**Reassignment under the Americans with Disabilities Act**

Reassignment may be the reasonable accommodation of last resort and agencies are required to explore this option, only after they have determined that:

1. There are no effective accommodations that will enable the employee to perform the essential functions of their current position; or
2. All other reasonable accommodations would impose an undue hardship.

Under the ADA:

* Reassignment must be offered to employees who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.
* Agencies are not required to create a new position into which the employee can be reassigned.
* Employees must meet the minimum qualifications of the job into which they are being reassigned.
* Reassignment should be to a vacant position at the same (or lower) salary range as the employee’s current position. Agencies may not reassign employees into positions that are a promotion for them (i.e. positions with a higher salary range).
* Employees do not serve a new probationary period in the position into which they are reassigned.
* Position must be vacant (or known to be becoming vacant).
* Position is considered vacant even if it is already posted for recruitment.
* Employees cannot “bump” other employees from their positions as part of the reassignment process under the ADA.
* Reassignment may only be offered within the agency where the employees work. That is, if the employee works at ODOT, only vacancies in ODOT should be considered.
* If relocation is necessary, moving expenses will not be provided.
* (NOTE: Be mindful of and review any additional CBA rights regarding transfer or medical transfer rights, as well as any potential overlap with worker’s comp, where an employee might have a parallel or simultaneous right to be on the broader “State Injured Worker’s List”)

**Frequently Asked Questions**

* **How long should agencies be engaged in reassignment efforts before concluding that there are no vacant positions available?**  It depends. The duration will vary depending on how quickly an agency can search for and identify whether an appropriate vacant position exists. For a small agency, this process may take one day; for larger agencies this process may take several weeks. When an agency has completed its search, identified whether there are any vacancies (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed them that no appropriate vacancies are available, the agency will have fulfilled its obligation. If an agency was not able to identify a reassignment vacancy, they **must** contact the Chief Human Resources Office and / or the Department of Justice.
* **What if the employee is a temporary employee? Do agencies need to offer a permanent position as an accommodation?** No. The ADA covers all employees (temporary, limited duration, trial service, or regular). Agencies should look for vacancies as follows:
	+ Temporary employees – only temporary positions.
	+ Limited Duration employees – only Limited Duration positions.
	+ Regular employees – only regular positions.
* **How far down the salary range should I be looking for in the vacancies? For instance my employee is at salary range 20, should I look for positions at salary range 5?** As you are looking at available vacancies, first look for those which are at the same salary range. If none is found look at those at salary range 19, then 18, etc. Agencies should first look at those positions that have the least financial impact on the employee. However, it may be that agencies may only find vacant positions at a much lower salary range.
* **If employees do not serve a new probationary period when reassigned, and their performance is not acceptable, how should agencies proceed?** If the reason the employee is not performing well is because of their disability, it may be necessary to re-engage in the interactive process and determine if accommodations may help the employee.
* **Should agencies only consider those vacant positions within the same bargaining unit? (e.g., the employee is represented by AFSCME but the position is in SEIU)** When looking at reassignment opportunities, agencies should first consider positions that are in the same union. If that is not possible, agencies should consider positions outside of the bargaining unit. However, agencies should coordinate with their Labor Relations unit within the agency and DAS / CHRO before exploring vacancies in a different Union.
* **If the agency finds a vacant position which is a demotion for the employee, is the agency obligated to continue looking for another job for the employee which is at the same salary range as the employee’s original position?** No. The agency will have fulfilled its obligation to find a vacant position that enables the employee to perform the essential functions of their job with or without a reasonable accommodation.
* **While going through the reassignment process, at what point may a supervisor proceed with filling the position occupied by the employee?** The supervisor may fill the position held by the incumbent once the position is vacant.
* **What happens if the agency is not able to accommodate the employee and does not have any vacancies into which the employee can be reassigned?** Contact the Chief Human Resources Office and / or the Department of Justice.