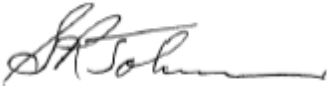




# State of Delaware Department of Human Resources

## AMERICANS WITH DISABILITIES ACT (ADA) POLICY

<b>Policy #:</b> To be assigned.	<b>Authority:</b> Americans with Disabilities Act Amendments Act of 2008 (ADA)
<b>Effective Date:</b> September 1, 2020	<b>Supersedes:</b> Reasonable Accommodation: Guidelines and Recommended Procedures (Oct. 26, 2018)
<b>Application:</b> Executive Branch Agencies	<b>Signature:</b> 

### 1. POLICY PURPOSE STATEMENT

The State is committed to providing reasonable accommodations to qualified employees with disabilities in order to assure that individuals with disabilities enjoy full access to equal employment opportunities. This policy provides for managing accommodations of those employees who are eligible under Title I of the Americans with Disabilities Act Amendments Act of 2008 (ADA).

### 2. SCOPE

This policy applies to eligible Executive Branch Agency employees upon meeting criteria outlined in this document.

### 3. DEFINITIONS AND ACRONYMS

- **Benefits and Privileges of Employment** – Examples of benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training; (2) services (e.g., employee assistance programs (EAPs), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation); and (3) parties or other social functions (e.g., parties celebrating retirements and birthdays, and company outings).
- **Disability** – A known physical or mental impairment that substantially limits one or more major life activities; a record of such impairment; or being regarded as having an impairment.
- **Duty to Reasonably Accommodate** – Upon request by a qualified individual with a disability or when a disability is known or obvious, Agencies must engage in the interactive dialogue process toward providing reasonable accommodations to qualified individuals with a disability so that the person may have equal employment opportunities and the benefits and privileges of employment. Agencies are not required to remove an essential job function as a form of reasonable accommodation.
- **Essential Functions** – The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things, the position exists specifically to perform that function, there are a limited number of other employees who could perform the

function if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

- **Interactive Process** – A flexible, ongoing gathering of information. This approach is used to evaluate a reasonable accommodation. It is a collaborative effort to discuss the request, as well as identify effective accommodation solutions. A robust interactive process demonstrates good faith and promotes a disability-inclusive workplace. Ongoing communication is key for optimum sharing of information regarding the accommodation.
- **Major Life Activity** – (1) General – a major life activity includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; (2) Major Bodily Functions – a major life activity also includes 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 function.
- **Qualified Individual with a Disability or Covered Disability** – An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds, and who, with or without reasonable accommodation, can perform the essential functions of the position.
- **Reasonable Accommodation** – Title I of the ADA provides for reasonable accommodations to qualified employees with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. Reasonable accommodations that apply to all persons with disabilities include, but are not limited to, the following:
  - Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job;
  - Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.
- **Undue Hardship** – Agencies do not have to provide a reasonable accommodation that would impose an undue hardship on the operation of the Agency. An undue hardship means that a specific accommodation would require significant difficulty or expense. This determination, which must be made on a case-by-case basis, considers factors such as the nature and cost of the accommodation needed, and the impact of the accommodation on the operations of the Agency not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.

#### 4. POLICY

- a. The ADA makes it unlawful to discriminate in employment against a qualified employee with a disability.

- b. The State Agency shall provide reasonable accommodations for the known physical or mental disabilities of qualified employees unless the State Agency can demonstrate that a particular accommodation:
  - would impose an undue hardship on the operation
  - pose a direct threat to health and safety<sup>1</sup>
- c. An employee must be capable of performing the **essential functions** of his/her job, **with or without** a reasonable accommodation.
- d. State Agencies shall use an interactive dialogue process when the need for a reasonable accommodation arises. The employee and the Agency representative must participate in a good faith, interactive dialogue.
- e. The State expressly prohibits any form of discipline, reprisal, intimidation, or retaliation against any individual for requesting a reasonable accommodation in good faith or for disclosing the existence of a disability.
- f. All personnel information regarding an employee's health and behavioral information is confidential consistent with the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#).

## 5. PROCEDURES ASSOCIATED WITH THIS POLICY

- a. Each Agency shall designate an individual to evaluate and authorize requests for reasonable accommodations. This individual will be known as the Agency's ADA Coordinator (Coordinator), and all Agencies shall ensure procedures are in place in the event the designated Coordinator is unavailable.
  - 1) The Coordinator will be responsible for ensuring the reasonable accommodation process proceeds to a timely, appropriate, and effective conclusion.
  - 2) The Coordinator may liaison with the Statewide ADA Coordinator (Statewide Coordinator) for guidance on complex employee accommodations.
  - 3) The Coordinator shall be trained regularly on the ADA and the reasonable accommodation process to include, but not be limited to, attending statewide training, attending meetings designated by the Statewide Coordinator, and attending recommended web-based training provided by regionally/nationally known ADA organizations.
  - 4) The Coordinator/HR Representative shall participate in orienting new supervisors and new employees to this policy and their State Agency ADA process.

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<sup>1</sup> This policy is designed for current employees. For additional phases in the employment process, ADA procedures and documentation may be found in relevant functional areas.

**b. Requesting a Reasonable Accommodation**

- 1) The employee must be capable of performing the essential functions of the job **with or without** a reasonable accommodation.
- 2) The reasonable accommodation process begins when an employee initiates a request verbally or in writing to a supervisor or manager in the employee's reporting line; the Agency's human resources (HR) office; or the Agency's Coordinator.
  - If the disability is apparent or known by the Agency, the Agency may initiate an interactive dialogue process.
  - A family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.
- 3) The request does not need to use special words, such as "reasonable accommodation" or mention the ADA. Agencies cannot require such requests be made at a certain time – the duty to provide a reasonable accommodation is ongoing.
- 4) The request does not mean that the employer is required to provide the requested accommodation; but both parties (employee and Agency) must participate in a good faith, interactive dialogue.
- 5) A reasonable accommodation is not necessarily the best or most expensive accommodation – it is one that is effective and will allow the employee to perform the essential functions of the job.

**c. Agency Acknowledgement and Information Gathering**

- 1) An interactive dialogue with the employee begins with the receipt of the verbal or written request for a reasonable accommodation.
- 2) The Coordinator, with input from the employee and supervisor (when appropriate), is responsible for completing the [ADA Reasonable Accommodation Request Form](#).
- 3) The Coordinator will confirm with the employee in writing the receipt of their verbal or written request as soon as possible, but no later than 10 business days from notification of the request.
- 4) If the disability is obvious and/or the employee has already provided the Agency with sufficient documentation of the disability, additional medical information may not be required.
- 5) If the disability is not obvious, limit questions to those that will help determine an effective accommodation relating to the essential functions of the job. It may be necessary to contact the employee's healthcare professional to receive additional information regarding the request for a reasonable accommodation. The [Authorization for Release of Protected Health Information Form](#) is to be completed by the employee. The [Healthcare Provider](#)

[Questionnaire in Response to an Accommodation Request](#) and [ADA Physician's Memo](#) are attached for this purpose.

- 6) The Coordinator may request supplemental medical/behavioral health information when the information already submitted is insufficient to document the accommodation and/or the functional limitations as they relate to the essential functions of the job. The employee has 30 business days to provide the additional documentation.
  - Failure to provide necessary documentation by the employee, where it has been properly requested, may result in a denial of the reasonable accommodation request.
  - The request may be reopened under the appropriate circumstances, as described in this policy, if enough information is provided.
  - All medical/behavioral health information shall be kept confidential consistent with HIPAA.

d. **Interactive Dialogue/Exploring Accommodation Options**

- 1) If the employee meets the ADA definition of a disability, the interactive dialogue continues with the Coordinator and other authorized individuals discussing reasonable accommodations with the employee.
- 2) The supervisor shall be included in the interactive dialogue. If there is an objection to the supervisor's involvement, a manager in the employee's reporting line who is familiar with the employee's essential job functions is to be involved. The Coordinator shall also maintain communication with the Agency HR office and other authorized individuals throughout the interactive dialogue process.
- 3) The employee, along with the medical provider, should provide suggestions of the preferred accommodation and describe how it will assist in performing the essential functions of the employee's job. The Agency is not bound by the employee's preferred accommodation method but will consider the suggested and preferred accommodations.
- 4) The Agency will create a culture that is open and understanding in order to create a safe, trusting, and supportive environment during the interactive dialogue.
- 5) To ensure that all effective accommodations have been considered, the Coordinator and other authorized individuals must continue the interactive dialogue with the employee until the Coordinator confirms with involved parties that the accommodation will allow the employee to perform the essential functions of the job.
- 6) All interactions are to be thoroughly documented by the Coordinator and any other authorized individual and shall include the following: (a) the employee's job-related limitations; (b) request for an accommodation; (c) any alternative accommodation considered; and (d) the Agency's consideration, analysis, and reasoning for either granting or denying each accommodation request. The [ADA Reasonable Accommodation Determination Form](#) may be used for this purpose.

- 7) The goal of the interactive process is to determine a positive outcome for employees and employer, as well as finding the most sensible, cost-effective accommodation to assist employees in completing the essential functions of their job.

e. **Processing Request**

- 1) Ongoing communication is key for optimum sharing of information regarding the accommodation.
- 2) Once the accommodation options have been explored, the Coordinator, with input from the employee and Agency supervisor, will select an effective accommodation.
- 3) If there is more than one option, the Coordinator should consider the preference of the employee. However, the Coordinator may choose the most effective, cost-efficient option.
- 4) The Coordinator must inform the employee if the accommodation will be granted, denied, if other accommodation options have been proposed, or the current status, including the need for additional time and purpose, of the request within 15 business days of receipt of medical information.
  - If there are delays, the Coordinator should examine temporary measures that may be taken to assist the individual with a disability in performing the essential functions of the job.
  - If additional time is needed to make the decision, the Coordinator shall communicate the delay to the employee within 15 business days explaining the reason for the delay and indicating the time needed to complete the accommodation and any temporary measures to be taken. Any extenuating circumstances or factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation should be included in communications.
  - If the employee is denied a specific accommodation and an alternative accommodation is proposed, the interactive process must continue to evaluate how the alternative method of accommodation is working. The explanation for the denial of a specific accommodation shall also state the reason(s) for the denial. The explanation should be provided to the employee within 15 business days of the decision.

f. **Implementing an Accommodation**

- 1) It may be appropriate for the Agency to try an accommodation on a trial basis in order to see if it works. The Coordinator must put in writing the accommodation(s) implemented on a trial basis, include the rules and the length of time, provide the documentation to the employee, the employee's supervisor, and the employee file.
- 2) Depending on the accommodation, it is important to ensure that equipment is installed properly, the appropriate training takes place, relevant personnel are notified of any schedule changes, and any outside services are being provided in a prompt and effective manner.

- 3) The Agency supervisor shall continue the interactive dialogue by communicating and documenting a successful implementation, as well as any changes or issues that need to be addressed.
- 4) Employee may refuse to accept an accommodation that was not requested or is not needed. This decision must also be documented.

g. **Monitoring the Accommodation**

- 1) The supervisor is responsible for monitoring the effectiveness of accommodations. As part of the interactive process, it is extremely important for the supervisor to check in with the employee, and the employee must let the supervisor know how well the accommodation is working or share what improvements are needed.
- 2) If equipment is involved, the supervisor should assure that an appropriate resource is assigned to do maintenance and/or upgrades as needed.
- 3) It is the responsibility of the supervisor to evaluate if the essential functions of the job are being completed in an efficient and effective manner.

h. **Denying a Request/Offering an Alternative Solution**

- 1) Consistent with the ADA, the Coordinator, supervisor and other authorized individuals may find it necessary to reject an employee's original request for a reasonable accommodation for the following reasons:
  - The employee is not an individual with a qualifying disability. For example, a temporary impairment, such as a broken arm, is not significant enough to be considered a qualifying disability due to its duration and the extent to which it limits a major life activity.
  - The requested accommodation would require the removal of an essential function of the job.
  - The employee is unable to provide requested documentation from a medical professional that demonstrates that s/he has a qualifying disability.
  - 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.
  - The employee's requested accommodation would pose a direct threat to health or safety.
- 2) The Coordinator is responsible for continuing the interactive dialogue and exploring effective accommodations that can be provided to the employee.
- 3) The decision to implement an alternative reasonable accommodation should be discussed during a subsequent interactive dialogue meeting between the employee and supervisor to determine if it will be effective.
- 4) The notification of the selected reasonable accommodation should be put in writing and shared with the employee's supervisor. The [ADA Reasonable Accommodation Determination Form](#) may be used to document all decisions.

- 5) The written notice of the reasonable accommodation must be provided to the employee within 15 business days.

i. **Complaint Process**

- 1) An employee has the right to appeal a decision regarding a denied reasonable accommodation by submitting a written complaint using the process set forth in the [Respectful Workplace and Anti-Discrimination Policy](#), the [State of Delaware Merit Rules](#) and/or Collective Bargaining Agreement (CBA), if applicable.
- 2) In addition, an employee with a disability alleging discrimination, retaliation or harassment, has the right to file a complaint by contacting the Delaware Department of Labor (DDOL) or the Equal Employment Opportunity Commission (EEOC).
- 3) An employee's participation in any dispute/resolution process does not satisfy the requirements or toll the timeframes for bringing a claim under EEOC, the [State of Delaware Merit Rules](#), and/or CBA procedures.

j. **Confidentiality**

**All personnel information is confidential with the following exceptions:**

- 1) The Coordinator, supervisors and managers who need to know may be informed about necessary restrictions or limitations on the work or duties of the employee and about the necessary accommodation(s), including those for health and safety reasons, on a "need-to-know" basis in accordance with the ADA.
- 2) First aid and safety personnel may be advised in confidence if the disability might require emergency treatment or assistance.
- 3) Government officials may be given information necessary to investigate compliance consistent with the requirements of the Rehabilitation Act, the ADA, or other applicable federal and state laws.
  - The information may, in certain circumstances, be disclosed to workers compensation offices or insurance carriers consistent with statutory requirements.
  - An Agency's designated HR office/individual may be given the information to maintain records, evaluate, and report on the Agency's performance in processing a reasonable accommodation.
  - All information is to be kept in a confidential medical file separate from the employee's personnel file.

## **6. EXCLUSIONS OR EXCEPTIONS**

N/A



**7. DISSEMINATION AND TRAINING**

- a. The Agency HR office shall provide a review of this policy and procedure to current employees within 30 business days of its effective date and shall provide employees who are new to their respective Agencies a review of this policy and procedure within 30 business days of the employee's hire date.
- b. Employees must read and acknowledge receipt of this policy in the Delaware Learning Center, or if not applicable by other means within 30 business days of its effective date.

**8. DATA REQUIREMENTS/REPORTING**

- a. Each Agency shall maintain the number of reasonable accommodations made, including the approximate cost of each accommodation and a description of each accommodation, and may be asked to provide this information to the Statewide Coordinator.
- b. Information regarding an accommodation should remain on file for 13 years according to the Delaware Public Archives - Labor Relations/Employment Practices retention schedule.

**9. ASSOCIATED POLICY/REGULATIONS/INFORMATION**

[Americans with Disabilities Act of 1990, as amended](#)  
[State of Delaware Merit Rules](#)  
[Disability Insurance Program Rules & Regulations](#)  
[Family and Medical Leave Act of 1993, as amended](#)  
[Group Health Insurance Plan Eligibility and Enrollment Rules](#)  
[Respectful Workplace and Anti-Discrimination Policy](#)  
[Job Accommodation Network](#)  
[Office of Disability Rights](#)  
[Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#)

**10. FORMS ASSOCIATED WITH THIS POLICY**

[ADA Authorization for Release of Protected Health Information Form](#)  
[ADA Healthcare Provider Questionnaire in Response to An Accommodation Request](#)  
[ADA Reasonable Accommodation Determination Form](#)  
[ADA Physician's Memo](#)  
[ADA Reasonable Accommodation Request Form](#)

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law.*