



CIVIL RIGHTS ACCOMMODATIONS FOR PERSONS WITH DISABILITIES PROCEDURE

Lead Division: Civil Rights

Date: February 2, 2015

Signed by: Sandra D. Norman, Division Administrator

Supersedes: April 1, 2010

PURPOSE:

The Virginia Department of Transportation (VDOT) is obligated to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act (ADAAA) of 2008. Under these laws, employers must provide a reasonable accommodation to the known physical or mental limitations of qualified employees or applicants with disabilities, unless to do so would cause undue hardship. VDOT is committed to providing reasonable accommodations to employees and applicants for employment to assure that individuals with disabilities enjoy equal access to employment opportunities at VDOT.

This procedure is not intended to supplant the process for accessible parking administered by the Administrative Services Division or occupational and health and medical programs administered by the Division of Workforce Safety and Health. This procedure is also not intended to address requirements of Title II of the Americans with Disabilities Act.

PROCEDURE:

A request for reasonable accommodation is a statement to the employer indicating a need(s) for an adjustment or change at work, or in the application process. A request does not have to use words such as “reasonable accommodation” or “disability”. The reasonable accommodation process begins as soon as the request for accommodation is made.

An **employee** may request a reasonable accommodation orally or in writing to a supervisor, Civil Rights staff or Human Resources staff.

An **applicant** for employment may request a reasonable accommodation orally or in writing to a hiring manager or Human Resources staff handling the recruitment.

A **family member, health professional, or other authorized representative** may request an accommodation on behalf of a VDOT employee or applicant to a supervisor, Civil Rights staff or Human Resources staff.

All requests for accommodation should be made by completing the Reasonable Accommodation Request (Attachment A) form. If an employee or applicant with a disability requires assistance completing the form, VDOT staff receiving the request will provide assistance.



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Timeframes

All Request for Reasonable Accommodation forms should be forwarded to the appropriate District Civil Rights Office or the Civil Rights Division within three workdays, for processing. If no additional information is needed and there are no extenuating circumstances, requests will be processed and decided within 15 workdays from the date the request is received. The District Civil Rights Manager or the Civil Rights Division receiving the request will consult with the appropriate decision makers.¹ If the decision maker approves a request, it should be immediately communicated to the person making the request. If the accommodation cannot be provided immediately, the decision maker must inform the person making the request of the projected timeframe for providing the accommodation. This notice does not need to be in writing.

Denials

An employer is not required to provide a reasonable accommodation if it will impose an undue hardship on the operation of business. Management will decide if a request for a reasonable accommodation will be approved or denied. However, a manager's decision to deny a request for reasonable accommodation must be discussed with the appropriate District Civil Rights Manager or the Civil Rights Division before the decision is communicated to the person making the request. Civil Rights staff will document the justification for the denial.

Recordkeeping

Accommodation request forms and documents regarding denials will be maintained by the appropriate District Civil Rights Office and the Civil Rights Division.

ROLES AND RESPONSIBILITIES:

Civil Rights:

The Civil Rights Division has the responsibility to administer the agency's Reasonable Accommodation Program, agency-wide in collaboration with Human Resources. All persons receiving a request should forward the request to the appropriate District Civil Rights Office or the Civil Rights Division. A written confirmation is not required when a person needs a reasonable accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). The written form is required only for the first request. Civil Rights will promptly notify an employee's management that a request for accommodation has been made.

¹A request that will result in expenditure of funds must be approved by the respective District/Division Administrator. A request that does not result in expenditure of funds may be approved by an employee's immediate supervisor. Human Resources (HR) is responsible for approving applicants' requests and expenses incurred for accommodation during the selection process.



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language interpreters or readers). The written form is required only for the first request. Civil Rights will promptly notify an employee's management that a request for accommodation has been made. Civil Rights will assist management and the employee in using the interactive process to determine if the requested accommodation is feasible and effective. Civil Rights will coordinate with management and other divisions or external resources to provide certain accommodations such as adaptive equipment, removal of architectural barriers, requests for materials in alternative formats (e.g., Braille) and sign language interpreters. Costs for reasonable accommodations provided will be absorbed by the district/division of the originating request. Civil Rights is responsible for providing training on the ADA and ADAAA and for coaching managers on the interactive process.

Managers and Supervisors:

Once a request for accommodation is made, the next step is the *interactive process* between management and the employee to determine what accommodation should be provided, if any. The person requesting the accommodation and the appropriate decision maker (s) must talk to each other about the request. Courts have ruled that employers fail to demonstrate good faith if evidence does not show the application of an interactive process when the employer is aware of the employee's disability, and the employer receives notification of the employee's desire to be accommodated. During the interactive process, information is compiled related to one or more of the following:

- Learning the specific essential job functions that the employee is unable to perform without reasonable accommodation due to a disability.
- Understanding the employee's ideas for specific accommodation(s) that the employee feels he or she needs.
- Requesting additional information, including medical data that justifies an employee's specific accommodation request, if needed.
- Facilitating a negotiation that results in mutual agreement about the specific accommodation(s) that will enable the employee to perform his or her essential functions.
- Explaining the accommodation that the employer is willing to provide, and if appropriate, providing the employer's rationale for imposing an accommodation different from the accommodation requested by the employee.

Confidentiality

Managers should not discuss the interactive process with anyone who doesn't have a need to know. Privacy considerations, including restricting the distribution of information about an employee's disability and his/her accommodation request, are important in all interactive processes. Under no circumstances should co-workers be informed about the details of an employee's disability unless the employee personally chooses to impart such information to his/her co-workers.



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Medical information obtained in connection with the reasonable accommodation process will be kept confidential. Medical information will be forwarded to WSHD to be maintained as part of that division's files as the agency's central repository for medical information.

Human Resources:

Requests for accommodation from applicants with a disability to participate in the process to be considered for a job will be handled by Human Resources. Human Resources staff will coordinate with the appropriate Civil Rights Office or Civil Rights Division to determine if the accommodation is appropriate, and to ensure that the request is properly documented for record-keeping purposes. Depending on the timeframe for receiving applications, conducting interviews, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job. Human Resources is responsible for coordinating with Civil Rights regarding requests for accommodation that involve personnel actions such as reassignment, transfer, etc. Human Resources is responsible for conducting job analyses in coordination with Civil Rights, to determine essential functions.

Workforce Safety and Health

Safety job analyses will be conducted by the agency's Division of Workforce Safety and Health (WFSH). Civil Rights will collaborate with WFSH in this regard as needed. Civil Rights will forward all confidential medical information obtained in the reasonable accommodation process, when needed, to WFSH for retention.

EFFECTIVE DATE:

This procedure is effective February 2, 2015 and will remain in effect until amended.

FURTHER INFORMATION:

For the purpose of these procedures, the following terms are defined as follows:

Reasonable Accommodation: Any change in the work environment or in the way things are customarily done that results equal employment opportunity for a person with a disability.

Qualified Person with a Disability: A person with a disability is qualified if (1) s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) s/he can perform the essential functions of the position, with or without reasonable accommodation.



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Essential Functions: The fundamental job duties of the position. The job cannot be done without performing these duties. 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 specialized and the employee is hired based on his/her ability to perform it. Determination of the essential functions of a position must be conducted on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position

Reassignment: Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it.

Undue Hardship: If a specific type of reasonable accommodation causes *significant difficulty or expense*, then VDOT does not have to provide that particular accommodation. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.