

REASONABLE ACCOMMODATION POLICY AND PROCEDURE

I. Introduction

The City of New York will make reasonable accommodation to qualified applicants and employees with disabilities to enable them to perform the essential functions of their jobs, or to enjoy the equal benefits and privileges of employment, unless providing such accommodation would impose an undue hardship. The requirement to provide reasonable accommodation applies to disabilities that are known, or should have been known, to the employer. The reasonable accommodation process, including a description of key terms, is set forth below and should be followed by applicants and employees requesting reasonable accommodation, as well as by City agencies.

II. Key Terms

A qualified applicant or employee is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position and who, with reasonable accommodation (if needed), or without accommodation (if none is needed), can perform the essential functions of that position.

A **disability** is (1) a physical, medical, mental or psychological impairment, or (2) a history or record of such an impairment, or (3) being regarded as having such an impairment.

Essential functions are duties that are fundamental to a position including, among others, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated. Evidence of what constitutes an essential function may include, but is not limited to: the employer's judgment; written job descriptions, if any; the amount and/or proportion of time spent performing the function; the consequences of not requiring a function; the terms of a collective bargaining agreement; and the work experience of incumbents.

Undue hardship is action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of an employer's business.

Reasonable accommodations, which are described more fully below, are modifications or adjustments to the application process, work environment, or to the manner or circumstances under which a position is customarily performed, that promote equal employment opportunity for an individual with a disability. Reasonable accommodation enables a qualified applicant or employee with a disability to be considered for a position or to perform its essential functions, or to enjoy benefits and privileges of employment that are equal to those enjoyed by similarly situated employees without disabilities. Accommodations are not reasonable if they impose an undue hardship on the employer.

III. Effective Communication and Other Assistance

Each agency's Disability Rights Coordinator (DRC) shall be responsible for ensuring effective communication between applicants or employees and agency staff at every stage of the application and reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. Each DRC shall also be responsible for providing such other reasonable assistance as is requested by applicants, employees and supervisors throughout the reasonable accommodation and appeals processes.

IV. Confidentiality

Agency personnel must respect employee confidentiality. All documentation and information concerning the medical condition or history of an employee requesting an accommodation must be collected on forms separate from other personnel-related forms and must be maintained by the agency DRC in separate medical files. The information shall be treated as confidential medical records, except to the extent that (1) supervisors and managers must be informed about work restrictions or reasonable accommodations; (2) first-aid and safety personnel need to be informed if the disability may require emergency treatment; and (3) government officials investigating compliance with law are required to be provided with relevant information upon request.

V. The Reasonable Accommodation Process Step-by-Step

Overview

The reasonable accommodation process should be **flexible and interactive**, involving both the employer and the applicant or employee requesting reasonable accommodation. The process generally involves four steps. **Step 1**, which triggers the reasonable accommodation process, is the **request** by an applicant or employee for reasonable accommodation. With respect to applicants, agencies must ensure that the application, interviewing and testing procedures are accessible by reasonably accommodating applicants with disabilities. Although agencies must not inquire whether an individual has a disability, they may inquire whether an accommodation is needed, particularly where a disability is apparent or suspected.

Step 2 consists of **analyzing** the job to determine its purpose and essential functions. In **Step 3**, the employer **consults** with the applicant or employee to determine job-related limitations (these may affect whether an individual is "qualified") and how those limitations can be overcome by reasonable accommodation, to identify potential accommodations and to assess the effectiveness of potential accommodations. With respect to applicants, agencies may inquire or ask an applicant to demonstrate how he or she would accomplish essential tasks, with or without reasonable accommodation. In **Step 4**, the employer considers the applicant's or employee's preferences, and selects or **implements** an appropriate reasonable accommodation.

Although the process is described in terms of "steps", it should always be interactive

and flexible. It is characterized by close coordination and cooperation between an applicant or employee and the employer, primarily the immediate supervisor of the application process or the position. In some instances, an appropriate and reasonable accommodation might be provided or implemented without the applicant or employee and the employer proceeding in a step-by-step fashion. For example, if an employee who uses a wheelchair requests that his or her desk be elevated on blocks and the employee's supervisor implements the accommodation, the reasonable accommodation process has been accomplished without a formal analysis of the job's essential functions and the employee's job-related limitations. In more complex situations, however, the step-by-step approach will guide both the employee and the employer in determining the parties' respective rights and responsibilities with a common goal of moving the process forward within clearly defined time periods.

Procedure

Step 1: Applicant or Employee Requests Reasonable Accommodation; Initial Consultation

The employee or job candidate should complete a Reasonable Accommodation Request form, and submit it to his or her immediate supervisor or, if the employee prefers, to that supervisor's supervisor. (The form should be made available to applicants at the first possible opportunity in the application process.) If a request for reasonable accommodation is made by an applicant to facilitate the application process, the agency staff supervising the application procedures should assist applicants in completing the form where requested and, in conjunction with the agency DRC or EEO officer, process the request for accommodation. Supervisors shall assist employees in completing the form where requested. The agency staff receiving the request (in the case of applicants) or supervisor, in the case of employees, shall acknowledge each request by signing and dating the form in the space provided. One copy is to be returned to the applicant or employee and a second copy is to be filed with the agency DRC, who is responsible for monitoring the process and for noting its outcome on the form. The submission by an applicant or employee of a request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the employer agency of the need for an accommodation. Employers must reasonably accommodate disabilities that are known to them, or that should have been known to them, but need not accommodate other disabilities. Nevertheless, once an employer is aware of an individual's disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the agency official supervising the application process or the involved supervisor may ask an applicant or employee to provide documentation in support of the request. For example, if an applicant with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination that applicant may be asked to provide documentation in support of that request. Similarly, if an employee with a mental disability requests a flexible schedule to enable the employee to attend psychotherapy during the work day, the employee may be asked to provide documentation from the treating professional in support of that

request.

In limited circumstances, medical examinations or more detailed medical documentation may be required to determine whether an employee can perform the essential functions of the job and what accommodations may be appropriate. However, because the circumstances under which such examinations or documentation may be required in the context of a reasonable accommodation request are narrow and fact specific, agency officials must consult with the agency's DRC before requesting them. The DRC shall consult with the Mayor's Office for People with Disabilities (MOPD) prior to authorizing such requests.

After acknowledging a request for accommodation and providing copies to both the employee and the agency DRC, the supervisor should either (1) provide or implement the request and document the accommodation or (2) proceed to Step 2 of this procedure.

Step 2: Supervisor Analyzes Job to Determine its Purpose and Essential Functions

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the job's essential functions and the employee's job-related limitations, as in the example provided above, where an employee's desk is elevated on blocks to permit access from a wheelchair. Other situations are more complex, however, and require structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the employer should examine the position to determine its purpose and its essential functions. Identifying which job functions are essential is necessary to determine whether an employee with a disability is "qualified" for a position. With respect to applicants for employment, agencies must make the application, interview and testing process accessible, unless doing so would create an undue hardship.

Essential functions are the fundamental job duties of a position, excluding marginal functions. A job function can be deemed an essential function for a variety of reasons including, but not limited to, whether (1) the position exists to perform the function; (2) a limited number of employees are available to whom the function can be assigned; and/or (3) whether the function is so highly specialized that it must be held by an employee selected for the ability to perform that function. Evidence of what constitutes the essential functions of a position includes the following:

- ✍ the employer's judgment;
- ✍ written job descriptions, if any;
- ✍ the amount and proportion of time spent performing a function;
- ✍ the consequences of not requiring the employee to perform a function;
- ✍ the terms of a collective bargaining agreement;
- ✍ work experience of prior employees in the same position;

- ✍ work experience of current employees in similar positions; and
- ✍ other relevant evidence.

The essential function inquiry, however, is not intended to second guess the employer agency's business judgment, or to lower performance standards.

Step 3: Consult with the Employee

After evaluating the position to determine its essential functions, the supervisor should consult with the applicant or employee requesting the accommodation to assess the limitations that the disability imposes on the performance of each essential function. If reasonable accommodation is requested for the application process itself, the agency staff supervising that process should consult with the applicant to determine how the process may reasonably be made accessible to the individual with a disability.

A "qualified" applicant or employee is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position and who, with reasonable accommodation (if needed), or without accommodation (if none is needed), can perform the essential functions of that position or can complete the application process.

Using a collaborative, open and flexible approach, the supervisor and employee or prospective employee (where a conditional offer of employment has been extended) should consider how any job-related limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. The employer must consider an applicant's or employee's preferences, along with what is reasonable under the circumstances of the work environment, in selecting accommodations. The agency is not required to provide an accommodation that imposes undue hardship. The same type of open and collaborative approach also should be undertaken in identifying reasonable accommodations for the application process.

What Accommodations Are Reasonable?

Accommodations that are reasonable may include, but are not limited to, those listed below. The reasonableness of an accommodation will depend upon the circumstances of each case.

- ✍ making facilities physically accessible to and usable by people with disabilities (e.g., providing ramps, rest room grab bars, signage);
- ✍ job restructuring (e.g., reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks);
- ✍ modifying work schedules (e.g., permitting alternative starting and ending times to avoid standing and jostling on subways);

- ✍ providing or modifying equipment, devices or materials (e.g., raising a desk on boards for an employee who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print);
- ✍ providing qualified readers, interpreters, or other support services during the application, interview, testing processes, and during training and other employment and employment-related activities, including employment-related social functions (e.g., office parties, picnics).

Where more than one possible reasonable accommodation exists, the employer should give primary consideration to the employee's preference in determining what accommodation it will provide. However, the employer has the discretion to choose among various appropriate reasonable accommodations that would enable the individual to perform the essential functions of the job. For example, an employer may be able to provide a mechanical page turning device, rather than hire an assistant to turn pages for an employee who does not have use of his or her hands.

If the cost of a requested accommodation imposes an undue hardship on an employer, the employee with a disability should be given the option of providing the accommodation or paying that portion of the cost that creates the undue hardship. However, the employer may not shift the cost of providing accommodations to the employee to avoid an expenditure of funds that is reasonable for the employer to pay under the totality of the circumstances.

Accommodations may be unreasonable if they impose an undue administrative hardship. For example, shifting tasks among clerical employees may be reasonable where a sufficient number of employees exists among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees.

Reasonable accommodation may also include permitting an employee with a disability to use aids or services that the employer is not otherwise required to provide. For example, although an employer would not be required to provide a motorized scooter to an employee with a mobility impairment, reasonable accommodation would include providing an area to stow such a mobility aid, if necessary.

Employers are not required to provide personal items to employees that are needed both on and off the job. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet job-related rather than personal needs. For example, eyeglasses designed to enable an employee to view a computer monitor, but which are not otherwise needed by the employee outside the office, may constitute a reasonable accommodation.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the employee identifies job-related

limitations and any requested accommodation with specificity. For example, an employee who is deaf and who routinely uses a text telephone (TTY) can readily identify for the employer that job-related limitation concerning use of the telephone, as well as the accommodation needed, a TTY. Where it is obvious that providing the TTY will enable the employee to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis provided for in Steps 2 and 3. In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.

What if Neither the Employer nor the Applicant or Employee Can Identify an Appropriate Reasonable Accommodation?

Sometimes, neither the supervisor nor the applicant or employee can identify possible reasonable accommodations. In those instances, the supervisor should consult with the agency's DRC. The DRC will seek to facilitate effective communication between the parties with the goal of identifying and implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation. Throughout the Step 3 consultation process, the employee, the supervisor or the DRC may seek technical assistance or clarification of each component of the reasonable accommodation process from MOPD.

Step 4: Select and Implement an Appropriate Reasonable Accommodation

Within 10 business days of an employee's submitting a request for reasonable accommodation, the supervisor to whom it was submitted shall either grant or deny the request in writing in the space designated for that purpose on the Request for Reasonable Accommodation form and, where an accommodation will be provided, shall have provided or begun to implement the accommodation. Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the employee. In all instances, however, supervisors shall act as expeditiously as possible to provide reasonable accommodations. Employees may request the assistance of the agency DRC in expediting the process. Where further supporting documentation is sought from the employee, the grant or denial of a request for reasonable accommodation shall be rendered within 10 business days of the provision of the documentation requested, or within 10 business days of the applicant's or employee's objection to providing such documentation.

Where a supervisor determines to deny a request for accommodation, or to provide an accommodation other than that for which the applicant or employee has expressed a preference, the supervisor shall first consult with the agency DRC. After such consultation, the supervisor shall inform the applicant or employee in writing on the Request for Reasonable Accommodation form of the accommodation, if any, that will be provided, or that the request has been denied. The need for a consultation between a supervisor and the agency DRC shall not delay a determination on a request for reasonable accommodation beyond 10 business days of receipt of the request.

VI. Appeals to the Agency Head

An applicant or employee may appeal to the agency Commissioner or agency head any supervisory action or failure to act pursuant to this procedure by which the applicant or employee believes he or she is aggrieved. Within 10 business days of receipt of the appeal, the Commissioner or agency head, or his or her designee, shall:

1. obtain from the agency DRC and review all documentation relating to the request for reasonable accommodation;
2. meet with the supervisor and the applicant or employee;
3. consult with the agency DRC and the agency EEO officer (if different from the DRC);
4. review the essential job functions, job-related limitations involving the applicant's or employee's disability, and potential accommodations;
5. evaluate the reasonableness of applicant or employee and supervisor preferences in accommodations, giving primary consideration to the employee's preferences; and
6. consult with MOPD and with the Department of Personnel

Within 15 business days of receipt of the appeal, the Commissioner or agency head shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and directing the supervisor to implement such accommodation promptly. The DRC shall monitor implementation of the reasonable accommodation.

Discrimination Complaints

This reasonable accommodation procedure is intended to ensure equal employment opportunities for employees with disabilities, but shall not impede the right of any employee to file a complaint with the agency Equal Employment Opportunity Office, an appropriate federal oversight agency under the Americans with Disabilities Act or the Rehabilitation Act of 1973, the State Division of Human Rights, the New York City Commission on Human Rights, or any other federal, state or local agency having jurisdiction over such matters, or in any court of competent jurisdiction.

For Further Guidance

Throughout the reasonable accommodation process, employees or agency officials may seek guidance from MOPD by calling (212) 788-2830 (voice) or (212) 788-2838 (TTY).

The Disability Rights Coordinator for this agency is:

[should include DRC name, with voice and TTY numbers]

REQUEST FOR REASONABLE ACCOMMODATION

The City of New York will make reasonable accommodation to qualified applicants and employees with disabilities to enable them to perform the essential functions of their jobs, or to enjoy the equal benefits and privileges of employment and the employment process, unless providing such accommodation would impose an undue hardship. This form shall be made available to and used by all applicants and employees requesting reasonable accommodation, in conjunction with the City's Reasonable Accommodation Policy and Procedure.

INSTRUCTIONS: Applicants should complete sections I and II and submit this form to the agency staff supervising the application process. Current employees should complete sections I and III and submit this form to their immediate supervisors. Supervisors receiving requests for reasonable accommodation should complete section IV, return one copy of the completed form to the applicant or employee requesting the accommodation, and immediately forward the second copy of the form to the agency Disability Rights Coordinator (DRC). The DRC should complete and update Section V as appropriate. Agency supervisory staff and/or DRCs shall assist applicants or employees in completing this form where requested.

Section I - This section should be completed by **both applicants and current employees.**

Name _____

Address _____

Phone _____

Accommodation Requested (attach additional sheets and supporting documentation as appropriate)

Section II - Complete this section **only if you are a job applicant.**

Position/title applied for _____

Unit or Agency (if known) _____

Location of Position (if known) _____

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Section II (for applicants only), continued

Job Vacancy Notice Number (if known) _____

Part(s) of employment process for which an accommodation is requested (e.g., application, examination, interview) _____

Agency Contact Person (if known) _____

Date of Examination/Interview _____

Section III - Complete this section only if you are an employee (even if you are currently on leave).

Position/Title _____

Unit/Agency _____

Location _____

Supervisor _____

Section IV - To be completed by agency staff supervising the employment application process or supervising an employee requesting a reasonable accommodation.

Supervisor Name and Title _____

Unit/Agency _____

Location _____

Phone _____ Date Request Received _____

Supervisor Signature _____

After completing this section, supervisors must return a copy of this form to the applicant or employee, immediately send a copy to the agency DRC, and take such further action as is required by the Reasonable Accommodation Policy and Procedure.

