



ADA Policy Guide Series – #2 Procedures for Requesting and Identifying Reasonable Accommodation

In accordance with the Americans with Disabilities Act, as amended (ADA) and the Virginia Human Rights Act (VHRA), it is the policy of the Commonwealth to provide reasonable accommodation to employees and applicants with disabilities. State agencies must provide a workplace that is respectful and considerate of applicants' and employees' requests for accommodations. Agencies must be flexible, creative and explore accommodation options in good faith with the objective of identifying ways to enable employees to perform the essential functions of the job with or without reasonable accommodation.

Requesting Reasonable Accommodation

<p>Eligibility to Request Reasonable Accommodation</p>	<ul style="list-style-type: none"> • Applicants with a disability, as defined by the ADA, who need assistance with the application process or accommodations to fully participate in an interview; or • Employees with a disability, as defined by the ADA who need an accommodation to perform one or more essential functions of the job; or • A family member, health professional, or other representative designated by the employee may make a request for accommodation on the applicant's or employee's behalf. 		
<p>Submitting the Reasonable Accommodation Request</p>	<p>An applicant or employee may submit a request for reasonable accommodation to one or more of the following:</p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: center; vertical-align: top;"> <p><u>Job Applicants</u></p> <ul style="list-style-type: none"> • Agency Hiring Manager • Agency Human Resources Officer or their designee • Any agency official with whom the applicant has had contact during the application or interview process. </td> <td style="text-align: center; vertical-align: top;"> <p><u>Current Employees</u></p> <ul style="list-style-type: none"> • Immediate Supervisor or other manager in the employee's direct reporting structure • Agency Human Resources Officer or their designee </td> </tr> </table> <p>Agencies may have a defined internal process for submitting and reviewing reasonable accommodation requests.</p>	<p><u>Job Applicants</u></p> <ul style="list-style-type: none"> • Agency Hiring Manager • Agency Human Resources Officer or their designee • Any agency official with whom the applicant has had contact during the application or interview process. 	<p><u>Current Employees</u></p> <ul style="list-style-type: none"> • Immediate Supervisor or other manager in the employee's direct reporting structure • Agency Human Resources Officer or their designee
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<p>Timing of the Reasonable Accommodation Request</p>	<ul style="list-style-type: none"> • An applicant or employee may request a reasonable accommodation at any time even if the individual has not previously disclosed the existence of a disability, as defined by the ADA, or a need for accommodation. • The Interactive Process must begin as quickly as possible upon receiving the request for accommodation. 		

<p>Requesting Reasonable Accommodation</p>	<ul style="list-style-type: none"> • The applicant or employee is responsible for requesting reasonable accommodation and providing sufficient notice to the agency that an accommodation is needed. • Agency managers or supervisors may observe that an employee is experiencing difficulties performing essential job functions and report their observations to their agency's Human Resources who may facilitate a discussion with the employee if further inquiry is appropriate. • The initial request for accommodation may be made in any manner (e.g., in writing, or orally). However, the oral request must be documented in writing on the Employee's Request for Job Accommodation form. • The individual making the request does not have to use any special words, mention the ADA, or use the phrase "reasonable accommodation" or "disability."
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Processing and Assessing Requests for Reasonable Accommodation

<p>Requesting Medical Documentation</p>	<ul style="list-style-type: none"> • In some cases, the need for accommodation will be reasonably evident or already known. In these cases, the agency may not need to seek further medical documentation. • If a requestor's disability, as defined by the ADA, and/or need for reasonable accommodation are not obvious or already known, the agency HR Representative may require medical information. • This information may be requested under the following circumstances: <ul style="list-style-type: none"> ○ The information submitted by the requestor is insufficient to document the disability or the need for the accommodation. ○ A question exists as to whether an individual can perform the essential functions of the position, with or without reasonable accommodation; or ○ A question exists as to whether the employee will pose a direct threat to self or others. • The agency may request only medical documentation that is specifically related to the employee's request for accommodation and ability to perform the essential job functions. • Agencies must not request other medical records. • Requests for medical documentation will be handled by the agency's Human Resources representative. Supervisors and managers must not request medical information or documentation from an applicant or employee seeking an accommodation. • When medical documentation is appropriately requested, it is the employee's responsibility to ensure the agency receives the information. • The agency may deny the reasonable accommodation request if the medical information is not provided in a timely
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	<p>manner. Employees may resubmit a request for reconsideration to the agency.</p> <ul style="list-style-type: none"> • Whenever medical information is appropriately disclosed as described herein, the recipients of such information must comply with all confidentiality requirements. • Medical documentation shall be maintained in a confidential file separate from the employee’s personnel record and retained according to the Virginia Public Records Act. • The agency may ask the treating health care provider to clarify if an alternate accommodation may assist the employee in performing essential job functions.
<p>Reassignment as a Reasonable Accommodation</p>	<ul style="list-style-type: none"> • Reassignment to a vacant position is an accommodation that may be considered if there are no effective reasonable accommodations that will enable the employee to perform the essential functions of the current job, or if all other reasonable accommodations impose undue hardship or direct threat. • HR will work with the employee to identify appropriate vacant funded positions within the agency for which the employee is minimally qualified and can also perform the essential job functions, with or without reasonable accommodations. • Vacant funded positions that are equivalent to the employee’s current job in terms of pay, status and other relevant factors will be considered first. • However, if there are no vacant funded positions available in the employee’s same pay band for which the employee is minimally qualified, the agency will consider vacant positions assigned to lower pay bands. • In all instances, the employee must meet the minimum qualifications for the reassigned position as established in the job description. • Consideration of position vacancies should be applicable for a period of sixty (60) calendar days unless there is knowledge that a position will become vacant at a later date, such as a scheduled retirement.
<p>Remote Work as Reasonable Accommodation</p>	<ul style="list-style-type: none"> • Remote work or telework may be a reasonable accommodation for certain positions based upon the scope of the essential job duties and the employee’s ability to perform the work remotely. Remote work agreements may not be applicable with certain positions’ core responsibilities or essential job duties that require an actual physical presence on a designated work site(s). <ul style="list-style-type: none"> ○ Agencies should provide written criteria and expectations for approved accommodations that include remote work.
<p>Leave as Reasonable Accommodation</p>	<ul style="list-style-type: none"> • An agency’s approval of extended leave with or without pay based upon the employee’s available leave balances may be a reasonable accommodation.

	<ul style="list-style-type: none"> ○ In accordance with DHRM Policy 4.45, Leave without Pay (LWOP) may be approved incrementally for up to a maximum of twelve months at the agency's discretion. Agencies must advise employees of the impact of LWOP on benefits and pay. ○ Indefinite leave is not considered to be a reasonable accommodation. Approval of extended leave must include a date for the employee's return to duty with or without reasonable accommodation.
<p>Determinations</p>	<p>Prior to approving or denying a request for accommodation, the ADA requires agencies to determine:</p> <ul style="list-style-type: none"> • if the requestor is an individual with a disability. • if the accommodation is needed to: <ul style="list-style-type: none"> ○ Enable an applicant with a disability to be considered for the position the individual desires. ○ Enable an employee with a disability to perform the essential job function(s) of the position; or ○ Enable an employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities. • whether the requested accommodation is reasonable. • if there is an alternative accommodation that will be effective for the requestor and the agency; and • whether the reasonable accommodation will impose an undue hardship on the agency's operations.
<p>Approval of Requests for Reasonable Accommodation</p>	<ul style="list-style-type: none"> • The time needed to process a request will depend upon the nature of the accommodation requested, whether it is necessary to obtain supporting documentation, and/or consultation with external resources. • Where feasible, if there is a delay in providing the agreed upon accommodation, temporary measures should be taken to assist the employee. • Funding for reasonable accommodations must be absorbed within the agency's operating budget. • Under the guidance of Agency Human Resources, the employee's supervisor, and the appropriate management staff involved in the approval of the accommodation shall provide the employee with written documentation detailing the agency's ability to meet the accommodation request and the timeframe.
<p>Denials of Requests for Reasonable Accommodation</p>	<p>A request for reasonable accommodation may be denied where:</p> <ul style="list-style-type: none"> • The individual does not have a disability as defined under ADA. • The reasonable accommodation results in undue hardship or the individual poses a direct threat to self or to others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from DHRM and the Office of the Attorney General. See ADA Policy Guide Series #5.

	<ul style="list-style-type: none"> • No reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform the essential functions of the job. <p>Per the ADA, the Agency must provide a written explanation for the denial to the requestor as follows:</p> <ul style="list-style-type: none"> • The explanation should be written in plain language and clearly state the specific reasons for denial. • If a specific requested accommodation is denied but the agency is offering an alternative accommodation in its place, the letter should explain both the reasons for denying the requested accommodation, the reasons for the accommodation being offered, and how it will be effective in the performance of the essential job functions.
<p>Appeals of Denied Requests</p>	<p>In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, agencies should designate a process for review when an applicant or employee chooses to appeal the denial of a reasonable accommodation request. This process:</p> <ul style="list-style-type: none"> • Should include a review by Agency Executive Leadership or a designee. • May include review by DHRM’s Office of Diversity, Opportunity and Inclusion, the State Employee Grievance Process; and/or • Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or DHRM’s Office of Diversity, Opportunity, and Inclusion.
<p>Confidentiality of Records</p>	<ul style="list-style-type: none"> • Information regarding an individual receiving an accommodation because of a disability is confidential and may only be shared with individuals who have a need to know for purposes of assessing and implementing the accommodation, such as the requesting employee’s supervisor and the HR representative. • Documentation as voluntarily disclosed that is associated with the reasonable accommodation request is considered as Personal Health Information (PHI) and must be stored in a secured file with limited access to selected HR personnel. • General summary information regarding an employee’s or applicant’s status as an individual with a disability may be collected by agency equal employment opportunity officials to maintain records and evaluate/report on the agency’s performance on hiring, retention and promoting of individuals with disabilities.