

**ADMINISTRATIVE POLICY CIRCULAR**

**Date:** August 25, 2003

**To:** All Employees

**Subject:** Reasonable Accommodation Procedures

1. **PURPOSE:** To provide written reasonable accommodation procedures to enable the National Labor Relations Board (NLRB) to process requests efficiently; to ensure that individuals with disabilities understand how to approach the system and know what to expect; and to be a resource both for individuals with disabilities and for Agency supervisory/managers and employees, so that all Agency personnel can understand the requirements of the Rehabilitation Act of 1973. The Agency is required to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment except when such accommodation would cause an undue hardship on Agency operations.
2. **Authority:** The NLRB Reasonable Accommodation Procedures have been developed in accordance with Executive Order 13164 (July 26, 2000), Section 501 of the Rehabilitation Act of 1973, (29 U.S.C.), and the Americans with Disabilities Act of 1990, (42 U.S.C.).
3. **Policy:** It is the policy of the National Labor Relations Board to provide reasonable accommodations to qualified disabled employees or applicants, unless to do so would cause undue hardship to the Agency, and to handle requests as quickly as possible.
4. **Program Responsibilities:**
  - a. **Director of Administration:** The Director of Administration is the administrator of the Disability Program and is responsible for overall program direction and oversight.
  - b. **Director of Human Resources:** The Director of Human Resources is the Program Coordinator for the Disability Program and is responsible for developing and implementing the policies and procedures for the Agency's reasonable accommodation program. The Director (1) ensures that the program complies with Executive Order 13164; (2) ensures that requests are expeditiously processed; and (3) informs management, employees and individuals with disabilities of the requirements of the Rehabilitation Act. In addition, the Director of Human Resources is requested to concur in the Division or Office Head's approval or disapproval of employee requests for reasonable accommodation. Any non-concurrences will be forwarded to the Director of Administration to coordinate a resolution.

- c. **Selective Placement Coordinator:** The Agency's Selective Placement Coordinator is assigned to the Division of Administration, Human Resources Branch, Labor and Employee Relations Section and assists management in the review and evaluation of requests for reasonable accommodation, provides information on available resources and potential accommodations, tracks requests to ensure that they are given appropriate consideration, and ensures that requests are addressed in a timely manner. In addition, the Selective Placement Coordinator is the primary liaison with the Agency's Equal Employment Opportunity Office, Information Technology Branch, Budget Branch, Procurement and Facilities Branch and other offices or agencies, regarding requests for reasonable accommodation.
- d. **Managers and Supervisors:** Managers and Supervisors are responsible for being familiar with the requirements of these procedures and processing requests for reasonable accommodation expeditiously through their appropriate Branch or Office Head, including prompt coordination with the Selective Placement Coordinator, as necessary, for resolution of requests for accommodation.

5. **Definition of Key Terms:**

a. ***Reasonable Accommodations***

The Rehabilitation Act of 1973 requires Federal agencies to provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would impose an undue hardship on the Agency's operations. 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. There are 3 categories of reasonable accommodations:

- 1) modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille);
- 2) modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job (such as providing sign language interpreters); and
- 3) modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as removing physical barriers in an office or adjusting an employee's tour of duty).

b. ***Undue Hardship***

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.

**c. *Qualified Individual with a Disability***

An individual with a disability is qualified if (1) he/she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) he/she can perform the essential functions of the position, with or without reasonable accommodation.

**d. *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.

**e. *Reassignment***

According to *The Guide to Processing Personnel Actions*, reassignment is defined as the change of an employee from one position to another without promotion or change to a lower grade.

**f. *Individual with handicap(s)***

Under the Federal EEOC Regulations, 29 CFR, 1614.203, an individual with handicap(s) is defined as one who:

- has a physical or mental impairment which substantially limits one or more of such person's major life activities;
- has a record of such an impairment; or
- is regarded as having such impairment.

**6. Requirements of the Rehabilitation Act**

Under the Code of Federal Regulations on Reasonable Accommodations (Title 29, Section 1613.704), Federal agencies shall make reasonable accommodation to the known physical or mental limitations of a qualified disabled applicant or employee unless the Agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Reasonable accommodation may include, but shall not be limited to: 1) Making facilities readily accessible to and usable by disabled persons; and 2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

As specified in Equal Employment Opportunity Commission (EEOC) reasonable accommodation guidelines, factors to be considered in determining whether an accommodation would impose an undue hardship on the operation of the Agency include: 1) the overall size of

the Agency's program with respect to the number of employees, number and type of facilities, and size of budget; 2) the type of Agency operation, including the composition and structure of the Agency's work force; 3) the nature and cost of the accommodation; and 4) the requirements of a collective bargaining agreement.

## **7. Requesting an Accommodation**

### **a. Initiating a Request for Accommodation**

An employee or job applicant may initiate a request for reasonable accommodation orally or in writing. Further, a person requesting accommodation does not have to mention the Rehabilitation Act or use the phrase "reasonable accommodation." Although not required, it may be helpful in expediting the process if the employee specifically notes that he/she is requesting a reasonable accommodation. If the requested accommodation cannot be made, management may make alternative suggestions that may meet the employee's needs. An oral request will start the accommodation consideration process. However, for record keeping purposes, an EEOC SF-800, entitled *Request for Barrier Removal or Reasonable Accommodation* (copy attached) must be completed. If a disabled person needs assistance with completion of this form, the supervisor/manager or the Selective Placement Coordinator shall provide that assistance.

If a request for an accommodation is needed on a repeated basis, the disabled person does not have to submit a written request each time (e.g., for assistance with a sign language interpreter or a reader.)

Requests may be made at any time:

- to the supervisor or manager in the employee's immediate chain of command; and or
- in connection with the application process, any Agency employee with whom the applicant has contact.

In order to ensure expeditious processing of requests, all decision makers should designate back-ups to continue receiving, processing, and providing reasonable accommodations when the decision maker is absent.

A family member, health care professional, union representative, or other representative may request a reasonable accommodation on behalf of an individual with a disability. The Agency would then confirm with the individual with the disability that the reasonable accommodation is wanted, and complete the written form.

### **b. Processing Requests for Reasonable Accommodation**

- Step 1** Submit request to the Branch Chief or Office Head with a copy to the first line supervisor, accompanied with appropriate medical documentation. If the request involves a change in tour of duty, hours, etc., the first line supervisor, in consultation with the Division or Office Head, may approve without further discussion. For a request involving other matters, such as an adaptive computer, the supervisor should follow Step 2 for disposition and record keeping.

**Step 2** Forward the request to the Selective Placement Coordinator in the Human Resources Branch.

**Step 3** The Selective Placement Coordinator will review the request and recommend acceptance/rejection of the request to the Director of Human Resources within 3 workdays of receipt based on consultations with the Branch Chief or Office Head, the EEO Office, the Information Technology Branch representative, or the Procurement and Facilities Branch representative, etc., as appropriate, regarding the reasonableness of the request.

**Step 4** The Division or Office Head will approve or disapprove the request in concurrence with the Director of Human Resources, within 5 workdays of receipt, absent extenuating circumstances. Any non-concurrences will be forwarded to the Director of Administration to coordinate a resolution.

**Step 5** The Selective Placement Coordinator will forward the approved request to the supervisor and appropriate office (for example, Information Technology, Procurement, etc.) for appropriate action; or the Selective Placement Coordinator will inform the employee, or applicant, of reasonable accommodation denial in writing within 10 workdays, absent extenuating circumstances, after the decision is made. Such notices shall comply with the denial section set forth in Section 10 below.

Where there is a delay in either processing a request for, or delivering, a reasonable accommodation, the Agency shall notify the individual of the reason for the delay and to the extent possible keep the individual informed of the date on which the Agency expects to complete the process. Further, if there is a delay, the Agency shall investigate whether there are temporary measures that could be taken to assist the individual with the disability. This may include temporary job restructuring or the use of equipment that might permit the individual to perform some of the functions of his/her job.

The parties are encouraged to use alternative dispute resolution techniques to resolve any dispute that may arise in these proceedings. These informal processes are in addition to and do not modify or replace the EEO Complaint process.

For record keeping purposes, all requests should be forwarded to the Selective Placement Coordinator in the Labor and Employee Relations Section in the Human Resources Branch including any requests in which the Selective Placement Coordinator has not been involved. However, it is noted that many requests may be approved by first-line supervisors, with the concurrence of the Division or Office Head, such as requests for change in tour of duty, rearranging furniture for accessibility, and purchase of special office supplies.

## **Time Limits**

Time limits for processing requests for and providing reasonable accommodations should be as short as reasonably possible. In any case, requests will be processed within a maximum of 15 workdays after receipt, absent extenuating circumstances. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. The timeframes may be suspended while awaiting medical documentation and/or supplemental documentation. Oral requests should be documented by the supervisor/manager and forwarded to the Selective Placement Coordinator, as soon as possible after receipt.

### **c. Medical Information**

The employee or the applicant requesting the accommodation may need to provide appropriate medical information and/or updates related to the functional impairment at issue and where the requested accommodation is not obvious. Under the Rehabilitation Act, medical information is not required where; a) both the disability and the need for reasonable accommodation are obvious, or b) the individual has already provided the Agency with information sufficient to document the existence of the disability and his/her functional limitations.

The Agency has a right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the alleged disability or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee perform the essential functions of the job. Further, the Agency has a right to have medical information reviewed by a medical expert of the Agency's choosing and at the Agency's expense.

Where further medical documentation is warranted, the Agency may request information or documentation including the following:

1. the nature, severity, and duration of the individual's impairment;
2. the activity or activities that the impairment limits;
3. the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
4. why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job or enjoy a benefit to the workplace.

The Agency will explain to the individual why the submitted documentation is insufficient, identify the information that is needed, and allow the individual an opportunity to provide the information before requesting medical examination. The individual may be asked to sign a limited release to his/her health care professional, limited to the information the Agency has identified as needed.

If the individual is still unable to provide sufficient information in support of the request, the Agency may request that the individual be examined by a health care professional of the Agency's choice at the Agency's expense. Any such medical examination will be limited to determining the existence of a disability and/or the functional limitations that require a reasonable accommodation.

Failure to provide necessary documentation where it has been properly requested could result in the denial of the request for accommodation.

## **8. Confidentiality**

Consistent with law and regulation, [29 CFR 1630.14(b), 42 USC 12201(b) and (c)], all medical documentation will be kept confidential and will be maintained separately from the employee's official personnel file (OPF). Further, Agency officials who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except as follows:

- Supervisors and managers who have a need to know may be advised about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
- First aid and safety personnel may be told if the disability might require emergency treatment or evacuation;
- Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act;
- The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers; and
- Agency EEO officials may be given the information to maintain records and evaluate and report on the Agency's performance in processing reasonable accommodation requests.

All of the above persons are bound by the same confidentiality requirements. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

## **9. Reassignment as an Accommodation**

Reassignment, absent undue hardship, will be considered as a reasonable accommodation if the Agency determines that no other reasonable accommodations will permit the employee with a disability to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship.

Reassignments, as a reasonable accommodation, may be made only to vacant positions, absent undue hardship on the Agency, and to employees (not applicants), who are qualified for the new position. If the employee is qualified for the position, he/she may be reassigned to the job and will not have to compete for it. Such vacant positions shall not have any greater career ladder promotion potential than the employee's current position of record. Reassignment is a "last resort" accommodation that must be considered if there are no effective accommodations that would enable the employee to perform the essential functions of his current job, or if other possible accommodations would impose undue hardship.

In considering whether there are positions available for reassignment which have no greater career ladder promotion potential than the employee's current position of record, the Selective Placement Coordinator will work with the appropriate management official(s) and the Director of Human Resources, to identify: (1) all vacant positions within the Agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions that Agency management has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. As appropriate, the Agency 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 Agency will consider, and consistent with applicable law, rule and regulations, offer a vacant lower level position for which the individual is qualified.

Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate at no cost to the Agency.<sup>1</sup>

#### **10. Denials of Reasonable Accommodation**

All reasonable accommodation denials together with the reasons for the denial will be in writing and, absent extenuating circumstances, issued to the requesting employee or applicant within 10 workdays from the date of the decision to deny. The denial shall be written in plain language with as much specificity as possible. Where the Agency denies a specific requested reasonable accommodation but offers to make a different one in its place, the Agency will explain the reasons for the denial of the requested accommodation and the reasons that it believes the chosen accommodation will be effective. The timeframes may be suspended while awaiting medical documentation and/or supplemental documentation. The denial will also notify the individual that he/she has a right to file a grievance under the applicable negotiated or administrative grievance procedures, as appropriate; or a complaint through the EEO complaint or other applicable statutory process, consistent with any limits to such rights set forth in any statute or the applicable collective bargaining agreement.

#### **11. Information Tracking**

The Agency will monitor its disposition of each request and will maintain the confidentiality of medical information received consistent with applicable law and regulations.

The following information will be tracked:

1. numbers and types of reasonable accommodation that have been requested in the application process and whether those requests have been granted or denied;
2. jobs (occupational series, grade level, and Agency component) for which reasonable accommodation have been requested;
3. types of reasonable accommodation that have been requested for each of those jobs;
4. numbers and types of reasonable accommodation for each job, in Headquarters and in Field offices, that have been approved, and the numbers and types that have been denied.
5. reasons for denial of requests for reasonable accommodation;
6. amount of time taken to process each request for reasonable accommodation; and

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<sup>1</sup> Of course, if the employee is otherwise entitled to a paid transfer under a collective bargaining agreement, this provision does not limit such payment.

7. sources of technical assistance that have been consulted in trying to identify possible reasonable accommodation.

Records will be divided into 2 categories for this purpose:

1. records related to a particular individual requesting accommodation for the duration of that individual's employment; and
2. cumulative records used to track the Agency's performance with regard to reasonable accommodation for at least 3 years.

Records containing medical information about a particular individual with a disability are subject to confidentiality restrictions. For this reason, all records will be retained separate from the employee's official personnel record and will be secured under the responsibility of the Selective Placement Coordinator in the Agency's Human Resource Branch. Only individuals identified under Section 8, under "Confidentiality," may have access to this information. Those individuals who may have "a need to know" are bound by the same confidentiality regulations.

It is noted that the EEOC has the right to review all relevant records upon request to evaluate the efficacy of the Agency's accommodation procedures. Aggregate information that does not disclose an individual's name will not be subject to the confidentiality restrictions. The purpose of tracking this information is to evaluate the Agency's performance in responding to requests for reasonable accommodation and to submit statistical reports annually to the EEOC.

/S/

Gloria J. Joseph  
Director of Administration