

City of New York Reasonable Accommodation Process



Reasonable Accommodation Process

Every New York City government agency must provide applicants, employees, interns, and consultants with a reasonable accommodation that allows them to perform the essential functions of their job and enjoy equal employment opportunities, unless doing so would cause an undue hardship for the agency. Reasonable accommodations are for the requestor's condition only (under the bases cited below). Consult Human Resources for options to address needs about caring for another.

The bases for which an individual can request a reasonable accommodation are:

- Disability
- Religion
- Status as a victim of domestic violence, sex offenses, or stalking
- Pregnancy, childbirth, or related medical conditions (including lactation needs)

An accommodation can be a change to a workplace environment (such as facilities or equipment), a rule or practice (such as rules concerning when work is performed, when breaks are taken, or how job tasks are to be done), or to an individual's job or operation to enable qualified individuals to perform the essential functions of a job or to enjoy the benefits and privileges of employment.

Protected Bases, Defined

Disability: Any physical, medical, mental or psychological impairment, or a history or record of such impairment. Both temporary or short-term injuries, as well as chronic conditions, may qualify as disabilities even if the impairments, when treated, permit the individual to perform physical activities without limitation, and/or the conditions do not substantially limit the individual's major life activities.

Religion: A sincerely held belief or practice of an individual's creed or religion, including all aspects of religious observance, practice and belief. A belief system that does not include a traditional concept of God, may be a religion. However, an individual's assertion that the strength of the belief the individual holds has reached the level of traditional religious views does not automatically mean that the belief is religious. Strongly held beliefs that are based on scientific evidence or that are philosophical and personal may not be religious beliefs for purposes of assessing a reasonable accommodation request, even though they may inform critical life choices.

Status as a Victim of Domestic Violence, Sex Offense, or Stalking:

- Victim of domestic violence - a person who has been subjected to acts or threats of violence, not including acts of self-defense
- Victim of sex offenses or stalking - a person who has been subjected to acts that would constitute violations of New York Penal Law

Pregnancy, Childbirth, or Related Medical Conditions (including lactation needs): This includes pregnancy, childbirth (whether or not it results in a live birth), or related medical conditions, (including the state of seeking to become pregnant; any medical condition that is related to or caused by pregnancy or childbirth, including, but not limited to, infertility, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, miscarriage, recovery from childbirth, miscarriage, and termination of pregnancy), access to lactation facilities, and related breaks to express/pump breast milk.

Types of Accommodations

Each reasonable accommodation request requires an individualized assessment, including of the specific qualifying need and what is the most reasonable accommodation for the employee to be able to perform the essential functions of the job. Below are some examples of the types of accommodations that might be available based on the specific needs in the request:

Based on Disability:

- Job restructuring
- Modifying work schedules
- Providing or modifying equipment or devices

- Making existing facilities readily accessible to and usable by individuals with disabilities
- Extending leave for additional recuperation time and/or temporary transfer
- Adjustments or modifications of examinations, training materials, or policies
- Providing a sign language interpreter for the hearing impaired or reader for the visually impaired
- Reassignment, which is an accommodation of last resort

Based on Religion:

- Flexible arrival and departure times
- Allowing leave usage or voluntary changes of shifts or assignments
- Time and/or place to pray
- Accommodation relating to appearance and dress
- Modified workplace practices, policies, and/or procedures

Based on Status as a Victim of Domestic Violence, Sex Offenses, or Stalking:

- Leave, including to attend court appointments
- Modified or flexible work schedules
- Protecting the confidentiality of addresses and phone numbers
- Transfers to another location, unit, division, and/or workstation
- Assisting in the enforcement of protective orders, such as sharing photograph of abuser with reception or security

Based on Pregnancy, Childbirth, or Related Medical Conditions (including lactation needs):

- Bathroom breaks
- Changes to work environment
- Time off for prenatal appointments
- Light duty/temporary transfer
- Extending or advancing leave if employee has no balances
- Periodic rest for those who stand for long periods of time
- Assistance with manual labor

Lactation Room Requirements: Agencies are required to provide an individual with lactation needs a reasonable time to express breast milk and a sanitary place, other than a restroom, that can be used to express breast milk. The location must be shielded from view, free from intrusion, and include, at minimum, an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water. An agency must provide the individual with a refrigerator to store breast milk in the workplace.

Requesting a Reasonable Accommodation

An individual need not use the words “reasonable accommodation” or “accommodation.” If an individual raises an issue that implicates the potential need for an accommodation, or if a supervisor or manager perceives that an accommodation may be helpful to permit the employee to perform the essential functions of their position, they must immediately refer the employee to the EEO Office to initiate the cooperative dialogue. (In most agencies the EEO Office carries out this function but in a few the review of reasonable accommodation requests is designated to a different office.)

What is the Cooperative Dialogue Process?

The process by which the EEO officer and an individual requesting a reasonable accommodation engage, in good faith, in a written or oral dialogue concerning the person’s accommodation needs, potential accommodations, the difficulties that the potential accommodations may pose for the agency, and alternative accommodations. The objective of a cooperative dialogue is to determine the appropriate reasonable accommodation.

Important Time Frames

Upon becoming aware of a need or request, managers and supervisors must refer the information to the EEO Office immediately, barring extenuating circumstances. Managers and supervisors must also inform the employee to submit their accommodation request to the agency EEO Office so that their need is reviewed appropriately.

Within 10 days from notice of an accommodation need or request, the EEO Office must initiate the cooperative dialogue.

Within 15 days from conclusion of the cooperative dialogue, the EEO Office must issue a written decision notifying the individual whether the accommodation requested is granted, denied, or a different accommodation is being offered. The written decision must also provide information on the right to appeal the decision.

Expedited processing or a temporary accommodation while assessing the need or awaiting documentation may be necessary in certain time-sensitive circumstances (e.g., when the accommodation is needed for imminent medical treatment or to avoid imminent emotional and/or bodily harm).

At least 10 business days before an accommodation is set to expire, the EEO Office must remind the employee in writing of the end date of the accommodation. Any request for an extension or modification should be submitted to the EEO Office **at least five business days** before the expiration of the original accommodation, in which case, the EEO Office will initiate the cooperative dialogue.

The Appeal Process

Within 10 days from when the EEO Office issues the decision, the individual may appeal to the agency head (or their designee) a decision denying their request for a reasonable accommodation or denying the specific accommodation requested. In the event that the employee is on an approved leave when the EEO Office issues its decision, the employee will have an additional five days from when they return from the approved leave to appeal the decision. Where the EEO Office has not issued a decision after 15 days from the end of the cooperative dialogue and has not notified the individual of a need to extend the time for decision, the individual may file an appeal.

Within 15 business days of receiving an appeal, the agency head (or their designee) must review the appeal and issue a notice of the decision to the individual.

Resources

Reasonable Accommodations at a Glance

<https://www1.nyc.gov/site/dcas/agencies/equity-and-inclusion.page>

New York City Commission on Human Rights

<https://nyc.gov/cchr>

Mayor's Office for People with Disabilities

<http://nyc.gov/mopd>

Job Accommodation Network (JAN):

<http://www.askjan.org>

jan@askjan.org

New York State Division of Human Rights

<https://dhr.ny.gov>

U.S. Equal Employment Opportunity Commission (EEOC)

<https://www.eeoc.gov>

info@eeoc.gov

nyc.gov/dcas

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