

SUBJECT: ADA and Reasonable Accommodation in Employment NUMBER: 50.020.10

DIVISION: Chief Human Resources Office EFFECTIVE DATE: 11/05/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT:

Oregon state government follows the clear mandate in state law and the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act of 2008, to remove barriers that prevent qualified people with disabilities from enjoying the same employment opportunities that are available to people without disabilities.

Oregon state government provides equal access and equal opportunity in employment. Its agencies do not discriminate based on disability. Oregon state government uses only job-related standards, criteria and methods of administration that are consistent with business necessity. These standards, criteria and methods do not discriminate or perpetuate discrimination based on disability.

According to OAR 105-040-0001 Equal Employment Opportunity and Affirmative Action, Oregon state government takes positive steps to recruit, hire, train, and provide reasonable accommodation to applicants and employees with disabilities.

AUTHORITY:

ORS 240.145; 240.240; 240.250; ORS 659A.103 -145; 243.305; 243.315; The Americans with Disabilities Act (ADA) of 1990 as amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008; Civil Rights Act of 1991; and 42 U.S.C. §12101 et seq.

APPLICABILITY:

This policy applies to all state employees, including state temporary employees, according to provisions of federal and state law.

ATTACHMENTS:

ADA Accommodation Tool Kit

DEFINITIONS:

Also refer to State HR Policy 10.000.01, Definitions.

The following definitions apply to terms referenced in this policy and its attachments:

Americans with Disabilities Act (ADA): The ADA is a federal civil rights statute that removes barriers preventing qualified people with disabilities from enjoying the same employment opportunities available to people without disabilities. References to ADA also refer to amendments to that Act.

Essential Functions: These include, but are not limited to, duties that are necessary because:

- The primary reason the position exists is to perform these duties.
- A limited number of employees are available who can perform these duties.
- The incumbent is hired or retained to perform highly specialized duties.

Individual with a Disability: This term means a person to whom one or more of the following apply:

- A person with a physical or mental impairment that substantially limits one or more of the major life activities of such a person without regard to medications or other assistive measures a person might use to eliminate or reduce the effect of impairment.
- A person with a record of such impairment.
- A person regarded as having such impairment.

Major Life Activities: This term means the basic activities the average person in the general population can perform with little or no difficulty. These include, but are not limited to: breathing; walking; hearing; thinking; concentrating; seeing; communicating; speaking; reading; learning; eating; self-care; performing manual tasks such as reaching, bending, standing and lifting; sleeping; and working (working in general, not the ability to perform a specific job). The term also includes, but is not limited to, "major bodily functions," such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Physical or Mental Impairment: This term refers to any of the following:

- A physiological disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more bodily systems, including neurological, musculoskeletal, special sense organs, respiratory, cardiovascular or reproductive.
- A mental or psychological disorder including, but not limited to, intellectual disability, organic brain syndrome, emotional or mental illness or specific learning disability.
- Disease or condition including orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV or alcoholism.
- Any other physical or mental impairment listed under the ADA.

Qualified Person: This term means a person who has the personal and professional attributes, including skill, experience, education, physical and mental ability, medical, safety and other requirements to hold a position.

"Qualified person" does not include people who currently engage in illegal drug use. However, persons who are currently enrolled in, or who have completed a rehabilitation program, and who continue to abstain from illegal drug use may qualify.

Reasonable Accommodation: This term means change or adjustment to a job or work environment that enables a qualified employee with a disability to perform the essential functions of a job, or to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities.

“Reasonable accommodation” does not include modifications or adjustments that cause an undue hardship to the agency.

“Reasonable accommodation” does not mean providing personal auxiliary aids or services, such as service dogs or hearing aids that a person uses both on and off the job.

A reasonable accommodation does not include lowering production standards, promoting or assigning an employee to a higher-paying job, creating a position or reassigning essential functions to another worker.

Accommodations for Pregnancy, Childbirth or a Related Medical Condition

“Reasonable accommodation” includes accommodations or adjustments made for pregnancy, childbirth, or a related medical condition including, but not limited to, lactation. Reasonable accommodations for purposes of pregnancy, childbirth or a related medical condition may include, but are not limited to:

- (1) Acquisition or modification of equipment or devices.
- (2) More frequent or longer break periods or periodic rest.
- (3) Assistance with manual labor.
- (4) Modification of work schedules or job assignments.

Undue Hardship: This term means significant difficulty or expense. Whether a particular accommodation imposes undue hardship is determined on a case-by-case basis, with consideration of such factors as the following:

- The nature and cost of the accommodation needed.
- The agency’s size and financial resources and the employee’s official worksite.
- The agency’s operation, structure, functions and geographic separateness.
- The agency’s administrative or fiscal relationship to the facility responding to the accommodation request and to any other state agencies in the facility.
- The impact of the accommodation on the operation of the agency or its facility.

POLICY:

- (1) Each state agency director or authorized designee administers State HR Policy 50.020.10 as the agency's policy. Compliance with the ADA is mandatory.
 - (a) Each agency identifies an ADA coordinator to coordinate ADA accommodation requests and function as an agency resource on ADA matters.
 - (b) Each agency develops and follows its own procedures for receiving, processing and documenting accommodation requests under this policy. The attached tool kit will assist in this process.
- (2) An employee may request an accommodation under this policy by following agency procedures.
- (3) The agency must review and respond in a timely manner to each request for accommodation. The agency must engage in an interactive dialogue with the employee to determine whether the accommodation is necessary and will be effective. Agencies will acknowledge in writing all written requests for accommodations within seven calendar days from the date of receipt.
- (4) Each accommodation is unique to the person, the disability and the nature of the job. No specific form of accommodation can guarantee success for all people in any particular job. The agency must give primary consideration to the specific accommodation requested by the employee. Through the interactive process the agency may identify and provide an alternative accommodation. With regard to pregnancy, childbirth or a related medical condition, the agency must not require an employee to accept a reasonable accommodation that is unnecessary for the employee to perform the essential duties of the job or to accept a reasonable accommodation if the employee does not have a known limitation.
- (5) The duty to provide reasonable accommodation is ongoing. The agency and the employee must engage in the interactive process again if an accommodation proves ineffective.
- (6) The agency may deny an accommodation if it is not effective, if it will cause undue hardship to the agency, or if the agency identifies imminent physical harm or risk. The undue hardship exception is available only after careful consideration. The agency must consider alternative accommodations, should a requested accommodation pose undue hardship.
- (7) Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or was previously accommodated under the ADA.
- (8) **Policy Notification.**
 - (A) Agencies will ensure information regarding ADA and agency-specific procedures for requesting an accommodation are readily accessible to employees via bulletin boards and/or a public website or intranet.
 - (B) Agencies shall post signs that inform employees of the employment protections under ORS 659A, including the right to be free from discrimination because of pregnancy, childbirth and related medical conditions, and the right to reasonable accommodation. Agencies shall post the signs in a conspicuous and accessible location in or about the premises where employees work.

- (i) In addition to posting signs, agencies shall provide a written copy of the notice to:
 - (1) New employees, at the time of hire.
 - (2) Existing employees, within 180 days after the effective date of this policy.
 - (3) Any employee who informs the agency of the employee's pregnancy, within 10 days after the employer receives the information.