

The Dentons logo, consisting of the word "DENTONS" in white, uppercase, sans-serif font, enclosed within a white arrow-shaped graphic pointing to the right. The background of the slide is a purple gradient with a faint, light-colored tree silhouette in the upper left, and a photograph of a forest with vibrant autumn foliage in shades of yellow, orange, and red on the right side.

DENTONS

Dealing with complex accommodation cases

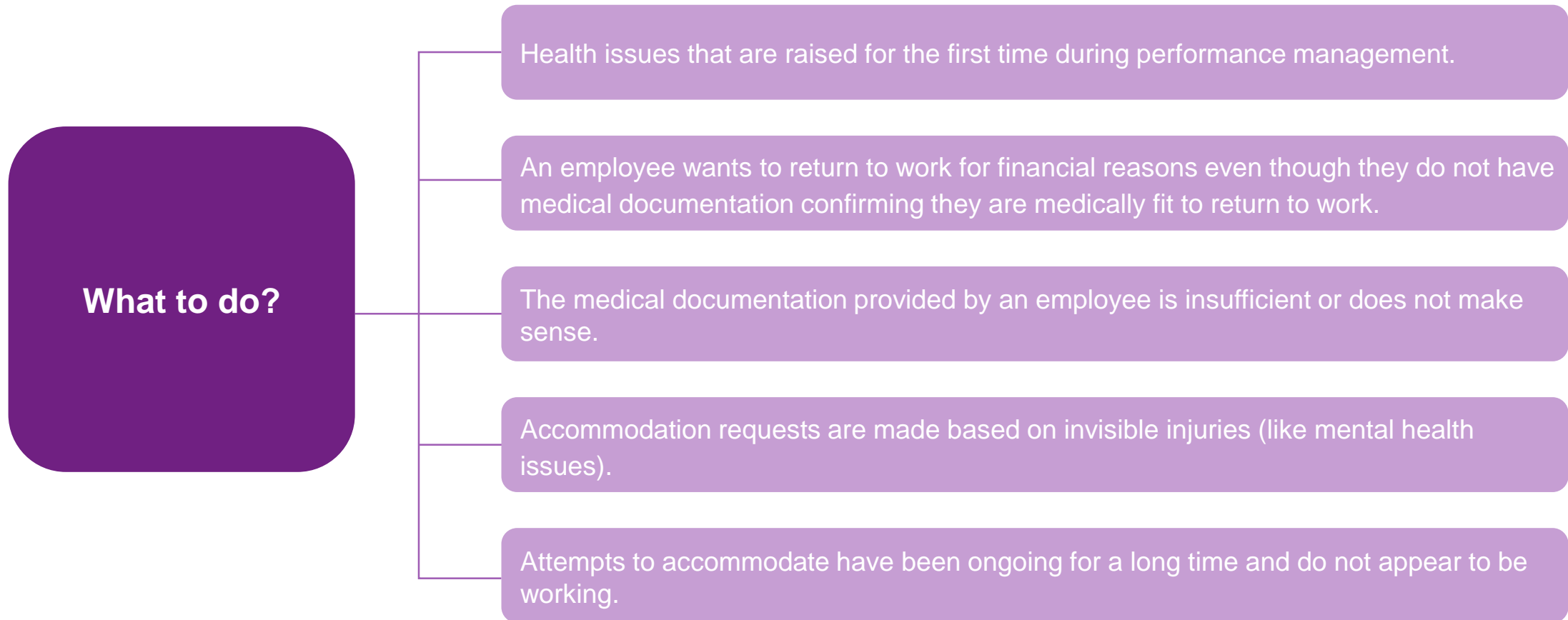
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Accommodations: Complex situations

How to deal with some of the toughest accommodations issues in the workplace



How to address health issues that are raised for the first time during performance management?

IMMEDIATE RESPONSE

Conclude the meeting and temporarily put performance management on hold.

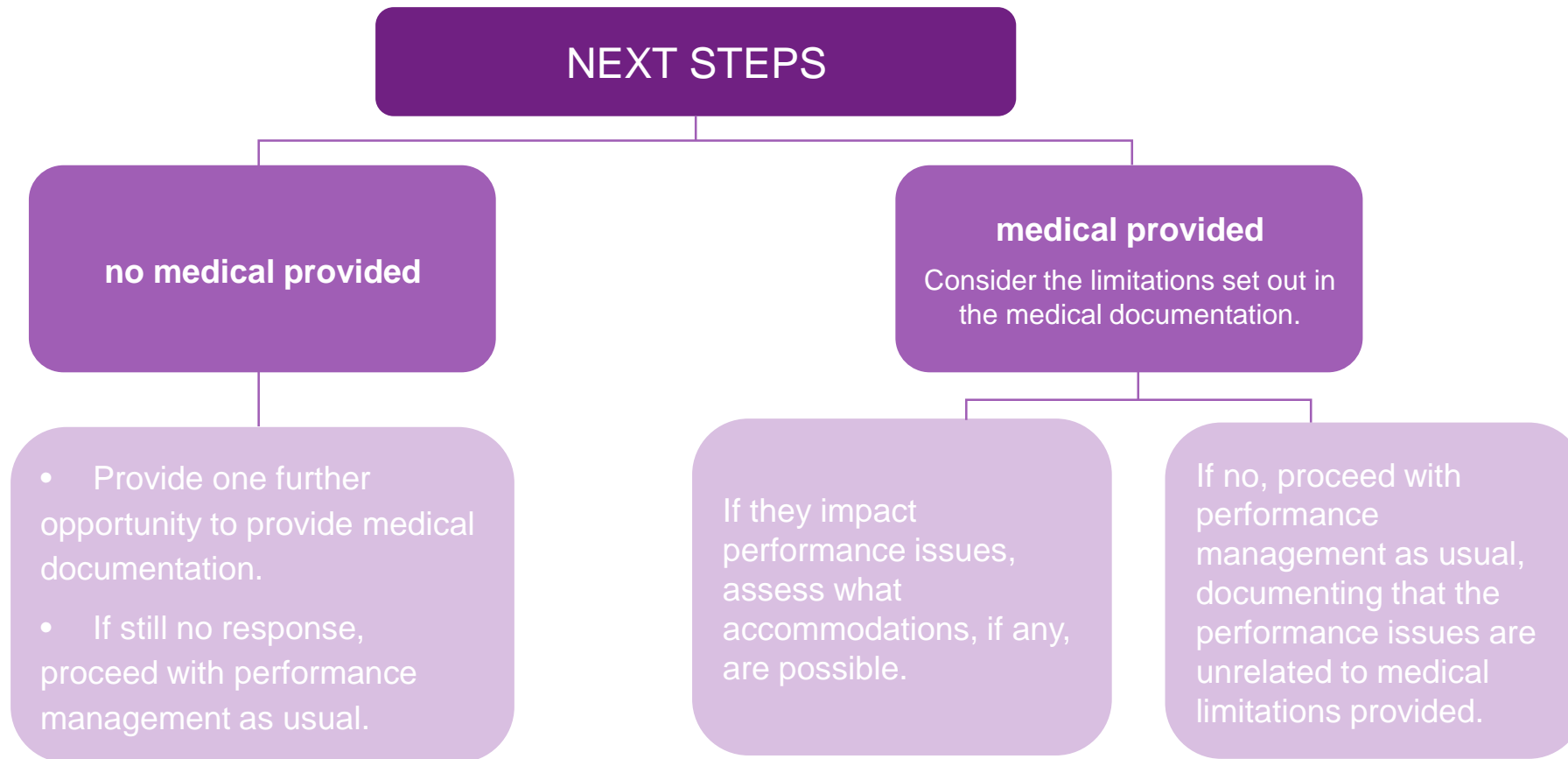
Confirm in writing that this is the first time the employee has raised health issues impacting their performance and that the company takes its duty to accommodate seriously.

Request the employee for medical documentation.

* questionnaire recommended

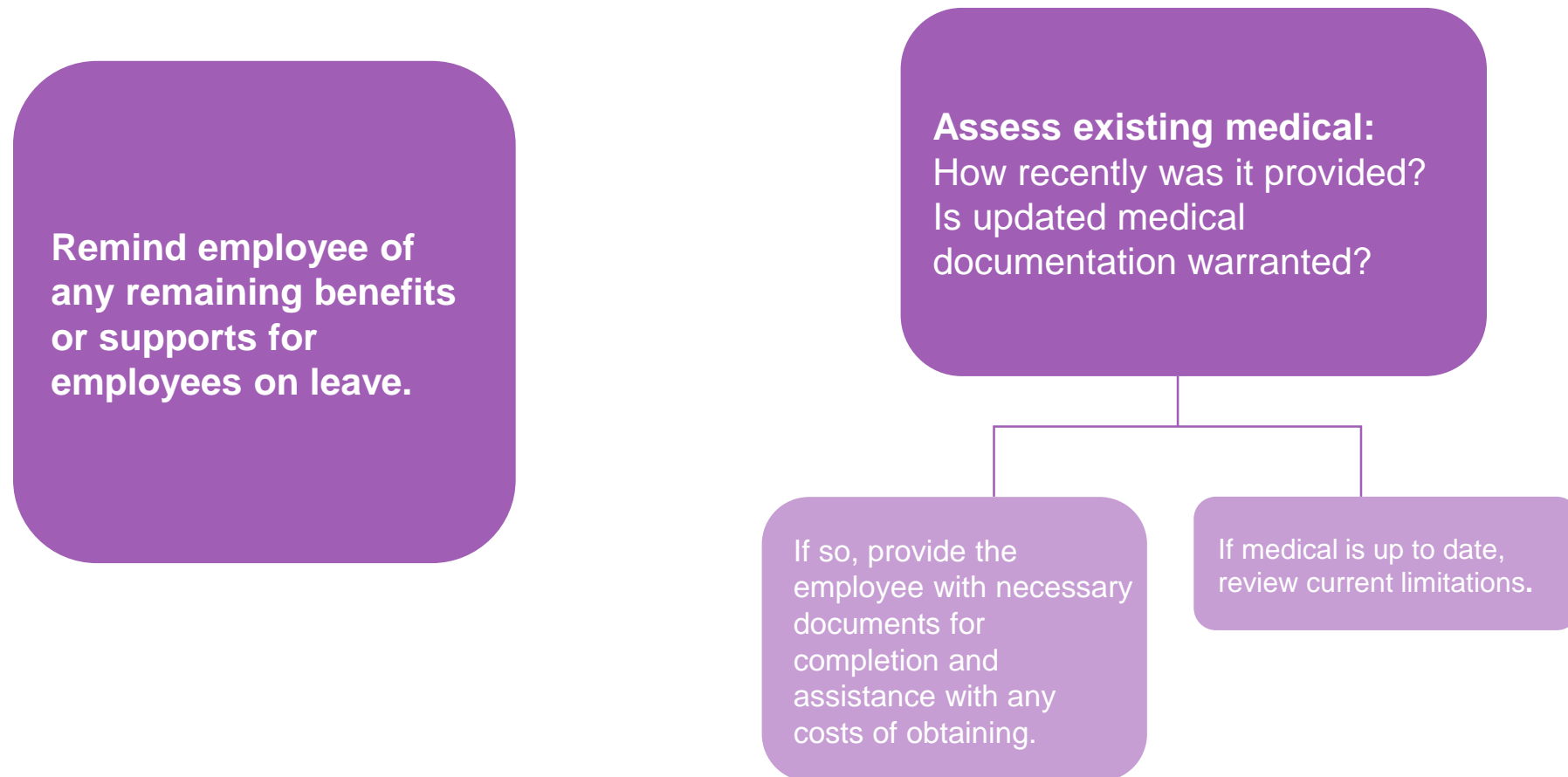
Provide a deadline for response.

How to address health issues that are raised for the first time during performance management?



! Document everything

How to deal with an employee who wishes to return to work for financial reasons when not medically fit to do so?



How to deal with an employee who wishes to return to work for financial reasons when not medically fit to do so?

If up to date medical documentation indicates the employee is not fit for work:

- The employee cannot safely return and should not be allowed to do so.
- Advise employee of EI sick benefits.
- Provide any requested assistance with accessing benefits forms.

How to deal with medical documentation provided by an employee that is incomplete or does not make sense?

Commonly encountered examples:

- Medical that contradicts recent medical from same practitioner.
- Medical that attempts to impose the form of accommodation instead of addressing the health limitations.
- Medical that does not respond to the questions asked.
- Medical that is illegible.

How to deal with medical documentation provided by an employee that is incomplete or does not make sense?

Next steps:

1. Determine what supports, if any, can be temporarily put in place based on the medical provided.
2. Follow up and request further information from the medical practitioner and provide a deadline for response.
3. Assess the updated response.

How to deal with accommodation requests based on invisible injuries?

What are invisible injuries?

- Physical, mental, or neurological condition that is not visible from the outside.
- Include traumatic brain injuries, mental health issues or pain symptoms.
- Despite being invisible, they can limit or challenge a person's movements, senses or activities.

How to deal with long term accommodations?

Short Answer: *The same way you deal with other medical accommodation requests.*

1. Get supporting medical documentation.
2. Assess supporting medical.
3. Determine what, if any, accommodations can be made up to the point of undue hardship.
4. Periodically seek updated medical information to confirm ongoing need for accommodation.

How to deal with long term disabilities & accommodations?

A.K.A. How long does the duty to accommodate last?

Short Answer: As long as the employee remains employed, there is a duty to accommodate them up to the point of undue hardship.

Relevant considerations:

- Is the employee capable of doing any work?
- If the employee has been completely unable to do any work, how long have they been on leave? (Does frustration of contract apply?)

Best practices for dealing with long term medical leaves.

Complex Medical Accommodation

Bilon v. Niagara Catholic District School Board, 2024 HRTO 174

- The applicant has cold urticaria, a condition that causes an allergy-like reaction in response to cold weather.
- In September 2015, she was assigned to a school where her assistance was required for outdoor duty.
- The applicant explained that she could not be outside in cold weather and requested indoor duties from October to May.
- The respondent asked for more information. Twice the applicant provided additional details from her physician.
- The respondent proposed a modified work plan based on temperature considerations as outlined by the applicant's physician.
- The applicant believed that she should be accommodated to work strictly indoors throughout the cold season.

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[21] Lastly, as part of the collaborative process, I find it is worth noting that the applicant's disability is unusual, and the respondents were unfamiliar with it. As such, their repeated requests for clarification, in my view, were reasonable and understandable.

Key takeaways

Bilon v. Niagara Catholic District School Board, 2024 HRTO 174

1. Ask questions

2. Be creative and adaptable

3. Take a collaborative approach

Accommodation by association

Khanom v. Idealogic PDS Inc., 2024 ONSC 5131

- The Plaintiff requested to work from home during COVID lockdowns.
- Her job duties were primarily computer-based.
- She wished to work at home to protect the health of her husband, who had health issues and was particularly vulnerable to health risks from COVID.
- Her manager refused her request and terminated her.
- The Plaintiff argued that the Defendant breached its obligations under the *Human Rights Code*.
- The Plaintiff relied on s. 12 of the Code, which states that a right is infringed where there is discrimination “because of relationship, association or dealings with” a person identified by a prohibited ground of discrimination.

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[9]...The Defendant knew that her wish to work from home was due to her husband's disability. I therefore find that she was terminated due to her relationship with a disabled individual. This is the very harm that s. 12 is intended to protect against.

Key takeaways

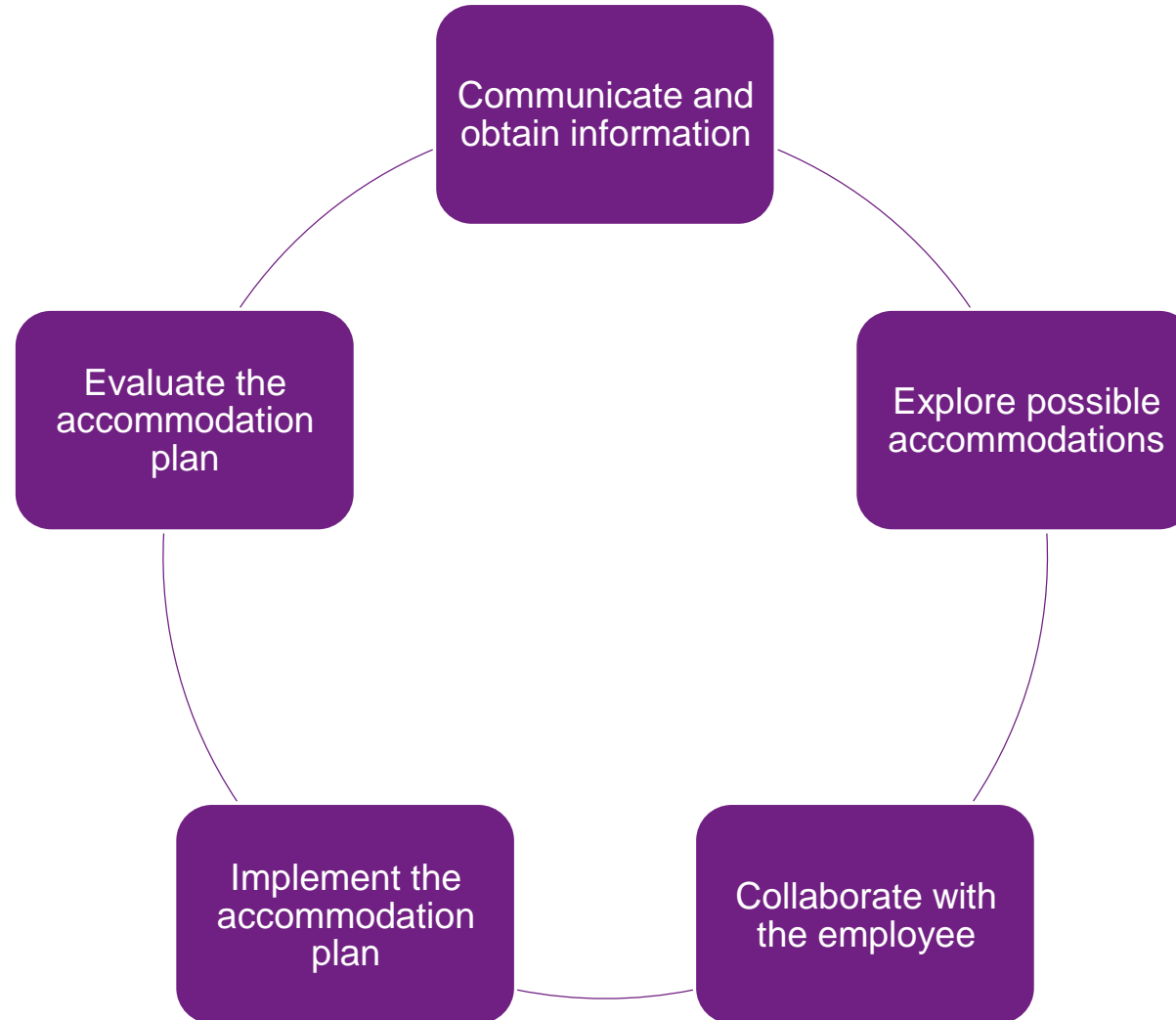
Khanom v. Idealogic PDS Inc., 2024 ONSC 5131

1. Duty to accommodate can be engaged by association

2. Explore possible accommodations in good faith

Complex accommodations

Best practices



Complex accommodations

Common pitfalls / Things to avoid

Uniform accommodation approach

- The accommodation process should be individualized
- Consider the employee's particular circumstances and do not presume

Excessive rigidity

- Consider changes to the workplace or the employee's working conditions, without undue hardship

Unilaterally imposed accommodation plan

- Collaborate with the employee to determine a reasonable accommodation plan