



STATE OF DELAWARE REASONABLE ACCOMMODATION Guidelines and Recommended Procedure

These guidelines and recommended procedures are offered to assist state agencies in providing reasonable accommodations to qualified employees and applicants with disabilities as defined in the Americans with Disabilities Act and the Delaware Handicapped Persons Employment Protections Act. Appendix I contains helpful terms, while Appendix II contains a list of valuable resources that may assist agencies during the reasonable accommodation process. Attachment 1 is a Supervisor's Accommodation Request Questionnaire, a form letter that an employee who requests an accommodation should submit to his or her physician, and a Medical Questionnaire in Support of ADA Accommodation Request form to go with the form letter. A list of the employee's essential job functions should be attached to the Medical Questionnaire by the employer.

The following represents the basic procedure by which Delaware state agencies should evaluate a request for a reasonable accommodation.

1. The reasonable accommodation process typically begins when an employee or job applicant initiates a request for reasonable accommodation orally or in writing. This request is typically made to any of the following: employee's supervisor; a supervisor or manager in employee's immediate chain of command; the agency's human resources office; or the authorized office/individual designated by the agency to oversee the reasonable accommodation process. A family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. The agency should then confirm with the person with a disability that he/she in fact requests a reasonable accommodation. In some instances, it may be necessary for the employer to initiate an informal, interactive process with the employee in need of accommodation. This process should identify the precise limitations resulting from the disability and the potential reasonable accommodations that could overcome limitations. Agencies should not hesitate to consult with the Human Resource Management Office for further guidance. During the hiring process and before a conditional offer is made, an employer generally may not ask an applicant whether the applicant needs a reasonable accommodation for the job, except when:

- The applicant has voluntarily disclosed the information and requests a reasonable accommodation; and /or;
 - The employer could reasonably believe, based on obvious information that the applicant would need a reasonable accommodation to perform specific job functions. In such situations, the employer should initiate an informal, interactive process.
2. If the applicant/employee replies that a reasonable accommodation is requested, the employer may inquire as to what type. The applicant/employee must be capable of performing the essential functions of the job with or without a reasonable accommodation. A reasonable accommodation is not necessarily the best or most expensive accommodation, but is one that will help allow the applicant/employee to perform the essential functions of the job. Agencies should not require that individuals with disabilities use particular words to request a reasonable accommodation. In addition, agencies cannot require such requests be made at a certain time – the duty to provide reasonable accommodation is ongoing.
 3. Each agency should designate an office/individual to authorize approval or denial of requests for reasonable accommodation. The request should then be provided to the agency's designated office authorized to approve such requests.
 4. When an agency is provided with a request for reasonable accommodation, it is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. Thus, when a disability and/or need for accommodation is requested, the authorized office/individual will normally require the individual to provide reasonable documentation of medical/behavioral health information about the disability and his/her functional limitations as it relates to the essential functions of the job, application process or the benefits and privileges of employment. Additionally, the authorized office/individual may request supplemental medical/behavioral health information when the information already submitted is insufficient to document the disability and/or the functional limitations as it relates to the essential functions of the job, application process or the benefits and privileges of employment. Failure to provide necessary documentation, where it has been properly requested, could result in a denial of reasonable accommodation. The authorized office/individual has the right to have medical/behavioral health information reviewed by a medical expert of the agency's choosing at the agency's expense and may require the written authorized consent of the individual with the disability consistent with federal and state law including the Health Insurance Portability Protection Act (HIPPA). Furthermore, an agency has the right to obtain a second opinion at the agency's choosing and at the agency's expense. This information shall be explained to the individual when necessary. All medical/behavioral health information shall be kept confidential consistent with HIPPA. An agency may not be required to request medical

information where:

- Both the disability AND the need for reasonable accommodation are obvious; or
 - The individual has already provided the agency with sufficient information to document the existence of the disability and his/her functional limitations relating to the essential functions of the job.
5. The authorized office/individual should explain how the agency will process a request for reasonable accommodation, and from whom the individual will receive a final decision. To ensure that all effective accommodations have been considered, the authorized office/individual is encouraged to talk to the individual requesting the accommodation where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are choosing between different possible reasonable accommodations.
 6. The authorized office/individual should grant or deny requests for reasonable accommodation, in writing, within 15 business days of the date when all information is received including any requested medical documentation, when possible. Time limits for processing requests and providing reasonable accommodations should be as short as reasonably possible. The time necessary to respond to any particular request for accommodation will depend largely on the nature of that accommodation. Of course, there may be "extenuating circumstances" (factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation). Where there is a delay in either processing a request for, or delivering a reasonable accommodation, the authorized office/individual should notify the individual of the reason for the delay. If there are delays, the designated office/individual should examine temporary measures that may be taken to assist the individual with a disability.
 7. When an agency denies an individual's request for a reasonable accommodation, it should notify the individual in plain language with the reasons for the denial, and should identify the office/individual that made the decision. The agency should notify the individual of his or her recourse with the Office of Labor Law Enforcement of the Delaware Department of Labor, the Equal Employment Opportunity Commission, and/or the ADA Grievance Procedure through the Office of Disability Affairs.
 8. All personnel information is confidential with the following exceptions:
 - 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) including for health and safety reasons;

- 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 consistent with the requirements of the Rehabilitation Act; the ADA; the Delaware Handicapped Persons Employment Protections Act or other applicable federal and state laws;
 - The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers consistent with statutory requirements; and
 - Agencies' designated office/individual may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation.
9. Nothing in this procedure statement is intended to be a waiver of state sovereign immunity.

(This procedure is not intended to create any individual right or cause of action not already existing and recognized under state or federal law.)

APPENDIX I
KEY TERMS
FOR GUIDANCE

Qualified individual with a disability or covered disability – An individual who has: a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; b) a record of such impairment; or c) being regarded as having such impairment.

Reasonable accommodation - Title I of the ADA provides for reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. Reasonable accommodations that apply to all persons with disabilities include, but are not limited to, the following:

- modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job;
- modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job;
- modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

Any disability related inquiry or medical examination of an employee must be “job-related and consistent with business necessity” based on objective evidence that:

- **an employee’s ability to perform essential job functions will be impaired by a medical condition; or**
- **an employee will pose a direct threat (to the employee or others) due to a medical condition.**

Duty to Reasonably Accommodate – Upon request by a qualified individual with a disability, agencies must provide reasonable accommodations to a qualified individual with a disability so that the person may have equal employment opportunities. Agencies are not required to remove an essential job function as a form of reasonable accommodation.

Undue hardship - Agencies do not have to provide reasonable 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.

Essential functions - The essential functions of a job 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.

Benefits and Privileges of Employment – Examples of benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).

Office of Disability Affairs,– This office houses the State's ADA Coordinator and provides technical assistance to State agencies regarding ADA matters. It also provides the State's formal ADA Grievance Procedure.

APPENDIX II

RESOURCES FOR THE REASONABLE ACCOMMODATION PROCESS

The list of reference is being provided for the convenience of the employee or agency. The state is in no way endorsing any independent or private agency.

U.S. Equal Employment Opportunity Commission

Phone: 1-800-669-3362 (Voice) 1-800-800-3302 (TTY)

Web Site: <http://www.eeoc.gov>.

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq., and the regulations, 29 C.F.R. § 1630. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9; (2) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, 8 FEP Manual 405:7601 (1999); and (3) *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992) (*Technical Assistance Manual*). The *Technical Assistance Manual* includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the American with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employee Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000). Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the *Technical Assistance Manual* and the poster, are also available through the Internet at www.eeoc.gov. All of these documents provide guidance that applies to state agencies through the ADA.

U.S. Department of Labor (To obtain information on the Family and Medical Leave Act)

To request written materials: 1-800-959-3652 (Voice) 1-800-326-2577 (TTY)

To ask questions: (202) 219-8412 (Voice)

Job Accommodation Network (JAN)

Phone: 1-800-232-9675 (Voice/TTY)

Web Site: <http://janweb.icdi.wvu.edu/>

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

Phone: 1-800-949-4232 (Voice/TTY)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

Phone: (301) 608-0050 (Voice/TTY)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

Phone: (703) 524-6686 (Voice)

TTY: (703) 524-6639

Web Site: <http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing

- information on thousands of commercially available assistive technology products),
- centers where individuals can try out devices and equipment,
 - assistance in obtaining funding for and repairing devices, and
 - equipment exchange and recycling programs.

Delaware ADA Coordinator

Phone: (302) 739-3613 (Voice); (302) 739-3699 (TTY)

Provides technical assistance to State agencies on ADA issues.

Delaware Statewide Coalition for the Americans with Disabilities Act (SCADA)

SCADA is committed to the effective implementation of the Americans with Disabilities Act (ADA) in Delaware. SCADA provides ADA information, education and technical assistance throughout the state, enabling business, government and disability communities to work together to ensure equal opportunity for persons with disabilities and compliance with the ADA.

Phone: (302) 292-3066 email: scada@comcast.net

Conflict Connections

Provides training and staff development, facilitation, problem solving, and mediation services to organizations and groups. Topics and issues that can be addressed pertain to workplace disputes, EEOC, disabilities, special education, organizational change and strategic planning, and complex problem solving and decision making.

Phone: (302) 737-5395
email: conflictconnections@ezol.com

Architectural Accessibility Board

The Architectural Accessibility Board reviews plans to ensure that individuals with disabilities can use public facilities with the maximum of safety and independence by providing for the implementation of standards for the elimination of architectural barriers.

Phone: (302) 760-2569

United States Department of Justice

Phone: (302) 573-6277

The Office of Management and Budget

Phone: (302) 739-4195

Web Site: <http://delawarepersonnel.com/>

Division of Vocational Rehabilitation

Phone: (302) 761-8275

Web Site: <http://www.delawareworks.com/dvr/>

Delaware Assistive Technology Initiative

Phone: (302) 651-6790 or 1:800-870-DATI
TDD – (302) 651-6794

Web Site: <http://www.asel.udel.edu/>