

DEPARTMENT OF MILITARY AFFAIRS
STATE HUMAN RESOURCES
PRACTICE AND PROCEDURE MANUAL

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SUBJECT: Reasonable Accommodations Policy and Procedures

SECTION: Employee Services/Programs

I. PRACTICE

A. STATEMENT OF POLICY AND PURPOSE

It is the policy of the Department of Military Affairs (DMA) to provide reasonable accommodations to qualified disabled individuals who are employees or applicants for employment. DMA will adhere to all applicable federal and state laws, regulations, and guidelines with respect to providing reasonable accommodations, as required, to afford equal employment opportunity to qualified disabled individuals. Reasonable accommodations will be provided in a timely and cost-effective manner. Employment opportunities shall not be denied because of the need to make reasonable accommodations to an individual's disability. Responsibility for implementation of this policy rests with the Affirmative Action Officer.

This policy is in accordance with:

The Rehabilitation Act of 1973
The Americans with Disabilities Act of 1990, as amended in 2009
The State Fair Employment Act (FEA), §§ 111.31 to 111.395, of the Wisconsin Statutes
The State Civil Service Act, Chapter 230 of the Wisconsin Statutes
OSER-0366-AA Policy Bulletin

B. DEFINITIONS

Although the federal and state laws differ slightly with regard to definitions, the State Fair Employment Act criterion takes precedence. The following definitions and criteria are taken from the State FEA.

Individual with a Disability:

An individual who:

1. Has a physical or mental impairment which substantially limits one or more major life activities or makes achievement unusually difficult or limits the capacity to work; or
2. Has a record of such an impairment; or
3. Is perceived as having such an impairment.

Major Life Activities: Activities that include, but are not limited to, functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, sleeping, breathing, learning, and working.

Qualified Individual with a Disability: A disabled individual whose experience, education and/or training enable the person, with or without reasonable accommodation, to perform the essential functions of the job.

Reasonable Accommodation: Any modification to a job, an employment practice, or work environment that will enable a qualified individual with a disability to adequately undertake the job-related responsibilities of a particular job. Reasonable accommodations include, but are not limited to, making facilities accessible, adjusting work schedules, restructuring jobs, providing assistive devices or equipment, providing readers or interpreters, and modifying work areas.

Undue Hardship: Any accommodation that would be unduly costly, extensive, substantial or disruptive or that would fundamentally alter the nature or operation of the business, as determined on a case by case basis by the Adjutant General in consultation with State Human Resources and General Counsel.

II ACCOMMODATION REQUEST PROCEDURES

All employees will be informed of their right to request reasonable accommodations in their new employee orientations. To request an accommodation formally, a classified staff member submits Disability Accommodation Request Form for Classified Employees (DER-DAA-10) to State Human Resources (SHR).

A. The Request Process for Employees and Applicants Who Have Received Job Offers

1. The employee or applicant with a job offer needing an accommodation has the responsibility of initiating the request by completing the Disability Accommodation Request Form for Classified Employees (DER-DAA-10) and forwarding it to SHR.

If a supervisor has reason to believe that an employee may need an accommodation, that supervisor shall engage in an informal discussion with said employee. If it is found that an accommodation is needed, the employee should initiate a formal request by completing the Disability Accommodation Request Form. Although federal and state laws do not require requests be in writing, all reasonable accommodation requests must be documented.

2. The SHR AA Designee will review the request and consult with the DMA Risk Management Officer and the SHR Director. The AA Designee will engage in an interactive process with the employee in an attempt to find a workable accommodation solution. This interactive process may include any of the following, depending upon the specifics of each case:
 - a. Meet with the supervisor
 - b. Consult with any medical or rehabilitation professionals who may be working with the employee
 - c. Consult with Department's Budget and Finance Director
 - d. Consult with General Counsel
3. If the request is modified or denied, the AA Designee will notify the employee of the decision by providing a copy of the completed request form and a copy of the Appeal Process. The original form and all medical information obtained will be kept by SHR and be considered a confidential medical record.

4. DMA will make a good faith effort to approve, modify or deny an accommodation request within 30 calendar days of SHR's receipt of the request form.

B. The Request Process for Applicants/Interviewees

1. All applicants may request a reasonable accommodation for civil service exams. All agency job announcements will give contact information for those applicants who are unable to complete the application process. If an applicant requests an accommodation for an exam, the agency will engage in an interactive process in an attempt to find a reasonable accommodation solution.
2. All applicants who are invited to interview will be informed that they may request an accommodation. Each invitation to interview will include contact information to use if the applicant wishes to request an accommodation for the interview process. For each request, the agency will engage in an interactive process in an attempt to find a reasonable accommodation solution.
3. During the interview, all applicants will be asked if they are able to perform the duties and responsibilities of the position, with or without a reasonable accommodation. Qualified applicants will not be denied employment solely on the basis of a need to provide a reasonable accommodation.
4. If a qualified applicant with a disability is offered a position, the accommodation request process identified above in Section A will be used for any possible reasonable accommodation.

C. Factors in the Decision Making Process

The following questions will be considered when determining the reasonableness of a request:

1. Are the job functions for which the accommodation is required essential to the overall performance of the job?
2. Is the employee otherwise qualified to perform the essential job functions?
3. Does the accommodation accomplish the desired result (i.e., allow the employee to effectively perform the essential functions of the job)?
4. Is the cost of the accommodation feasible within the budget of DMA?
5. Are there other more cost-effective accommodation options that would also allow the employee to perform the essential functions of the job?
6. If not, can approval be obtained from the Department of Administration to use funds which are statutorily reserved for reasonable accommodations?
7. Will the accommodation adversely affect the productivity or work environment of other employees in the work unit?

8. Will the accommodation be unduly disruptive to DMA or the work unit?

III GENERAL GUIDELINES

- A. An employee may be required to provide verification of a disability and accommodation recommendations from a medical or rehabilitation professional. The employee must bear the initial cost of verification. (Note: This may be covered by the employee's health insurance.) If DMA requests a second opinion, the agency will bear the cost.
- B. As a general rule, the agency work unit will purchase equipment only if it is determined that the use of the equipment is necessary in the transaction of the official business of the agency work unit. The equipment may not be of a personal nature (i.e., eyeglasses, hearing aids) which the employee can reasonably be expected to personally provide.
- C. All accommodation request decisions will be made using an informal interactive process. The employee will always be the primary person consulted when determining the most appropriate accommodation. Employees may provide or arrange for their own accommodations; however, the procedures in this Policy and Procedures Manual must still be followed. This gives DMA documentation of the accommodation and ensures that the accommodation is not unduly disruptive to the workplace.
- D. After an accommodation is provided, the employee and the supervisor shall evaluate the effectiveness of the accommodation. If any modification to the accommodation is necessary or desired, they should be requested using the procedures in this Policy and Procedures Manual.
- E. If an employee acquires a disability and DMA is not able to make a reasonable accommodation that allows the employee to continue in his or her current position, DMA will explore possibilities for employment in other positions, in accordance with § 230.37, Wis. Stats. It may be necessary to place the employee on leave during the exploration if he or she cannot be accommodated in the current position or a temporary position. If these good faith efforts do not result in a reassignment, it will be necessary to terminate the individual's employment with the agency. While no legal responsibility exists for alternative employment outside of the agency, employees will be counseled regarding their rights, if any, to other positions in state employment where applicable.

IV APPEAL PROCESS

An employee who disagrees with a disability accommodation request decision may appeal the decision using the following procedure.

- A. The employee must file a written appeal, stating the reasons for the disagreement, with SHR within 30 calendar days of the date of the decision as shown on the Disability Accommodation Request Form for Classified Employees (DER-DAA-10). SHR will notify the appropriate supervisor and members of management of the appeal.

- B. The SHR Director will reevaluate the decision and consider any additional information or statements supplied by the employee, as well as additional information from treating specialists. The SHR Director may consult with the other agencies, taking care to provide confidentiality for the employee.
- C. The SHR Director shall review the record of the accommodation request and make a final decision regarding the appeal.
- D. Written notification of the appeal decision will be provided within 30 calendar days to the employee, the supervisor, and the appropriate chain of command. If the 30 calendar day time limit cannot be met, the SHR Director will inform all parties of an alternative time limit, not to exceed an additional 60 calendar days.
- E. This is the final internal appeal process for disagreements regarding accommodation requests.
- F. An external appeal of the SHR Director's decision may be filed with the Wisconsin Employment Relations Commission.

Nothing in this policy should be construed to impede or prohibit a timely filing of a discrimination complaint with the appropriate external government agency (Wisconsin Workforce Development, Equal Rights Division; federal Equal Employment Opportunity Commission). This procedure also does not prohibit a timely filing of a discrimination complaint using the Informal Complaint Process, unrelated to a request for an accommodation.