



HUMAN RESOURCES

Division: ADMINISTRATION
Chapter: HUMAN
RESOURCES
Policy: HR 5.1 - AMERICANS WITH
DISABILITIES (ADA) ACT
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PREFACE

The Americans with Disabilities Act (ADA), was signed into law on July 26, 1990 to be effective two (2) years from that date. The Americans with Disabilities Amendments Act of 2008 (ADAAA) amended portions of ADA and became effective January 1, 2009.

Policy

- A. In accordance with the ADA, it is the policy of the Department of Public Safety to:
1. Prohibit discrimination against employees and qualified applicants on the basis of a disability;
 2. Protect individuals from discrimination, coercion, intimidation, threats or interference when filing an ADA complaint or testifying about alleged ADA violations; and,
 3. Consider requests for and provide reasonable accommodation(s) to employees and qualified applicants consistent with the procedures delineated in this policy.

Definitions

- A. ADA - Americans with Disabilities Act of 1990 to include the Americans with Disabilities Amendments Act of 2008.
- B. Applicant - a person who applies for a position. This includes individuals:
1. Not employed by the Department of Public Safety or state government;
 2. Employed by state government, but not employed by the Department of Public Safety; and
 3. Employed by the Department of Public Safety, but applying for another position within the agency.
- C. Basic Training - any course(s) of instruction required by the Criminal Justice Education and Training Standards Commission for certification.
- D. Direct Threat - a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation.
- E. Disability - the term "disability" means, with respect to an individual-

1. A physical or mental impairment that substantially limits one or more major life activities of such individual;
 2. A record of such an impairment; or
 3. Being regarded as having such an impairment.
- F. Employee - a person employed with the Department of Public Safety. For purposes of this policy, this does not include individuals employed by the Department of Public Safety applying for another position within the agency as these individuals would be considered applicants.
- G. Essential Job Functions - duties critical to the position in question; the position exists for the purpose of performing these duties; there are a limited number of employees among whom that function can be distributed; or the function is highly specialized and the incumbent was hired to perform that function.
- H. In-service Training - any course(s) of instruction required by the Department or Division.
- I. Major Life Activities – include but are not limited to functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- J. Marginal Job Functions - those duties that are not critical to the position; the position would exist without these duties.
- K. Mental Impairment - any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- L. Physical Impairment - any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (*including speech organs*), cardiovascular, reproductive, digestive, genitourinary, immune, hemic and lymphatic, skin, and endocrine or the operation of a major bodily function.
- M. Qualified Individual with a Disability - an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job.

NOTE: Generally only long-term conditions are covered by the ADA.

Example: An individual may break an arm; this is a short-term condition. However, should the bone not heal properly, a long-term condition may develop.

- N. Reasonable Accommodation - any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions.
- O. Substantially Limits - shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
- P. Temporary Job Assignment Modification – a modification of essential job functions on a temporary basis. Temporary modifications are considered for medical conditions with an expected duration of less than six months.
- Q. Undue Hardship - an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation in relation to the size, financial resources and nature of the employer's business.

General Provisions

Title I of the ADA prohibits discrimination in all employment practices including:

application procedures	training	compensation
hiring	promotion	other terms, conditions and
evaluation	dismissal	privileges of employment
disciplinary action	medical examinations	

Reasonable Accommodation

Reasonable accommodation, as defined previously in this policy, is any modification or adjustment to a job or the work environment that will enable an employee with a disability to perform essential job functions.

The ADA requires reasonable accommodation to:

- A. Ensure equal opportunity;
- B. Enable a qualified individual with a disability to perform the essential functions of a job; and
- C. Enable an employee with a disability to enjoy equal benefits and privileges of employment.

The obligation to provide a reasonable accommodation applies to all aspects of employment, is ongoing, and may arise any time that an individual's disability or job changes.

An accommodation may be made for a current employee who, due to a physical or mental condition, has become unable to perform the essential job functions of his/her current position. In considering an individual's disability and an accommodation, the manager must ensure that the accommodation would not pose an undue hardship to the agency.

Procedures

A. Requests for Reasonable Accommodation(s) - Employee

Requests for reasonable accommodation(s) shall be initiated in writing by the employee and submitted through the appropriate chain-of-command to the ADA Compliance Officer for final approval. However, managers or supervisors may inquire of an employee whether a reasonable accommodation is needed when it becomes apparent due to job performance or other means that the individual is unable to perform the essential job functions without an accommodation. If the individual indicates that he/she does need a reasonable accommodation to perform the essential job functions, the manager or supervisor shall then advise the individual of the procedures for requesting a reasonable accommodation.

All requests shall be initiated using the Request for Reasonable Accommodation form and shall provide the following information:

1. Employee/Applicant Name and Personnel Number;
2. Work Location;
3. Home Address;
4. Position Classification and Staff ID;
5. Duration;
6. Nature of the medical condition, including any specific limitation(s);
7. Description of requested accommodation(s);
8. Signature and Date.

B. Requests for Reasonable Accommodation(s) – Basic Training

All requests related to mandatory Criminal Justice Education and Training Standards Commission Basic Training requirements shall be initiated using Request for Reasonable Accommodation – Basic Training form. This form shall be forwarded directly to the Director of the Office of Staff Development and Training for consideration.

C. Review of Requests for Accommodation(s) and Determination of Coverage under ADA

Upon receipt, the manager shall acknowledge in writing receipt of the request for accommodation and shall advise the individual that additional information may be necessary and that the request shall be submitted through the chain-of-command to the

ADA Compliance Officer for a final review and decision. It is recommended that the manager advise the individual of the status of his/her request for accommodation periodically.

During the interim period between the initial request, a final decision, and implementation of an accommodation, if approved, an employee may be granted a temporary job assignment modification if one is available, may use available leave credits, or leave without pay.

In determining if the individual possesses a disability as recognized under ADA, additional medical information may be necessary. Generally, medical information shall be requested from the physician who is treating the individual's condition.

In such a situation, the medical specialist shall be provided a letter (ADA letter #1) and a list of the essential job functions of the position in question. The letter shall advise the specialist specifically what information is needed by the manager or supervisor in order to make a determination regarding the individual's ability to perform the essential job functions.

D. Consideration of Requests for Accommodation(s)

The following requirements shall be satisfied before there is an obligation to make a reasonable accommodation:

1. The individual requesting the accommodation must be otherwise qualified, i.e., meet the minimum education and experience requirements as stated in the job specification;
2. The medical condition must satisfy the definition of a disability as recognized by the ADA, and must be known to the agency;
3. The reasonable accommodation must not impose an undue hardship on the operation of the agency;
4. The employment of the individual with the reasonable accommodation must not pose a significant risk of substantial harm to him/herself or others.
5. Once it has been determined that the individual possesses a disability as recognized under ADA, the ADA Coordinator shall consider the individual's request for reasonable accommodation. This consideration may include:
 - a) Additional consultation with the individual requesting an accommodation;
 - b) Conducting research to determine the cost of the accommodation, availability of other positions for a current employee, or alternate accommodations.

Examples of reasonable accommodations include, but are not limited to:

- a) Making existing facilities used by employees readily accessible to and usable by an individual with a disability;

- b) Restructuring a job, i.e., reassigning marginal functions to another position. After reassignment of marginal functions, however, the position must maintain the original classification level;
- c) Modifying work schedules;
- d) Acquiring or modifying equipment;
- e) Appropriately modifying examinations, training or other programs;
- f) Permitting use of accrued paid leave or unpaid leave for necessary treatment;
- g) Allowing an employee to provide equipment or devices that an employer is not required to provide.

Reasonable accommodation may also include, for a current employee, reassignment to a vacant position for which he/she is qualified if the person becomes disabled and is unable to perform the essential job functions of the original position. The position does not necessarily have to be at the same level and there is no requirement to lower quality or quantity standards in order to make an accommodation. Additionally, the agency is not obligated to provide personal use items such as glasses or hearing aids, unless those items are specifically designed or required to meet job related needs.

Undue Hardship

An employer cannot simply assert that a needed accommodation will cause it undue hardship and be relieved of the duty to provide accommodation. Rather, an employer will have to present evidence and demonstrate that the accommodation will, in fact, cause it undue hardship. Whether a particular accommodation will impose an undue hardship for a particular employer is determined on a case by case basis by the ADA Compliance Officer. The factors to be considered include:

- A. The nature and cost of the accommodation in relation to the size, financial resources, number of employees, nature and structure of the operation;
- B. Where the work location making an accommodation is part of a larger entity, i.e., the department, the department's structure and resources shall be considered, as well as the financial and administrative relationship of the facility to the department as a whole;
- C. The impact of the accommodation on the operation of the work location that is making the accommodation.

Direct Threat

The agency may require that an individual not pose a "direct threat" to the health or safety of him/herself or others. An individual cannot be denied an employment opportunity merely because of a slightly increased risk; there must be a "significant risk of substantial harm." An assessment of "direct threat" must be based on valid medical analyses and/or other objective information, not on speculation and shall be made by the management on a case-by-case basis. Furthermore, an assessment that a limitation constitutes a "direct threat"

must apply to all employees regardless of a disability. In determining whether an individual would pose a direct threat, the factors to be considered include:

- A. Duration of the risk;
- B. Nature and severity of the potential harm;
- C. Likelihood that the potential harm will occur; and
- D. Imminence of the potential harm

If it is determined that an individual would pose a direct threat because of a disability, the agency must then try to eliminate or reduce the risk to an acceptable level with reasonable accommodation.

If a proposed accommodation is rejected because it would pose an undue hardship on the agency or that the individual would pose a direct threat to the health and/or safety of him/herself or others, information such as a cost analysis, medical information, etc. will be necessary to justify the rejection.

In either case, the agency has the burden of proving that either the disability poses a direct threat to the health and/or safety of the individual or others and such risk cannot be reduced or eliminated by an accommodation or that the requested accommodation poses an undue hardship to the agency.

Notification of Final Decision

Employees shall be advised in writing of a final decision to the request for an accommodation within thirty (30) calendar days after all information necessary for review, *i.e., medical information, etc.*, has been received by the manager and forwarded to the ADA Compliance Officer. Upon the final decision of the ADA Compliance Officer, the individual shall be notified of the decision in writing and advised accordingly.

Responsibilities of the Divisions and Human Resources

Each of the major Divisions and Sections of the agency are responsible for reviewing requested accommodations and approving/disapproving requested accommodations consistent with ADA regulations and this policy.

Other Responsibilities of the Agency

Each Division shall designate a suitable number of coordinators to be responsible for compliance with the ADA policy and procedures. Any and all records associated with the request, consideration, approval/denial, and implementation of an accommodation are confidential and shall be maintained with the employee medical file in a manner so as not to breach this confidentiality.

Employment

A. Pre-Recruitment

Prior to recruiting for a vacant position, managers are responsible for periodically reviewing position descriptions to ensure that essential job functions have been identified and are clearly set forth. Position descriptions should be reviewed when a vacancy occurs or when a vacancy is anticipated (*i.e., a current employee will be retiring in sixty days, etc.*), but prior to recruitment for that vacant position, to ensure that the position description accurately reflects the job duties and responsibilities. This review will also ensure that the essential job functions are accurately reflected in the job opportunities report.

B. Recruitment

Refer to the Department Posting Policy for specific instructions related to advertising positions. It is recommended that as much detailed information as possible related to the essential job functions of the position being advertised be included in the job opportunities report. The report may also include a brief description of the work environment if the environment is unusual, but such a description is not required. For example, the position is assigned to the mental health section of a maximum security prison. Jobs requiring certification as a Criminal Justice Officer shall be so indicated in the posting.

Interviewing

During the interview process, the applicant shall be provided a list of the essential job functions for the position they seek. In addition, if the position for which they are applying requires certification by the Criminal Justice Education & Training Standards Commission, the applicant shall be provided the essential job functions required to complete Basic Training. They shall closely review the list and sign Applicant/Employee Verification Statement (Phase I) form, acknowledging that they have reviewed the list and have the ability to perform the essential job functions, with or without an accommodation. They do not have to indicate the need for an accommodation at this point in the process. This requirement that the applicant review the list of essential job functions for the position they seek and sign Applicant/Employee Verification Statement form applies whether the applicant is external to the agency or is a current employee seeking another position within the agency. Those responsible for interviewing applicants for employment shall not, under any circumstances, inquire about disabilities nor require applicants to undergo pre-employment medical examinations or drug tests until after a conditional offer of employment.

Selection

Individuals shall ultimately be selected based upon job-related criteria unrelated to the existence or potential for a disability. However, following the interviews and after the applicants have been ranked based upon training, experience, credentials, and interview results, but prior to extending a conditional offer of employment, the hiring manager may ask an applicant to demonstrate performance of a particular job function to ensure that the applicant has the ability to complete the task consistent with the requirements of the particular essential job function, *i.e., time frames, etc.* This request to demonstrate performance of a particular job function shall be made on a case-by-case basis and may be made regardless of whether the individual is external to the agency or is a current employee seeking another position within the agency. The hiring manager will consult with the ADA compliance officer before making the request.

During the employment process, following a conditional offer of employment, those individuals entering a position requiring certification by the Criminal Justice Education and Training Standards Commission shall be provided a copy of the essential job functions required to successfully complete "Basic" training and the essential functions for the position for which the conditional offer of employment was made and directed to declare if an accommodation is or is not required to perform the functions. After review of the essential job functions, the selected applicant will sign Applicant/Employee Verification Statement (Phase II) form. Additionally, those individuals entering a position requiring certification by the Criminal Justice Education and Training Standards Commission shall be required to undergo a physical examination prior to beginning work.