

# REASONABLE ACCOMMODATION POLICY

Implementing Section 188 of the Workforce Innovation and Opportunity Act of 2014

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## Purpose

The following information provides direction in the processing of reasonable accommodation requests and outlines the procedures for the provision of accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.

## Background

The nondiscrimination and equal opportunity provisions found in Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and 29 CFR Part 38 prohibit discrimination based on race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity.

## Serving Individuals with Disabilities

WIOA's disability-related provisions are designed to promote competitive, integrated employment for individuals with disabilities. When serving these individuals, staff shall ensure compliance with WIOA Section 188 through the following:

- Individualized treatment. In serving persons with sensory, mental and/or physical disabilities, it is our policy to focus on what a customer *can do*, and we shall be proactive in determining whether, on request of the customer, there are auxiliary aids and services available to promote access and opportunity for the customer. It is our policy to provide *individualized* treatment for all members of the public seeking to participate in our programs and activities, including members of the public with disabilities.
- An "integrated setting." We must make every effort to ensure persons with disabilities are served in an "integrated setting" to the extent possible. This means we will not segregate persons with disabilities from our other customers in the process

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of delivering services, aid, training, and benefits. There are times, however, when you will perform an *individualized* assessment of an individual with a disability, and conclude the individual requires segregated services for meaningful access to, or a meaningful opportunity to participate in, the program or activity (*e.g.*, a private space for a customer on the autism spectrum). Under these circumstances, segregated services may be provided to the individual.

- Access and opportunity. Our policy is to provide all persons with disabilities with physical (*e.g.*, wheelchair, service animal, modified keyboard and mouse), and programmatic (*e.g.*, applying the same essential eligibility requirements) access to our programs and activities as well as effective communication (*e.g.*, Braille, large print, sign language, captioning) and reasonable accommodations.
- Accommodations provided free of charge. All accommodations must be provided free-of-charge to the customer.
- Periodic evaluation of job qualifications. Staff shall be vigilant in reviewing job qualifications for referrals, apprenticeships, training, and any other services, aid, or benefits. During this review, staff shall determine whether any qualifications or other requirements exist that, if applied, would result in prohibited disability-based discrimination. Discriminatory qualifications and/or requirements must be removed.
- Limitations on pre-employment and employment medical inquiries. Federal law limits the nature and extent of medical and/or disability-related information that may be collected from an individual. For detailed guidance on this limitation, see the DC Nondiscrimination Plan.

## Key Terms

- *Reasonable Accommodation* means any of the following:
  - Modifications or adjustments to an application/registration process that enables a qualified individual with a disability to be considered for the aid, benefits, services, training, or employment that the qualified individual desires.
  - Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.
  - Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits,

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services, training, or employment as are enjoyed by other similarly situated individuals without disabilities. 29 C.F.R. § 38.4(yy).

- *Qualified individual with a disability* means:
  - With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position;
  - With respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training. 29 C.F.R. § 38.4(ww).
- *Disability*
  - means, with respect to an individual:
    - A physical or mental impairment that substantially limits one or more major life activities of such individual;
    - A record of such an impairment; or
    - Being regard as having such an impairment<sup>1</sup>
  - “Physical or mental impairment”
    - Means:
      - any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
      - Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
    - includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, pregnancy-

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<sup>1</sup>For further information of what it means to have a “record of such an impairment” or “is regarded as having such an impairment,” please see 29 C.F.R. § 38.4(q)(6), (7).

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- related medical conditions, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism
- “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, writing, communicating, interacting with others, and working; and
    - The operation of a “major bodily function,” such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system. 29 C.F.R. § 38.4(q).
  - *Undue hardship*
    - Means significant difficulty or expense incurred by a recipient, which considered with the factors set forth below.
    - Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include:
      - The nature and net cost of the accommodation needed, taking into consideration the available credits and deductions, and/or outside funding, for the accommodation;
      - The overall financial resources of the facilities or facilities involved in the provision of the reasonable accommodation;
      - The overall financial resources of the recipient;
      - The type of operation or operations of the recipient; and
      - The impact of the accommodation upon the operation of the facility or facilities. 29 C.F.R. § 38.4(rrr).

### **What Accommodations are Reasonable?**

The reasonableness of an accommodation will depend upon the circumstances of each case. Reasonable accommodations include, but are not limited to the following:

- Making facilities that are not otherwise required to comply with Federal accessibility standards physically accessible to and usable by people with disabilities (e.g., providing ramps, restroom grab bars, signage, etc.).

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- Restructuring of job or training tasks (e.g., reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks, etc.).
- Modifying schedules (e.g., permitting alternative starting and ending times to avoid standing and jostling on subways).
- Providing or modifying equipment, devices or materials (e.g., raising a desk on boards for a person who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print, etc.).
- Providing qualified readers, interpreters, or other support services for all aspects of programs and activities including the application, interview, and testing processes, and during training and employment-related activities.

Reasonable accommodation may also include permitting the individual with a disability to use aids or services that the recipient is not otherwise required to provide. For example, although a recipient generally would not be required to provide a motorized scooter to an individual with mobility impairment, reasonable accommodation may include providing an area to stow such a mobility aid, if necessary.

A recipient is not required to provide personal items to individuals with disabilities. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet needs that are related to the program or activity in which the person is participating, or the job the person is performing. For example, eyeglasses designed to enable the individual to view a computer monitor, but which are not otherwise needed outside of the program or activity in which the person is participating, or the job the person is performing, may constitute a reasonable accommodation.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the individual identifies any requested accommodation with specificity. For example, an employee who is deaf and routinely uses a text telephone (TTY) can readily identify a job-related limitation, as well as the accommodation needed. Where it is obvious that providing the TTY will enable the individual to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis.

Accommodations may be considered “unreasonable” only if they impose an undue hardship for the specific recipient in question. For example, shifting tasks among clerical employees to accommodate an employee with a disability may be reasonable

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where enough employees exist among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees. The factors listed in the definition of “undue hardship” in 29 CFR Section 38.4(rrr) must be considered in making this determination.

If a requested accommodation would result in undue hardship, the recipient must, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient.

## **Reasonable Accommodation Process**

### **1. *Individual with a Disability Requests Reasonable Accommodation***

The individual with a disability should submit a reasonable accommodation request to designated staff. A WIOA Reasonable Accommodations Request Form has been attached to this policy. The recipient receiving the request shall acknowledge each request in writing. A request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the recipient of the need for an accommodation. *See Appendix A, WIOA Accommodation Request Form (Disability).* Reasonable accommodation must be provided for disabilities that are known. Nevertheless, once the recipient is aware of an individual’s disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the recipient manager supervising the accommodation process may ask the individual to provide documentation in support of the request. For example, if the individual with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination, that individual may be asked to provide documentation in support of that request.

Similarly, if an individual with a mental disability requests a flexible schedule to attend psychotherapy during the workday, the individual may be asked to provide documentation from the treating professional in support of that request.

After acknowledging a request for accommodation, the designated staff member should do one of the following: (1) provide or implement the request and document the accommodation; or (2) proceed to Step 2 of this procedure.

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## **2. Consult with the Individual Requesting a Reasonable Accommodation**

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the individual's limitations and the recipient's resources, as in the example provided above, where an individual's desk is elevated on blocks to permit access from a wheelchair. Other situations are more complex, however, and require structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the recipient should consult with the individual requesting the accommodation to assess the limitations of the disability and how the individual may best be involved in the accommodation process.

Using a collaborative, open and flexible approach, the recipient should consider how any limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. Other possible resources to consult with throughout this process include, but are not limited to, the following:

- Job Accommodation Network's Searchable Online Accommodation Resource (SOAR) system is designed to let users explore various accommodation options for people with disabilities in work and educational settings (<https://askjan.org/soar.cfm>).

The circumstances under which documentation can be requested, as well as the procedure for requesting such documentation, are as follows:

When the disability and/or the need for accommodation are not obvious, the recipient may ask the individual for reasonable documentation about his/her disability and functional limitations.

*Reasonable documentation* means that the recipient may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation; However, the recipient, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

The recipient may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any situation will depend on the disability and the type of function limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists),

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psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, the recipient should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing the recipient to submit a list of specific questions to the health care or vocational professional. **The recipient must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.**

If a person provides insufficient documentation of a disability in response to the recipient's initial request, the recipient may require the person to go to a health care professional. However, the recipient should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

Under the federal disability nondiscrimination law, the recipient cannot ask for documentation under the following circumstances: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the person has already provided sufficient information to substantiate they have an actual, current disability and needs the reasonable accommodation requested.

If the individual's disability or need for reasonable accommodation is not obvious, and they refuse to provide the reasonable documentation requested by the recipient, then they are not entitled to reasonable accommodation. On the other hand, failure by the recipient to initiate or participate in an interactive process with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

### ***3. Recipient Management and/or Designated Staff Analyzes the Request for Reasonable Accommodation***

After consulting with the individual with a disability, the recipient should examine the request and determine if the requested accommodation is feasible and does not create an undue hardship or result in a fundamental alteration. If a requested accommodation would result in undue hardship, the recipient must, after consultation with an individual (or individuals) with a disability, take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible,

individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient (29 C.F.R. § 38.14(a)(3)).

The factors identified in 29 C.F.R. § 38 to be considered in determining whether an accommodation would impose an undue hardship or in determining whether the cost of a modification would result in a fundamental alteration includes the following:

- The nature and net cost of the accommodation/modifications needed, taking into consideration the availability of tax credits and deductions and/or outside funding for the accommodation/modification.
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation/modification, including the following:
  - The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities.
  - The effect the accommodation/modification would have on the expenses and resources of the facility or facilities.
- The overall financial resources of the recipient, including the following:
  - The overall size of the recipient.
  - The number of persons aided, benefited, served, trained, or employed by the recipient.
  - The number, type and location of the recipient's facilities.
- The type of operation or operations of the recipient, including the following:
  - The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient.
  - Where the individual is seeking an employment related accommodation/modification, the composition, structure and functions of the recipient's workforce.
- The impact of the accommodation/modification upon the operation of the facility or facilities, including the following:
  - The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties.
  - The impact on the facility's ability to carry out its mission.

#### **4. *Select and Implement an Appropriate Reasonable Accommodation***

Within 10 business days of receipt of a request for reasonable accommodation, the recipient shall either grant or deny the request in writing. Provisions of this accommodation should commence immediately. If staff is unable to accommodate the individual's specific need, the recipient's WIOA EO Officer should be contacted to assist.

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Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the individual requesting a reasonable accommodation. In all instances, however, the recipient shall act as expeditiously as possible to provide reasonable accommodations. Where further supporting documentation has been sought from the individual requesting a reasonable accommodation, the grant or denial of a request for reasonable accommodation shall be rendered as noted below:

- For those cases in which medical documentation is necessary to understand the individual's limitations and what accommodations are possible, the grant or denial shall be issued within 10 business days of receipt of the requested documentation.
- For those cases in which the documentation is being requested merely to verify the information provided by the individual with a disability, the grant or denial shall be issued within 5 business days of receipt of the requested documentation.
- For those cases in which the individual refuses to provide reasonable requested documentation, the grant or denial shall be issued within 5 business days of the notification of refusal.

Where the recipient determines to deny a request for accommodation, or to provide an accommodation other than the individual's expressed preference, the recipient shall first consult with the individual requesting the reasonable accommodation. The recipient will document the determination in writing. *See Appendix B, Final Determination on Request for Disability Accommodation.* Where the determination is to deny the request based on undue hardship or fundamental alteration, the proposed alternative accommodation or modification should also be documented.

## **Confidentiality**

For guidance on confidentiality and parameters on collecting, using, storing, and disclosing medical or disability information, see the DC Nondiscrimination Plan.

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