



DISTRICT OF COLUMBIA  
DEPARTMENT OF CORRECTIONS

**POLICY AND  
PROCEDURE**

<b>EFFECTIVE DATE:</b>	September 4, 2018	<b>Page 1 of 13</b>
<b>SUPERSEDES:</b>	NEW ISSUANCE	
<b>OPI:</b>	HRM	
<b>REVIEW DATE:</b>	September 4, 2019	
<b>Approving Authority</b>	Quincy L. Booth Interim Director	

<b>SUBJECT:</b>	<b>ADA- ACCOMMODATING EMPLOYEES WITH DISABILITIES (NEW ISSUANCE)</b>
<b>NUMBER:</b>	<b>3810.1</b>
<b>Attachments:</b>	A – Employee Reasonable Accommodation Request Form B – Reasonable Accommodation Information for Employees in the District of Columbia C – Reasonable Accommodation Determination D – Authorization for Release of Protected Health Information E – Health Care Provider Certification Form F – Reasonable Accommodation Plan

**SUMMARY OF CHANGES:**

Section	Change
	<i>New Issuance</i>

**APPROVED:**

\_\_\_\_\_  
Quincy L. Booth, Director

9/4/18  
Date Signed

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1. **PURPOSE AND SCOPE.** To provide guidance to DOC employees and applicants on how to request a reasonable accommodation for disability.
  
2. **POLICY.** The DOC is committed to equal employment opportunities for applicants and employees with disabilities, and providing reasonable accommodations as required to facilitate the employment of qualified employees and applicants with disabilities. Beyond its legal obligations, the District is committed to providing accommodations that will allow its employees with disabilities to contribute at the highest levels.
  
3. **APPLICABILITY**  
  
DOC employees and applicants for employment.
  
4. **NOTICE OF NON-DISCRIMINATION**
  - a. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
  
5. **PROGRAM OBJECTIVES.** The intent of this Program Statement is to ensure that:
  - a. Employees and applicants for employment are informed of the procedures and requirements in order to make a reasonable accommodation request (Attachment A, Reasonable Accommodation Request Form).
  - b. Staff are informed of the avenues to request reconsideration of decisions related to reasonable accommodations.

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- c. Supervisory staff are informed of the procedures and requirements to respond appropriately and timely to requests for reasonable accommodation.
- d. DOC will meet legal requirements concerning reasonable accommodation requests, and obtain the benefits that arise from maintaining a diverse and inclusive workplace.

## 6. DIRECTIVES AFFECTED

- a. **Directives Rescinded.** None
- b. **Directives Referenced**
  - 1) PP 3800.1 Equal Employment Opportunity Program
  - 2) PP. 3800.4 DOC Language Access Program

## 7. AUTHORITY

- a. The Americans with Disabilities Act As Amended, 42 USC 12101, *et seq*
- b. D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq.,
- c. D.C. Code §§ 2-1402.01, 2-1402.11, 2-1402.12, 2-1402.13, Prohibited Acts of Discrimination - Employment
- d. D.C. Code §§ 2-1431.01- 2-1431.02, 2-1431.05 et seq., Disability Rights Protection

## 8. STANDARDS REFERENCED

**NONE.**

## 9. DEFINITIONS

- a. **Direct Threat-** a significant risk of substantial harm to health and safety.

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- b. **Disability-** a physical or mental impairment that substantially limits one or more of the person's major life activities, a record of such impairment; or being regarded as having such an impairment.
- c. **Interactive Process-** communication between the employee and employer to determine the best approach towards a reasonable accommodation **Major Life Activity-** major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- d. **Qualified Individual** – an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the essential employment functions of the position, and who, with or without reasonable accommodation, can perform the essential functions of the position.
- e. **Qualified Interpreter.** Defined by the ADA as an individual able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. A qualified interpreter may provide interpretation services in person or via a Video Remote Interpreting (VRI) service.
- f. **Reasonable Accommodation-** any change or adjustment to the job, the work environment or the way work is customarily done which permits a qualified applicant or employee with a disability to perform the essential functions of a job or to enjoy the equal benefits and privileges of employment as are available to a similarly situated employee without a disability.
- g. **Regarded As or Perceived Disability** - An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under the ADA

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- because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
- h. **Substantially Limited-** when an individual is materially restricted from performing a major life activity as determined without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, assistive technology; auxiliary aids or adaptive behavior modification.
- i. **Undue Hardship-** an accommodation that causes significant difficulty or expense on the agency.

## 10. GENERAL REQUIREMENTS

- a. *Who is a Person with a Disability?*
- 1) A person with a disability is:
    - a) An individual with a physical or mental impairment that substantially limits one or more of the person's major life activities;
    - b) An individual with a record of such an impairment; or
    - c) An individual who is perceived to have such impairment".
  - 2) A person is "substantially limited" in performing a major life activity if she/he is materially restricted in a major life activity.
  - 3) Examples of "major life activities" include walking, lifting, seeing, performing manual tasks, sitting, breathing, speaking, hearing, learning, reading, personal care/grooming, and other activities.
  - 4) A "qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment functions of the position, and who, with or without reasonable accommodation, can perform the essential functions of the position (Attachment A – Employee Reasonable Accommodation Request Form).

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- 5) An individual with an injury covered under workers' compensation may be protected by the ADA, but is not automatically protected. To be protected by the ADA, the employee must meet the ADA's definition of disability. The ADA does not require an employer to provide a reasonable accommodation for an employee with an occupational injury who does not have a disability as defined by the ADA.
  - b. *What is a Reasonable Accommodation?*
    - 1) A reasonable accommodation can be described as any change or adjustment to the job, the work environment or the way work is customarily done which permits a qualified applicant or employee with a disability to perform the essential functions of a job or to enjoy the equal benefits and privileges of employment as are available to a similarly situated employee without a disability.
    - 2) Reasonable accommodation may occur in three phases of employment:
      - a) *In the application process.* Reasonable accommodation must be provided in the job application process to provide a qualified applicant with a disability with an equal opportunity to be considered for the position;
      - b) *In the performance of the essential functions of a job.* Reasonable accommodation must be provided to enable a qualified person with a disability to perform the essential functions of the job. This may include changes or adjustments to the work environment, to the manner or circumstances in which the position is customarily performed, or to employment policies;
      - c) *In the receipt of all benefits of employment.* Reasonable accommodations must be provided to enable an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities. This would include equal access to lunchrooms, meetings, employer-sponsored services, employee benefits,

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social events, etc.

- 3) In determining whether a requested accommodation is reasonable, DOC will consider several factors, including:
    - a) The nature and cost of the change;
    - b) If the accommodation would impose an undue hardship;
    - c) The number of people who could benefit from the change (including members of the public); and
    - d) Additional benefits or detriments that would result from the change
- c. *Purpose of Reasonable Accommodation*
- 1) The purpose of reasonable accommodation is to provide employment opportunities for persons with disabilities who otherwise would not be able to perform the essential functions of their job, and to allow employees with disabilities to perform or be more productive. Reasonable Accommodation Information for Employees Form. (Attachment B)
  - 2) Reasonable accommodations may include, but are not limited to:
    - a) Making existing facilities accessible;
      - 1) Job restructuring;
      - 2) Change of work schedules or place of work;
      - 3) Extended leave;
      - 4) Telecommuting;
      - 5) Reassignment to a vacant position to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue

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hardship;

- 6) Acquisition or modification of equipment or devices, including computer software and hardware;
- 7) Appropriate adjustments or modifications of examinations, training materials or policies; and
- 8) Provision of qualified readers and/or sign language interpreters and other similar accommodations.

The DOC will provide reasonable accommodations in a timely manner. The process of considering requests for accommodations and providing reasonable accommodations will always include an "interactive process" of mutual communication and consultation between the qualified individual with a disability and DOC.

The DOC is not required to provide an accommodation if it would cause an undue financial or administrative hardship in light of the overall financial and administrative resources available.

In addition, the DOC is not required to provide an accommodation if doing so would pose a direct threat to health or safety.

d. "Essential vs. Marginal Functions of a Position"

- 1) **Essential functions** are those that are fundamental and central to the purpose of the position. DOC must provide reasonable accommodations to an employee with a disability to allow the employee to accomplish the essential functions of the job, but the agency is not required to exempt an employee with a disability from performing the essential functions of the job.
- 2) Factors to consider in determining if a function is essential include:
  - a) Whether the reason the position exists is to perform that function,



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- b) The number of other employees available to perform the function or among whom the performance of the function can be distributed, and
- c) The degree of expertise of skill required to perform the function.

- 3) **Marginal functions** are useful responsibilities, but are not central to the purpose of the position. These functions can be reassigned without destroying the basic purpose of the position. (Attachment B)

## 11. Reasonable Accommodation Process

- a. In general, it is the responsibility of the individual with a disability to inform his or her employer that an accommodation is needed. The employer shall immediately refer the employee to the DOC ADA Coordinator. .
- b. A request for accommodation does not have to be in writing and may be in plain English. It does not have to use the term “reasonable accommodation” and does not have to mention the ADA.
- c. An employee may request to be represented in this process by the employee’s union, attorney, or any other individual designated by the employee.
- d. A request for accommodation may be made by a family member, friend, health professional, or other representative who is acting on the individual's behalf with the individual's consent. The request does not have to be in writing and the requestor shall be immediately referred to the DCDOC ADA Coordinator who will initiate and conduct the interactive process.
- e. If an employee with a known or obvious disability is having performance problems, and a supervisor believes that an accommodation may be necessary, the supervisor shall contact the ADA Coordinator who will initiate and conduct the interactive process.

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- f. An employee may request a reasonable accommodation by submitting the Employee Reasonable Accommodation Request Form, (Attachment A) or by notifying their supervisor, ADA Coordinator, EEO Officer, or Human Resources Officer. Such request may be made verbally or in writing by the employee or his or her representative. The employee will be provided with information on the reasonable accommodation process and when the disability and/or need for accommodation is not obvious, the Employee Reasonable Accommodation Request Form must be completed by the employee and the employee's doctor or health care provider to provide reasonable documentation about his or her disability and functional limitations
  
- g. When the completed forms are returned, the agency's ADA Coordinator will review the information to determine if the employee is a qualified individual with a disability, and if so, whether an accommodation is appropriate. The coordinator may confer with the employee's supervisor, the employee's health care provider, DOC's EEO Officer, and DOC's Human Resources Officer to review the requested accommodation and/or other alternatives. The coordinator will also contact the employee to discuss the requested accommodation and/or alternatives in an interactive process.
  
- h. This process will be completed as quickly as possible. However, if the information on the forms is incomplete or unclear, the process may be delayed. The employee who is requesting reasonable accommodation should make sure that forms are completed accurately and returned as soon as possible. The agency will provide the employee with a written update on the status of the request within Fifteen (15) days from the day that the request is acknowledged.
  
- i. The ADA Coordinator will review the recommended action with the DOC Human Resource Officer, the Warden or his designee (as needed), and the DOC Director. The requesting employee will be notified of the agency's decision by providing a Reasonable Accommodation Determination letter (Attachment C). If the request is not approved, the DOC and the employee shall engage in the interactive process to explore other options for accommodation, if any.

## 12. MEDICAL DOCUMENTATION AND CONFIDENTIALITY

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a. If the disability is not obvious, and/or there is no other medical information already on record for the employee, the agency can require the employee to submit documentation from an appropriate healthcare or rehabilitation professional concerning the existence of the disability and the employee's functional limitations. The appropriate professional will depend upon the disability and may include but are not limited to doctors, psychiatrists, psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational therapists and licensed mental health professionals. An employee may provide a HIPAA compliant limited release allowing the employer to submit a list of specific questions form Health Care Provider Certification Form (Attachment E) to the healthcare or vocational professional requesting information regarding the nature of the disability and the functional limitations. Unrelated medical information shall not be requested. The employee's medical information shall be maintained in a confidential file separate from the employee's personnel file or other records and shall not be revealed to anyone who does not need to know in order to provide the accommodation.

**b. Medical Examinations and Inquiries**

- 1) DOC may not require applicants to take medical examinations or answer any disability-related questions. The employer may ask a job applicant or employee about his or her ability to perform job-related functions and may respond to an applicant's or employee's request for reasonable accommodation.
- 2) DOC may require an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his or her healthcare professional to substantiate that s/he has an ADA disability and needs a reasonable accommodation after DOC provides the employee notice why the documentation is insufficient and allows the employee the opportunity to provide the missing information in a timely manner. The medical examinations or ask disability-related

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questions of an employee, must be job-related and consistent with business necessity.

- 3) Notwithstanding the ADA, DOC may conduct drug testing consistent with the Standard Operating Procedure 6050.4B-17 Mandatory Employee Drug and Alcohol Testing Program (MEDAT).

#### **c. Reasonable Accommodations Determination**

- 1) The DOC may approve or deny an employee's request for a reasonable accommodation. An employee may be denied for the following reasons:
  - 2) The employee is not an individual with a qualifying disability.
    - a) A temporary impairment, such as a broken arm, is not significant enough to be considered a qualifying disability, taking into account its duration and the extent to which it actually limits a major life activity.
    - b) The employee is unable to provide requested documentation from a medical professional that demonstrates that he/she has a qualifying disability.
  - 2) The employee is able without an accommodation to:
    - a) Perform the essential functions of the job or
    - b) Participate in and/or benefit from the service or activity in an equally effective manner as employees without disabilities
  - 3) The requested accommodation will not enable the employee to perform the essential functions of the job.
  - 4) The employee's request for a reasonable accommodation is primarily for non-disability reasons, rather than because of a disability.

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- 5) The employee's request for a reasonable accommodation would impose an undue hardship on the operations of the agency and there is no alternative reasonable accommodation.
- 6) The employee's requested accommodation would pose a direct threat to health or safety.
- 7) When there is more than one effective accommodation the employer may choose the one that is less difficult or expensive to provide.
- 8) If an employee needs a reasonable accommodation to perform an essential function of a job or eliminate a direct threat and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.

When denying a requested accommodation, The DOC will engage in the interactive process and consider available alternative accommodations that would be reasonable and effective and would not constitute an undue hardship or direct threat.

#### d. **Charges of Discrimination**

An employee who believes s/he has been wrongly denied a reasonable accommodation may:

- 1) Request reconsideration by the agency,
- 2) File a complaint with the agency EEO Counselor ,
- 3) File a complaint with the DC Office of Disability Rights,
- 4) File a complaint with the DC Office of Human Rights, or
- 5) File a complaint with the federal Equal Employment Opportunity Commission.