


STATE OF HAWAII DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT POLICIES AND PROCEDURES	POLICY NO. 601.002	NO. of PAGES 10 1 Attachment
	EFF. DATE November 4, 2015	REV.NO./Date 2
TITLE: REASONABLE ACCOMMODATIONS FOR EMPLOYEES AND APPLICANTS WITH DISABILITIES	APPROVED:  James K. Nishimoto, Director	

I. POLICY

It is the policy of the State, as an employer, and its appointing authorities to fully comply with the reasonable accommodation requirements of applicable federal and State laws and to provide reasonable accommodation for qualified persons with disabilities who are employees or applicants for employment.

The State and its appointing authorities will process requests for reasonable accommodation and, where appropriate, provide reasonable accommodation to qualified applicants with disabilities during the employment application process and to qualified employees with disabilities in performing the essential functions of their jobs, unless to do so would cause an undue hardship to the State or a direct threat to the health and safety of the individual or others.

II. PURPOSE

The purpose of this policy is to ensure that the State and its appointing authorities fully comply with the reasonable accommodation requirements set forth in the Americans with Disabilities Act Amendments Act of 2008 (ADA) and Chapter 378, Hawai'i Revised Statutes, Employment Practices, and any other applicable laws and to ensure that individuals with disabilities enjoy full access to equal employment opportunities.

III. DEFINITIONS

The following definitions can be found in the regulations to implement the equal employment provisions of the ADA and the *Equal Employment Opportunity Commission Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA*:

“Direct Threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

“Disability” means the state of having a physical or mental impairment which substantially limits one or more major life activities, having record of such an impairment, or being regarded as having such an impairment.

“Essential Functions” means those core duties that are the reason that the position exists. A function can also be essential if the number of other employees available to perform this function is limited, the function is highly specialized, and/or the

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employee is hired for special expertise or ability to perform this function. The term “essential functions” does not include the marginal functions of the position.

“Qualified Individual with a Disability” is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the position such individual holds or desires and can perform the essential functions of such position, with or without reasonable accommodation.

“Reasonable Accommodation” means modification or adjustment to a job, the job application process, or the work environment that will enable a qualified job applicant or employee with a disability to perform the essential functions of the job, participate in the application process, or enjoy the benefits and privileges of employment. Reasonable accommodations do not include accommodations that cause an undue hardship on the employer or cause a direct threat of harm to the individual or others.

“Undue hardship” means significant difficulty or expense incurred by an employer with respect to the provision of an accommodation. Significant difficulty can mean accommodations that are unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business, or would impact upon collective bargaining agreements or civil service laws.

IV. SCOPE

This policy applies to all employees in the executive branch departments under the jurisdiction of the Department of Human Resources Development (“DHRD”), to include civil service or exempt from civil service employees, full-time or part-time employees, permanent or temporary employees, and applicants for employment.

V. RESPONSIBILITIES

A. Applicants for Employment

1. Department Responsibilities

- a. Departments that receive applications and screen and interview applicants must provide reasonable accommodations to applicants to enable them to be considered for a position opening and/or to gain access to the workplace. Examples of reasonable accommodations for applicants may include, but are not limited to, providing written materials in accessible formats; providing readers or sign language interpreters; ensuring that recruitment, interviews, tests and other components of the application process are held in accessible locations; providing or modifying equipment

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or devices; or adjusting or modifying application policies and procedures.

- b. Departments shall designate an individual to oversee issues relating to reasonable accommodation for applicants and employees, who will be referred to as the Reasonable Accommodation Coordinator ("RA Coordinator"). This individual may, but need not, be the same individual designated as the ADA Coordinator for the Department.
- c. Departments shall work with their RA Coordinator to determine an appropriate reasonable accommodation upon request by an applicant for employment.

2. Applicant Responsibilities

- a. Applicants must meet the requirements for the job and must be able to demonstrate his/her ability to perform the essential functions of the job with or without reasonable accommodation during the selection process.
- b. It is the responsibility of the applicant to request accommodations to enable him/her to be considered for a position opening and/or to gain access to the workplace.
- c. Applicants for employment to whom a conditional offer of employment has been made may request a reasonable accommodation to perform the essential functions of the position offered. The determination of a reasonable accommodation in such instances will be made according to Section VI.A below. Applicants to whom conditional offers have been made, but for whom no reasonable accommodations can be made are not eligible for a job search.

B. Employees

1. Departments' Responsibilities

- a. The Department is responsible for determining whether a requesting employee is a qualified individual with a disability under the provisions of State and federal law.
- b. The Department is responsible for providing reasonable accommodation for a qualified individual with a disability.

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- c. Departments shall notify the Executive Branch Equal Employment Opportunity Office (“EEO Office”) and all employees in the department of the name and contact information of the RA Coordinator. The RA Coordinator is responsible for implementing this policy and working with departmental managers and supervisors to determine reasonable accommodations.
 - d. Departments shall notify the EEO Office, for informational purposes, about any and all requests for reasonable accommodation and/or complaints relating to this policy (including applicants), whether made internally or to the Equal Employment Opportunity Commission or Hawaii Civil Rights Commission.
2. Managers’ and Supervisors’ Responsibilities
- a. Managers and supervisors are responsible for receiving requests for reasonable accommodation, notifying the RA Coordinator and working with the RA Coordinator and employee in determining whether any appropriate accommodation can be made.
 - b. Managers and supervisors must participate in good faith in the interactive process procedure to determine a reasonable accommodation.
3. Employee Responsibilities
- a. Employees may request reasonable accommodation for disabilities from their Department’s RA Coordinator, supervisor/manager, Departmental Personnel Officer (or his/her designee), Departmental EEO or Civil Rights Compliance Officer or the EEO Office.
 - b. The employee is responsible for initiating and submitting the request for reasonable accommodation. While a request may initially be made orally, the individual will be asked to confirm his/her request in writing, which may be on the Request for Accommodation for Employees and Applicants form, attached as Attachment A.
 - c. The employee must participate in good faith in the interactive process procedure to determine a reasonable accommodation.

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VI. INTERACTIVE PROCESS PROCEDURE

A. Determination of Reasonable Accommodation in Employment

1. The RA Coordinator, or supervisor/manager after consultation with the RA Coordinator, will meet with the employee requesting a reasonable accommodation to discuss the limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
2. The RA Coordinator, or supervisor/manager after consultation with the RA Coordinator, may request information from the employee's medical provider relating to the employee's request for a reasonable accommodation, with the request limited to information about the employee's disability, any limitations in performing essential functions of the job, and the duration of any limitations.
3. When the RA Coordinator has a reasonable belief, based on objective evidence, that an employee is unable to perform an essential function or will pose a direct threat of harm to him/herself or others because of a medical condition, the Department may require that the employee be evaluated by a medical provider to determine his/her qualifications for the employee's current position, to assess the employee's current physical, psychological and/or emotional capacities, or to be evaluated to determine his/her qualifications for reassignment in a suitable, vacant position within the employee's department. Any evaluation requested by the Department will be paid for by the Department.
4. The RA Coordinator, or the supervisor/manager after consultation with the RA Coordinator, will determine which potential reasonable accommodation(s) to provide, if any, and whether any of the potential reasonable accommodations constitute an undue hardship for the department or a direct threat of harm to the employee or others.
5. The RA Coordinator or the supervisor/manager, after consultation with the RA Coordinator, will communicate the determination of whether the reasonable accommodation is possible and the identified accommodation to the employee. If a reasonable accommodation has been identified, the RA Coordinator or the supervisor/manager will implement the reasonable accommodation as soon as practicable and also notify the EEO Office and the department RA Coordinator.

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6. The Department's duty to provide a reasonable accommodation may be an ongoing process. If a reasonable accommodation turns out to be ineffective and the employee with a disability remains unable to perform an essential function, the Department must consider whether there would be an alternative reasonable accommodation that would not pose an undue hardship or a direct threat of harm. Departments are advised to consult with the Executive Branch EEO Office in those situations where there may be an undue hardship or direct threat of harm as a result of providing a reasonable accommodation.
7. An employee who does not fall under the Return to Work Priority Placement Program Policy and Procedure 902.001 may be subject to discharge, in accordance with applicable State laws, rules, policies, and collective bargaining agreements if he/she refuses a reasonable accommodation and is unable to perform the essential functions of his/her position. For employees subject to Policy and Procedure 902.001, that policy's termination procedures shall apply instead of this provision.
8. A conditional offer of employment may be revoked, if the applicant
 - a. Is unable to perform the essential functions of the position being offered with or without accommodation and no reasonable accommodation is available, or
 - b. Refuses a reasonable accommodation and is unable to perform the essential functions of his/her position.

B. Confidentiality

Medical information revealed during the determination of a reasonable accommodation, either during the hiring process or for employees, will be kept confidential and shared only to the extent necessary with other decision-makers involved in the reasonable accommodation process who need the information in order to make employment decisions consistent with State and federal laws.

VII. JOB SEARCH FOR EMPLOYEES

A. Job Search Process

1. A job search will be conducted within the employee's Department if the following conditions apply:
 - a. The employee is an employee of the relevant department.

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- b. It is determined, after engaging in the interactive process, that the employee, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation.
 - c. The employee does not fall under the Return to Work Priority Placement Program Policy and Procedure 902.001. (For any employee subject to the Return to Work Priority Placement Program, the job search procedures under Policy and Procedure 902.001 will apply.)
2. If the criteria stated in VII.A.1 are met, a job search will be conducted as follows:
- a. Employee may limit the job search to meet specific criteria, i.e. geographic location, hours, type of work, however, limiting the scope of a job search may limit the results of the search for vacancies.
 - b. In conducting the job search, the Department will consider comparable vacant positions for which the employee qualifies and that meet the employee's specific criteria.
 - i. For civil service employees, a comparable position is one that has the same rate of pay or is within the same salary range; has similar knowledge, skills, and abilities; and has similar or related minimum qualifications.
 - ii. For non-civil service employees, a comparable position is one within the same salary range and that has similar knowledge, skills and abilities required for the job.
 - iii. Vacant positions are those that are available and funded when the employee requests a reasonable accommodation or that the Department knows will become available and be funded within a reasonable amount of time.
 - iv. The job search shall not result in a promotion, a higher base salary, or a position with greater employment rights (i.e. part-time employees will not be eligible for full-time vacancies, exempt employees will not be eligible for civil service vacancies, temporary

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employees will not be eligible for permanent vacancies).

- c. If no vacant comparable positions are available, at the request of the employee, the Department will consider vacant positions at a lower salary range for which an employee meets the minimum qualifications. If the employee accepts such a position, his/her compensation shall be determined pursuant to Policy & Procedure 700.001 or any applicable collective bargaining agreements.

B. Post Job Search Process

1. The Department shall send written notification to the employee upon conclusion of the departmental job search as to whether any vacancies were found in the employee's department.
2. If vacancies are found, then the selection will be made in the following way:
 - a. Comparable positions: If more than one vacancy is found that meet the employee's specific criteria and for which the employee is qualified, the employee will be allowed to choose the vacancy he/she prefers.
 - b. Positions at a lower salary range: If there are more than one vacancy for which the employee is qualified, the employer must place the employee in the position that comes closest to the employee's current position in terms of pay, status, etc.
 - c. The Department does not have to place the employee in a vacant position if it will cause an undue hardship or direct threat of harm to the employee or others. The Department must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.
3. If an employee selects a vacant position:
 - a. The employee must (1) satisfy the requisite skill, experience, education, and other job-related requirements of the position, and (2) be able to perform the essential functions of the new position, with or without reasonable accommodation.
 - b. The Department does not have to provide training so the employee acquires necessary skills, experience, education or other job-related requirements to be placed in the position.

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The Department will provide an employee with a disability who is being reassigned with any training that is normally provided to anyone hired for or transferred to the position.

- c. The performance appraisal system will apply to all civil service employees who are placed in a vacant position to assure that they meet the performance requirements of the position, and also to assure that the employee has an opportunity for two-way dialogue with his/her supervisor on performance issues.
- 4. Employees may be subject to discharge, in accordance with applicable State laws, rules, policies and collective bargaining agreements if the employee:
 - a. Is unable to perform the essential functions of his/her position with or without accommodation and no vacant positions are available, or
 - b. Refuses a vacant position and is unable to perform the essential functions of his/her position.
- 5. The departments shall consult with DHRD EEO Office before initiating a termination action.

VIII. STATE RESOURCES

Departments may seek consultation and recommendations from the following resources:

- A. Revised Accommodations for Employees with Disabilities Manual, <http://hawaii.gov/health/adacoordination/sohramanual/index.htm>
- B. Executive Branch Equal Employment Opportunity Office
(808) 587-1162 or eeo@hawaii.gov
- C. Disability and Communication Access Board
(808) 586-8121 (V/TDD)

IX. AUTHORITIES AND REFERENCES

Americans with Disabilities Act Amendments Act of 2008

Chapter 378, Hawai'i Revised Statutes

EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Number 915.002, October 17, 2002

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Chapter 76, Hawai'i Revised Statutes

X. ATTACHMENTS

Attachment A: Request for Accommodation for Employees and Applicants