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| <b>NATIONAL LABOR RELATIONS BOARD</b><br><br><b>ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL</b> | <b>PER-31</b><br><br><b>3/30/2023</b> |
| <b>REASONABLE ACCOMMODATION PROGRAM</b>   |                                       |

## Table of Contents

|  |    |
|--|----|
| 1. SUPERSEDED MATERIAL                             | 2  |
| 2. BACKGROUND                                      | 2  |
| 3. POLICY  | 2  |
| 4. PURPOSE   | 3  |
| 5. AUTHORITY                                       | 3  |
| 6. ACCESSIBILITY                                   | 3  |
| 7. DELEGATION OF AUTHORITY                         | 3  |
| 8. DEFINITIONS                                     | 4  |
| 9. INITIATING THE REASONABLE ACCOMMODATION PROCESS | 7  |
| 10. PROCESSING ACCOMMODATION REQUESTS              | 8  |
| 11. TIME GUIDELINES                                | 11 |
| 12. MEDICAL AND OTHER INFORMATION                  | 13 |
| 13. CONFIDENTIALITY OF MEDICAL INFORMATION         | 14 |
| 14. REASSIGNMENT                                   | 15 |
| 15. DENIALS OF REASONABLE ACCOMMODATION REQUESTS   | 15 |
| 16. INFORMATION TRACKING                           | 16 |
| 17. COSTS AND RESOURCES                            | 17 |
| ATTACHMENT A                                       |    |

## 1. SUPERSEDED MATERIAL

This National Labor Relations Board (NLRB or the Agency) Administrative Policy and Procedures Manual (APPM) Chapter supersedes the National Labor Relations Board Reasonable Accommodation Program, dated September 30, 2015.

## 2. BACKGROUND

On July 26, 2000, President Clinton signed Executive Order 13164, requiring each Federal Agency to establish effective written procedures for processing requests for reasonable accommodation as provided by the Rehabilitation Act of 1973, incorporating portions of the Americans with Disabilities Act (ADA). Federal Agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless doing so would cause an undue hardship.

To implement this Executive Order, the NLRB issued Administrative Policy Circular 03-04 on August 25, 2003. This Policy Circular provided a framework for processing reasonable accommodation requests and was implemented in a manner consistent with applicable laws, regulations, executive orders, directives, policy statements, and legal precedents.

The ADA Amendments Act (ADAAA) of 2008 became effective January 1, 2009. By passing this law, Congress rejected several Supreme Court decisions that it viewed as improperly narrowing ADA coverage. The ADAAA ensures coverage for individuals whom Congress viewed as intended to fall within the protections of the ADA.

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law.

## 3. POLICY

The NLRB is committed to providing reasonable accommodations to its employees and applicants for employment and personal assistive services to Agency employees with targeted disabilities, and to ensuring that qualified individuals with disabilities enjoy equal access with respect to: (a) the application process; (b) perform essential job functions; and (c) the benefits and privileges of employment.

Qualified individuals with disabilities are entitled to be provided with these reasonable accommodations, unless doing so would cause undue hardship to the NLRB. The NLRB is committed to handling requests quickly and in a confidential manner as possible. The focus of the review of an accommodation request is on the need for accommodation rather than on

whether the employee/applicant has a medical condition that meets the definition of a disability under the ADAAA.

## 4. PURPOSE

The purpose of this Chapter is to describe the NLRB's Reasonable Accommodation Program, which includes its Personal Assistance Service Program (PSA), and to integrate all the relevant materials related to this Program. This Chapter is intended to be a resource for both managers and employees, as well as for applicants for employment. Contractors are excluded from coverage under this Program.

## 5. AUTHORITY

The procedures prescribed herein were developed in accordance with Executive Order 13164 (July 2000), Section 501 of the Rehabilitation Act of 1973, as amended (2017), (29 U.S.C. 791 et seq.), the American with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the Americans with Disabilities Act Amendments Act of 2008. Id.

## 6. ACCESSIBILITY

The NLRB will make available to all employees and job applicants a copy of these procedures in written and other accessible formats to meet an individual's particular need, including braille and large print, as required.

## 7. DELEGATION OF AUTHORITY

The General Counsel and Chairman of the NLRB will jointly delegate authority and responsibility for this Program.

The General Counsel and Chairman delegate the following responsibilities to the Division of Administration and, in turn, the Division of Administration delegates the following responsibilities to the Office of Human Resources (OHR):

- i. Implementing the policies and procedures for the NLRB's reasonable accommodation program.
- ii. Ensuring the program complies with Executive Order 13164 (July 2000), Section 501 of the Rehabilitation Act of 1973, as amended (2017), (29 U.S.C. 791 et seq.), the American with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the ADAAA.
- iii. Ensuring that requests for reasonable accommodations are timely processed.
- iv. Informing management, employees, and individuals with disabilities of the requirements of the Rehabilitation Act/ADAAA.

- v. Reviewing appeals of denials of reasonable accommodation requests and providing timely decisions.

## 8. DEFINITIONS

### A. Deciding Official

The Deciding Official will make a decision in consultation with the Reasonable Accommodation Program Manager (RAPM), Special Counsel, and Agency designees, on whether and what to provide for a reasonable accommodation, once requested. The Deciding Official will generally be the requesting individual's immediate supervisor unless otherwise delegated by the General Counsel and Chairman, respectively.

### B. Disability

A disability is a physical or psychological impairment that substantially limits one or more of an individual's major life activities. An individual may satisfy this requirement if they have a record of having such an impairment; or are regarded as having such an impairment. [See, 29 C.F.R. § 1630.2\(g\).](#)

Generally, a disability includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities. [See, 29 C.F.R. §1630.2\(h\).](#)

Note the ADAAA indicates the definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act to the maximum extent permitted. [See, \[http://www.eeoc.gov/laws/regulations/adaaa\\\_fact\\\_sheet.cfm\]\(http://www.eeoc.gov/laws/regulations/adaaa\_fact\_sheet.cfm\)](#)

(i) Non-visible/non-obvious disabilities: In some circumstances, a disability or impairment may not be visible or apparent to other people. Such non-visible/non-obvious disabilities include partial sensory impairments such as low vision or hearing loss; chronic health conditions like arthritis, asthma, or diabetes; mental health conditions like depression or anxiety; learning disabilities; and serious illness, such as cancer.

### C. Essential Functions

Essential functions are the fundamental job duties of the position the individual holds or seeks. The term does not include the marginal functions of a position. 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; or the function is highly specialized, and the individual is hired based on their expertise or ability to perform it.

A determination of the essential functions of a position is made on a case-by-case basis by the Deciding Official, who is generally the requesting individual's immediate supervisor. Evidence of whether a particular function is essential includes, but is not limited to: the employer's judgment as to which functions are essential; written job descriptions prepared before advertising or interviewing; the amount of time spent on the job performing the function; consequences of not requiring the incumbent to perform the function; the terms of a collective bargaining agreement; work experience of past incumbents; and/or the current work experience of incumbents in similar jobs. [See, 29 C.F.R. § 1630.2\(n\).](#)

#### **D. Healthcare Provider**

A Healthcare Provider is an appropriate professional and may include, but is not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

#### **E. Interactive Process**

The interactive process is an ongoing dialogue to identify potential accommodations to allow the individual to overcome those limitations resulting from a disability and allow the employee to perform the essential functions of their position, or in the case of an applicant to apply for a position. The purpose of the interactive process is to identify the precise limitations resulting from the disability and potential reasonable accommodations appropriate to overcome those limitations. [See, 29 C.F.R. § 1630.2\(o\)\(3\).](#) The interactive process, generally between the requestor and RAPM, and on occasions between the requestor and Deciding Official, may include communicating with the requestor to clarify the request, obtaining, and exchanging information with the requestor to the extent necessary regarding needs and alternatives, searching for solutions, determining whether the requestor is an individual with a disability, and evaluating possible accommodations.

#### **F. Major Life Activities**

Major life activities under the ADAAA include but are not limited to caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working, and the operation of a major bodily function, including but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Whether an activity is considered a major life activity is not determined by reference to whether

it is of central importance to daily life. The term “major” is not to be interpreted strictly to create a demanding standard for disability. [See, 29 C.F.R. § 1630.2\(i\).](#)

## **G. Personal Assistance Service**

PAS is assistance with performing activities of daily living that an individual would typically perform if they did not have a disability and is not otherwise required as a reasonable accommodation. [See, 29 C.F.R. § 1614.203\(a\)\(5\).](#)

## **H. Qualified Individual with a Disability**

A qualified individual with a disability is a person that satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that such an individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. [See, 29 C.F.R. § 1630.2\(m\).](#)

## **I. Reasonable Accommodation**

A reasonable accommodation is an effective modification or adjustment that enables: (i) a qualified applicant with a disability to be considered for the position; (ii) a person with a disability who is qualified to perform the essential functions of the position; or (iii) employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by their similarity-situated coworkers without disabilities. [See, 29 C.F.R. § 1630.2\(o\).](#)

Examples of reasonable accommodations include: making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant funded position.<sup>1</sup> Accommodations may also include expanded and/or flexible work hours, as well as expanded telework.

## **J. Reasonable Accommodation Program Manager**

The RAPM, a designated role in the Office of Human Resources, responds to requests for reasonable accommodation and serves as the NLRB’s day-to-day point of contact for issues related to reasonable accommodation. The RAPM is responsible for responding to inquiries regarding the NLRB’s Reasonable Accommodations Program; identifying appropriate resources for requested accommodations, for processing requests for reasonable accommodations based on disabilities; and for tracking requests for reasonable accommodations.

## **K. Substantially Limits**

A medical condition or impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.

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<sup>1</sup> [29 CFR 1630.2\(o\)](#)

A medical condition or impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting. Each case requires an individual assessment. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of the ADAAA and EEOC regulations. [See, 29 C.F.R. § 1630.2\(j\).](#)

Substantially limits shall be construed broadly in favor of coverage, to the maximum extent permitted by the terms of the ADAAA. It is not meant to be a demanding standard. However, not all medical conditions or impairments meet the definition of substantially limiting a major life activity. Determining whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. For example, an individual who has a hearing impairment may still be found to constitute a qualified individual with a disability, and therefore qualify for a reasonable accommodation, even if hearing aids or cochlear implants lessen or ameliorate the effects of the impairment.

## **L. Undue Hardship**

The NLRB does not have to provide a particular accommodation if an alternative accommodation would be equally effective in assisting a requestor and/or doing so would impose an undue hardship to the NLRB. In determining whether an accommodation would impose an undue hardship, factors to be considered include: (i) the nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding; (ii) 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; (iii) the overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities; (iv) the type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and (v) 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. [See, 29 C.F.R. § 1630.2\(p\).](#)

## **9. INITIATING THE REASONABLE ACCOMMODATION PROCESS**

When an individual decides to request a reasonable accommodation, including a PAS, the individual or their representative must let the NLRB know that they are seeking an adjustment or change at work or an adjustment or change to the application process for a reason related to a

medical condition. An individual need not have a particular accommodation or PAS in mind before making a request.

#### **A. How Requests May be Made**

Requests for reasonable accommodation, including a PAS, can be made by either an applicant or an employee [or on behalf of an applicant or employee] and can be made either orally or in writing. The NLRB strongly encourages all individuals seeking a reasonable accommodation to submit a written request (*see Attached Sample Request Form*) however, the interactive process will begin as soon as an oral or written request is made.

A request for reasonable accommodation can be made by the individual with a disability, as well as the individual's family member, health professional, or other representative (including a union representative, if applicable) who is acting on the individual's behalf. Once sufficient medical documentation has been provided, the RAPM will not generally require updated medical information absent circumstances, such as a modified accommodation request, an accommodation request that was for a limited duration (including those involving temporary conditions), or a change in medical circumstances.

After the accommodation is approved, the individual may subsequently obtain the accommodation by notifying their supervisor or the RAPM via email or verbally, unless directed otherwise by the Deciding Official and/or the RAPM. The RAPM will, in most cases, be aware of the approved accommodation.

#### **B. To Whom Requests Should be Made**

The NLRB will consider an individual's request if it is made to the RAPM and/or any of the following: a supervisor or manager in the individual's reporting chain; Office of Human Resources (OHR); the Office of Equal Employment Opportunity (OEEO); or any agency employee with whom an applicant has contact in connection with the application process (e.g., HR Specialist or hiring manager). In all circumstances, individuals requesting a reasonable accommodation are encouraged to complete the attached request form and submit all requests directly to the RAPM.

## **10. PROCESSING ACCOMMODATION REQUESTS**

#### **A. Requests Made to the RAPM**

An individual, as mentioned above, is not required to fill out a specific form or submit a written request reasonable accommodation for the interactive process to begin. When submitting reasonable accommodation requests, including a PAS, to the RAPM, individuals may make an oral request and/or email a written request to [Ask4RA@NLRB.gov](mailto:Ask4RA@NLRB.gov). Individuals may also submit their requests through the attached Sample Request Form. (*See Attached Sample Request Form*).



The RAPM will discuss the request with the requestor and relevant Agency officials as needed, including Special Counsel, OHR, the requestor's manager and/or supervisor, and the Deciding Official, if it is someone other than the requestor's immediate supervisor. In response to a request, the NLRB may require the requestor to provide medical documentation concerning the disability, including a description of any functional limitations and suggested accommodations. However, the NLRB will not request medical information where: (a) both the disability and the need for reasonable accommodation are obvious; or (b) the individual has already provided the NLRB with sufficient information to document the existence of the disability and their functional limitations. The RAPM will share medical information with other Agency officials, mentioned earlier in this paragraph, on a "need to know" basis only and to the extent required to make a reasonable accommodation determination.

If the RAPM, in consultation with relevant Agency officials, determines that additional information, including additional medical documentation, is necessary to process the request, the RAPM will request information sufficient to substantiate whether the employee/applicant has a disability and requires a reasonable accommodation to perform the essential functions of the position in question. The RAPM may request additional medical documentation if the documentation previously provided does not sufficiently explain how the specific accommodation will assist the individual to perform the essential functions of the position. The RAPM will not request medical documentation exceeding what is reasonably necessary to assess a given request.

## **B. Requests Made to Other Agency Employees**

The NLRB employee, other than the RAPM, to whom any reasonable accommodation request, including a PAS, is made (Receiving Official), will immediately notify the RAPM. This includes a supervisor or manager in the individual's reporting chain; OHR; the Office of Equal Employment Opportunity; or any Agency employee with whom an applicant has contact in connection with the application process. The Receiving Official will notify the requestor that it is strongly encouraged to submit a written request (*see Attached Sample Request Form*). In consultation with the RAPM, and Special Counsel, supervisors or managers in the requestor's reporting chain may grant interim accommodations, while the request for accommodation is being processed. This includes maintaining in place a previously granted accommodation, which is either still current at the time the request is made or is expected to expire while the request (or renewal) of that accommodation is pending. Notice of this interim accommodation will be issued to the requestor by the individual's first line supervisor in writing, stating that the interim accommodations is temporary, of a specified duration, and may not be granted permanently.

## **C. Guidance for Supervisors and HR Specialists on How to Recognize Requests for Reasonable Accommodations**

Employees can make a request for reasonable accommodation, including a PAS, at any time even if a supervisor or HR specialist is unaware of a disclosed or undisclosed disability.

Employees do not have to use the phrase "reasonable accommodation" or the word "disability." Therefore, supervisors and HR specialists should use active listening skills for phrases such as:

- "I need..."
- "It would help if..."
- "I would like to adjust or change my..."

These phrases should be taken as potential requests for reasonable accommodation. Supervisors and HR specialists play a crucial role in creating an accessible and inclusive environment for the NLRB's employees with disabilities. Reasonable accommodations can include, but are not limited to, specialized equipment or software, flexible work schedules, telework, or reassignment to a vacant position.

The RAPM and other subject matter experts are available to support and facilitate the accommodation process for managers and employees. The role of the Deciding Official is to coordinate with the RAPM in reviewing, approving/denying, and modifying a request for reasonable accommodation. The role of supervisors is to work with the Deciding Official (if someone other than the supervisor), the RAPM, and Special Counsel, as needed, to review and approve/deny an accommodation, or in some circumstances modify an existing accommodation.

#### **D. Interactive Process**

The interactive process should begin immediately upon receipt of the oral or written request.

The interactive process identifies the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. Determining what, if any, accommodation should be provided, or how the parties can best resolve the issues, may include, but is not limited to:

- Analyzing the actual position or job to be performed to determine its purpose and essential functions.
- Consulting with the requesting individual and their supervisor/manager to ascertain the job-related limitations caused by the individual's disability and how those limitations could be resolved with an accommodation.
- Identifying potential accommodations and assessing the effectiveness of those accommodations in enabling the individual to participate in the application process, performing essential functions of a job, or receiving equal benefits and privileges of employment.
- Discussing the preference of the requesting individual; and
- Exploring accommodations that are effective for the individual, Agency and/or the overall needs of the office.

Communication is a priority throughout the interactive process. All parties involved (e.g., the requesting individual, supervisors/managers, etc.) should take a proactive approach when considering possible accommodations, including consulting appropriate resources for assistance.

#### **E. Decisions**

The Deciding Official makes the final determination whether to grant or deny an accommodation or modify an existing accommodation. Denials of accommodations or any modifications to current accommodations will include the reason(s) in writing (e.g., “accommodation ineffective because” “accommodation would cause undue hardship because”). The RAPM will provide the NLRB’s final decision to the requestor in writing (see also No. 15 below). The requestor may contact the RAPM by mail at: National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570; via email at [Ask4RA@nlrb.gov](mailto:Ask4RA@nlrb.gov); by phone at (202) 273-0007; or by confidential FAX at (202) 874-2345.

#### **F. Reconsiderations**

If a request for an accommodation or a request for a modification to an existing accommodation, including a PAS, is denied, the requestor may seek reconsideration of the denial. When seeking such a reconsideration, the requestor may challenge the basis relied upon in issuing the denial, including seeking a determination of essential function(s) of the position and/or any undue hardship determination that may have factored into the denial.

Requests for reconsideration must be submitted to the Director of OHR within **10 business days** after the employee/applicant’s receipt of written notice of the denial of the requested accommodation. Requests for reconsideration must be in writing unless the requestor is prevented by exigent circumstances from submitting a written request. The OHR Director, after consulting with Special Counsel, will respond to the request for reconsideration, in writing, within **10 business days** of receipt of the request and/or information provided in support of the request for reconsideration.

## **11. TIME GUIDELINES**

Absent extenuating circumstances,<sup>2</sup> all requests for reasonable accommodation or modifications to an existing accommodation, including a PAS, shall be granted or denied, no later than **30 calendar days** after the request is first submitted. The time limit starts as soon as the accommodation is first requested (orally or in writing). If a request is granted, the accommodation will be provided within **30 calendar days** from the date of the approval

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<sup>2</sup> The term “extenuating circumstances” is applicable to “factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation.” [EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation \(October 20, 2000\), Section II, Question 14.](#)

notification. Where an accommodation can be provided in less than the maximum time frame, failure to provide an accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

The NLRB will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner. The RAPM will give the requestor an adequate opportunity to contact a health care provider to obtain any additional necessary information. This period is usually **15 business days** and, where appropriate, a reasonable extension to this period may be granted. The **30 calendar day** period to make a determination concerning a reasonable accommodation request does not include any time periods during which the requestor is in the process of obtaining necessary information, including medical information, requested by the RAPM. If the requested medical documentation is not provided after the requestor has been given an adequate opportunity, the RAPM will notify the requestor in writing that the NLRB is unable to provide an accommodation due to a lack of adequate medical documentation. A requestor is not precluded from submitting a new reasonable accommodation request at any time thereafter.

#### **A. Provision of Accommodations**

Once the decision to provide an accommodation and/or a PAS is made, the NLRB will provide such accommodation and/or PAS within **30 calendar days** of the approval notification, absent extenuating circumstances.

The following are examples of extenuating circumstances:

- The purchase of equipment may take additional time to obtain because of requirements under the Federal Acquisition Regulations.
- The requested accommodation is not immediately available, and another alternative must be tried until the requested accommodation, if approved, becomes available.
- Equipment is backordered, the vendor typically used for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- The employee with a disability will be provided with and will work with the equipment on a trial basis to ensure that it is effective before it is purchased by the NLRB.
- An accommodation involves the modification or removal of architectural barriers.

Where extenuating circumstances are present, the RAPM will notify the requestor in writing as soon as possible of the reason for the delay and the approximate date the reasonable accommodation requested, or an alternative, will be provided.

If there is a delay in providing an accommodation or PAS that has been approved, the RAPM will explore whether temporary measures can be taken to assist the employee.

## **B. Expedited Processing**

In some circumstances, a request for reasonable accommodation or PAS requires an expedited review and decision in a timeframe that is shorter than the above time frames. Assuming the NLRB has information necessary to make a determination it will seek to do so within **10 business days** from the time the request is first made. Expedited processing includes, but is not limited to, the following situations:

- To enable an applicant to apply for a job; or
- To enable an employee to attend a meeting scheduled to occur shortly.

When all the facts and circumstances known to the NLRB make it reasonably likely that the requestor will be entitled to an accommodation or PAS, but the accommodation or PAS cannot be provided immediately, the NLRB will explore whether it is possible to provide the individual with an interim accommodation that would allow the individual to timely complete the application process or perform the essential functions of the job, absent undue hardship.

## **12. MEDICAL AND OTHER INFORMATION**

If medical or other information/documentation is necessary, the RAPM will forward a written request asking the requestor to obtain medical documentation from the employee/applicant's healthcare provider(s). All NLRB requests for information will describe the nature and essential functions of the job in question and any other relevant information pertinent to the request. The RAPM will not request medical documentation exceeding what is reasonably necessary to assess a given request. Once sufficient medical documentation has been provided, the RAPM will not generally require updated medical information absent circumstances, such as a modified accommodation request, an accommodation request that was for a limited duration (including those involving temporary conditions), or a change in medical circumstances.

The NLRB's request for medical or other documentation and for information relevant to the type of reasonable accommodation being requested may include, but is not limited to the following:

- the nature, severity, and duration of the impairment.
- the major life activity(ies) that the impairment limits.
- the extent or degree to which the impairment limits these activities.
- the reason the individual requires an accommodation and the particular accommodation recommended.
- how the accommodation will assist the individual to perform the essential functions of their position.

Not all requests for an accommodation require medical documentation, including medical conditions that are clearly apparent, or for medical conditions that are permanent and previously documented. The NLRB has a right to request relevant supplemental medical information if the information submitted does not clearly explain: (i) the nature of the disability, (ii) the need for

the accommodation, or (iii) otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace or assist an applicant with the application process.

Medical documentation may be sent directly from the requestor or the requestor's health care provider to the RAPM.

If the information provided by the health care provider or the requestor is insufficient to enable the NLRB to determine whether an accommodation is necessary and appropriate, the RAPM will explain, in writing, how the documents are administratively insufficient and ask the employee/applicant to obtain additional information, including additional medical documentation.

The NLRB has the right to have medical information reviewed by its own medical expert at the NLRB's expense. In general, it is not necessary to request re-certification of medical information or to request updated medical information when an employee's disability and the need for reasonable accommodation are known or obvious, or the individual has already provided the NLRB with sufficient information to substantiate the disability. The NLRB may, however, request updated medical documentation under certain circumstances. These include when an employee requests changes to an already granted reasonable accommodation or PAS, when there is a change to an employee's condition or essential job functions, or when information about an employee's disability or need for accommodation was limited or indeterminate in time.

### 13. CONFIDENTIALITY OF MEDICAL INFORMATION

Medical documentation relating to requests for reasonable accommodation or a PAS, including information about functional limitations, medical diagnoses, or disability status, must be kept confidential and shared only with those who have a valid "need to know" to assist in processing requests for reasonable accommodation. Medical information may be disclosed to (1) supervisors and managers who need to be told about necessary restrictions and about the necessary accommodation(s); (2) first aid and safety personnel if the disability might require the individual to receive emergency treatment; (3) government officials to investigate the NLRB's compliance with the Rehabilitation Act; (4) worker' compensation offices or insurance carriers, when such information is formally requested; and (5) agency OEEO officials to maintain records.

Medical documentation must be kept in files separate from the employee's/applicant's official personnel file, or any other files kept by supervisors, managers, Deciding Officials, or the NLRB. Employees who obtain or receive medical documentation or information are strictly bound by the confidentiality provisions of this policy. When medical documentation is

disclosed, the individual disclosing the information must inform the recipient(s) of the confidentiality requirements.

## 14. REASSIGNMENT

Reassignment is a form of reasonable accommodation that may be provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their current position with or without a reasonable accommodation. It will only be considered as a reasonable accommodation if the NLRB determines that no other accommodation will permit the employee with a disability to perform the essential functions of his or her current position, there must be a vacant funded position available, and the employee requesting accommodation must be qualified for the position.

In considering whether there are positions available for reassignment, the supervisor(s), Deciding Official, and RAPM will work with both OHR and the requesting employee to identify: (1) vacant positions within the NLRB for which the employee may be qualified, with or without reasonable accommodation; and (2) positions which OHR has reason to believe will become vacant within **60 days** from the date the search is initiated and for which the employee may be qualified. The employee may also review vacancy announcements on USAJOBS.

The program will first focus on positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, the NLRB may consider lower grade positions for which the individual is qualified. If there are no such positions available, the NLRB is not required to grant a reassignment as an accommodation. Employees accommodated by a reassignment to a lower grade may notify management that they would like to be considered for accommodation equal to their earlier position if such a position becomes available. Reassignments may be offered to an employee outside his or her local commuting area.

## 15. DENIALS OF REASONABLE ACCOMMODATION REQUESTS

If it is determined that a request for reasonable accommodation will be denied, that decision will be promptly communicated by the RAPM to the requestor, in writing, stating the reasons for denial. While primary consideration will be given to an employee's requested accommodation, other effective accommodations may be offered. Under such circumstances, reasons for this alternate accommodation should also be communicated by the RAPM to the requestor. The RAPM will notify the requestor, in writing, stating the specific reasons for denial (e.g., why the medical documentation submitted is inadequate to establish that the requestor has a disability or required an accommodation; why the accommodation requested is not effective; or why the accommodation poses an undue hardship to the Agency). Any denial of a reasonable accommodation will include information on the requestor's right to file a request for

reconsideration with the Director of OHR, as discussion in Section 10 above. The denial notice will also include information explaining the requestor's right to file an Equal Employment Opportunity (EEO) complaint pursuant to [29 CFR 1614.106](#), and to invoke other statutory processes, as appropriate.

Factors supporting the denial of a request for accommodation include:

- Failure by the individual requesting accommodation or PAS to timely provide sufficient medical documentation or to cooperate with the NLRB's efforts to obtain such documentation.
- A determination that the requested accommodation would result in undue hardship.
- Medical documentation is inadequate to establish that the requesting individual is a qualified individual with a disability and/or needs a reasonable accommodation.
- The requested accommodation would require the removal of an essential function of the job.
- The requested accommodation would require the lowering of a performance or production standard.
- The requested accommodation would not be effective or is not the most appropriate accommodation under the circumstances, and/or there are no alternative appropriate accommodations.
- The individual requesting accommodation refuses to accept an appropriate alternative accommodation.

## 16. INFORMATION TRACKING

The NLRB's reasonable accommodation program will maintain tracking procedures that record the following information: (1) the specific reasonable accommodation; (2) the job (occupational series, grade level, and agency component) sought by requesting applicant or held by the employee; (3) whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment; (4) whether the request was granted or denied; (5) the identity of the deciding official; (6) the basis of the denial; and (7) the number of days taken to process the request.

The RAPM is responsible for tracking and preparing data summaries for reasonable accommodation activities within the NLRB. All information will be kept confidential as described fully above in Section 13 and will be maintained for the longer of the employee's tenure with the NLRB or 3 years; and 3 years for applicants. The NLRB will keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 and will make such records available to the EEOC upon the EEOC's request. Individuals may contact the RAPM to track the processing of requests for reasonable accommodation.



## 17. COSTS AND RESOURCES

Supervisory and managerial employees are to familiarize themselves with the resource materials available on EEOC's public website, including EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000), and EEOC Enforcement Guidance of Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002). See, <https://www.eeoc.gov/federal-sector>.

Deciding Officials who decide requests for a reasonable accommodation or make hiring decisions must consider all resources available to the NLRB as a whole, excluding those resources designated by statute for a specific purpose that does not include reasonable accommodation, prior to denying an accommodation on the basis of cost. [See, 29 C.F.R. § 1614.203\(d\)\(3\)\(ii\)\(A\)](#).

Deciding Officials who grant or deny requests for accommodation or who make hiring decisions must arrange for the use of the NLRB's resources to provide the accommodation, including seeking cost coverage from any centralized fund the NLRB may have for that purpose. [See, 29 C.F.R. § 1614.203\(d\)\(3\)\(ii\)\(B\)](#).

# ATTACHMENT A

## Employee or Applicant REQUEST FOR REASONABLE ACCOMMODATION

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Executive Order 13164 dated July 26, 2000, requires that agencies track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information in accordance with applicable law and regulations.

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### SECTION I.

1. Name (please print): \_\_\_\_\_

*Employee/Applicant (circle one)*

2. Home Address: \_\_\_\_\_

3. Home Telephone: \_\_\_\_\_ 4. Work Telephone: \_\_\_\_\_

5. Agency component: \_\_\_\_\_

6. The title, occupational series and grade of the position for which reasonable accommodation is requested (vacancy number for applicant only):  
\_\_\_\_\_

7. Date of the request for reasonable accommodation: \_\_\_\_\_

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### SECTION II.

### ACCOMMODATION REQUESTED

*(Be as specific as possible, e.g., adaptive equipment, reader, interpreter, etc., or attach a description.)*

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### SECTION III.

### REASON FOR REQUEST

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### SECTION IV.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date