



Court Services and Offender Supervision Agency
Pretrial Services Agency
For the District of Columbia
 Office of Human Resources
 Office of Human Capital Management

POLICY STATEMENT

Reasonable Accommodation
 Number: 0820
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Overview

Background

Section 501 of the Rehabilitation Act of 1973, as amended, requires federal agencies to provide reasonable accommodation to qualified employees and applicants with disabilities, unless doing so would cause undue hardship. The substantive standards of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*) apply to the Federal Government through the Rehabilitation Act. (29 U.S.C. §§ 791 *et seq.*)

Court Services and Offender Supervision Agency (CSOSA) and Pretrial Services Agency for the District of Columbia (PSA) (collectively, the Agency) are committed to fully complying with the Rehabilitation Act of 1973, as amended, and providing equal employment opportunities for employees and applicants without regard to disability.

This policy establishes the Agency's commitment to:

- Recruit, hire, develop, and advance employees and applicants to the fullest extent possible without regard to disability;
- Respond to requests for reasonable accommodation through an interactive process; and
- Provide reasonable accommodations that are consistent with applicable laws and regulations.

Summary of Changes

- Change in policy number to reflect the change in the policy administrator
- Separation of policy from procedures
- Definition of additional terms
- Clarification of roles and responsibilities

Coverage

This Policy Statement applies to all employees and applicants of the Agency.

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Overview, Continued

Authorities

- Rehabilitation Act of 1973 (29 U.S.C. §§ 791 *et seq.*), as amended
- Americans with Disabilities Act (ADA) of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*)
- Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151 *et seq.*)
- Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. §§ 2000ff *et Seq.*)
- Code of Federal Regulations, Title 5, Part 339 (Medical Qualification Determinations)
- Code of Federal Regulations, Title 29, Part 1614 (Federal Sector Equal Employment Opportunity)
- Code of Federal Regulations, Title 29, Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act)
- Executive Order 13163, Increasing the Opportunity for Individuals with Disabilities to be employed in the Federal Government (July 26, 2000)
- Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000)
- Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010)
- EEOC Enforcement Guidance, Disability-Related Inquiries and Medical Examinations of Employees under the ADA, No. 915.002 (July 27, 2000)
- EEOC Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915.003 (October 20, 2000)
- Equal Employment Opportunity (EEO) Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, No. 915.002 (revised October 17, 2002)
- Equal Employment Opportunity Commission (EEOC) Regulations to Implement the ADA Amendment Act (March 24, 2011)

Disclaimer

The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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Overview, Continued

References OI-OHR-0820.1 Reasonable Accommodation

Supersedes Chapter 7, Procedures for Providing Reasonable Accommodation for
Individuals with Disabilities – November 29, 2001

Administrator CSOSA Office of Human Resources (OHR) and PSA Office of Human Capital
Management (OHCM) are responsible for the contents of this policy.

Policy

Principles

- The Agency provides reasonable accommodation when:
 - An applicant with a disability needs an accommodation to equally compete for a job;
 - An employee with a disability needs an accommodation to:
 - Perform the essential functions of the job held or desired;
 - Gain access to the workplace; and/or
 - Enjoy equal access to benefits and privileges of employment (e.g., detail assignments, training, office-sponsored events).
 - The Agency processes requests for reasonable accommodation in a prompt and efficient manner, using the interactive process and referenced reasonable accommodation operational instruction.
 - The Agency provides both the policy and operational instruction, including any forms, to employees and applicants in written and accessible formats, upon request.
 - The Agency's reasonable accommodation process is transparent. The employee and applicant may track the processing of open requests by contacting the Reasonable Accommodation Coordinator (RAC).
 - The Agency has the discretion to choose among effective reasonable accommodations and may provide an alternative to the requested accommodation.
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Definitions

Decision-Maker (DM)

The requesting employee's first-level (immediate) supervisor who accepts, processes, and grants or denies a request for reasonable accommodation. In the event of an extended absence of the first-level supervisor, the second-level supervisor is the DM.

For CSOSA applicants, the DM is the Deputy Associate Director of Human Resources (DAD OHR). For PSA applicants, the DM is the Deputy Assistant Director, Office of Human Capital Management (DAD OHCM).

Occasionally, the first-level supervisor may not have the authority to grant a specific reasonable accommodation request. In such situations, the DM is the Agency official who has responsibility for handling specific reasonable accommodation requests (e.g., For CSOSA employees, requests for accessible parking are handled by the Office of Administration. For PSA employees, requests for accessible parking are handled by the Office of Finance and Administration.)

Direct Threat

A threat that poses a significant risk of substantial harm to the health or safety of an individual or others that cannot be eliminated or reduced by reasonable accommodation. A "significant" risk is a high, and not just a slightly increased, risk. The determination that an individual poses a "direct threat" must be based on:

1. An assessment of the individual's present ability to safely perform the essential functions of the job; and
2. Reasonable medical judgment based on the most current medical knowledge and/or best available objective evidence.

Employers must apply the "direct threat" standard uniformly and may not use safety concerns to justify exclusion of persons with disabilities when persons without disabilities would not be excluded in similar circumstances.

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Definitions, Continued

Disability

With respect to an individual:

1. A physical or mental impairment that substantially limits one or more major life activities of the individual;
2. A record (history) of the impairment; or
3. Being regarded as having the impairment.

Note: The Rehabilitation Act of 1973, as amended, does not require an employer to provide reasonable accommodation to an individual who is only regarded as having an impairment.

Essential Job Functions

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.

A job function may be considered "essential" for any of several reasons, including, but not limited to:

- Whether the reason the position exists is to perform that function;
- The number of other employees available to perform the function or among whom the performance of the function can be distributed; and
- The degree of expertise or skill required to perform the function.

Factors to consider in determining whether a function is essential include, but are not limited to:

- Written job descriptions prepared before advertising or interviewing applicants for the job;
 - Employer's judgment as to which functions are essential;
 - Amount of time spent on the job performing the function;
 - Consequences of not requiring the incumbent to perform the function;
 - Terms of a collective bargaining agreement;
 - Work experience of past incumbents in the job; and
 - Current work experience of incumbents in similar jobs.
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Definitions, Continued

Extenuating Circumstances

Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation or limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation.

Examples of extenuating circumstances include, but are not limited to:

- Employee is away from the duty station for an extended period and unable to determine whether the proposed accommodation meets the identified needs;
- Purchase of equipment takes longer than anticipated due to procurement requirements;
- Equipment is back-ordered (the vendor used by the Agency for goods or services cannot promptly supply the needed goods or services, and another vendor is not immediately available);
- Requestor needs to use the equipment on a trial basis to ensure that it is effective before the Agency purchases it;
- New staff needs to be hired or contracted;
- Accommodation involves the removal of architectural barriers;
- There is an outstanding initial or follow-up request for medical information; and
- Implementation of the accommodation requires union negotiations.

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Definitions, Continued

Interactive Process

A collaborative, information-gathering approach used to evaluate a request for reasonable accommodation. It centers on communication between an employer and the individual requesting the reasonable accommodation (requestor) and may involve obtaining relevant information from the requestor's health care provider.

The process begins when an oral or written request for reasonable accommodation is made. During the interactive process, the DM engages in a discussion with the requestor, the Reasonable Accommodation Coordinator (RAC), and other relevant Agency officials to collect information necessary to make an informed decision about:

- Whether the requestor is covered as an individual with a disability; and
 - Which, if any, reasonable accommodation(s) will effectively eliminate the barrier(s) identified by the requestor.
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Major Life Activities

Functions that most persons, in the general population, can perform with little or no difficulty. Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others and working.

A major life activity also includes the operation of a major bodily function to include: functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions, among others. The operation of a major bodily function includes the operation of an individual organ within a body system.

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Definitions, Continued

Medical Information

Information obtained in connection with the reasonable accommodation process. Medical information includes the fact that someone has requested, is receiving, or has been approved for or denied an accommodation, or has a disability, as well as any information concerning an individual's medical condition or history (e.g., diagnosis and prognosis), regardless of the manner in which it is obtained.

An agency may only request medical information that is reasonably necessary to establish that the requestor is an individual with a disability and needs the accommodation. An agency must ensure the confidentiality of this medical information consistent with applicable laws and regulations.

Personal Assistance Services (PAS)

Services providing assistance with performing activities of daily living that an individual would typically perform independently if he/she did not have a disability. PAS are not reasonable accommodation. They may be provided in addition to reasonable accommodation to individuals with targeted disabilities. PAS are provided by a personal assistance service provider. Examples of PAS include, but are not limited to, assistance with removing and putting on clothing, eating, and using the restroom.

PAS are provided to employees with targeted disabilities:

- During work hours;
 - When the employee is teleworking under an agency's telework policy or as a reasonable accommodation; and
 - When needed because of job-related travel.
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Definitions, Continued

**Physical or
Mental
Impairment**

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory and lymphatic, skin, normal cell growth, and endocrine.

Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Examples of emotional or mental illness include, but are not limited to: major depression, bipolar disorder, anxiety disorders (panic disorder, obsessive compulsive disorder, and post-traumatic stress disorder), schizophrenia, and personality disorders.

**Qualified
Individual with a
Disability**

An individual who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the position; and
- Can perform the essential functions of the position with or without reasonable accommodation.

Specific Exclusions: An individual who currently uses drugs illegally or poses a “direct threat” to him/herself or others is not a qualified individual with a disability under this policy.

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Definitions, Continued

**Reasonable
Accommodation**

Any change or adjustment in the work environment or the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

If requested or identified, these changes or adjustments address three aspects of employment:

1. The job application process to enable a qualified applicant with a disability to be considered for the position (e.g., providing application forms in alternative formats like a large print or Braille);
2. The work environment or the manner or circumstances under which the position is customarily performed to enable a qualified individual with a disability to perform the essential functions of the position (e.g., providing sign language interpreters); and
3. Equal access to the benefits and privileges of employment to those enjoyed by other similarly situated employees without disabilities (e.g., use of athletic facilities and locker room at work site).

Examples of reasonable accommodations:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- Job restructuring;
- Modified work schedules;
- Acquisition or modification of equipment or devices;
- Adjustments or modifications of examinations, training materials or policies;
- Provision of qualified readers or interpreters; and
- Reassignment to a vacant position (as a last resort).

Examples of accommodations that are not considered reasonable:

- Creation of a new position;
- Elimination of an essential job function; or
- Lower production standards—whether qualitative or quantitative.

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Definitions, Continued

**Reasonable
Accommodation
Coordinator
(RAC)**

Serves as the technical adviser and subject matter expert on the laws and regulations of the reasonable accommodation process. The RAC provides advice and assistance to the Agency's management, employees, and applicants on day-to-day issues involving reasonable accommodation and disability.

Reassignment

A form of "last resort" reasonable accommodation. It may be provided to an employee (not an applicant) who, because of a disability, can no longer perform the essential functions of his/her current job, with or without reasonable accommodation.

Agencies are not required to remove an essential job function, lower a performance or production standard, create a new position for the employee, or reassign or move another employee to create a vacancy.

A reassignment is made only to a vacant, funded, same, or lower-graded position. If the employee is qualified for such a position and the Agency chooses to offer it as an accommodation, the employee will be reassigned to the new position and will not have to compete for it.

Requestor

An employee or applicant, including a representative acting on the employee's or applicant's behalf, who requests a reasonable accommodation.

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Definitions, Continued

Targeted Disability

A subset of the larger disability category. The federal government has recognized that qualified individuals with certain disabilities, particularly manifest disabilities, face significant barriers to employment, above and beyond the barriers faced by people with a broader range of disabilities. These barriers are often due to myths, fears, and stereotypes about such disabilities.

Targeted disabilities include:

- Developmental disabilities, for example, cerebral palsy or autism spectrum disorder;
- Traumatic brain injuries;
- Deafness or serious difficulty hearing, benefiting from, for example, American Sign Language;
- Blindness or serious difficulty seeing even when wearing glasses;
- Missing extremities (arm, leg, hand and/or foot);
- Significant mobility impairments, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports;
- Partial or complete paralysis (any cause);
- Epilepsy and other seizure disorders;
- Intellectual disabilities (formerly described as mental retardation);
- Significant psychiatric disorders, for example, bipolar disorder, schizophrenia, PTSD, or major depression);
- Dwarfism; and
- Significant disfigurement (e.g., disfigurements caused by burns, wounds, accidents, or congenital disorders).

Temporary Arrangement

Any interim or short-term measure that may be put in place while the decision on the reasonable accommodation request is pending or until an approved accommodation is available.

NOTE: Provision of a temporary arrangement is not a finding that a request for reasonable accommodation will be approved.

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Definitions, Continued

Undue Hardship An action requiring significant difficulty or expense on the part of the Agency. An employer does not have to provide a reasonable accommodation that would cause an undue hardship to the employer. Undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.

A determination of undue hardship should be based on several factors including, but not limited to:

- Nature and cost of the accommodation needed;
 - Overall financial resources of the agency making the reasonable accommodation (i.e., the number of persons employed at this agency, the effect on expenses and resources of the agency); and
 - Impact of the reasonable accommodation on the operations of the agency.
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Roles and Responsibilities

Requestor

- Makes oral or written request for reasonable accommodation.
- Participates in the interactive process with the DM, the first-level supervisor (if not DM), the RAC, and other relevant Agency officials to assist in their understanding of:
 - The nature, severity, and duration of the impairment;
 - The activity or activities that the impairment limits;
 - The extent to which the impairment limits the individual’s ability to perform the activity or activities;
 - The reasons the individual requires a reasonable accommodation or a particular reasonable accommodation;
 - The ways the reasonable accommodation will assist the individual in applying for the job, performing the essential functions of the job, or enjoying a benefit of the workplace; and
 - Alternative accommodations that may be effective in meeting the individual’s needs.
- Provides a limited medical release and/or medical documentation from a physician or other licensed medical professional regarding the disability, if requested (i.e., when the medical condition is not obvious).

Receiving Official

- Receives oral or written requests for reasonable accommodation.
- Clarifies whether a reasonable accommodation is being requested if the nature of the initial communication is unclear.
- Communicates and forwards all requests for reasonable accommodation, along with any supporting documentation, to the RAC.

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Roles and Responsibilities, Continued

RAC

- Implements the Agency's reasonable accommodation procedures consistent with this policy, governing laws, regulations, executive orders, and EEOC directives.
- Serves as a resource for employees and applicants on the process for requesting reasonable accommodation.
- Provides guidance and technical assistance to supervisors and other relevant Agency officials on processing requests for reasonable accommodation:
 - Reviews all requests for reasonable accommodation;
 - Identifies the DM responsible for handling the request for reasonable accommodation;
 - Engages the first-level supervisor, if not the DM;
 - Advises the DM on responding to the request;
 - Consults with medical personnel (i.e., Federal Occupational Health [FOH] or Agency's other contract physician[s]) to determine if the employee meets the definition of a qualified individual with a disability or additional medical information is needed;
 - Requests and receives medical information and supplemental medical information, if needed;
 - Requests an examination by Agency's contract physician(s) when the medical information provided is insufficient to substantiate the existence of a disability and the need for reasonable accommodation; and
 - Researches and provides recommendations to the DM on potential reasonable accommodations, including temporary arrangements, if warranted.
- Facilitates and engages all relevant parties (e.g., DM, first-level supervisor [if not DM], requestor, CSOSA Office of Human Resources [OHR]/PSA Office of Human Capital Management [OHCM]) throughout the interactive process.

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Roles and Responsibilities, Continued

- RAC, continued**
- Ensures that the official who grants or denies requests for reasonable accommodation (DM) or who makes hiring decisions:
 - Knows how to arrange for the use of all resources available to the Agency as a whole to provide the reasonable accommodation, including any centralized funds the Agency may have for the purpose; and
 - Is aware that to deny an accommodation based on cost, the official must consider all resources available to the Agency as a whole excluding those designated by statute for a specific purpose that does not include reasonable accommodation.
 - Consults with OHR/OHCM to identify vacancies for which an employee may be qualified when reassignment is being considered as a last resort.
 - Reviews all information to ensure that the reasonable accommodation:
 - Meets the requestor’s disability-related needs;
 - Does not eliminate essential functions of the position;
 - Is reasonable; and
 - Does not pose an undue hardship.
 - Ensures that the Office of General Counsel provides a legal sufficiency review for any denial of a reasonable accommodation before providing a final decision to the requestor.
 - Establishes a tracking system to:
 - Monitor the processing of reasonable accommodation requests through to closure; and
 - Provide status updates on open requests to employees and applicants, upon request.
 - Maintains records on all reasonable accommodation requests and relevant documentation:
 - Consistent with applicable laws and regulations; and
 - Agency’s requirement to keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and to make such records available to the Commission upon the Commission’s request.
 - Compiles cumulative data for tracking and reporting purposes and prepares statistical information on the number, nature, and disposition of reasonable accommodation requests.

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Roles and Responsibilities, Continued

- Decision Maker**
- Participates in the interactive process with the requestor, the first-level supervisor (if not DM), the RAC, and other relevant Agency officials to clarify:
 - 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.
 - Renders a final decision, in consultation and coordination with the first-level supervisor (if not DM), the RAC, and other relevant Agency officials on whether to grant, deny or provide an alternative to the requested accommodation.
 - Communicates the decision in writing to the requestor, copying the RAC.
 - Evaluates the effectiveness of an approved reasonable accommodation on a regular basis, in consultation with the RAC.
 - Determines if a temporary arrangement is warranted and available while the decision on the reasonable accommodation request is pending or when there is a delay in providing an approved accommodation due to extenuating circumstances.
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- Human Resource Specialists**
- Ensure that job vacancy announcements contain appropriate notices to applicants regarding the Agency's reasonable accommodation policy, including appropriate contact information for accommodation-related matters.
 - Handle accommodation requests from applicants during the application process and coordinate with the RAC.
 - Identify vacant positions for which an employee is qualified in cases where reassignment is being considered as a last resort.
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Roles and Responsibilities, Continued

**Training &
Career
Development
Center (TCDC)
(CSOSA)**

- Collaborates with the RAC to develop appropriate training programs and resource materials for the Agency's reasonable accommodation program, including customized course development for the supervisors and other relevant officials.
 - Provides training to ensure:
 - All employees have the information necessary to comply with this policy and reasonable accommodation procedures;
 - The supervisors and other relevant officials have the information necessary to recognize and process requests for reasonable accommodation; and
 - All employees and applicants who need and qualify for reasonable accommodations are accommodated consistent with this policy, governing laws, regulations, executive orders, and EEOC directives.
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**Director of
Office of Equal
Employment
Opportunity
(OEEO)**

- Manages the EEO discrimination complaint process, including claims involving denials of requests for reasonable accommodation.
 - Compiles cumulative data for tracking and reporting purposes and prepares statistical information on EEO complaints involving denials of requests for reasonable accommodation.
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**Associate
Director of
Human
Resources
(CSOSA)**

- Oversees the reasonable accommodation policy and procedures.
 - Manages the reasonable accommodation program.
 - Coordinates with PSA OHCM to set reasonable accommodation goals and targets for the Agency in alignment with EEOC regulations.
 - Ensures records are maintained consistent with applicable laws and regulations.
-

**Office of
General Counsel
(OGC)**

- Reviews the decision to deny a request for reasonable accommodation for legal sufficiency before a final decision is communicated to the requestor.
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Roles and Responsibilities, Continued

**CSOSA/PSA
Directors**

- Ensure the Agency's operations adhere to EEO principles in their human capital policies and practices relating to employment, development, advancement, and treatment of employees and applicants with disabilities.
 - Ensure the Agency has adequate funding for reasonable accommodations.
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