

# Accommodating Employees with Disabilities During Investigations

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With insights from Bryce Desrochers

## Introduction

### *Purpose of this paper*

Workplace investigation teams are typically aware and cognizant of diversity, equity, and inclusion (“DEI”) considerations. At times, these are at the core of the matter (e.g., complaint) being investigated or reviewed. At a minimum, by law, employers must build these considerations into their foundational programs and services—how they treat their people and how they treat their clients. When applying an employer’s codes of conduct or values and ethics policies in conducting investigations or compliance reviews, it is a given that an investigation team will respect and apply these same requirements.

But how often do we see investigation or review policies or processes overtly state the DEI considerations that an investigation team should apply when dealing with the individuals who will help them solve the investigation puzzle? The policies and processes don’t need to—it’s all there in the employer’s foundational articles after all. Or maybe there is another way to look at this.

This paper serves to help investigation teams get into the mindset of actively considering how DEI plays into their investigation processes and practices. It looks at one DEI component—employees with disabilities. It serves to help investigation teams go beyond the obvious—a person using a wheelchair or a cane must require something—to factoring in how not-so-obvious DEI considerations can help them and the person they are interviewing or investigating produce an investigative result that will make a difference for the employer and the people involved in the process.



## *Accommodation by Chance*

While the Integrity by McCarthy Inc. team was hosting an event with a dunk tank in late August 2022, Kenneth (Ken) McCarthy saw a young man in a wheelchair watching the frivolity. The young man had some mobility in his left arm but was controlling his wheelchair by way of a joystick using his chin.

Ken approached the young man in the wheelchair and asked if he wanted to participate. The young man politely declined and wheeled away. A while later, the young man returned and approached Ken at a table while Ken's son-in-law was taking his turn getting dunked. The young man introduced himself as Bryce Desrochers and asked if he could push the dunk tank target with his hand.

Ken moved the table out of the way and helped protect the electronics on Bryce's wheelchair while Bryce dunked Ken's son-in-law not once, but twice. Bryce smiled, said thank you, and told Ken that he never gets to do anything like that. And then, he wheeled away without saying another word.

While it was just another day in the life of Bryce Desrochers, that day in late August 2022 opened Integrity by McCarthy Inc.'s collective eyes to a whole new world. That day at the dunk tank taught us a couple of important things. Ken had some employment equity experience from his days as a Canadian federal government executive, but apart from a superficial effort on his part to put the dunk tank out of the way on a flat surface (accessibility by chance), Ken hadn't considered participants with different needs from his own. We thank Bryce for coming into our lives that day (and many times since then) and for helping us develop this paper.

## Why Accommodation Matters

### *The numbers*

Disabilities are real, even if we are afraid to see or acknowledge them.

In the United States, twenty-seven (27) percent of adults have some sort of disability. According to the [U.S. Centers for Disease Control and Prevention \(2020 data\)](#), for individuals in that age group, 12.1 percent have a mobility disability, 12.8 percent have a cognitive disability, 6.1 percent are deaf or hard of hearing, and 4.6 percent have a vision disability.

In Canada, twenty-two (22) percent of persons 15 years of age or older have some sort of disability. According to [Statistics Canada \(2017 data\)](#), for individuals in that age group: 9.6 percent have a mobility disability, and 5.4 percent have a vision disability.

Data from both countries reveal that persons with disabilities are less likely to be employed than those without disabilities.

### *It's the law*

In the United States, there are various legal protections for people with disabilities in the workplace in different jurisdictions.

Federally, the most commonly known ones are the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

Likewise in Canada, there are protections in different jurisdictions with the most commonly known federal laws being the Canadian Human Rights Act, the Accessible Canada Act, and the Employment Equity Act.

In both countries, the laws are clear when it comes to employees with disabilities. Employers cannot discriminate against employees with disabilities; and employers need to reasonably accommodate employees' disabilities in the workplace without undue hardship to the employer. "Undue hardship" generally relates to the cost of the accommodation, sources of funding, and health and safety considerations.



## *It can improve your investigation results*

How much better would your information gathering be if you made the investigation process accessible for all? How much better would your investigation be from a procedural fairness perspective? Employees with disabilities may carry a huge mental load. Every single day, they have to navigate a world that is not equally accessible, either cognitively or physically.

As investigators, we often talk about building rapport with the interviewee, trauma-informed approaches, and procedural fairness. When we are able to accomplish these, we often see a successful interview or fact finding which can lead to a happy client and the resolution of a serious problem. These three components come down to empathy and respect.

Our friend and co-author on another article, Bryce, shared a story with us. In one of his learning environments, he heard someone in class say, referring to him, “How can he use a computer if he cannot even use his hands?” Bryce notes that sometimes, people with

disabilities will just tolerate hurtful comments like that one, or they stay quiet about their needs because they do not want to cause problems or be an inconvenience.

That insensitive and ignorant statement led us to ponder whether employees with disabilities might not be seen as reliable complainants or witnesses in the workplace investigation world. “How can he be a reliable witness; how can he make notes of what he saw?” When we considered some of the classic training out there about how investigators can detect deception, we believed that yes, some disabilities could lead an investigator to mistakenly question the reliability of a witness, to the point of even suspecting that the person may be lying. We discussed auditory processing disorder where a person cannot understand what they hear in the same way others can understand it. In many cases, that person may give you a blank stare, give their head a shake, and ask you to repeat your question, even if you believe it is a simple question. We also thought about people who stutter and how they manage their interpersonal interactions. They may nod, blink, and carefully pace out their words to “hide” the stutter. In both of these situations, this may look

like the person is nervous, trying to buy some time, or trying to fabricate a response.

If you can get past some societal biases about people with disabilities, or open your mind to the possibility that “something might be there,” you can find the best way to accommodate the person in your investigation process. This will help them lower their guard, and allow you to either remove or help them navigate barriers. In short, you will build trust and rapport, ensure procedural fairness, and avoid re-traumatizing that person. You will have a far better chance of producing a solid investigation result.

## Types of Accommodations

### *Timing*

In our research, we found some useful information about timing of interviews and communication methods. We found a McGill University article on [Accommodating Candidates with Disabilities During Interviews \(McGill Equity\)](#)

The article talks about scheduling interviews during a time of the day when the candidate experiences the fewest disability related barriers. For example, some people with disabilities depend on personal care workers and Paratransit, which may restrict their availability. Medications and energy levels can also impact the time that a candidate may request for an interview or test.

### *Assistive communication*

As mentioned earlier, a person with a disability may have a unique method of communicating or retaining information that might be vital to your investigation. You need to think outside the “able-person’s box” and ask how this individual

might know and convey reliable information that will be helpful to you in solving the issue under investigation.

The above-referenced McGill article spoke of assistive communication devices which may require the interviewer’s participation (such as wearing a lapel microphone or typing into a Braille). The article notes that if you are unsure how to use the equipment, just ask! Employees with disabilities are the experts on their own needs.

There is guidance found on the [University of Mary Washington](#) website that talks about interviewing persons with disabilities.

The site says that if an interviewee reads lips, the interviewer should speak at a normal rate while facing the person and be sure to keep their hands away from their mouth. The guidance further states to not exaggerate lip movements, but to speak expressively because the person will rely on your facial expressions, gestures, and eye contact.





In our new hybrid world where investigators could be conducting interviews in person, an employer can provide a special screen and software at the interview location that can accommodate employees with visual impairment. For interviews that we conduct by video, there are accessibility tools such as screen readers that these same employees can use on many popular video communication platforms.

For the employee with auditory processing disorder, perhaps it would be better for them to have the questions in advance, or in writing in front of them. For both them and the person who stutters, give them time, don't interrupt, be patient. This type of accommodation costs nothing, except for perhaps a bit more time required to fully capture the experience that the person needs to convey.

If the employee is hard of hearing, your investigation would likely need to include an American Sign Language (ASL) interpreter.

## *Physical and emotional accommodation*

In the case of a physical disability or mobility issues, your interview location must have accessible entrances to the building, the doorways, the hallways, and the interview room itself.

Dimmed or no lighting may be required for an employee with a visual disability. Such an employee may also need to wear dark glasses which prevents you from "reading" their eyes.

Clear signage in large print, or braille signage may need to be present at an interview location.

A quiet or off-site interview room would be a wise accommodation for an employee with a cognitive disability. Keeping visual distractions and background noise to a minimum may be a game changer in such a case.

A dry erase board or virtual whiteboard could help an employee with a disability by breaking information into smaller chunks thereby easing struggles relating to reading or attention.

If your interviewee is visually impaired, it would be helpful to include HTML or Word documents instead of PDFs and images as part of your materials to ensure that screen readers and other assistive computing technology can interact with the documents.

In some cases, you need to consider the method in which the employee reviews and validates their interview notes. Perhaps a replay of an audio recording is better than a review of a paper or electronic document. Perhaps they need more time to review the notes.

The same thing goes for a review of a draft investigation report. The format you choose to present your report (e.g., electronic document, PDF, paper copy) should respond to the employee's accommodation needs. Does an audio version of the report come into play here?

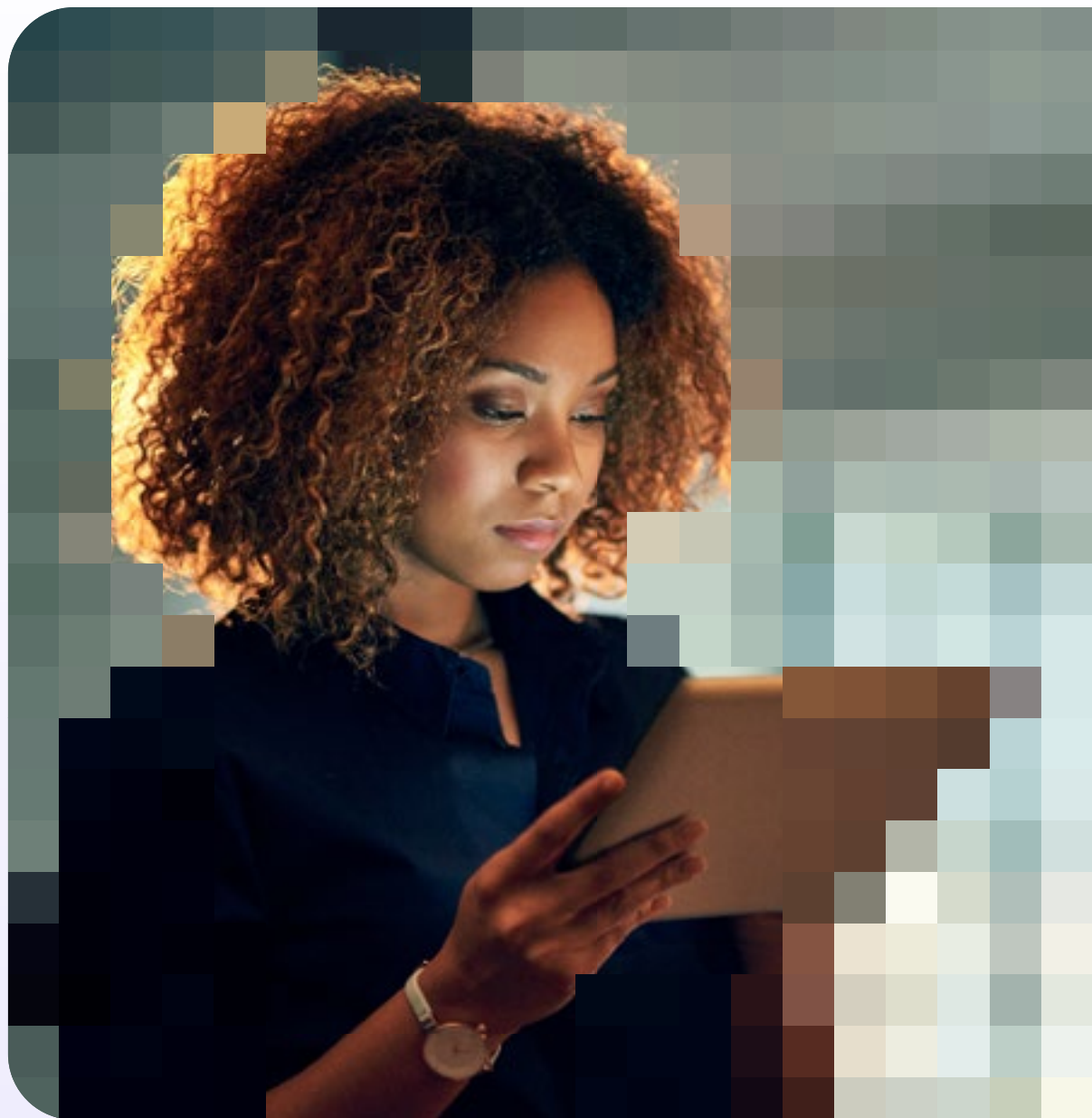
Maybe the interview needs to be broken down into multiple, shorter discussions to get through difficult issues. For the same reasons, more than one observer or support person might satisfy an accommodation need.

When dealing with a neurodivergent employee, questioning techniques are important.

Avoiding ambiguous statements and using clear, direct, and concise questions, sometimes closed-ended, will make the experience better for the employee and will produce a better interview outcome.

In many cases, the types of accommodations are only limited by our imaginations.

Again, we are trying to build trust and rapport, ensure procedural fairness, and avoid re-traumatizing that person.





## Accommodation Best Practices

### *Ask up front*

When you are getting ready to meet with employees in a workplace investigation, you should think about who you are preparing for. Are their abilities the same as your own? Who are you leaving out? How do you know if they have a disability, evident or non-evident? Will they tell you? Or perhaps the client will? Following both the advice in the McGill article and Bryce's own experience, you should ask the employee for their accommodation needs at the outset of your investigation. Under many jurisdictions, there are processes in place that allow for employees to self-identify and request accommodations. There is a likelihood that if the employer has already accommodated an employee's disability, they will disclose that accommodation to you if it is relevant to the investigation. It is possible, though, that the employee may not have disclosed a disability to their employer and may not have requested an accommodation. Remember Bryce's comment about not wanting to cause problems or be an inconvenience. We have come across situations in our practice where an employee does not want their employer to

know about a disability because it is "none of their business."

If an employee presents a complex accommodation matter on the spot, it can derail your progress on the investigation and if you are not responsive to the request, you may find yourself looking foolish before a court or a tribunal at some point in the future.

If you are interviewing someone in person, ask if they have any needs for accommodation. Get ahead of it. In the case of a physical disability or a mobility issue, you can take the time to scope out the entrances to the building, the doorways, the hallways, and the room itself to see if there is room for a wheelchair or other mobility devices.

Build time into your schedule to find a suitable space. If you are interviewing them by video, don't just assume that the client-approved platform is the most accessible one for the interviewee. Find out if it will work for them.

Find out what type of documents are most compatible with their assistive technology and

ensure that you have everything available for them. Most importantly: ask employees what they need. There are many disabilities and cognitive issues that could impact a workplace investigation.

And, when you ask an employee up front and get an answer about their accommodation needs, demystify the interview and investigation process with them. Tell them how things will roll out (e.g., you will send them material in advance, someone can help them complete a step in the process).

### *Put it in your policies and procedures*

It can be fairly straightforward to accommodate employees with disabilities. This does not mean that it is easy. Bryce's advice is to plan for employees with disabilities first, then work from there. This is something that needs to be built into your investigation processes, not only because it is the right thing to do, but because it can help your investigation immensely.



It doesn't take much to make your investigation policies and processes DEI-friendly. In the case of employees with disabilities, you could add a simple statement that the investigator will consider the employee's accommodation needs in their investigation planning, in keeping with the employer's internal policies, and if the employee has disclosed the need. This could be supported by a list of best practices that the employer/investigators have employed. Further, by making it clear that your policies and processes are DEI-friendly, you may see an increase in employees with disabilities speaking up to report wrongdoing. If they see that the policies and processes enable them to meaningfully participate, they are more likely to trust the process.

We always recommend consulting with people with disabilities to understand their needs. While you build processes and systems around their advice, it would be worthwhile to pay these experts who helped you develop your insights.

## *Run it by the employer*

If your investigation process includes the step of asking interviewees about accommodation needs (apart from the usual ones relating to official languages and support persons/observers), let your client know. You want to make sure that you are not setting anyone up for failure or litigation. Sometimes, employers have had to make difficult decisions (e.g., decline accommodation requests). Sometimes employers have not yet made decisions on accommodation requests when an employee or their doctor do not articulate the employee's functional limitations (i.e., what needs to be accommodated) but rather, make a request for a specific tool or way of doing business. And, if the employee makes an accommodation request that the employer was not already aware of, it is wise to let the employer know, for the reasons detailed above.

## Conclusion

Accommodating employees with disabilities is legally required, but it is also a matter of basic respect. Everyone deserves to participate in a barrier-free world, and if you can make the investigation process easier for employees with disabilities, your results will be so much better.

There are a handful of resources online that talk about how to accommodate candidates in employment interviews, but very little information is out there with respect to workplace investigations.

Keep in mind that you will not need to accommodate an employee with a disability in all of your investigations. So, this should not be a major change to your processes.

But be mindful of the statistics in both the United States and Canada: one in four (27 percent in the United States and 22 percent in Canada) adults have some sort of disability. Chances are, if you are interviewing multiple employees in an investigation, you are going to meet someone with a disability. You want to get the best out of them. And maybe, just maybe, you have already accommodated them without even knowing it.

### Things to remember - accommodating employees with disabilities in investigations:

- Can be written into policies and procedures without extensive modifications to the documents.
- Will build trust and rapport, ensure procedural fairness, and avoid re-traumatizing that person.
- May not be as complicated as you think.
- Can only be intentionally accomplished if the employee discloses their accommodation needs or if you ask them about such needs.
- May enable such employees to trust the process and speak up when they become aware of wrongdoing.
- Gives you a chance to produce an investigation result that meets your client's needs and resolves a problem they are dealing with.



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