respond to the allegations in writing
- Ensuring that verbal and written communications with a party with an intellectual disability are shared in a manner they can comprehend (e.g., written at an appropriate grade level, offered in an accessible format)
- Adjusting the location of an interview (e.g., ensuring a quiet meeting location or lowering lighting) to minimize sensory overstimulation for a party with autism
- Adapting the length and frequency of interviews for a party with anxiety

disorder

## **How do workplace investigators know if someone needs an accommodation?**

An investigator can consider asking parties and participants whether they need any accommodation to help them participate in an investigation. For example, I ask all participants and parties this question when I first contact them and again at the start of our interviews. I do so regardless of whether I know they have a disability.

## **How can investigations be more inclusive?**

Aside from asking participants about their accommodation needs, I think that organizations and investigators should design their investigation process with inclusivity and accessibility in mind. Many people find participation in an investigation to be very intimidating and anxiety-inducing, and they may not feel comfortable asking for accommodation (or they may not know what to ask for). Thinking of ways to make investigations more inclusive minimizes the need for people to ask for individualized accommodation.

Examples of inclusive investigative practices include:

- Writing correspondence using simple and clear language
- Providing participants with more than one opportunity to express accommodation needs
- Providing different options for meeting locations (e.g., different videoconferencing platforms or in person)
- Outlining a roadmap for each interview (e.g., what the purpose of the interview is, what allegations will be discussed and in which order, next steps after the interview)
- Establishing a break schedule for longer interviews
- If a participant is accompanied by a support person, advising the participant that they can ask to speak to their support person privately at any time

Furthermore, inclusive investigation processes can benefit participants. For example, communicating with participants using simple and jargon-free language can help people with learning disabilities understand written and verbal communications better, but also makes it easier for everyone to understand these communications.

It is important to note that it may not be possible to implement all types of accommodation requests in the context of a workplace investigation. Some requests may need to be balanced against the need to conduct timely and fair investigations. For example, a request to limit interviews to one hour every two weeks may significantly affect how long it takes to conclude an investigation. That said, it may nonetheless be justified. In that situation, it may be necessary to communicate adequately and appropriately with the other party impacted by the delay.

In any event, organizations may wish to seek legal advice on how to approach accommodation requests in the context of workplace investigations.

## **How I approached this issue**

### **What happened<sup>1</sup>**

In a harassment investigation that I conducted for a mid-sized health care organization, the respondent was a person with complex and intersecting mental health and cognitive disabilities. They shared medical documentation with me that outlined some of their restrictions and limitations. They also shared their accommodation

agreement which set out their accommodations in the workplace.

However, while this information was relevant to the investigation, I did not rely on it to make any assumptions about what accommodation the respondent needed as part of the investigation process, which may have been different from their accommodation needs in the workplace. Instead, in my initial correspondence with them, I asked them to let me know if they needed any accommodation to participate and noted that I would do my best to meet their requests. I also provided them with the option to meet me in person or by video conference.

### **What worked well**

Before our first interview, the respondent requested that we meet over videoconference so they could participate outside of the organization's offices, and also that we limit our meetings to one hour to help them manage their anxiety and assist with their ability to focus on our discussion.

This was a very complex investigation, with many allegations and a counter-complaint. I anticipated needing several one-hour interviews with the respondent. Accordingly, I informed the client that the respondent's request to limit meetings to one hour could impact the timeliness of the investigation, but the client and I determined that accommodating this request was important for ensuring the respondent could fully participate in the investigation. I suggested to the client that I could conduct witness interviews concurrently with the respondent interviews to keep the investigation moving forward in a timely manner. I also suggested that if the client had any questions about their duty to accommodate in the context of the investigation, they may want to seek advice from their legal counsel.

During our first interview, the respondent mentioned that they sometimes would need me to repeat my questions, and I assured them that I would do so if needed. This occurred multiple times during our conversations.

During each interview, I again asked the respondent to let me know if they needed any other accommodation in case they had identified anything else that could be helpful to them during one of our previous interviews, or if their needs had otherwise changed (e.g., they were experiencing more anxiety during a particular period of time). While the respondent did not ask for any other accommodation, they appreciated knowing that they had the option to do so.

### **What I would do differently**

During one of our interviews, I asked if we could discuss the allegations in a different order than they were listed in the allegations letter so we could discuss them in chronological order, as I felt this would be the easiest way to work through the allegations, which were complex. The respondent was initially amenable to this. However, following this interview, the respondent told me that they found that discussing the allegations out of order from the list provided was confusing and made it difficult for them to follow the discussion and their notes. They requested that we discuss the allegations in order, as set out in the allegations letter, which we did in our following interview. I also provided the respondent with the opportunity to revisit the allegations that we discussed "out of order" to give them the opportunity to add anything they may have omitted because they were feeling confused.

In retrospect, I think a better approach would have been to ask the respondent, before the interview, if we could discuss the allegations in a different order and set out the proposed order before meeting to provide the respondent with the time to consider the request and better prepare for the interview.

## **Key takeaways**

When investigators and organizations are considering accommodation requests from participants with disabilities, it is critical to be flexible in the investigation process. Generally, if a participant requests something that differs from the standard investigation process but does not cause any negative impact to other participations or to the fairness of the investigation, it can be accommodated.

As organizations become more inclusive of people with cognitive, intellectual, and psychological disabilities, I believe that the issue of accommodation in workplace investigations will become more prevalent. However, organizations and workplace investigators can adapt and adjust their investigation processes to respond to individual accommodation requests and become more inclusive overall.

## **Footnote**

1. I have changed some facts for reasons of confidentiality.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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