

STATE OF MARYLAND

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REASONABLE ACCOMMODATIONS POLICY AND PROCEDURE

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MARYLAND REASONABLE ACCOMMODATIONS POLICY AND PROCEDURES

1. POLICY

- 1.1 The State of Maryland is dedicated to full compliance with the reasonable accommodation requirements and the Americans with Disabilities Act.
- 1.2 No employee shall be retaliated against for seeking a reasonable accommodation for a disability.

2. LEGAL AUTHORITY

- 2.1 Title I of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. § 12102, et seq.
 - 2.1(a). Americans with Disabilities Act Amendment Act of 2008.
- 2.2 Section 504 of the Rehabilitation Act of 1973 as amended, Title 34 C.F.R. Section 104.12.
- 2.3 Executive Order 01.01.2007.16 Code of Fair Employment Practices.
- 2.4 Annotated Code of Maryland State Personnel and Pensions Article, Title 2-302 and Title 5-2.
- 2.5 State Government Article, Title 20

3. DEFINITIONS

- 3.1 Disability means:
 - A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - A record of such impairment; or
 - Being regarded as having such impairment.
- 3.2 Substantially Limits – generally means inability to perform a major life activity that the average person in the general population can perform or restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as

compared to the average person in the general population can perform. This should be broadly interpreted without consideration of mitigating measures such as:

- Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- Use of assistive technology;
- Reasonable accommodations or auxiliary aids or services; or
- Learned behavior or adaptive neurological modifications.

3.3 Major Life Activities – Includes, but is not limited, functions such as caring for one-self, performing manual tasks, walking, seeing, hearing, speaking, breathing, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, learning, and working. Also includes major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

3.4 Qualified individual with a disability – An individual with a disability who meets the job requirements of the position and who, with or without reasonable accommodation, can perform the essential functions of such position.

3.5 Essential Functions – The fundamental job duties of the employment position. The term “essential functions” does not include the marginal functions of the position.

3.6 Reasonable Accommodation – means:

- Modification(s) or adjustment(s) to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- Modification(s), adjustment(s), or change(s) to a job or work environment or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- Modification(s) or adjustment(s) that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees.
- Only individuals who have an actual disability, or who have a record of a disability are entitled to accommodations; individuals who are regarded as having a disability are not entitled to accommodations.

- 3.7 Undue Hardship – Significant difficulty or expense incurred by the employer to provide a reasonable accommodation. The employer has the burden of proving that providing a reasonable accommodation would impose undue hardship on the employer.
- 3.8 Request for accommodation – A verbal or written request for modification or adjustment in the work environment or process of job application.

4. CONFIDENTIALITY

- 4.1 All documents concerning an employee's reasonable accommodation request should be maintained in the employee's confidential file, separate from the employee's official personnel file, in accordance with applicable confidentiality laws and regulations.

5. PROCESSING A REQUEST FOR ACCOMMODATION

- 5.1 An employee makes a request for a reasonable accommodation to a supervisor, manager, ADA Coordinator, or Human Resources Representative.
- 5.2 Request can be in writing or verbal. The adjustment or change must be for a disability and need not mention the ADA or use the phrase "reasonable accommodation". The following examples should be treated as requests for accommodation:
- An employee tells his/her supervisor, "I'm having trouble punching the keys on the computer keyboard because of medical treatments I'm undergoing".
 - An employee who uses a wheelchair informs his employer that his wheelchair does not fit under the desk.
 - A qualified applicant requests a sign language interpreter at the interview.
- 5.3 The agency representative asks the employee to complete the Reasonable Accommodation Request Form (for record keeping purposes) and may ask for documentation.
- 5.4 Medical documentation may be needed to establish that the employee has a disability and requires a reasonable accommodation. The medical documentation should explain the disability and functional limitations. The employer should not request documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. For example, a person's complete medical records should not be requested because they may contain information unrelated to the disability at issue and the need for accommodation.
- 5.5 The employer should promptly initiate the interactive process with the employee to determine the employees' needs and identify the appropriate reasonable accommodation.

5.5.1 Questions to ask employee regarding accommodations (not limited):

- What limitations are you experiencing?
- To what degree do these limitations affect your performance?
- What specific tasks are problematic?
- What accommodations will help you perform the tasks that are problematic?

5.6 The employer is not required to provide the reasonable accommodation that the employee wants. The employer may choose among reasonable accommodations as long as the chosen accommodation is effective.

5.7. Undue hardships are determined on a case-by-case basis.

- The nature and net cost of the accommodation needed under this part, taking into consideration the availability of outside funding;
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility and the effect on expenses and resources;
- The type of operation or operations of the employer including the composition, structure, and functions of the work force of the employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer;
- Legitimate safety concerns; and
- The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

5.8 The decision to grant or deny a reasonable accommodation request should be in writing.

5.9 Where an agency has denied a requested reasonable accommodation but offered to make a different one in its place, the agency's notice should explain both the reason for the denial of the requested accommodation and the reason that it believes that the chosen accommodation will be effective.

5.9.1 Where an agency has denied a reasonable accommodation or provided an accommodation that the employee or applicant believes is not effective, within 10 days after receiving a decision from the agency, an employee or applicant may appeal the decision in writing to the Statewide EEO Coordinator. Within 30 days after an appeal is received, the Coordinator shall review the ADA reasonable accommodation request and the decision being appealed and issue the parties a written decision that:

- concurs with the agency's decision; or
- remands the case back to the agency for additional assessment; or
- recommends an alternative appropriate reasonable accommodation(s).

5.10 All agency denials must notify the employee that s/he has a right to file an Equal Employment Opportunity complaint.