



State Records Center and Archives

New Mexico Commission of Public Records

SERIES: Human Resources (SRCA 400)

NUMBER: SRCA-409

TITLE: Reasonable Accommodation

PURPOSE: The purpose of this policy is to establish guidelines to efficiently process requests for reasonable accommodation.

SCOPE: This policy applies to all commission of public records – state records center and archives job candidates and employees.

DEFINITIONS:

“ADA Coordinator” is the Deputy State Records Administrator or designee.

“Disability” means, with respect to an individual-

- a physical or mental impairment that substantially limits one or more major life activities of such individual;
- a record of such an impairment; or
- being regarded as having such an impairment.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

“Essential functions” 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.

“Major Life activities” include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, sitting, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

“Qualified” means an SRCA employee or applicant with a disability who, with or without reasonable accommodation, can perform the essential functions.

“Reasonable accommodation” means any modification or adjustment to the work environment or to the circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position and or to enjoy the benefits and privileges of employment.

There are three 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 cafeteria).

Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees accessible to and usable by individuals with disabilities
- Restructuring a job by modifying the job so that a qualified person with a disability can perform the essential functions of the position
- Initiating part-time or modified work schedules
- Acquiring or modifying equipment or devices;
- Acquiring readers or interpreters;
- Providing an alternative worksite in a setting away from the employee's normal work station

“SRCA” means the New Mexico Commission of Public Records - State Records Center and Archives.

“Undue hardship” means accommodations that would impose an undue hardship on the operation of the agency. 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.

A. GENERAL PROVISIONS: It is the policy of the SRCA to provide reasonable accommodations to qualified individuals with disabilities to support the performance of an essential function of a job, compete for a job, or enjoy benefits and privileges of employment equal to those enjoyed by other employees.

The SRCA ADA Coordinator may require documentation to determine whether the candidate or employee's mental or physical impairment is covered by the Americans with Disabilities Act and whether the accommodation is necessary for the candidate or employee to perform essential functions of a job, to compete for a job, or enjoy benefits and privileges of employment equal to those enjoyed by other employees.

A collaborative effort that includes the candidate or employee, the SRCA ADA Coordinator and may include external experts will be initiated by a request for reasonable accommodation that includes analysis of essential job functions, evaluation of options, and accommodation effectiveness. Primary consideration is given to the accommodation preferred by the individual with a disability however SRCA may choose to provide an alternative accommodation. The alternative chosen must:

- Enable an applicant with a disability to have an equal opportunity to participate in the application process
- Enable the employee to perform the essential functions of the job
- Enable the employee to enjoy privileges and benefits of employment equal to those enjoyed by other employees

All parties involved shall treat all information contained in the accommodation request and determination process as confidential.

The resources of the agency as a whole, not just those of an individual division, will be a factor in determining whether a requested reasonable accommodation poses an undue hardship.

B. RESPONSIBILITIES:

Job Candidates: Job Candidates must inform State Personnel and/or the SRCA of the need for an accommodation.

Employee: It is the responsibility of the employee to:

- Make the SRCA aware that accommodation is needed;
- Provide documentation to establish the existence of a disability if the disability and/or need for accommodation is not obvious, and functional limitations caused by the disability;
- Participate in the interactive process;
- Provide feedback to the supervisor or ADA Coordinator about the effectiveness of the reasonable accommodation; and
- Appeal the reasonable accommodation determination if s/he is not satisfied.

Supervisor: It is the responsibility of the supervisor to:

- Participate in the reasonable accommodation interactive process; and
- Evaluate, with the help of the employee, the effectiveness of the accommodation and report to the ADA Coordinator.

ADA Coordinator: It is the responsibility of the ADA Coordinator to:

- Determine sufficiency of the documentation of the disability, if the disability is not obvious;
- Coordinate the interactive process;
- Research reasonable accommodation options and reach a consensus with the employee, if possible, regarding an effective reasonable accommodation;
- Consult with any SRCA department affected by the accommodation;
- Notify the job candidate or employee and the supervisor of final decisions related to an accommodation request;
- Ensure an appropriate accommodation is provided in a timely manner so as not to negatively affect the hiring process or an employee's performance; and
- Maintain all records of job candidate or employee reasonable accommodation requests in accordance with file retention rules and keep these records separate from their employee personnel file.

C. REQUEST FOR ACCOMMODATION: An employee or job candidate may initiate a request for reasonable accommodation orally or in writing. Employees may make their request to the supervisor, division director, the human resource manager, deputy state records administrator or state records administrator. An applicant may make a request to an employee with whom the applicant has contact. However, the employee with whom the applicant has contact shall notify the ADA Coordinator as soon as reasonably possible. The ADA Coordinator will inform applicants who need assistance with the application process to contact the State Personnel Office.

The requesting employee or job candidate is not required to mention the laws relating to, or the words, "reasonable accommodation." A request for accommodation is a statement that an individual needs an adjustment or a change at work or in the application process for a reason related to a medical condition.

All requests, whether oral or written, shall be forwarded to the ADA Coordinator as soon as reasonably possible.

Although the state records administrator or designee may, for record keeping purposes, ask an applicant or employee to fill out a form, an individual's oral request will start the reasonable accommodation process. Accordingly, the time limits established by this policy will run from the date of the oral request. Employees are encouraged to initiate a request in writing.

If an accommodation is likely to be needed on a repeated basis (e.g., assistance of sign language interpreters or readers) the employee shall not be required to submit a written request each time. Once the reasonable accommodation is approved, the employee may obtain the accommodation by notice to an appropriate individual.

In addition to the employee or applicant, a family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. Where possible, the ADA Coordinator or designee will confirm with the person with a disability that they in fact want a reasonable accommodation.

D. PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION: There is not a "one size fits all" process for requesting a reasonable accommodation. This policy shall be implemented in a manner that imposes the fewest burdens on individuals with disabilities and permits the most expeditious consideration and delivery of the reasonable accommodation.

Accommodation Request – Job Candidate

The Human Resource Manager will discuss the accommodation request process with the job candidate and explain that the agency will consider a specific accommodation requested, however, an appropriate reasonable accommodation is the decision of the SRCA and may not be what the applicant requested.

Upon receipt of an accommodation request from a job candidate, the Human Resource Manager immediately completes the appropriate form and sends it to the ADA Coordinator. The original, a facsimile or electronic copy of the form may be submitted.

The ADA Coordinator will review the request, determine the appropriate action and upon arranging the provision of accommodation will confirm the information with the Human Resource Manager. *(Providing accommodation for the competitive process does not necessarily establish precedent for provision of an accommodation in an employment situation. Accommodation for the competitive process may not relate to job duties.)*

Analysis: The ADA Coordinator may exempt a job candidate from the analysis process and authorize provision of accommodation due to the time sensitive nature of the competitive employment process. However, the ADA Coordinator may request documentation if the job candidate's disability is not obvious or if there is no record of disability.

Mitigating measures shall not be considered when determining whether an impairment substantially limits a major life activity. Exceptions are ordinary eyeglasses or contact lenses. The ADA Coordinator will consider the job candidate's preferred accommodation and may seek assistance from internal and/or external experts in evaluating the need for specific accommodation and identifying accommodation options. The ADA Coordinator will also discuss the practical considerations with supervisors whose realm of authority may influence the assessment, procurement, installation, maintenance, and or disposal of items used as a reasonable accommodation.

Acquisition of Accommodation: Once appropriate accommodation is identified, the ADA Coordinator informs the job candidate and Human Resource Manager of the SRCA choices and, if necessary, initiates the procurement process.

Appeal Process: If the job candidate's impairment does not warrant accommodation, the ADA Coordinator immediately informs the State Records Administrator or designee. Upon affirmation of the State Records Administrator or designee, the ADA Coordinator will inform the job candidate and Human Resource Manager in writing of the accommodation denial, the reason for denial and, if applicable, an alternative solution. The Human Resource Manager will place a copy of the denial in the position hiring file. A job candidate may appeal a denial of accommodation. Appeal must be made in writing to the State Records Administrator within 48 hours of notice. The State Records Administrator may affirm, modify or reverse the decision of the ADA Coordinator or may return the request for accommodation to the ADA Coordinator for further consideration. The decision of the State Records Administrator is final. *(Should a job candidate appeal a denial of accommodation, no final hiring decision can be made until the appeal process is resolved.)*

Accommodation Request – Employee

The Human Resource Manager will include this policy and any procedures in the new hire packet and the employee shall return the signed acknowledgment form to the Human Resource Manager. To initiate a request an employee or a person acting on their behalf will notify the immediate supervisor or the ADA Coordinator of the need for accommodation.

Within one week from the date of the request, the ADA Coordinator or designee will discuss the accommodation request with the employee or person acting on their behalf and will complete the appropriate form with the employee or person acting on their behalf.

Analysis: The ADA Coordinator will determine whether documentation of the disability claimed is sufficient. If not, the ADA Coordinator may request that the employee provide medical information pertinent to the reasonable accommodation requested. Documentation may not be required if the disability is obvious or if there is a record of disability. Mitigating measures shall not be considered when determining whether a reported impairment substantially limits a major life activity. Exceptions are ordinary eyeglasses or contact lenses.

If the accommodation is warranted, the ADA Coordinator may seek assistance from internal and/or external experts in evaluating need and/or identifying specific accommodation or options. The ADA Coordinator will give primary consideration to an employee's preferred accommodation as part of the interactive process. The ADA Coordinator will further discuss practical considerations with supervisors whose realm of authority may influence the assessment, procurement, installation, maintenance, and or disposal of items used as reasonable accommodation.

Once an appropriate accommodation is identified, the ADA Coordinator will inform the employee and supervisor, in writing, of any approved accommodation and, if necessary, initiate the procurement process. The ADA Coordinator will place a copy of the request approval in the employee's Reasonable Accommodation file.

E. TIME LIMITS: The ADA Coordinator or designee will process a request for and provide or deny reasonable accommodation within a reasonable time. The reasonable time necessary to respond to any particular request will depend largely on the nature of the request. Where the request is simple and straightforward, absent undue hardship, the state records administrator or designee will provide the accommodation immediately. If the request is more complex or there are extenuating circumstances, a

reasonable time period will be necessary to take into consideration factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation.

If there is a delay in either processing a request for or delivering a reasonable accommodation, the ADA Coordinator or designee will notify the individual with a disability.

Should more than two weeks, from the date procurement is initiated, be needed to acquire items, the ADA Coordinator will contact internal and or external resources that may provide short term loan of the needed accommodation in the interim.

The ADA Coordinator will arrange training if it is needed for the employee to use the accommodation effectively and if there is a need to train auxiliary staff in the use and or maintenance of the accommodation.

Upon the receipt of assistive technology, the ADA Coordinator will inform the appropriate staff. Assistive technology will be integrated into agency systems within two weeks of receipt. The ADA Coordinator will maintain an inventory of assistive devices used as accommodation.

F. MEDICAL INFORMATION: The ADA Coordinator is not required to request medical documentation in order to provide reasonable accommodation. In fact, the SRCA may 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 SRCA with sufficient information to document the existence of the disability and his/her functional limitations.

However, where the disability and/or need for accommodation is not obvious, an employee or applicant requesting a reasonable accommodation may be required to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

If the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation, or does not 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 the ADA Coordinator or designee has the right to request relevant supplemental medical information. The ADA Coordinator or designee also has the right to have medical information reviewed by a medical expert of the ADA Coordinator or designee's choosing at the SRCA's expense.

When the standards set forth above are met, the ADA Coordinator or designee may request information or documentation regarding:

- the nature, severity, and duration of the individual's impairment;
- the activity or activities that the impairment limits;
- the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
- 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 of the workplace.

The ADA Coordinator or designee may also require that documentation about the disability or functional limitations come from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. However, the ADA Coordinator or designee may request only the information that is relevant to making a decision about reasonable accommodation. In most situations, this means that the ADA

Coordinator or designee may **not** request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation.

Where necessary to enable an individual's health professional to provide information regarding that individual's ability to perform a job, the ADA Coordinator will provide information to the health professional that describes the nature of the job, the essential functions the individual will be expected to perform, and any other information that is relevant to evaluating the request.

The ADA Coordinator or designee will only share the medical information it obtains, on a need to know basis. Those individuals must be informed of the limits on further disclosure of the information. Documentation may contain sensitive information about a person's medical condition, which may make some employees uncomfortable about sharing it with supervisors. In order to avoid this problem, whenever possible, the ADA Coordinator or designee will tell those individuals that the employee has a disability rather than sharing all of the details about the medical condition.

The ADA Coordinator or designee may request that an individual be examined by its own physician **only** if the individual has provided insufficient documentation from his/her own health care or other appropriate professional to substantiate the existence of a disability and the need for reasonable accommodation. If, in response to an initial request, the individual submits insufficient documentation to demonstrate that s/he has a disability and needs accommodation, the ADA Coordinator or designee will explain to that person why the submitted documentation is insufficient; identify the information that is needed; and allow the individual an opportunity to provide the information *before* requesting a medical examination. In such circumstances, the ADA Coordinator or designee will have the individual sign a limited release and then submit a list of specific questions to the individual's health care professional.

If the individual requesting an accommodation is still unable to provide sufficient information in support of the request, the ADA Coordinator or designee may request that the individual be examined by a health care professional of the ADA Coordinator or designee's choice at the SRCA's expense. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require a reasonable accommodation. Where a medical examination is warranted, the ADA Coordinator or designee must explain to the individual that failure to agree to it could result in a denial of reasonable accommodation.

ALL medical information must be kept **confidential**. This means that all medical information obtained in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. In addition, individuals 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 need to know may be told 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;
- 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.

Where medical information is disclosed to any of the foregoing officials, the ADA Coordinator or designee must inform those individuals about the confidentiality requirements that attach to the information.

G. REASSIGNMENT: Reassignment is a form of reasonable accommodation that must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position s/he holds, with or without reasonable accommodation. 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/her current job, or if all other possible accommodations would impose undue hardship.

Reassignment is available only to employees, not to applicants. In addition, reassignment may be made only to a vacant position. The law does not require that agencies create new positions or move employees from their jobs in order to create a vacancy.

An employee will be qualified if s/he (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position with or without reasonable accommodation. If the employee is qualified for the position, s/he should be reassigned to the job as a reasonable accommodation and should not have to compete for it.

H. APPEAL OF ACCOMMODATION PROVIDED: A request for reconsideration of the choice of accommodation may be submitted, in writing, to the ADA Coordinator within fifteen (15) days of notice. Additional information may be presented to support the request. The ADA Coordinator will respond to a request for reconsideration within fifteen (15) days. If the accommodation determination is upheld, an appeal may be submitted to the State Records Administrator, in writing, within fifteen (15) days of notice. The State Records Administrator may affirm or modify the decision of the ADA Coordinator. The decision of the State Records Administrator is final.

G. DENIALS OF REASONABLE ACCOMMODATION: If accommodation is not warranted, the ADA Coordinator must notify the individual in writing of the denial and the reasons for it. The denial should be written in plain language with as much specificity as possible. All denials must notify the individual that they have a right to file an EEO complaint.

If the state records administrator has denied a specific requested reasonable accommodation but offered to make a different one in its place, the notice should explain both the reasons for the denial of the requested accommodation and the reasons that it believes that the chosen accommodation will be effective.

Where the state records administrator grants an individual's request for reasonable accommodation, there is no requirement that the decision be in writing or that reasons for the decision be provided to the individual.

H. INFORMATION TRACKING: The following information will be maintained by the ADA Coordinator:

- the number and types of reasonable accommodations that have been requested in the application process and whether those requests have been granted or denied;
- the jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;
- the types of reasonable accommodations that have been requested for each of those jobs;
- the number and types of reasonable accommodations for each job, by agency component, that have been approved, and the number and types that have been denied;
- the number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
- the reasons for denial of requests for reasonable accommodation;
- the amount of time taken to process each request for reasonable accommodation; and

- the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

[2.3.20.011, 7/01/95; renumbered 3/15/02; renumbered and amended 3/7/2014]

APPROVED:



John Hyrum Martinez
State Records Administrator

EFFECTIVE DATE:

March 7, 2014