

**Internal Operations Manual**

**SUBJECT:** Reasonable Accommodation

**NUMBER:** 107-04-040

**DIVISION:** Operations Division - Personnel

**EFFECTIVE DATE:** 05-16-03

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**APPROVED: Signature on file with the Office of Business Administration**

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**POLICY/  
PURPOSE:**

The Department of Administrative Services (DAS) is committed to ensuring provisions are made for reasonable accommodations of both employees and the public, including recruitment, hiring, promotion, and retention of employees with disabilities. This includes access to Agency sponsored training, information exchange, and social activities. These policies, procedures, and guidelines establish a collaborative process by which DAS provides reasonable accommodation for people with disabilities.

**AUTHORITY:**

Rehabilitation Act of 1973; Civil Rights Act of 1991; ORS 182.100; 243.305; 243.315; 659.025; 240.379; 659.400, 405, 425; 433.045, 447.233; DAS Affirmative Action Plan; The Americans with Disabilities Act (ADA) of 1990 and public sector provisions (Title II) in 1992; and FED. 42 U.S.C. §12101 *et seq.*

**APPLICABILITY:**

All persons with disabilities including members of the public, job applicants and current employees

**ATTACHMENTS:**

- A. Authorization for Release of Medical Records
- B. Medical Verification of Employee's Request for ADA Reasonable Accommodation

**DEFINITIONS:**

**Accessible:** Easy to approach, enter, operate, participate in, and/or use safely and with dignity by a person with a disability (i.e., site, facility, work environment, service, or program).

**Affirmative Action:** Positive action to accomplish programs designed to increase the employment opportunities of certain groups.

**Americans with Disabilities Act (ADA):** A comprehensive Civil Rights law requiring employers to provide accommodations for qualified individuals with disabilities who are employees or applicants for employment.

**ADA Coordinator:** The ADA Coordinator is available for consultation. This person will coordinate the Department's efforts regarding reasonable accommodation; maintain a resource list of agencies and organizations whose primary focus or clientele are persons with disabilities; and maintain records of reasonable accommodations, including financial aspects.

**Architectural Barriers:** Physical elements of a facility which impede access by people with disabilities. Examples include unpaved exterior ground surfaces, steps, curbs, doorknobs and operating controls, deep-pile carpeting, and location of temporary or movable structures such as equipment and display racks.

**DEFINITIONS  
(Continued)**

**Auxiliary Aids and Services:** Devices or services that accommodate a functional limitation of a person with a communication disability. Examples are qualified interpreters and communication devices for persons who are deaf or hard of hearing; qualified readers, taped texts, Braille, or other devices for persons with visual impairments.

**Confidential Medical Records:** Employee medical records (i.e., doctor releases, accommodation requests) are maintained in Personnel in separate and locked files.

**Essential Functions:** Necessary duties because the primary reason the position exists is to perform these duties; necessary because of the limited number of employees available who can perform these duties; and/or the duties are highly specialized so the incumbent is hired for his/her expertise/ability to perform the particular duties.

**Major Life Activity:** Basic activities the average person in the general population can perform with little or no difficulty including breathing; walking; hearing; seeing; speaking; learning; self-care; performing manual tasks such as reaching, standing and lifting; sleeping; or working (working in general, not the ability to perform a specific job).

**Mental Impairment:** Any mental or psychological disorder or characteristics, such as mental retardation, head injury, emotional/mental illness, or learning disability.

**Mitigating Measures:** Medications and assistive devices an individual uses to eliminate or reduce the effects of impairment. Examples include medication for conditions such as epilepsy or hypertension; insulin used to control diabetes; prosthetic devices; walkers, canes, crutches; and hearing aids.

**Person with a Disability:** A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

**Physical Impairment:** Any physiological disorder, disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, sense organs, respiratory, speech, cardiovascular, digestive, skin or endocrine.

**Qualified Person with a Disability:** A person with a disability who can meet the skills, experience, and other requirements; and, with or without reasonable accommodation, can perform the essential functions of a job.

**Readily Achievable:** Easily accomplishable and able to be carried out without much difficulty or expense. Factors to be considered include nature and cost of the action, overall financial resources and the effect on expenses and resources, legitimate safety requirements and impact on the operation of a site.

**DEFINITIONS**  
**(Continued)**

**Reasonable Accommodation:**

**A. Employment:**

- a) Modifications to the job application process to enable a qualified applicant with a disability to apply and be considered for a position.
- b) Modification to the work environment, or the manner or circumstances under which a job is performed to enable a qualified person with a disability to perform the essential functions of the job.
- c) Modifications that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the other similarly situated employees without disabilities. These may include making facilities readily accessible; job restructuring; modifying work schedules; acquiring equipment or devices; adjusting or modifying examinations, training materials or policies; using qualified readers, interpreters or other assistants; or other similar actions.

**B. Services**

Modifications to agency facilities, processes, materials, and procedures to enable an individual with a disability to fully participate in activities and to receive the services and benefits of the agency.

**Title V of the Rehabilitation Act of 1973:** Title of the law, which prohibits discrimination on the basis of a disability by the federal government, by federal contractors, by recipients of federal financial assistance, and by federally conducted programs and activities.

**Undue Hardship:** Significant difficulty, expense, or impact on the Agency when considered in light of factors set forth in this policy and as defined by the ADA.

**GUIDELINES:**

- I. The Department shall make reasonable accommodations for participating members of the public, a job applicant, or DAS employee, unless to do so would create an undue hardship on the Agency or if it places the person with a disability and/or others at imminent physical harm or risk. The ADA requires DAS accommodate a person with a disability only to the extent the disability is known. The burden is on the person with a disability to let the Department know an accommodation is needed. The Department will make every effort to provide appropriate and necessary accommodations to ensure that individuals with disabilities will have equal opportunities to participate in activities and to receive the services of the Department.
- II. DAS is committed to employ and advance employment-qualified individuals with disabilities. Individuals with disabilities are held to the same reasonable attendance and performance standards as other workers.

Under the ADA, it first must be determined whether a person's disability is an impairment of a permanent or long-term nature and severely restricts the individual from doing activities of central importance to most people's daily lives. This standard includes consideration of the condition's impact beyond its effect on work-specific manual tasks and if there are any mitigating measures

**GUIDELINES (Continued)**

the person uses to eliminate or reduce the effects of the impairment. A medical diagnosis of a condition, standing alone, is insufficient to extend coverage under the Act.

Requests for accommodation will be reviewed on a case-by-case basis and each request will receive a response. The process to determine appropriate and feasible accommodation will be conducted in a mutually interactive dialogue. An accommodation is unique to the individual, their disability, and the nature of their job. While the Agency will give primary consideration to any specific accommodation requested, it may offer an alternative accommodation. No specific form of accommodation is guaranteed for all individuals with a particular disability or for all individuals in a particular job. Individual programs will be responsible for the cost of an accommodation.

A surcharge will not be imposed on an individual requesting an accommodation or any group of individuals with disabilities to cover the costs of accommodation. The ADA does not require DAS to lower production standards, promote or assign an employee to a higher paying job, create a position, or relocate essential functions to another worker as an accommodation.

- III. Accommodations with auxiliary aids and/or services that are of a personal nature, such as service dogs or hearing aids, which are used both on and off the job, are not the employer's responsibility.
- IV. Individuals who are enrolled or who have completed drug or alcohol rehabilitation programs and continue to abstain from using illegal drugs or alcohol are protected by the ADA. However, current users of alcohol or illegal drugs are not protected.
- V. DAS will use technical assistance available through agencies and networks specializing in issues involving persons with disabilities. This assistance may include information on technology, worksite analysis or modification, and vocational assessment.
- VI. DAS will not knowingly do business with any bidder, contractor, subcontractor, or supplier of materials who discriminates against individuals with disabilities.
- VII. DAS will have an agreement with the lessor for all office spaces, including any common areas in the building to be used by DAS, to comply with all applicable regulatory and building codes requirements for occupancy by DAS, and meet the requirements of the ADA for accessibility in accordance with the standards provided in the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG). At a minimum the office spaces, including the common areas, have:
  - 1. An accessible entrance and an accessible route to those areas in which the principal activities of DAS as a state agency will be conducted
  - 2. Accessible restroom facilities
  - 3. Accessible parking for the disabled in compliances with Oregon Revised Statutes (ORS) 447.233, if parking is provided under the lease.

**PROCEDURES FOR REASONABLE ACCOMODATION REQUESTS:**

**Applicants for Employment:**

<b><u>Step</u></b>	<b><u>Responsible Party</u></b>	<b><u>Action</u></b>
1.	Manager	Identifies the essential functions of the position on the position description, particularly those requiring physical requirements. Some tools to use when establishing essential functions are:  <ul style="list-style-type: none"><li>a. written job descriptions</li><li>b. the amount of time spent on the function</li><li>c. consequences of not performing the function</li><li>d. work experience of past incumbents or incumbents in similar jobs.</li></ul>
2.	Personnel	Develops recruitment announcements, which include an offer to provide reasonable accommodation to applicants, upon their request, who need assistance to participate in the application and/or selection process.
3.	Applicant	Follows the application procedure described on the job announcement, meets the qualifications for the job with or without accommodation, and qualifies by examination in the same way as a non-disabled applicant.  Submits oral or written request for accommodation to Personnel in order to participate in the interview, if necessary.
4.	Manager	Interviews applicants. During the interview process, the interviewers may NOT inquire about the existence, nature, or severity of a disability. If a current employee is an applicant for a position, the employee is treated like an outside applicant for the job. A current supervisor who has confidential medical information about the employee should not disclose that information to the person conducting interviews for the new job or to the new supervisor. Ascertains if the applicant is qualified to perform the essential functions of the job with or without reasonable accommodation. After hiring, you may ask the employee if they can evacuate the building safely.

**Current Employees:**

<b><u>Step</u></b>	<b><u>Responsible Party</u></b>	<b><u>Action</u></b>
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| 1. | Manager  | Identifies the essential functions of the position on each employee's position description.   |
| 2. | Employee | Identifies the limitations imposed by the disability which prevents or hampers the employee's ability to perform an essential function of their position without accommodation, and submits a request for specific accommodation. |

**Current Employees: (Continued)**

<b>Step</b>	<b>Responsible Party</b>	<b><u>Action</u></b>
	Employee ( <i>Continued</i> )	The individual may use "plain English" and need not mention the ADA or use phrases like "with reasonable accommodation" in their request.
3.	Manager	Notifies the ADA Coordinator of employee's request for reasonable accommodation.
4.	ADA Coordinator	Ensures the employee is qualified to perform the essential functions of the job with or without reasonable accommodations.

To determine whether or not the person has a disability that qualifies under the ADA, the ADA Coordinator coordinates an **interactive dialogue** with the employee, their supervisor, Personnel Analyst, and other accommodation specialists as necessary.

In certain circumstances, a conversation with the employee's health care provider or medical documentation may be needed for final determination (Forms A and B). If there is a charge for this documentation it is at the employee's expense (may be covered in part/full by medical insurance).

The request for documentation must be job-related and consistent with business necessity (i.e., if an employee's ability to do the essential job functions will be impaired by a medical condition or an employee will pose a direct threat due to a medical condition).

If an individual has more than one disability, DAS will request information pertaining only to the disability that requires a reasonable accommodation. A second professional opinion at the Department's expense may be required to determine an employee's disability or options for accommodation. Professionals may include doctors, licensed physician's assistants, psychologists, nurses, occupational therapists, physical therapists, speech therapists, vocational rehabilitation specialists or licensed mental health professionals.

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After determination that the employee is a qualified person with a disability, the employee, manager, Personnel Analyst and ADA Coordinator will begin a collaborative process to explore potential accommodations that would mitigate the limitations.

5. Management Team Performs job analysis and evaluates employee-submitted recommendation(s) based on the following factors:
- a. Essential functions of the job
  - b. Classification and compensation implications

**Current Employees: (Continued)**

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**Step    Responsible Party    Action**

- c. Collective bargaining provisions and/or ADA statutes
- d. Reasonable accommodation alternatives
- e. Nature and cost of accommodation(s), availability of financial resources, and availability of outside funding
- f. Effect of the accommodation on Agency operations, the ability of other employees to perform their duties, and the Agency's ability to fairly and effectively apply and enforce the state statutes for which it has responsibility
- g. Whether the accommodation and/or alternatives shall enable the individual to perform the essential functions of the job.

Some common areas for reasonable accommodation are:

- a. facilities readily accessible and usable
- b. job restructuring (except essential functions)
- c. modified work schedule
- d. acquisition of modified equipment or assistive devices
- e. adjustment of tests, policies or training
- f. negotiated variances in the collective bargaining agreement, or provision of readers or interpreters

The Department may consider reassignment to a funded, vacant position as a possible accommodation. However, the Department is not required to create a new position.

Employees cannot employ "bumping rights" to an occupied position as an accommodation for a disability.

Makes decision regarding the accommodations that will be made.

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|-----------|-----------------|--|
| <b>6.</b> | ADA Coordinator | Notifies the employee requesting the accommodation of the Agency's determination and specific accommodations it proposes to make if accommodations are feasible. Documents all actions taken by the Department and ensures Agency wide consistency in approach to approving or denying accommodation requests. |
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**Current Employees: (Continued)**

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<u>Step</u>	<u>Responsible Party</u>	<u>Action</u>
7.	Employee	Notifies the ADA Coordinator if the accommodation is or is not acceptable.
8.	ADA Coordinator	Coordinates with the parties involved to insure the accommodations are completed.
9.	Employee	If employee rejects the accommodation(s) offered, has no reasonable alternatives, and cannot perform the essential functions of the job as a result of the rejection, the employee will not be considered a qualified individual for that position. The Agency will then take appropriate steps, up to and including termination from the position.

**CONFIDENTIALITY**

Information obtained during the reasonable accommodation process regarding the medical condition or history of the applicant/employee shall be held confidential as medical records, with these exceptions:

- Managers and supervisors may be informed regarding necessary accommodations.
- First aid and safety personnel may be informed, where appropriate, if the impairment might require emergency treatment, or if accommodations need to be made for the safe evacuation of the building.
- Government officials investigating compliance with Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act, shall be provided relevant information upon request. To ensure confidentiality, all information concerning applicants/employees will be maintained by the Personnel Section in confidential files separate from their personnel file.

**APPEAL PROCEDURES:**

Any employee, applicant, or member of the public who believes they have been discriminated against because DAS failed to provide reasonable accommodation may file a complaint with the Agency Director, Personnel Manager, ADA Coordinator, Division Administrator, or a supervisor. All reported incidents will be investigated promptly, thoroughly, impartially, and discreetly. The investigator will notify the complainant in writing of the results of the investigation.

Formal appeals/complaints may also be filed with the state's Affirmative Action Office; the Bureau of Labor and Industries; the Equal Employment Opportunity Commission; or the United States Department of Labor, Office of Civil Rights.

**ADA RESOURCES:**

Contact the ADA Coordinator for current resources.

# Authorization for Release of Medical Records

Reviewing your medical records is one of the first steps in the process of assessing your request for a reasonable accommodation under the American with Disabilities Act. In order for your medical provider(s) to release your private medical information, you must allow them permission to communicate with us. Please use this form (or one similar to it) so your medical information can be supplied to us.

Patient's (your) Name: \_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

Social Security Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**Release my medical records and information from:**

Physician's Name: \_\_\_\_\_

Physician's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Physician's Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**To my employer:** The Department of Administrative Services  
Personnel Unit  
155 Cottage St NE U130  
Salem OR 97301-3974

I hereby authorize my medical provider to respond to, and release, all medical information requests from my employer listed above.

\_\_\_\_\_  
Patient's signature

\_\_\_\_\_  
Date

## Medical Verification of Employee's Request for ADA Reasonable Accommodation

Instructions: The American with Disabilities Act (ADA), 42 U.S.C.12101 et seq., prohibits discrimination in employment against qualified individuals with disabilities. The Department of Administrative Services (DAS) is committed to ensuring that it does not discriminate against qualified individuals with disabilities. DAS will provide reasonable accommodations to qualified individuals with disabilities where such accommodations will allow the individual to perform the essential functions of their job, unless the accommodation would impose an undue hardship.

On (date) \_\_\_\_\_, (employee) \_\_\_\_\_ requested a reasonable accommodation under the ADA. S/he asked to (the employees actual request) \_\_\_\_\_  
\_\_\_\_\_. DAS is requesting your professional medical guidance so we may effectively evaluate her/his request for accommodation. Please answer the questions below:

1. Does this individual have a physical or mental impairment?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. If your answer to #1 is yes, what is the nature of the impairment? Please describe the severity and duration of the impairment.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. If your answer to #1 above is yes, and if the individual has a mental impairment, please describe the specific impairment using the DSM-IV description and code.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. If your answer to #1 above is yes, does the individual have any functional limitation due to his/her impairment?  
Yes \_\_\_\_\_ No \_\_\_\_\_  

If so, what are the individual's functional limitations? Please describe the specific activities (i.e., caring for his/herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.) of the individual that are limited as a result of the impairment(s), including a description of the extent of those limitations and how long each limitation is expected to last.

Activity(ies) Limited: \_\_\_\_\_

How Extensive: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Duration: \_\_\_\_\_

5. Do you believe that the requested accommodation would be effective based upon the attached Position Description/Essential Functions of the employee's job?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Please provide any other suggested modifications to the individual's job duties or office environment that would improve the limitations posed by his/her impairment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If leave or a reduction in hours of work is the requested or suggested accommodation, how much leave time will be necessary on what kind of schedule (i.e., daily, weekly, monthly, etc.)? When will the individual be able to return to work without any accommodation?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Medical Professional: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**Please return completed form to:**

State of Oregon Department of Administrative Services  
Personnel Section  
155 Cottage St NE U130  
Salem OR 97301-3974  
Attn: Personnel Manager

OR FAX to:

503/378-6879

Attachments: Authorization to Release Medical Information  
Position Description  
Job Analysis/Essential Functions Worksheet