

**D.C. GOVERNMENT**

**MANUAL FOR ACCOMMODATING EMPLOYEES**

**WITH DISABILITIES**

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**Introduction**

**The Office of Disability Rights**

The DC Office of Disability Rights is available to assist agencies and employees with disabilities with reasonable accommodations and other disability issues.

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**Purpose of the Manual**

The purpose of this Manual is to provide guidance on how to reasonably accommodate District employees and applicants for positions within the District government. This Manual outlines a uniform approach to providing reasonable accommodations consistent with federal and District laws. The Manual explains the obligations of both the District agencies and individuals with disabilities, and it answers some of the questions about reasonable accommodations facing District agencies.

**Overview**

**Legal Requirements**

The District of Columbia Government (the District) is required by federal and District laws to provide equal employment opportunity to qualified individuals with disabilities. The Americans with Disabilities Act of 1990 (ADA) and the D.C. Human Rights Act of 1977, as amended, seek to eliminate discrimination against individuals with disabilities to ensure that our workforce is as diverse as our society. The District has a legal obligation to provide reasonable accommodations as required to facilitate the employment of qualified employees and applicants with disabilities. Beyond its legal obligations, the District is committed to providing accommodations that will allow its employees with disabilities to contribute at the highest levels.

## **Purpose of Reasonable Accommodation**

The purpose of reasonable accommodation is to provide employment opportunities for persons with disabilities who otherwise would not be able to perform the essential functions of their job, and to allow employees with disabilities to perform or be more productive.

Reasonable accommodations may include, but are not limited to:

- Making existing facilities accessible;
- Job restructuring;
- Change of work schedules or place of work;
- Extended leave;
- Telecommuting;
- Reassignment to a vacant position;
- Acquisition or modification of equipment or devices, including computer software and hardware;
- Appropriate adjustments or modifications of examinations, training materials or policies; and
- Provision of qualified readers and/or sign language interpreters and other similar accommodations.

Reasonable accommodations must be provided in a timely manner. The process of considering requests for accommodations and providing reasonable accommodations must always include an “interactive process” of mutual communication and consultation between the qualified individual with a disability and the District agency providing the accommodation. Accommodation decisions should be based primarily on whether they will help the applicant or employee be a successful and productive member of the District’s workforce.

Most accommodations cost little or nothing. The District is not required to provide an accommodation if it would cause an undue financial or administrative hardship in light of the overall financial and administrative resources available.

In addition, the District is not required to provide an accommodation if doing so would pose a direct threat to health or safety.

## **Definitions**

### **Who is a Person with a Disability?**

- A person with a disability is
  - An individual with a physical or mental impairment that substantially limits one or more of the person’s major life activities;
  - An individual with a record of such an impairment; or
  - An individual who is perceived to have such an impairment”.

- A person is “substantially limited” in performing a major life activity if s/he is materially restricted in a major life activity.
- Examples of “major life activities” include walking, lifting, seeing, performing manual tasks, sitting, breathing, speaking, hearing, learning, reading, personal care/grooming, and other activities.
- A “qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment functions of the position, and who, with or without reasonable accommodation, can perform the essential functions of the position.

An individual with an injury covered under workers' compensation may be protected by the ADA, but is not automatically protected. To be protected by the ADA, the employee must meet the ADA's definition of disability. The ADA does not require an employer to provide a reasonable accommodation for an employee with an occupational injury who does not have a disability as defined by the ADA.

### **What is a Reasonable Accommodation?**

A reasonable accommodation can be described as any change or adjustment to the job, the work environment or the way work is customarily done which permits a qualified applicant or employee with a disability to perform the essential functions of a job or to enjoy the equal benefits and privileges of employment as are available to a similarly situated employee without a disability.

Reasonable accommodation may occur in three phases of employment:

- *In the application process.* Reasonable accommodation must be provided in the job application process to provide a qualified applicant with a disability with an equal opportunity to be considered for the position;
- *In the performance of the essential functions of a job.* Reasonable accommodation must be provided to enable a qualified person with a disability to perform the essential functions of the job. This may include changes or adjustments to the work environment, to the manner or circumstances in which the position is customarily performed, or to employment policies;
- *In the receipt of all benefits of employment.* Reasonable accommodations must be provided to enable an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities. This would include equal access to lunchrooms, meetings, employer-sponsored services, employee benefits, social events, etc.

In determining whether a requested accommodation is reasonable, agencies should consider several factors, including:

- The nature and cost of the change;
- The number of people who could benefit from the change (including members of the public); and
- Additional benefits or detriments that would result from the change.

### What are the “Essential Functions” of a Position?

- **Essential functions** are those that are fundamental and central to the purpose of the position. An agency must provide reasonable accommodations to an employee with a disability to allow the employee to accomplish the essential functions of the job, but an agency is not required to exempt an employee with a disability from performing the essential functions of the job.

A function may be essential because:

- The position exists to perform that function
- There are a limited number of employees available who could perform that function
- The function is highly specialized

It is important to determine whether something is really an essential function or whether it is simply a way of *performing* an essential function. An essential function is what the completed task is, not *how* that task is completed. As such, results oriented language should be used as much as possible; an essential function may be for an employee to *relocate* (as opposed to *lift*) 50 lb. boxes.

Factors in determining whether a task is an essential function include:

- The employer’s judgment;
  - Position description written before the job was advertised and filled;
  - Amount of time the employee spends performing the function;
  - Functions performed by others in the same or similar job classifications;
  - Work performed by current and past incumbents;
  - Consequences if this position did not perform the function; and
  - Number of available employees who could perform the function.
- **Marginal functions** are useful responsibilities, but are not central to the purpose of the position. These functions can be reassigned without destroying the basic purpose of the position.

## **When Can the District Deny an Accommodation?**

### **Undue Hardship**

The agency may decline to provide an accommodation because such accommodation is unduly

- Expensive;
- Extensive;
- Substantial;
- Disruptive; or
- Would fundamentally alter the nature or operations of the agency

Whether an accommodation causes an undue hardship must be determined in light of all available financial and administrative resources.

### **Direct Threat**

An agency may decline to provide an accommodation because the accommodation would pose a direct threat to health or safety. In order to be a direct threat, there must be a significant risk of substantial harm. The determination of a direct threat must be based on an individualized assessment of the applicant or employee with a disability, must rely on current medical knowledge, and must not be based on generalized assumptions or stereotypes.

## **Reasonable Accommodation Process**

### **Request Process (Employee Requests an Accommodation)**

Employees or applicants with disabilities may request reasonable accommodations of the employer, regardless of title, salary, grade, bargaining unit, employment status (permanent, temporary, provisional, emergency) or civil service status (regular, exempt). This request does not have to be in writing, be formal or use any special language. An individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."

Here are some examples from the Job Accommodation Network:

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for a reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

A request for accommodation also may be made by a family member, health professional, or other representative who is acting on the individual's behalf with the individual's consent.

The employee usually initiates the reasonable accommodation process by inquiring about the process from a supervisor, Human Resources representative, EEO Counselor, or the ADA Coordinator at the agency. If the supervisor is contacted first, the ADA Coordinator should be brought in early in the process.

If an employee with a known or obvious disability is having performance problems, a supervisor may suggest an accommodation, but only after making a preliminary determination that the performance problem is related to the employee's disability. This is an exception to the general rule against inquiring about disabilities, and extends *only* to those with known or obvious disabilities.

The reasonable accommodation does not have to be requested at the beginning of employment. However, a reasonable accommodation request will not cancel out any prior disciplinary actions.

## **Interactive Process**

The ADA requires that the employer engage in an interactive dialogue with the individual with a disability concerning reasonable accommodations. It is best to take a methodical approach in addressing requests for reasonable accommodation from employees.

Immediately upon receiving the reasonable accommodation request, the agency ADA Coordinator/EEO Counselor should schedule a meeting with the employee as soon as possible. The employee's collective bargaining agent or other person(s) of his/her choosing may assist the employee during this meeting.

The agency's ADA Coordinator should conduct an informal, interactive discussion with the employee. The discussion should include the following steps:

- 1) A review of the agency's detailed, written job description/vacancy announcement delineating the "essential functions" of the position from the "marginal functions."



- 2) A determination of how the employee's impairment/disability limits his/her ability to perform the essential functions of his/her job in order to identify the employee as a qualified individual with a disability.
- 3) An identification of potential accommodations and assessment of the effectiveness of such accommodations on the employee's job performance.
- 4) Identification of the type of accommodation needed. The Job Accommodation Network can be contacted for assistance in making this assessment at 1-800-232-9675 (Voice/TTY) or <http://janweb.icdi.wvu.edu/>.
- 5) Consideration of the preference of the employee; however, the agency has the right to select among the alternatives available, as long as they are effective.
- 6) Selection and implementation of the effective reasonable accommodation by the agency as expeditiously as possible. Keep the dialogue open with the employee and discuss time lines for obtaining the accommodation and follow up with the employee on unexpected delays.

The agency may find it difficult to accommodate the disability because it is not well understood or because neither the employee nor the ADA Coordinator know what equipment, modification or accommodation will enable the employee to perform the essential functions of the job. The agency ADA Coordinator should consult the Office of Disability Rights (ODR) for additional reference material and service organizations that may help in identifying appropriate accommodations.

### **Medical Documentation and Confidentiality**

If the disability is not obvious, and there is no other medical information already on record for the employee, the agency can require the employee to submit documentation from a physician or other medical professional concerning the existence and extent of the disability. Before consulting with the physician, it is necessary to obtain the individual's written consent for the release of medical information to the agency.

The employee's medical information must be maintained in a confidential file separate from the employee's personnel file or other records and must not be revealed to anyone who does not need to know in order to provide the accommodation. In some instances, the employee's supervisor does not need to know about the person's disability or accommodations. In those situations, the information should not be shared with the supervisor.

Information about the employee's disability or accommodations should not be revealed to co-workers, customers, or members of the public.

## **ADA Determination**

After the initial meeting and review of medical documentation (if submitted by the employee's healthcare professional), the agency will make a determination whether the employee is a qualified individual with a disability and develop a Reasonable Accommodation Plan for the employee.

## **Reasonable Accommodation Plan**

The Reasonable Accommodation Plan will:

- (i) State whether the employee is a "qualified individual with a disability" as defined by the ADA;
- (ii) Outline the employee's essential job functions needing accommodation;
- (iii) Recommend types of accommodation; consideration will be given to the preference of the employee, however, the agency has the right to select among the alternatives available; and
- (iv) Determine whether any accommodation causes an undue hardship or poses a direct threat.

## **Types of Reasonable Accommodation**

- A "no-tech" accommodation costs little or no money...just time, support and creativity (e.g., additional preparation time for an individual, or a color-coded filing system).
- A "low-tech" accommodation is any accommodation that is technologically simple or unsophisticated, and readily available in most offices (e.g., replacing a door knob with an accessible door handle, providing a magnifier).
- A "high-tech" accommodation is any accommodation that uses advanced or sophisticated devices (e.g., screen reading software with synthesized speech).

## **Examples of Possible Accommodations**

### **Job Restructuring**

Job restructuring as a form of reasonable accommodation may involve reallocating or redistributing the marginal functions of a job. Job restructuring frequently is accomplished by exchanging marginal functions of a job that cannot be performed by a person with a disability for marginal job functions performed by one or more other employees. An employee must be able to perform the essential functions of the job, but where it is possible to remove certain non-essential tasks from an employee's work requirements, this should be done.

Example: An agency has two data processing clerks. Typing on the computer is an essential function, using the phone is a marginal one. If a qualified data processing clerk had a speech impairment, it would be reasonable to assign the function of using the phone to the employee without a speech impairment in exchange for doing that employee's filing.

The agency is not required to reallocate essential job functions.

It may be a reasonable accommodation to change when or how the essential functions are done. These include:

- Reassign work at the existing site among coworkers.

Example: If a secretary had a vision impairment that prevented the secretary from typing in small spaces on forms, whenever such forms needed to be prepared, they might be assigned to another secretary without a vision impairment. In exchange, the secretary with a disability could assume one of the colleague's duties, such as filing.

- Eliminate non-essential tasks.

Example: If a part of the job is not necessary, it could be eliminated entirely. A mail clerk, rather than travelling to the post office in the early morning, might be allowed to wait for regular mail delivery.

- Reassign visits to accessible sites.

Example: A repairperson who uses a wheelchair could service the accessible sites, while the other sites could be assigned to someone who does not have a mobility impairment.

- Allow work in other than the traditional office setting.

Example: A surveyor can make calls on a designated line from home instead of having to come regularly to an inaccessible office to make those calls.

## **Modified Work Schedules and Flexible Leave Policies**

Changing a regular work schedule or establishing a flexible leave policy may be a reasonable accommodation unless it would cause an undue hardship. Modified work schedules may include flexibility in work hours or the work week, or part-time work.

People whose disabilities may need modified work schedules include individuals:

- Who require special medical treatment for their disability (such as people with cancer, HIV/AIDS, or mental illness);
- Who need rest periods (including some people who have multiple sclerosis, cancer, diabetes, respiratory conditions, or mental illness); and
- Whose disabilities (such as diabetes) are affected by eating or sleeping schedules,

Flexible leave policies should be considered as a reasonable accommodation when people with disabilities require time off from work because of their disabilities. The agency is generally not required to provide additional paid leave as an accommodation, but should consider allowing use of accrued leave or leave without pay, where this will not cause an undue hardship.

People with disabilities may require flexible leave because of:

- Medical treatment related to the disability;
- Repair of a prosthesis or equipment;
- Temporary adverse conditions in the work environment (an air-conditioning breakdown causing temperature above 85 degrees could seriously harm the condition of a person with multiple sclerosis); or
- Training in the use of an assistive device or a guide dog. (If an assistive device is used at work and provided as a reasonable accommodation, and if other employees receive training during work hours, then the disabled employee should receive training on this device during work hours, without the need to take leave.)

Some qualified people with disabilities are unable to work a standard 9:00 a.m. to 5:00 p.m. workday, or a standard Monday to Friday work week. Depending on the nature of the work assignment and operational requirements, changes to work schedules and hours may be a reasonable accommodation as long as it does not result in an undue hardship.

Example: An employee who needs kidney dialysis treatment is unable to work on two days because treatment is only available during work hours on weekdays. Depending on the nature of the work and nature of the work operation, it may be possible to perform work assignments at home on the weekend or to work three days a week as a part-time employee.

## **Modification or Purchase of Equipment and Devices**

Purchase of equipment or changes to existing equipment may be effective accommodations for people with many types of disabilities. There are many devices that make it possible for people to overcome existing barriers to performing functions of a job. These devices range from very simple solutions, such as an elastic band that can enable a person with cerebral palsy to hold a pencil and write, to “high-tech” electronic equipment that can be operated by head or mouth movements by people who cannot use their hands.

Types of equipment and devices that may be appropriate include:

- Teletypewriters (TTYs), telecommunications devices for the deaf (TDDs), text telephones (TTs), or video phones to enable people with hearing and/or speech impairments to communicate over the telephone;
- Telephone amplifiers for people with hearing impairments;
- Special software for standard computers and other equipment to enlarge print or convert documents to spoken words for people with vision and/or reading disabilities;
- Tactile markings on equipment in Braille or raised print for people with visual impairments;
- Telephone headsets, speaker phones, and adaptive light switches for people with manual disabilities;
- Talking calculators for people with visual or reading disabilities;
- Raised or adjustable-height desks for employees who uses wheelchairs;
- Modified equipment controls for hand and foot operation for a person with limited hand or foot control;
- Keyboard armrest and finger guides mounted on keyboards to keep persons with motor control impairments from striking keys in error;
- Clipboards for employees with manual impairments; and
- Refreshable Braille displays or Braille printers for blind employees.

The agency is only obligated to provide equipment that is needed to perform a job; there is no obligation to provide equipment that the individual uses regularly in daily life, such as glasses, a hearing aid or a wheelchair. The agency may be obligated to provide items of this nature if special adaptations are required to perform a job.

Example: An employee with a mobility impairment owns and uses a manual wheelchair. However, if the employee’s job requires movement between buildings that are widely separated and the employee’s mobility impairment prevents operation of a wheelchair manually for that distance, or if heavy, deep-pile carpeting prevents operation of a manual wheelchair, then it may be a reasonable accommodation to provide an employee with a motorized wheelchair at work.

## **Training**

Reasonable accommodation should be provided, when needed, to give employees with disabilities equal opportunity to benefit from training to perform their jobs effectively and to advance in employment. Needed accommodations may include providing:

- Accessible training sites;
- Training materials in alternate formats (e.g., large print, Braille, audiotape, or electronic format) to accommodate a disability; and
- Sign language interpreters or captioning.

### **Modification of Policies**

Policy modifications may include:

- Change of a workplace policy that prohibits something an employee with a disability needs to do their job (e.g., allowing a person with a disability to be accompanied by a service animal, allowing food at the workstation of a person with diabetes, allowing personal items at the desk of a person with a psychiatric disability);
- Development of an emergency evacuation procedure to provide effective egress for employees with difficulty in mobility in case of emergency; or
- Provision of accessible parking for an employee with a qualified parking permit designated for persons with disabilities.

### **Modification of Physical Site (building and facility)**

Employment activities must take place in an integrated setting. Employees with disabilities may not be segregated into particular facilities or parts of facilities. This means that architectural barriers may have to be removed or altered to provide structural accessibility to the workplace. However, the agency is not required to make structural changes that are unreasonable and would impose an undue hardship.

In existing structures, structural changes are necessary to the extent that they will allow an employee with a disability to perform the essential functions of the job, including access to work stations, and normal support facilities such as bathrooms, water fountains, and lunchrooms.

Non-structural changes are allowed instead of structural changes if they achieve the same result.

Example: A training is provided in a location without an accessible restroom. Rather than modify the restroom, the training can be moved to an accessible location.

Example: A water fountain is too high for a person in a wheelchair. Rather than lower the drinking fountain, cup dispensers may be installed.

## **Provision of Readers, Communication Access Providers, or Personal Assistants**

Individuals with communication disabilities (e.g., vision, hearing, and speech disabilities) should be able to communicate effectively with others as needed for their job duties and should have access to information needed for the job. Identifying the needs of the employee in relation to specific job tasks will determine whether or when an interpreter, reader, or other communication access provider may be needed.

It may be a reasonable accommodation to provide a reader for a qualified individual with a vision disability, if this would not impose an undue hardship. In some job situations a reader may be the most effective and efficient accommodation, but in other situations equipment may enable an individual with a vision disability to perform job tasks more accurately.

Example: A social worker who is blind requests a reader for paperwork, interviews, and report generation. A reader could be provided for several hours a day. If reading materials consist of complex or technical material, then the reader's vocabulary and reading level should be commensurate with the documents to be read.

Communication access providers (e.g., sign language interpreter or real time captioner) as needed may be a reasonable accommodation for a person who is deaf, if this does not impose an undue hardship.

Example: A deaf person applies for a job as a Clerk-Typist. It may be necessary to obtain a qualified interpreter for a job interview, because the applicant and interviewer must communicate fully and effectively to evaluate whether the applicant is qualified to do the job. Once hired, however, if the employee is doing clerical work, computer applications, or other job tasks that do not require much verbal communication, an interpreter may only be needed occasionally. Interpretation may be necessary for training situations, staff meetings or employee parties, so that this person can fully participate in these functions. Communication on the job may be handled through different means, depending on the situation, such as written notes, "signing" by other employees who have received basic sign language training, or by typing on a computer.

Providing an assistant as needed may be a reasonable accommodation for a person with a disability, if this does not impose an undue hardship.

Example: An assistant may be needed to retrieve items on shelves, file, or selectively assist a person with quadriplegia with other clerical duties.

Example: An assistant may be needed to guide a blind person who must travel as part of the job.

## **Reassignment to a Vacant Position and Light Duty**

If an employee develops his/her disability after being on the job, and can no longer perform the essential functions of his/her job, the employer may need to reassign the employee to a vacant position within the agency or within District government, if doing so does not constitute an undue hardship. The new position should be one that the employee is qualified to perform and that pays a comparable salary. Reassignment does not require the employee to compete for the new position.

Reassignment does not require the employer to violate a seniority system or collective bargaining agreement under which someone else is entitled to the vacant position. Reassignment should be considered **ONLY** if there are no reasonable accommodations available that would allow the employee to perform the essential functions of his/her current job.

Reassigning an employee with a disability to a light duty job might be required as a reasonable accommodation, depending on how an employer's light duty program is designed. If an employer reserves certain jobs for light duty, rather than creating light duty jobs as needed, the employer must reassign the employee to a vacant, reserved light duty position as a reasonable accommodation if (1) the employee cannot perform his/her current position because of his/her disability, with or without a reasonable accommodation; (2) the employee can perform the light duty job, with or without a reasonable accommodation; and (3) the reassignment would not impose an undue hardship. This is because reassignment to a vacant position and appropriate changes to an employer's policy are forms of reasonable accommodation required by the ADA, absent undue hardship. There is, however, no requirement to create a light duty position or any other position under the ADA.

## **Other Accommodations**

There are many other accommodations that may be effective for people with different disabilities in different jobs. Some other accommodations that may be appropriate include:

Example: An employee makes sporadic site visits to a home for inspection. Mileage is paid as part of the job. Instead, an employee who doesn't drive may be allowed to use paratransit or taxicabs instead of a personal car.

Example: A person with mental retardation is hired for a maintenance position. An employer may offer the use of a job coach for individualized on-the-job training services.



Example: A person with a learning disability may require assignments and instructions to be communicated by e-mail, rather than verbally.

Example: If a person's disability makes it difficult to come to the office, and the job can be done off-site, an accommodation may be to allow the person to work from home.

### **Timing and Review of Accommodations to Ensure Effectiveness**

Once an accommodation is approved, it should be implemented as soon as possible.

Within 4 - 6 weeks after the accommodations have been granted, the agency should assess the effectiveness of the accommodation(s) in enabling the employee to perform the essential functions of the job. If there is a need for additional accommodations, or changes to the existing accommodations, the agency should reevaluate the accommodations.

If the accommodations are not effective and there are no other methods of accommodation that can assist the employee in performing the essential functions of the job, then the accommodation of reassignment to a vacant position within the agency or within District government will be discussed.

### **Denying a Request for an Accommodation**

The agency may reject an employee's request for a reasonable accommodation for the following reasons:

1. The employee is not an individual with a qualifying disability.
  - a) A temporary impairment, such as a broken arm, is not significant enough to be considered a qualifying disability, taking into account its duration and the extent to which it actually limits a major life activity.
  - b) The employee is unable to provide requested documentation from a medical professional that demonstrates that he/she has a qualifying disability.
2. The employee is able without an accommodation to:
  - a) Perform the essential functions of the job or
  - b) Participate in and/or benefit from the service or activity in an equally effective manner as employees without disabilities
3. The requested accommodation will not enable the employee to perform the essential functions of the job.

4. The employee's request for a reasonable accommodation is primarily for non-disability reasons, rather than because of a disability.
5. The employee's request for a reasonable accommodation would impose an undue hardship on the operations of the agency and there is no alternative reasonable accommodation.
6. The employee's requested accommodation would pose a direct threat to health or safety.

When denying a requested accommodation, the agency must consider available alternative accommodations that would be reasonable and effective and would not constitute an undue hardship or direct threat.

An employee who believes s/he has been wrongly denied a reasonable accommodation may

- Request reconsideration by the agency;
- File a complaint with the agency EEO Counselor or ADA Coordinator;
- File a complaint with the DC Office of Disability Rights;
- File a complaint with the DC Office of Human Rights; or
- File a complaint with the federal Equal Employment Opportunity Commission