

## Idaho Division of Human Resources

### Executive Branch Statewide Policy

#### Section 14: Americans with Disabilities Act (ADA) and Reasonable Accommodation

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#### 14A. General Information and Applicability

The Americans with Disabilities Act<sup>1</sup> (ADA) requires employers to provide effective, reasonable accommodations for employees, or applicants for employment, with disabilities. This federal law protects employees and applicants by prohibiting discrimination and adverse employment action based on disability, history of disability, and/or being regarded as having a disability.

The purpose of this policy is to ensure compliance with federal laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). To that end, the State of Idaho (State) shall not discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions, and privileges of employment.

Upon request, the State shall provide reasonable accommodation(s) to qualified employees and applicants with a disability to assist them in performing the essential job functions of their position, and/or assist them during the application and recruitment process.

*All State agencies are required to comply with the ADA and this policy.*

#### 14B. Definitions

Direct Threat: A significant risk to the health, safety, or well-being of individuals with disabilities or others that cannot be eliminated by reasonable accommodation.

Disability: A physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or regarded as having such an impairment.

Essential Function: The job duties that are fundamental to the position; a critical component of that job that the incumbent must be able to perform unaided or with the assistance of a reasonable accommodation. Essential functions should not be re-assigned or removed from

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<sup>1</sup> And the Americans with Disabilities Amendments Act (ADAAA).

an employee's duties. Often, essential functions are listed on the job posting at the time of hiring. They are determined by considering (1) whether the reason the position exists is to perform that function, (2) the number of other employees available to perform the function or among whom the performance of the function can be distributed, and (3) the degree of expertise or skill required to perform the function.

Other factors to consider may include the actual work experience of present or past employees in that position, time spent performing the function, and the consequences of not requiring an employee to perform the function.

Marginal Function: These are relatively incidental to the reason the job exists. Marginal functions may be reassigned.

Interactive Process: An information-gathering process used to evaluate a request for accommodation. It is intended to be a flexible approach that centers on the communication between the agency<sup>2</sup> and the individual requesting an accommodation and may involve obtaining relevant information from a supervisor and the employee's healthcare provider.

Major Life Activity: Activities which that are of central importance to most people's daily lives including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and operation of major bodily functions.

Major Bodily Function: Includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Qualified Individual: An individual who meets the minimum qualifications of the position that they hold or for which they are seeking and, with or without reasonable accommodation, can perform the essential functions of the position.

Reasonable Accommodation: Any change to the application or hiring process, the job, the way the job is done, or the work environment that allows a qualified individual with a disability to perform the essential functions of that job and enjoy equal employment opportunities.

Reasonable accommodation may include:

- acquiring or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

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<sup>2</sup> For purposes of this policy, "agency" typically refers to an agency's human resources department.

Accommodations are considered “reasonable” if they do not create an undue hardship or a direct threat to the agency.

Undue Hardship: Accommodations that are financially difficult, unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the State<sup>3</sup>.

#### **14C. Process for Requesting Reasonable Accommodation(s)**

**Notification and Request.** The process begins as soon as the agency becomes aware of the employee’s need or desire for an accommodation, usually through an employee’s request. Employees may notify their agency of the need for a reasonable accommodation at any time and the notification may be expressed in a formal (written request) or informal (casual conversation) way. Regardless, the agency must respond expeditiously.

Before addressing the merits of the accommodation request, the agency shall determine if the employee’s medical condition meets the ADA definition of “disability.”

**Interactive Process.** The interactive process begins when the agency acknowledges receipt of a request for reasonable accommodation. The agency and employee then engage in an informal process to clarify what the employee needs and identify the appropriate reasonable accommodation(s). In instances where both the disability and the type of accommodation required are clear, there may be no need to engage in extended discussion.

Occasionally, the agency may need to ask questions concerning the nature of the disability and the individual’s functional limitations in order to identify an effective accommodation. This may include asking the employee what they specifically want as an accommodation<sup>4</sup>. This may also include asking the individual for acceptable documentation about their disability and functional limitations related to their essential functions.

Once there is an understanding of the need for an accommodation and the general nature of the accommodation request, the agency shall communicate with the employee’s supervisor to determine if the request is reasonable considering the essential functions of the job. Specifics of the actual condition or disability shall be kept confidential to the extent possible when communicating with the supervisor.

**Medical Provider Essential Job Functions Questionnaire.** Once an employee requests an accommodation due to a disability, the agency may need to request information from a medical provider. This information is gathered both to confirm the employee has an eligible disability and to assist in determining appropriate accommodations for the employee and their job duties. The employee must complete a HIPAA release form so that the agency is able to request the related medical information. The employee must also sign a waiver stating that the agency may disclose confidential personnel information to the medical provider.

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<sup>3</sup> For purposes of proving undue hardship, the State is one employer.

<sup>4</sup> An agency is required to provide an employee with a reasonable accommodation that is effective, but they are not required to provide the specific accommodation the employee requests.

If the employee refuses to provide the requested medical documentation, the interactive process shall cease and may result in the denial of the accommodation.

**Communication.** The agency may request additional or clarifying information to assist with the decision-making process. Each step in the process should have reasonable timeline expectations but should remain flexible depending on the employee's availability to see their healthcare provider.

The agency shall communicate the approval, denial, or alternative accommodation(s) verbally or in writing to the employee and supervisor. Communication should include the specific approved accommodation and length of accommodation. The employee should communicate when an accommodation is no longer assisting them in completing the essential functions of their position, or when an additional accommodation is needed<sup>5</sup>. The employee should notify HR when their direct supervisor changes, their position changes, and/or they transfer to another agency to ensure all parties understand the accommodation(s) and/or to determine if the accommodation is still effective.

Approved reasonable accommodations may be reevaluated depending on the nature and duration of the disability, the essential functions, and the implemented accommodation(s).

Agencies should have a process for employees to problem-solve or internally appeal any denials of reasonable accommodations.

#### **14D. Procedure for Applicants**

The agencies shall reasonably accommodate qualified applicants with a disability during the hiring process. When an individual with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or a direct threat, they shall be given the same consideration for employment as any other applicant. Per IDAPA 15.04.01.097 and the Alternative Examination Process for Persons with Disabilities, an agency may work with the Division of Vocational Rehabilitation or the Idaho Commission for the Blind to determine if reasonable accommodation during the examination process is necessary.

Applicants may request a reasonable accommodation at any step of the hiring process. Applicants may request accommodations verbally or in writing and may utilize the Applicant Request for Reasonable Accommodation form but are not required to do so.

Job postings and recruitment correspondence shall include verbiage which specifies who to contact should an applicant wish to request an accommodation. Any screening or testing given during the interview process shall be made known to all applicants in advance so that appropriate time is given to request an accommodation.

Agencies may not ask job applicants about the existence, nature, or severity of a disability. Applicants may only be asked about their ability to perform specific job functions with or

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<sup>5</sup> Each accommodation is considered separately.

without an accommodation.

#### **14E. Protections Against Discrimination and Retaliation**

No employee or applicant shall be disciplined or otherwise discriminated against in employment for requesting a reasonable accommodation. Specifically, no supervisor or any other employee of the agency may retaliate against an employee or applicant for:

- Requesting a reasonable accommodation
- Participating in the interactive process; or
- Assisting another employee or applicant in filing a request

Any employee or applicant who believes they have been discriminated or retaliated against for participating in the reasonable accommodation process should contact the appropriate agency HR department.

#### **14F. Medical Records and Confidentiality**

Information obtained regarding the medical condition or history of the employee or applicant shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on a qualified individual's work or duties.

Confidentiality applies to all medical information, including information related to reasonable accommodation requests. Agencies shall obtain a HIPAA release form to speak to an applicant or employee's medical provider.