

DISABILITY-RELATED EMPLOYMENT POLICY

19.01 PURPOSE

This regulation provides policy, responsibilities, and procedures to ensure the Department complies with the employment and public services provisions of Titles I and II of the Americans With Disabilities Act (ADA) of 1990; the Americans With Disabilities Amendments Act (ADAA) of 2008; and Commonwealth of Pennsylvania Management Directive 205.25, Amended, Disability-Related Employment Policy.

19.02 POLICY/SCOPE

- A. Discrimination against a qualified individual on the basis of disability is prohibited with respect to:
 - 1. Job application procedures; the hiring, advancement, or discharge of personnel; personnel compensation; job training; and other terms, conditions, and privileges of employment.
 - 2. The provision of Department services, programs, and activities.
- B. The Department shall provide reasonable accommodation to qualified individuals with a disability who are job applicants; current Department personnel; or recipients of services, programs, or activities provided by the Department to the public.
- C. No qualified individual with a disability shall, by reason of such disability, be denied reasonable accommodation for; be excluded from participation in; or be denied the benefit of services, programs, or activities offered or provided by the Department to the public.
- D. The Department is not required to provide an accommodation for an individual who:
 - 1. Is not otherwise qualified for a position.
 - 2. Is not otherwise qualified to be the recipient of services, or to participate in the programs or activities provided by the Department.

3. Is not an individual with a disability, as defined by the ADA, or meets the definition of disability solely on the basis of being “regarded as” having a disability (refer to Definitions).
4. Is requesting an accommodation based on his/her association with an individual with a disability.

19.03 DEFINITIONS

For the purpose of this regulation, these terms shall have the following meanings:

- A. Ameliorative: The ability to repair, make better, heal, or improve.
- B. Appeal: The second and final step that can be pursued by an individual who is not satisfied with the decision of the Equal Employment Opportunity (EEO) **Section, Equality and Inclusion Office (EIO)**, concerning a Request for Reconsideration.
- C. Conditional Job Offer: An offer of employment that is contingent upon the satisfactory result of a post-offer medical examination(s).
- D. Direct Threat: A significant risk of substantial harm to the health or safety of the individual or to others that cannot be eliminated or reduced by reasonable accommodation. The determination that Department personnel or an applicant for employment poses a “direct threat” shall be based upon a valid medical analysis and/or other objective, factual evidence regarding the individual’s present ability to perform the essential functions of the job.
- E. Disability:
 1. A physical or mental impairment that substantially limits one or more major life activities of an individual.
 - a. The determination of whether the impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of

2. Participating in a contractual or other arrangement or relationship that has the effect of causing discrimination on the basis of disability.
 3. Using standards, criteria, or methods of administration that have the effect of discriminating on the basis of disability.
 4. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.
 5. Failing to provide reasonable accommodation to a qualified individual which would not impose an undue hardship on the Department or pose a direct threat.
- G. Essential Functions: The necessary and fundamental job duties of a position. The term essential function does not include the marginal functions of the position.
- H. Healthcare Provider Questionnaire Form: **The Healthcare Provider Questionnaire, Form SP 3-712, (Appendage B)**, is used when it is determined that additional medical information is needed in order to respond to a request for accommodation. It is completed by the health care provider of the individual who is requesting accommodation.
- I. Major Life Activity: Any basic function the average person in the general population can perform with little or no difficulty.
1. Such activities include, but are not limited to: caring for oneself, performing manual tasks, walking, sitting, eating, sleeping, standing, lifting, bending, seeing, hearing, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
 2. A major life activity also includes the operation of a major bodily function including, but not limited to: the immune system, normal cell growth, digestive system, bladder function, neurological system, brain, respiratory system, circulatory system, endocrine system, and reproductive system functions.

- J. Physical or Mental Impairment:
1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
 2. Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 3. Alcoholism, successfully rehabilitated drug addiction, or drug addiction where use is occurring legally.
- K. Post-Offer Medical Examination: A medical examination required to determine that the applicant can perform essential functions of the position or meets other necessary requirements of the position. Physical fitness tests are not considered medical examinations.
- L. Qualified Individual With Disability:
1. Applicants or Department personnel who satisfy the requisite skill, experience, education, and other job-related requirements of employment, including the ability to perform the essential functions of the position with or without reasonable accommodation.
 2. An individual who, with or without accommodation, meets the eligibility requirements for participating in or benefiting from services, programs, or activities provided by the Department.
- M. Reasonable Accommodation:
1. Modifications to a job application process that enable an applicant with a disability to apply and be considered for the position the applicant seeks.
 2. Modifications to the work environment, manner, or circumstances under which the duties of the position are customarily performed that enable a qualified applicant

- or personnel with a disability to perform the essential functions of that position.
3. Modifications that enable personnel with a disability to receive the same benefits and privileges of employment received by personnel without a disability.
 4. Modifications to rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services that enable qualified individuals to participate in or benefit from services, programs, and activities provided by the Department.
- N. Request for Accommodation Form: **The Request for Accommodation, Form SP 3-713, (Appendage A)**, is used by an individual who is making a request for accommodation.
- O. Request for Reconsideration: The first step of **appeal** an individual can pursue when their request for accommodation has been denied by the Director, Bureau of Human Resources.
- P. Substantially Limiting:
1. The inability of an individual to perform a major life activity that the average individual in the general population can perform.
 2. A significant restriction as to the condition, manner, or duration under which an individual can perform a major life activity compared to the condition, manner, or duration under which the average individual in the general population can perform the same activity.
- Q. Transitory Impairment: Impairment with an actual or expected duration of six months or less.
- R. Undue Hardship: An accommodation that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the Department.

19.04 DUTIES AND RESPONSIBILITIES

- A. Deputy Commissioner of Administration and Professional Responsibility:
 - 1. Designate a Department Disability Services Coordinator (DSC) to process requests for employment-related accommodations and Requests for Reconsideration from individuals who request accommodation to participate in or benefit from Department services, programs, and activities.
 - 2. Designate the **Commander, EEO Section, EIO**, to review Requests for Reconsideration, render determinations, and receive and investigate discrimination complaints.

- B. **Commander, Equal Employment Opportunity Section, EIO**:
 - 1. Review Requests for Reconsideration of a Department decision regarding a request for accommodation.
 - 2. Ensure complaints of discrimination on the basis of disability are investigated and a determination is rendered.

- C. Director, Bureau of Human Resources:
 - 1. Ensure Department employment application procedures and forms comply with the ADA and disability-related Commonwealth directives.
 - 2. Ensure Department interview and selection processes comply with the ADA and disability-related Commonwealth directives.
 - 3. Grant or deny requests for accommodation and provide written responses to employment-related requests for accommodation.

D. Department Disability Services Coordinator:

1. Develop disability-related Department regulations and provide guidance to Department personnel on the proper application of these regulations.
2. Review, investigate, and resolve issues and make recommendations concerning requests for accommodation from applicants, Department personnel, and citizens.
3. Provide training and technical assistance to supervisors and command personnel regarding their ADA responsibilities.
4. When requested by an individual with a disability, determine how the Department will provide access to its services, programs, and activities.
5. Maintain records concerning employment-related disability issues occurring within the Department.
6. Maintain a separate, confidential record-keeping system for requests for accommodation, their disposition, and related medical information.
7. Ensure data concerning requests for accommodation is compiled and maintained in accordance with records retention policies.
8. Submit quarterly reports regarding requests for employment-related accommodations to the Office of Administration, Bureau of Equal Employment Opportunity.
9. Ensure implementation and verify compliance with the recommendations of the EEO **Section, EIO**, that result from the processing of a Request for Reconsideration.
10. Ensure implementation and verify compliance with the recommendations **of the** Office of Administration, Bureau of Equal Employment Opportunity that result from the processing of an Appeal.

E. Commanders and Directors:

1. Ensure accurate position descriptions and essential job functions are maintained for personnel under their command (refer to AR 4-38, Position Descriptions).
2. Ensure personnel under their command comply with this regulation.
3. Ensure employment-related requests for accommodation are forwarded, under confidential cover, to the Department DSC in accordance with this regulation, as quickly as possible.
4. Ensure new supervisors under their command receive mandatory ADA Training for Supervisors and Managers.
5. Ensure corrective action is taken when it is determined that services, programs, and activities under their purview are not accessible to, or usable by, qualified individuals with disabilities. This includes new facility construction and renovations.

F. Supervisors:

1. Develop accurate position descriptions and essential job functions for personnel under their supervision.
2. Ensure an accurate position description, including a list of essential job functions, accompanies any request for approval to fill a vacancy that is sent to the Bureau of Human Resources in accordance with AR 4-20, Employee Position Vacancies.
3. Advise job applicants of the process for requesting accommodation to participate in the selection process.
4. Receive and process requests for accommodation from subordinates.

G. Department Personnel:

1. Whenever accommodation due to a disability may be needed to perform the duties and requirements of their position:
 - a. Discuss the need for accommodation with their direct supervisor.
 - b. Complete the Request for Accommodation, Form SP 3-713 (Appendage A), and provide additional documentation, as requested.
2. Receive and process requests for accommodation from citizens receiving services from the Department.

19.05 REQUIREMENTS AND PROCEDURES

A. Hiring Process:

1. The position announcement and application process shall be accessible to individuals with disabilities.
2. If a disability is apparent, the individual may be informed that they can request reasonable accommodation for the application/employment process.
3. Announcements of Department vacancies shall:
 - a. List the essential job functions of the position.
 - b. Include the following statement, "Applicants with a disability who need an accommodation to apply shall complete a Request for Accommodation Form and forward it to the email address provided in the position announcement."
 - c. Be made accessible to individuals with disabilities.
 - (1) A text telephone (TTY) number, relay service number, or comparable accommodation should be included in the announcement.

- (2) Upon request, individuals with disabilities shall be provided the announcement in alternate formats, such as large print or an electronic document compatible for use with a reader.
 - d. Upon request, individuals with disabilities shall be provided alternate application formats and methods, such as providing the application in large print, accepting paper applications in lieu of automated applications, or providing assistance in completing the application.
 - e. If immediate assistance is not available to an applicant with a disability in completing a job application, the individual shall be advised of the place, time, and name of the individual who will assist them with completing the required application documents.
- B. Interview Process:
1. When scheduling an interview, applicants shall be advised of the process to request accommodation, should it be needed in order to participate in the interview.
 2. During the interview, interviewers may ask applicants:
 - a. Questions directly related to their ability to perform the essential functions of the job.
 - b. To describe how they will perform specific functions of the job, with or without accommodation.
 3. Under the following conditions, interviewers may ask applicants whether they need reasonable accommodation to perform job functions and what type of accommodation is needed:
 - a. When the applicant has a known disability.
 - b. When the applicant has voluntarily disclosed a disability.

- c. When the applicant has voluntarily disclosed that they need an accommodation to perform job functions.
4. Applicants requesting an accommodation during an interview, in order to demonstrate their ability to perform an essential function of a position, shall be provided the requested accommodation, if it is readily available, or be advised to describe the required accommodation and how it would enable their performance of the essential functions of the position.
5. Interviewers may not solicit information related to a disability during the interview, on the job application, via a test or examination, or from a job reference.

C. Employment Testing and Examinations:

1. Employment testing and examinations shall not adversely affect, nor tend to adversely affect, qualified applicants or a class of applicants solely on the basis of disability, unless the disability is job-related and excluding the individual is consistent with business necessity.
2. Only after a conditional offer of employment is extended can a medical evaluation be conducted or health-related questions be asked, provided that all candidates receiving a conditional job offer in the same job class are required to take the same examination or respond to the same inquiries.
3. Inquiries about the existence of disabilities in the form of employment applications, interviews, tests, and pre-employment medical examinations prior to making a job offer of employment are prohibited.

D. Accommodation Requests from Department Personnel:

1. Department personnel requesting an accommodation shall be provided a Request for Accommodation Form by a supervisor and advised to return the completed form to their immediate supervisor for processing.

2. The Request for Accommodation form can be accessed via the PSPiNet, Personnel Center, PSP HR Document Library, under the Americans with Disabilities link.
3. Supervisors receiving a completed Request for Accommodation Form shall review the form to ensure it is legible and properly completed.
4. The supervisor shall discuss with the individual how the disability affects his/her ability to perform the essential job functions and advise him/her that medical documentation may be required.
5. The supervisor shall sign the Request for Accommodation form providing any comments in the space provided, attach the individual's position description and essential job functions, and forward the packet, through channels, to their Troop Commander or Bureau/Office Director.
6. The Troop Commander or Bureau/Office Director shall provide comments and recommendations, if any, and forward the packet, under confidential cover, to the Department DSC within three days of receipt.
7. The Department DSC, and if necessary the State Police Medical Officer, shall review the accommodation request and documentation and determine if additional medical information is needed to make a recommendation for appropriate action.
 - a. If additional medical information is needed, the individual will be contacted by the Department DSC and asked to have their physician complete the Health Care Provider Questionnaire, (Appendage B). This form shall be returned directly to the Department DSC and not through the chain of command.
 - b. The Health Care Provider Questionnaire form can be accessed via the PSPiNet, Personnel Center, PSP HR Document Library, under the Americans with Disabilities link.
8. The Department DSC shall contact the individual making the request for reasonable accommodation, and discuss

the impact of the disability on the essential job functions of the position and the type of reasonable accommodation which would enable the individual to perform the essential functions of the position.

9. The Department DSC shall contact the Supervisor, Troop Commander, or Bureau/Office Director to discuss the nature of the position and the impact of the disability on performing the essential job functions. The requested accommodation and possible alternatives shall also be discussed.
10. Recommendations shall be made, and **Department Correspondence, Form SP 3-201**, shall be prepared by the Department DSC for the signature of the Director, Bureau of Human Resources, regarding applicant and employment requests for reasonable accommodation.
11. The Department's decision concerning a request for reasonable accommodation shall be sent by the Department DSC, via **Department Correspondence**, directly to the individual making the request. A copy of the **Department Correspondence**, minus any medical information, shall be sent to the affected Troop Commander or Bureau/Office Director.
12. If an accommodation has been granted, the Department DSC shall follow up periodically with the individual granted the accommodation to determine if it is meeting his/her needs and whether there is a continued need for the accommodation.

19.06 SERVICES, PROGRAMS, AND ACTIVITIES OFFERED OR PROVIDED BY THE DEPARTMENT TO THE PUBLIC

- A. Qualified individuals with a disability shall be afforded an opportunity to participate in, or benefit from, services, programs, and activities equal to the opportunity provided to the general population.
 1. This includes furnishing appropriate auxiliary aids and services, when necessary, to afford qualified individuals with a disability equal opportunity to participate in, and enjoy the benefits of, Department services, programs, and activities.

2. This does not include furnishing or permitting accommodations that would result in a fundamental alteration which diminishes the essential aspects of services, programs, or activities offered or provided by the Department or would result in undue hardship to the Department.
 3. This does not require permitting an individual to participate in, or benefit from, services, programs, or activities when that individual poses a direct threat to the health or safety of others.
- B. Department services, programs, and activities shall be administered in settings that enable qualified individuals with disabilities to participate in, or benefit from, that service, program, or activity, and interact with non-disabled individuals to the fullest extent possible.
1. Sites shall be selected that are reasonably accessible to, or usable by, qualified individuals with a disability.
 2. Accessibility features of facilities must be maintained in operable working condition, except for isolated or temporary interruptions in service or access because of the need to repair or maintain such features.
 3. For existing facilities that are not readily accessible to, or usable by, qualified individuals with a disability, redesign plans shall be developed in order for those facilities to become compliant with ADA Standards for Accessible Design.

NOTE: Questions concerning facilities that are not readily accessible to, or usable by, qualified individuals with a disability shall be directed to the **Disabilities Services** Coordinator, Labor Relations and Safety Division, Bureau of Human Resources.
 4. Advertising information regarding programs and activities shall include the following statement: "Individuals who require reasonable accommodation should contact the provider of the service, program, or activity."

- C. Accommodations to participate in or benefit from Department services, programs, or activities shall be provided to qualified individuals with a disability.
 - 1. If there is advanced notice of a need for reasonable accommodation, every effort shall be made to obtain that accommodation prior to rendering the service.
 - 2. If there is no advanced notice of a need for reasonable accommodation, personnel receiving first notification shall diligently attempt to obtain the accommodation (e.g., an interpreter for a qualified individual who has a hearing impairment).
 - 3. Personnel may contact the Department DSC for assistance in identifying resources for accommodation.

19.07 DECISIONS CONCERNING AN ACCOMMODATION REQUEST

- A. A request for accommodation may be denied if:
 - 1. The requester is not a qualified individual with a disability.
 - 2. The accommodation would create an undue hardship for the Department.
 - 3. An accommodation would not significantly reduce the risk of a direct threat.
- B. Prior to implementation by the Department, certain employment-related accommodations require approval by the Governor's Office of Administration, Bureau of Equal Employment Opportunity. These accommodations include:
 - 1. Modification of personnel work schedules.
 - 2. Arrangements that physically separate personnel with a disability from the customary or assigned workplace.
 - 3. Complement increases or the hiring of staff to support the accommodation.
 - 4. Modifications of job duties which have a significant impact on the classification and level of the position.

5. Modifications that have Fair Labor Standards Act implications.
 6. A conflict with the terms of collective bargaining agreements or memoranda of understanding.
 7. Any Department-approved request for reasonable accommodation costing \$1,500 or more, or for which the Department will need to request additional funding.
- C. If the cost of an accommodation would impose an undue hardship on the Department, the individual with the disability must be given the option of providing the accommodation or paying that portion of the cost which would constitute an undue hardship.
- D. A qualified individual with a disability has the right to refuse an accommodation. However, in the case of employment-related accommodations, an individual who cannot perform the essential functions of the job, with or without an accommodation, may be considered unqualified for the job.
- E. When a request for accommodation is denied, the written notification shall apprise the individual of the right to file a Request for Reconsideration.

19.08 COMPLAINTS AND APPEALS

- A. Employment-Related Complaints and Appeals:
1. Request for Reconsideration of Accommodation Request.
 - a. If a request for reasonable accommodation is denied, the individual requesting the accommodation may file a Request for Reconsideration, in writing, to the **Commander, EEO Section, EIO**, 1800 Elmerton Avenue, Harrisburg, **Pennsylvania** 17110.
 - b. The Request for Reconsideration must be filed, in writing, within 20 days of notification of the denial of the request for reasonable accommodation.

- c. The **Commander, EEO Section, EIO**, shall review the request and other appropriate information and notify the individual seeking the accommodation, in writing, of the disposition.
 - d. If the Request for Reconsideration is denied, the written notification shall apprise the individual of the right to appeal the decision.
 2. Appeal of a Request for Reconsideration Decision:
 - a. Individuals and Department personnel who are not satisfied with a decision from the Request for Reconsideration process may appeal the decision, in writing, to the Governor's Office of Administration, Bureau of Equal Employment Opportunity, 222 Finance Building, Harrisburg, **Pennsylvania** 17120.
 - b. The appeal must be filed within 20 days of notification of the EEO **Section** decision denying the Request for Reconsideration.
 3. Complaints of Discrimination on the Basis of Disability.
 - a. Complaints from job applicants or Department personnel alleging discrimination in employment on the basis of disability may be filed in accordance with AR 4-26, Discrimination, Discriminatory Harassment, Sexual Impropriety, and Retaliation; and Management Directive 410.10, Guidelines for Investigating and Resolving Internal Discrimination Complaints.
 - b. The Department DSC shall not investigate such complaints.
 - c. Retaliation against persons who have filed charges, or testified, assisted, or participated in any proceeding, investigation, or hearing concerning disability-related employment issues is prohibited as outlined in AR 4-26.

- B. Complaints and Appeals Regarding Department Services, Programs, or Activities:
1. Request for Reconsideration of Accommodation Request:
 - a. If a request for reasonable accommodation is denied, the individual requesting the accommodation may file a Request for Reconsideration, in writing, **to** the Department Disability Services Coordinator, Bureau of Human Resources, 1800 Elmerton Avenue, Harrisburg, **Pennsylvania** 17110.
 - b. The Request for Reconsideration must be filed, in writing, within 20 days of notification of the denial.
 - c. The Department DSC shall review the request and other appropriate information and notify the individual seeking the accommodation, in writing, of the disposition.
 - d. If the Request for Reconsideration is denied, the written notification shall apprise the individual of the right to appeal the decision to the Governor's **Office of Administration, Bureau of Equal Employment Opportunity**.
 2. Complaints alleging discrimination in providing services, programs, or activities of the Department may be filed with the local Troop/Bureau/**Office** EEO Liaison, or the Department EEO, 1800 Elmerton Avenue, Harrisburg, **Pennsylvania** 17110. These complaints generally will be handled in accordance with the procedures found in AR 4-26.

19.09 RECORDS MANAGEMENT

- A. The Department DSC shall maintain records concerning employment-related disability issues occurring within the Department in accordance with Office of Administration, Bureau of Equal Employment Opportunity directives.
- B. The Department DSC shall maintain a separate, confidential record-keeping system for accommodation requests, their

dispositions, related medical information, and complaints or appeals related to accommodation requests.

C. Retention:

1. Records of general disability-related issues in the Department shall be retained for four years.
2. Records of accommodations granted to Department personnel shall be retained until the accommodation is no longer needed or the individual separates from employment.
3. Records of accommodation requests from Department personnel that are denied shall be retained until the individual separates from employment.
4. Records of pre-employment accommodation requests shall be retained for four years from the date of receipt.
5. Records for accommodation requests from the public to participate in or benefit from Department programs and services shall be retained for four years from the date of receipt of the request.