

# OFFICE OF FINANCIAL MANAGEMENT

## State Policy Guidelines on Reasonable Accommodation of Persons with Disabilities Related to State Employment

Date of Original Issue: November 1, 1994

---

### I. AUTHORITY

Americans with Disabilities Act of 1990 (P.L. 101-336) 29 CFR Part 1630, and 28 CFR Part 35 Rehabilitation Act of 1973 (P.L.93-112) 45 CFR Part 84  
Chapter 49.60 RCW  
Chapter 162-22 WAC  
Chapter 251-10 WAC  
Chapter 356-35 WAC  
Executive Order 93-03 (Note: EO 93-03 was subsequently superseded by 96-04)

### II. PURPOSE

This policy sets forth broad guidelines for meeting reasonable accommodation requirements of state and federal law. All Agencies and Institutions of Higher Education of the State of Washington shall develop internal procedures for the implementation of these guidelines, and submit those procedures to the Governor's Affirmative Action Policy Committee for review and approval prior to adoption, in accordance with the Affirmative Action Planning Guidance issued by the Department of Personnel. This policy should not be construed as providing rights or obligations not provided under applicable laws.

### III. SCOPE

This policy affects all employees and candidates for employment with the State of Washington. Persons with disabilities have the right to request and receive reasonable accommodation in all aspects of employment with the State including but not limited to: application; recruitment; selection/hiring; promotion; testing; medical examinations; layoff/recall; assignments; termination; evaluation; compensation; disciplinary actions; leave; training; the terms, conditions and benefits of employment including insurance benefits; and employer supported activities.

### IV. DEFINITIONS

- A. "Reasonable accommodation" means modification or adjustment to a job, work environment, policies, practices, or procedures that enables a qualified individual with a disability to enjoy equal employment opportunity.

- B. "Equal Employment Opportunity" means an opportunity to perform the essential job functions or to enjoy equal benefits and privileges of employment as are available to a similarly-situated applicant or employee without a disability.
- C. "Person with a disability" means: 1) Under 42 U.S.C. 12102, a person with a physical or mental impairment that substantially limits one or more major life activities; or 2) Under chapters 49.60 RCW and 162-22 WAC, a person who has an abnormal condition that is medically cognizable or diagnosable, and who is denied reasonable accommodation or is discriminated against on the basis of that condition.
- D. "Qualified Individual with a Disability" means an individual with a disability who meets the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.
- E. "Undue hardship" means an excessively costly, extensive, substantial, or disruptive modification, or one that would fundamentally alter the nature or operation of the agency/institution.
- F. "Essential Functions" means the fundamental job duties of the position that the individual with the disability holds or desires. The term "essential functions" does not include the marginal functions of the position.
- G. "Health Care Professional" means a person who has completed a course of study and is licensed to practice in a field of health care which includes the diagnoses and assessment of the particular disability or disabilities in question.

## **V. OBLIGATIONS/RIGHTS OF EMPLOYER/EMPLOYEE/APPLICANT**

- A. State agencies and higher education institutions must provide reasonable accommodation to the known physical, mental or sensory limitations of an otherwise qualified individual with a disability.
- B. The obligation to provide a reasonable accommodation applies to all aspects of employment. This duty is ongoing and may arise any time that a person's disability or job changes.
- C. The need for a reasonable accommodation shall not adversely affect the consideration of an individual with a disability for employment, training, promotion or opportunity to enjoy equal terms, benefits, privileges and conditions of employment.
- D. Generally, it is the obligation of an individual with a disability to request a reasonable accommodation.
- E. A qualified individual with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential functions of the job without the accommodation, s/he will not be considered to be an otherwise qualified individual with a disability after refusing the accommodation.
- F. All information regarding the presence, or nature of an employee's or applicant's disability must be treated as a confidential medical record and shall be maintained in a secure manner, apart from personnel files with access restricted to designated personnel on a need to know basis.

- G. Each Agency and Institution shall develop an internal grievance procedure for addressing disputes related to requests for reasonable accommodations. Such procedures shall: explain the method for submitting a grievance; describe any internal appeals process[es]; identify an individual responsible for overseeing the process; set forth reasonable time frames for the review and resolution of the grievance; and provide for documentation of complaints submitted and the steps taken to attempt resolution.
- H. Information on reasonable accommodation, this policy, the agency/institution's internal procedures and the external enforcement mechanisms and remedies available, shall be disseminated to employees in employee orientations and other appropriate methods.
- I. When an applicant or employee makes a request for a reasonable accommodation, and the disability is not readily apparent and has not been previously documented, an agency or institution may request that the applicant or employee provide verification from a health care professional that s/he has the disability as claimed and that it has the effect of necessitating the reasonable accommodation requested. The agency/institution may obtain a second opinion at its own expense from a health care professional of its selection. Such inquiries must be limited to verification of the employee's claims, except that the employer may also request that the health care professional suggest possible effective alternative accommodations.

## **VI. RECRUITMENT/SELECTION**

- A. Reasonable accommodation must be provided in every stage of the recruitment, application and selection process to enable a qualified applicant with a disability to have an equal opportunity to be considered for a job.
- B. Notification of the right to make an accommodation request and information on how to initiate such a request must be included with all announcements, bulletins and recruitment efforts.
- C. Timeliness of response is essential in providing equal opportunity. Failure to provide accommodation in a timely manner shall be justification for extension of application and other deadlines.
- D. Qualification standards, employment tests, or other selection criteria must not screen out or tend to screen out an individual with a disability unless they are job-related and necessary for the employer.
- E. Employment tests must be used in the most effective manner to measure actual abilities. Tests must accurately reflect the skills, aptitude, or other factors being measured, and not the impaired sensory, manual, or speaking skills of an employee or applicant with a disability (unless those are the skills the test is designed to measure).
- F. Staff at designated contact points for information about job openings and the application process shall be given the training and authority necessary to initiate the agency/institution's process for the provision of reasonable accommodations.

## **VII. TO ALLOW APPLICANT/EMPLOYEE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB**

- A. Determination of essential functions: Each position should be examined, to determine its purpose and its essential functions. Appropriate times to examine a position include when the position is established, when it becomes vacant, and when the duties are changed. The following criteria should be considered in identifying the essential functions of a job:
1. Are employees in the position actually required to perform the function;
  2. Would removing that function fundamentally change the job;
  3. Was the position established to perform the function;
  4. Are there a limited number of other employees available to perform the function, or among whom the function can be distributed; and
  5. Is the function highly specialized, and is the person in the position hired for special expertise or ability to perform it?
- B. Upon receiving a reasonable accommodation request, the agency/institution shall consult with the individual with a disability to find out his or her specific physical or mental abilities and limitations as they relate to the essential job functions, identify the barriers to job performance and assess how an accommodation can overcome these barriers.
- C. The agency/institution shall consult with the employee, and may consult with other knowledgeable sources, to identify potential accommodations and assess how effective each would be in enabling the individual to perform essential job functions.
- D. If there are two or more effective accommodations that would allow the individual with a disability to perform essential job functions, after considering the preference of the individual with a disability, the employer may select the accommodation to be provided.
- E. When an accommodation in an employee's present position is not reasonable, or would cause an undue hardship, the agency/institution shall attempt to accommodate the employee through reassignment to another vacant position, at the same pay range or lower, for which s/he is qualified, within the same agency/institution. The agency/institution should also, within the practical limitations of its ability assist the employee in identifying and applying for vacant positions, for which s/he is qualified, within other agencies/institutions. The employee is responsible for providing current information showing skills, abilities, training, and experience; identifying the types of jobs s/he is interested in and qualified for; applying for vacant positions; and advising the employer of any change of address. The agency/institution is responsible for informing the employee of these responsibilities.

## **VIII. TO ALLOW AN EMPLOYEE TO ENJOY EQUAL TERMS, BENEFITS, PRIVILEGES AND CONDITIONS OF EMPLOYMENT**

- A. Reasonable accommodations must be provided to enable an employee with a disability to enjoy terms, benefits, privileges and conditions of employment equal to those enjoyed by similarly situated non-disabled employees.
- B. The need to provide a reasonable accommodation must not be a factor in the selection of an employee for promotion, training, travel, participation in projects, committees, developmental work assignments or any opportunity which may have an impact on an employee's career development.
- C. Reasonable accommodations must be provided to enable an employee with a disability the opportunity to enjoy all employer supported social or recreational activities.
- D. Timelines for all activities and opportunities covered under this section shall allow adequate opportunity for arranging reasonable accommodations.
- E. Information contained in communications regarding activities or opportunities covered under this section must be provided to an employee with a disability in a manner or format which is readily accessible to that employee; and employees must be notified about the employer's obligation to provide reasonable accommodations, and instructed as to how to initiate such a request.

## **IX. THE UNDUE HARDSHIP LIMITATION**

An agency/institution's responsibility to make a particular reasonable accommodation is limited by the defense that doing so would impose an undue hardship on the operation of the agency/institution. However, if a particular accommodation would impose an undue hardship, the employer must consider whether there are alternative accommodations that would not impose such hardship.

- A. Written justification, signed by the Director of the agency, the President of the institution, or equivalent, must be provided for any decision not to provide a reasonable accommodation because of undue hardship. The justification should demonstrate a consideration of the Disability Accommodation Revolving Fund at the Department of Personnel, and should explore the practical and available limits of the agency/institution's ability to draw upon resources available elsewhere within state government.
- B. If the cost of a reasonable accommodation would impose an undue hardship, and there are no other financial resources available, the individual with a disability must be given the option of providing the accommodation, or paying that portion of the cost which would constitute an undue hardship.
- C. The following criteria shall be considered in determining undue hardship:
  - 1. The nature and net cost of the accommodation needed, taking into consideration the availability of outside funding;

2. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of employees, and the effect on expenses and resources;
3. The overall financial resources of the covered entity with respect to the number of employees and the number and type and location of its facilities;
4. The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness, and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and
5. The impact of the accommodation on the operation of the facility including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.