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DOJ Policy Statement

REASONABLE ACCOMMODATION

PURPOSE:	Sets forth Department of Justice (DOJ or Department) policies, roles, and responsibilities with respect to the provision of reasonable accommodations for employees and applicants with disabilities.
SCOPE:	All DOJ components
ORIGINATOR:	Justice Management Division, Equal Employment Opportunity Staff
CATEGORY:	(I) Administrative, (II) Equal Employment Opportunity
AUTHORITY:	See Appendix A
CANCELLATION:	None
DISTRIBUTION:	Electronically distributed to those referenced in the "SCOPE" section and posted on the DOJ directives electronic repository (SharePoint) at: https://portal.doj.gov/sites/dm/dm/Pages/Home.aspx
APPROVED BY:	*Lee J. Lofthus* *Assistant Attorney General for Administration* *Justice Management Division*

ACTION LOG

All DOJ directives are reviewed, at minimum, every 5 years and revisions are made as necessary. The action log records dates of approval, recertification, and cancellation, as well as major and minor revisions to this directive. A brief summary of all revisions will be noted. In the event this directive is cancelled, superseded, or supersedes another directive, that will also be noted in the action log.

Action	Authorized by	Date	Summary
Initial Approval	*Lee J. Lofthus, Assistant Attorney General for Administration*	SEP 23 2019	Sets forth DOJ policies, roles, and responsibilities with respect to the provision of reasonable accommodations for employees and applicants with disabilities.

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DEFINITIONS

Term	Definition
Deciding Official	An individual who is authorized to make determinations regarding reasonable accommodation requests.
Direct Threat	A threat that poses a significant risk of substantial harm to the health or safety of an individual or others. The threat cannot be eliminated or reduced by reasonable accommodation. A significant risk is high, and not just a slightly increased risk. The determination that an individual poses a "direct threat" must be based on an assessment of the individual's present ability to safely perform the essential functions of the job, considering reasonable medical judgment and relying on the most current medical knowledge and/or best available objective evidence.
Disability	With respect to an individual with a disability: (i) a physical or mental impairment that substantially limits one or more major life activities of such individual; or (ii) a record of an impairment; or (iii) regarded as having such an impairment.
Episodic or In Remission	The state of occurring intermittently or of being suspended. An impairment that is episodic or in remission is considered a disability if that impairment would substantially limit a major life activity when active. Thus, an impairment such as epilepsy or cancer may constitute a disability if it would substantially limit a major life activity while active. Episodic conditions that impose only minor limitations, even when they are active, would not meet the definition of disability.

Term	Definition
Essential Job Functions	Fundamental job duties of the employment position the individual with a disability holds or desires. They do not include the marginal functions of the position. A job function may be considered essential for any of several reasons, including but not limited to the following: (i) The position exists to perform that function; (ii) The limited number of employees available among whom the performance of that job function can be distributed; and/or (iii) The incumbent in the position is hired for his or her expertise or ability to perform the particular function. Whether a particular function is essential includes, but is not limited to: (i) The employer's judgment about which functions are essential; (ii) Written job descriptions prepared before advertising or interviewing applicants for the job; (iii) The amount of time spent on the job performing the function; (iv) The consequences of not requiring the incumbent to perform the function; (v) The terms of a collective bargaining agreement; (vi) The work experience of past incumbents in the job; and/or; (vii) The current work experience of incumbents in similar jobs.

Term	Definition
Interactive Process	A collaborative effort involving an employer and employee. For example, after a request for accommodation has been made, the supervisor or deciding official communicates with the individual making the request to identify an effective accommodation that will allow the employee to perform the essential functions of the job. The interactive process may include: (i) An analysis of the particular job to determine its purpose and essential functions; (ii) A consultation with the employee to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation; (iii) An identification of potential accommodations and, in conjunction with the employee, an assessment of the effectiveness of those accommodations in enabling the employee to perform the essential functions of the job; (iv) The consideration of the preference of the employee and the selection and implementation of an accommodation that is appropriate for the employee and the employer; and (v) The overall needs of the office.
Major Life Activities	Include, but are not limited to: (i) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and (ii) the operation of a major bodily function, including functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. In determining other examples of major life activities, the term "major" must not be interpreted strictly to create a demanding standard for disability. Whether an activity is a major life activity is not solely determined by whether it is of "central importance to daily life."

Term	Definition
Physical or Mental Impairment	(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine. (ii) Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disability.
Qualified Individual with a Disability	A person who meets the appropriate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.
Reasonable Accommodation	A modification or adjustment to a job or to the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment that are equal to those of nondisabled employees.
Substantially Limits	An impairment that limits the ability of an individual to perform a major life activity compared to most people in the general population.
Undue Hardship	Occurs when the provision of an accommodation would cause significant difficulty or expense to an employer. The employer considers the following factors when determining if providing accommodation is an undue hardship: (i) The nature and net cost of the accommodation needed; (ii) The overall financial resources of the operational component involved in the provision of the reasonable accommodation, the number of persons employed in the operational component, and the effect on expenses and resources; (iii) The overall financial resources and size of the employer with respect to the number of its employees, and the number, type, and location of its operational components; (iv) The employer's operations, including the composition, structure, and functions of the workforce; the geographic separateness; and the administrative or fiscal relationship of the operational component to the organizations; and (v) The impact of the accommodation upon the operational component, including the impact on the ability of other employees to perform their duties and the impact on the operational component's ability to conduct its business.

ACRONYMS

Acronym	Meaning
AAG/A	Assistant Attorney General for Administration
ADA	Americans with Disabilities Act
C.F.R.	Code of Federal Regulations
DOJ	Department of Justice
RAC	Reasonable Accommodation Coordinator

I. Policy

It is the policy of the Department of Justice (DOJ or Department) to provide reasonable job accommodations for employees and job applicants with disabilities consistent with applicable law and regulations, including Executive Order 13164; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 42 U.S.C. §§ 12101, *et seq.*[1]; and 29 C.F.R. Part 1630, using an interactive process that will respond to requests for reasonable accommodation in a flexible, confidential, and objective manner. This Policy Statement sets forth policies, roles, and responsibilities for providing reasonable accommodations for employees and applicants with disabilities in the Department. It also authorizes DOJ components to issue related instructions that provide more detailed processes and procedures. The detailed procedural steps and guidelines regarding the provision of reasonable accommodation are described in the DOJ Instruction, "Reasonable Accommodation Process." Nothing in this policy creates any enforceable rights or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities.

A. Purpose of Reasonable Accommodation

Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodation, there are workplace barriers that keep others from performing jobs they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). A reasonable accommodation modifies or removes workplace barriers for individuals with disabilities.

This policy sets forth roles and responsibilities within the Department with respect to reasonable accommodations. It provides examples of the types of accommodations that are appropriate and generally will be provided to departmental employees and applicants with disabilities, in accordance with related departmental procedures and instructions. The examples of accommodations identified in this policy are not exhaustive; instead, they illustrate the broad spectrum of accommodations that may be provided. Reasonable accommodations must be provided to qualified employees regardless of whether they work full-time or part-time or are considered probationary.

[1] The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, protects persons with disabilities from discrimination in employment in the private sector and state and local governments. The substantive employment standards of the ADA are applicable to the Federal Government through the Rehabilitation Act, 29 U.S.C. §791, *et seq.*

B. The Interactive Process

It is the Department's policy to use the interactive process to resolve requests for accommodation and that management officials participate in the interactive process. Employees and applicants who make requests for accommodations must fully cooperate in the interactive process to ensure that effective accommodations are provided.

C. Reasonable Accommodation Decisions

Components must provide qualified employees or applicants with disabilities with reasonable accommodation, unless to do so would cause undue hardship for the component. The supervisor or deciding official must consider each request for reasonable accommodation on a case-by-case basis and determine whether the accommodation is needed, whether the accommodation would be effective, and whether providing the reasonable accommodation would impose an undue hardship. Components should base accommodation decisions primarily on whether the accommodation will help the applicant or employee become a successful and productive member of the Department's workforce. Many job accommodations cost little or nothing. However, the Department will also satisfy costlier accommodation needs, such as providing readers, sign language interpreters, or personal assistants for travel, to employees who need those services to perform their jobs.

D. Examples of Reasonable Accommodation

1. Authorizing leave, modifying a work schedule or a supervisory method;
2. Providing telework beyond that provided by the collective bargaining agreement or the relevant memorandum of understanding;
3. Providing assistive technology, including information technology and communications equipment or specially designed furniture;
4. Providing a reader or other personal assistant to enable employees to perform their job functions when the accommodation cannot be provided by current staff;
5. Removing an architectural barrier, including reconfiguring a work space;
6. Providing material in an alternative format (*e.g.*, Braille, large print); or
7. Providing a reassignment to another job.

E. Examples of Accommodations That Are Not Considered Reasonable

1. Eliminating essential job functions (*i.e.*, fundamental duties of the position);

2. Lowering standards (qualitative or quantitative) that are applied uniformly to employees with and without disabilities (though a reasonable accommodation may be provided to enable an employee with a disability to meet the standard);

3. Creating a new job or position;

4. Allowing or ignoring inappropriate conduct; and

5. Providing personal use items, such as prosthetic limbs, wheelchairs, eyeglasses, hearing aids, or similar devices, that are needed to accomplish daily activities both on and off the job.

II. Roles and Responsibilities

A. Head of Component

1. Adopts this policy or, using the policy as minimum standards, establishes procedures for accommodation requests. Ensures compliance with the Department's obligation to provide reasonable accommodations to qualified individuals within the component.

2. May designate one or more Reasonable Accommodation Coordinators (RAC) as appropriate, or another agency official in lieu of a supervisor to serve as a deciding official for a request for a reasonable accommodation.

3. Approves requests for reassignment between Department organizations as an accommodation. The Head of Component may designate this responsibility to another position.

4. Ensures that a system is developed by the component to safeguard, maintain, and track requests for reasonable accommodations and decisions made in response to such requests.

B. Deciding Official

1. Is responsible for the entire reasonable accommodation process. This includes making determinations on requests and providing accommodations when appropriate.

2. Seeks assistance and guidance, as needed, from either the Office of General Counsel, RAC, Disability Employment Program Manager, or Human Resources Office.

C. Component Human Resources Office

1. Train human resources specialists involved in the hiring process to recognize and timely respond to requests for reasonable accommodations in the job application process. This may be done by another responsible party designated by the component.

2. Provides consultation, as needed, to facilitate the provision of reasonable accommodation for employees. Areas of consultation include, but are not limited to: determining employee qualifications, restructuring jobs, identifying essential versus marginal job functions, and identifying suitable vacant positions for those instances in which reassignment is determined to be a suitable accommodation.

3. Identifies and assists other DOJ components with identifying vacant positions for reassignment of an employee from one component to another component.

D. Reasonable Accommodation Coordinator

1. Acts as the primary contact for accommodation requests if designated to do so by the Head of Component.

2. Serves as a resource to employees, managers, and supervisors regarding matters pertaining to the provision of reasonable accommodation.

3. Facilitates the interactive process, if designated to do so, between the supervisor or deciding official and the employee who is requesting an accommodation. This may include clarifying requests for accommodation so that an effective accommodation can be provided.

4. Coordinates with the appropriate personnel to ensure workspace is accessible to persons with disabilities.

5. Assists, if designated to do so, with procuring furniture, equipment, and services, such as sign language interpreters.

6. Acts as a deciding official if designated to do so by the Head of Component.

7. Maintains reasonable accommodation-related materials and compiles cumulative data for tracking purposes.

APPENDIX A

Applicable Authorities

Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701) Prohibits discrimination on the basis of disability in the Federal Government and requires each federal agency to maintain, update annually, and submit to the Equal Employment Opportunity Commission (EEOC) an affirmative action program plan for hiring, placing, and advancing individuals with disabilities.

Section 503 of the Rehabilitation Act of 1973, as amended - Prohibits discrimination and requires employers with federal contracts or subcontracts that exceed $10,000 to take affirmative action to hire, retain, and promote qualified individuals with disabilities. All covered contractors and subcontractors must also include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts.

Section 504 of the Rehabilitation Act of 1973, as amended - Prohibits discrimination based on disability in federally-funded and federally-conducted programs or activities in the United States, including employment programs.

Section 508 of the Rehabilitation Act of 1973, as amended - Requires that agencies ensure access for disabled employees and members of the public to electronic and information technology that is comparable to access by other non-disabled employees and members of the public.

The Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act of 2008 (ADAAA), (42 U.S.C. §12101) - Protects persons with disabilities from discrimination in employment in the private sector and state and local governments. The substantive employment standards of the ADA/ADAAA are applicable to the Federal Government through the Rehabilitation Act.

The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151) Requires access to facilities designed, built, altered or leased with federal funds.

Executive Order 13164 (2000) - Requires agencies to establish procedures to facilitate the provision of reasonable accommodations.

Title 5, Code of Federal Regulations, Part 339 – This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition that may affect safe and efficient performance.

Title 29, Code of Federal Regulations, Parts 1614 and 1630 – Part 1614 details the Federal Sector Equal Employment Opportunity Program and Process, and requires federal agencies to

engage in affirmative action for individuals with disabilities; and part 1630 implements the Americans with Disabilities Act.

U.S. Equal Employment Opportunity Commission - A Technical Assistance Manual on the Employment Provisions (Title 1) of the ADA (1992); "Notice of Rights under the ADAAA of 2008;" "Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (October 2002); EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation" (October 2000).