

## **What Is Reasonable Accommodation?**

The Rehabilitation Act of 1973, as amended, protects qualified employees and applicants with disabilities in the Executive Branch of the Federal government from employment discrimination based on disability. In 1992, the substantive employment standards of the Americans with Disabilities Act, 42 U.S.C. Section 12111, et seq., were made applicable to the Federal Government through the Rehabilitation Act. The amended law requires Federal employers to provide reasonable accommodations to qualified individuals with disabilities so that employees with disabilities can enjoy the benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities. It requires Federal agencies to provide reasonable accommodation for known physical or mental limitations of qualified employees and applicants, unless to do so would cause undue hardship. The law also ensures equal access to Federal programs, activities, and facilities to people with disabilities.

In addition, Executive Order 13164, issued on July 26, 2000, requires Federal agencies to develop written procedures for providing reasonable accommodation. Contact the agency personnel office, reasonable accommodation coordinator, civil rights office, or EEO office to request a copy of a particular agency's written procedures.

This section addresses reasonable accommodation and provides links to guidance, resources, and best practices.

### **Who is an individual with a disability?**

An individual with a disability:

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

### **What is a major life activity?**

A major life activity is a function that the average person in the general population can perform with little or no difficulty. Major life activities include activities such as caring for oneself, seeing, hearing, walking, breathing, speaking, learning, sitting, standing, lifting, reaching, and working.

### **Who is a qualified individual with a disability?**

A qualified individual with a disability has the skills, experience, education, and other requirements of the job the individual holds or desires, and can perform the essential functions of the position with or without reasonable accommodation.

### **What happens if the disability is not obvious?**

When the disability and/or the need for accommodation are not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations. An employer should respond expeditiously to a request for reasonable accommodation.

### **What is an undue hardship?**

An agency is not required to make an accommodation if it can demonstrate that providing the accommodation would impose an undue hardship on its everyday operations. An undue hardship is an action that requires "significant difficulty or expense" in relation to:

- overall size of the agency's program with respect to the number of employees, number and type of facilities and size of budget;
- type of operation, including the composition and structure of the agency's workforce; and
- nature and cost of the accommodation.

### **What is reasonable accommodation?**

The term "reasonable accommodation" is a term of art that Congress defined only through examples of changes or modifications to be made, or items to be provided, to a qualified individual with a disability. A reasonable accommodation is adapting the job site or job functions for a qualified person with a disability to enable an individual with a disability to enjoy equal employment opportunities. This does not mean that the employer must lower the standards of work for the position or change the job requirements. There are three categories of reasonable accommodations:

- 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);
- 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
- Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as removing physical barriers in an office cafeteria).

### **What are examples of a reasonable accommodation?**

Reasonable accommodations that can be requested include, but are not limited to, the following:

- making existing facilities accessible;
- restructuring the job;
- utilizing part-time or modified work schedules;
- adjusting or modifying tests, training materials, or policies;
- providing qualified readers and interpreters;
- acquiring or modifying equipment; and
- reassigning an individual to a vacant position for which the employee must be qualified.

### **Can an accommodation involve readers, interpreters, and/or personal assistants?**

Agencies may employ personal assistants for employees with disabilities, including those with visual and hearing impairments, under authority provided by 5 U.S.C. 3102. In addition, Section 3102(d) of the law authorizes the payment of pay and allowances for an individual who accompanies an employee with a disability on official travel. Specifically, the statute provides that the head of an agency may authorize the payment to an individual to accompany or assist (or both) the employee with a disability for all or a portion of the travel period involved. The statute further provides that the accompanying individual shall be considered an employee, but only for purposes of the Federal Employees' Compensation Act and the Federal Tort Claims Act. Accordingly, 5 U.S.C. Section 3110, which provides that a public official may not appoint, employ, promote, advance or advocate for a relative (as defined in the section), does not prohibit pay to an accompanying spouse.

### **How can an individual request a reasonable accommodation?**

An individual can make either an oral or written request for accommodation. To request an accommodation, an individual does not need to mention the Rehabilitation Act or "reasonable accommodation." A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. The request for a reasonable accommodation must be made in relation to a medical disability.

### **What if the request is denied?**

All denials of reasonable accommodation requests must be made in writing, and the decision must specify the reason for the denial. The denial should be written in plain language, clearly stating the specific reasons for the denial. After denying a request, the individual must be informed that she has the right to file an EEO complaint, has the right to pursue any applicable union grievance and informal alternative dispute resolution.

### **What are an individual's responsibilities?**

Employees or applicants with disabilities who need reasonable accommodation are responsible for making their needs known to the appropriate official. Supervisors are responsible for properly responding to requests for accommodation from their employees. When an individual decides to request accommodation, the individual or his/her representative must let the employer know that they need an adjustment or change at work for a reason related to a medical condition.

The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation.

### **How is a reasonable accommodation decision made?**

Decisions on making accommodations are made on a case-by-case basis. Executive Order 16134, however, requires each Federal agency to establish effective written procedures to facilitate the provision of reasonable accommodation for applicants and employees. Contact specific agencies for information on their decision-making process.

### **What about alternative accommodations?**

An individual who is granted a reasonable accommodation might not receive the exact form of accommodation requested. The deciding official has the discretion to identify reasonable and appropriate alternatives.

**If you have questions in relation to reasonable accommodations, please contact the White Sands Program for Individuals with Disabilities Manager at 678-2831/1291.**