




OREGON DEPARTMENT OF FISH AND WILDLIFE POLICY

Human Resources Division

Title:	Americans with Disabilities Act and Reasonable Accommodation in Employment	HR_450_16
Supersedes:	HR_450_16, dated March 1, 2007	
Applicability:	All state employees, including state temporary employees	
Reference:	State HR Policy 50.020.10; 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 <i>et seq.</i>	
Effective Date:	November 1, 2010	Approved: 

I. PURPOSE

This policy affirms the Department of Fish and Wildlife's (ODFW) support for State HR Policy 50.020.10, and establishes a process by which the department provides reasonable accommodation for qualified persons with disabilities.

II. DEFINITIONS

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

- A. **Americans with Disabilities Act (ADA):** The ADA is a federal civil rights statute that removes barriers that prevent 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.
- B. **ADA Coordinator:** The department Affirmative Action Officer has been designated the ADA Coordinator for employment pursuant to part 35.107 of the ADA.
- C. **Applicability:** This policy covers activities related to recruitment, new hires, current employees, promotions, and retention of employees with disabilities, department training, information exchange or social activities.
- D. **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.
- E. **Evidence of Essential Functions:** Includes the employer's judgment of which functions are essential, written job descriptions prepared before advertising or interviewing for the position,

time spent on the job performing the function, the consequences of not requiring the incumbent to perform the function, the terms of a collective bargaining agreement, the current work experience of incumbents in similar jobs and other relevant factors, e.g., the nature of the work operation.

- F. **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 an impairment.
 - A person regarded as having such impairment.
- G. **Major Life Activities:** This term means the basic activities the average person in the general population can perform with little or no difficulty. These including breathing; walking; hearing; thinking; concentrating; seeing; communicating; speaking; reading; learning; eating; self-care; performing manual tasks such as reaching, bending, standing and lifting; sleeping; or working (working in general, not the ability to perform a specific job).
- The term also includes but 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.
- H. **Physical or Mental Impairment:** This term refers to any of the following:
- 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
 - Mental or psychological disorder including but not limited to mental retardation, 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 disease or alcoholism
 - Any other physical or mental impairment listed under the ADA.
- I. **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 the position. “Qualified person” does not include people who currently engage in illegal use of drugs. A person may qualify, however, if he or she is currently enrolled in or has completed a rehabilitation program, and continues to abstain from illegal use of drugs.
- J. **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 enjoy the benefits and privileges of employment equal to those enjoyed by employees who have no disabilities. “Reasonable accommodation” does not include modifications or adjustments that cause an undue hardship to the department. “Reasonable accommodation” does not mean providing personal auxiliary aids or services, such as service dogs or hearing aids that 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.

- K. 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 department's size, employee's official worksite, and financial resources
 - The department's operation, structure, functions, and geographic separateness
 - The department's administrative or fiscal relationship to its facility responding to the accommodation request and to the other state agencies
 - The impact of the accommodation on the operation of the department or its facility.

III. POLICY

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.

- A. The Administrator of the Human Resources Division for ODFW administers State HR Policy 50.020.10 as the department's policy. Compliance with the ADA is mandatory.
1. The HR Administrator identifies an ADA Coordinator for the department to coordinate ADA accommodation requests and function as a department resource on ADA matters related to employment.
 2. The department develops and follows its own procedures for receiving, processing and documenting accommodation requests under this policy.
- B. An employee may request an accommodation under this policy by following department procedures.
- C. The department must review and respond in a timely manner to each request for accommodation. The department must engage in an interactive dialogue with the employee to determine whether the accommodation is necessary and will be effective.
- D. 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 department must give primary consideration to the specific accommodation requested by the employee. Through the interactive process the department may identify and provide an alternative accommodation.
- E. The duty to provide reasonable accommodation is ongoing. The department and the employee must engage in the interactive process again if an accommodation proves ineffective.

- F. The department may deny an accommodation if it is not effective, if it will cause undue hardship to the department, or if the department identifies imminent physical harm or risk. The undue hardship exception is available only after careful consideration. The department must consider alternative accommodations, should a requested accommodation pose undue hardship.
- G. 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.

IV. PROCEDURES

The department is committed to complying with the Americans with Disabilities Act (ADA), which protects qualified applicants and employees with disabilities from unlawful discrimination in recruitment, hiring, promotion, discharge, pay, training, fringe benefits, classification, referral, and other aspects of employment. Additionally, the department shall provide reasonable accommodation unless it can be demonstrated that to do so would cause an undue hardship on the ODFW or if it places the individual or others at physical harm or risk.

A. Responsibilities of individual seeking accommodation

1. It is the responsibility of the individual seeking accommodation, a family member or health professional to request specific accommodation or identify specific limitations imposed by the disability. Employees will in most instances submit requests to their immediate managers/supervisors. They also may initiate the request through the ADA coordinator. The requesting employee need not mention the ADA or use phrases like "reasonable accommodation" in their request which can be made orally or in writing.
2. The individual seeking accommodation shall submit any necessary documentation requested to support the need for accommodation.
3. The individual seeking accommodation shall cooperate in any resulting discussion and evaluation of the request for accommodation.

B. Responsibilities of the Manager/Supervisor

1. Prior to requesting that a recruitment be opened and at any time a position description is updated or revised, the manager/supervisor shall identify the essential functions of the position on the position description.
2. Prior to conducting interviews for a position, the manager/supervisor shall advise each eligible applicant that reasonable accommodation for the interview shall be provided upon request.
3. Prior to the interview, the interviewer shall give each applicant interviewed a copy of the position description and the form "Position Description Review Acknowledgment..." (see ODFW HR Forms). A copy of the completed form shall be retained with the interview materials.
4. During the interview process, interviewers shall not inquire about the existence, nature or severity of a disability.

5. Upon receiving request for accommodation from an applicant who is offered a job, or at any time for an employee the department becomes responsible for providing any necessary reasonable accommodation. Managers and supervisors shall contact the department's ADA Coordinator immediately upon receiving such a request.
6. Managers and supervisor shall participate in the process of identifying and implementing reasonable accommodation as determined appropriate by the ADA Coordinator.

C. Interactive Process

1. The ADA Coordinator shall be the principal contact between the employee requesting accommodation, the supervisor/manager, the medical professionals, and any other technical or professional resources consulted in the process of determining reasonable accommodation under the ADA.
2. Through an informal, interactive process the ADA Coordinator and the employee/applicant shall explore potential accommodations that would overcome the limitations. At this stage, the following should occur:
 - a. As appropriate, conduct a job analysis of the particular job involved and determine its physical and cognitive requirements.
 - b. Consult with the requesting employee/applicant regarding the precise job-related limitation imposed by the employee's disability and how those limitations could be overcome with a reasonable accommodation.
 - c. The effectiveness of each accommodation is assessed to determine if the employee can perform the essential functions of the position.
 - d. The ADA Coordinator, in consultation with the assigned Human Resources Analyst and the manager/supervisor, shall consider the reasonableness of the accommodation proposed by the employee/applicant, and to any other accommodations determined to be appropriate and reasonable.
 - e. If the accommodation(s) are deemed reasonable, consider the preference of the requesting employee/applicant and select and implement the accommodation that is most appropriate for both the employee/applicant and the employer.
3. If the disability or need for an accommodation is not obvious, documented or not already known to the supervisor/manager, ADA Coordinator, or the HR Analyst, it may be necessary for the employee to provide documentation about the disability and/or functional limitations. In this situation, the ADA Coordinator will request medical documentation, along with a signed Release of Information form directly from the requesting employee. If the information submitted does not clearly explain the disability, or the need for the accommodation, the department has the right to request supplemental medical information. The department also has the right to have the medical information reviewed by a medical expert. A description of the essential functions and working conditions of the job needs to be provided.

D. Implementation

1. The ADA Coordinator, in conjunction with the manager/supervisor, shall notify the applicant/employee requesting accommodation of the department's determination in writing and of the specific accommodations it proposes to make.
2. The individual may accept or reject the decision and/or the specific modification proposed. The individual may offer additional information or may propose alternative accommodation.
3. The ADA Coordinator will review the additional information following the steps outlined above and may consult with appropriate staff, managers and technical specialists to determine if the proposed alternative is reasonable.
4. The individual may disagree with the decision or reject the accommodations offered. However, if the employee cannot perform the essential functions as a result of the rejection, the employee may not be qualified for the position.

E. Technical Assistance

Questions regarding job analysis, worksite analysis, worksite modification or other possible accommodations shall be referred to the department's ADA Coordinator. The ADA Coordinator may contact the Vocational Rehabilitation Division, the Oregon Disabilities Commission, the Northwest ADA and Information Technology Center, or the Oregon Commission for the Blind. If a question arises as to the determination of reasonableness or about the extent of the department's obligation to provide accommodation in a particular case, the ADA Coordinator may contact the Office of Civil Rights of the U. S. Department of Labor for Technical Assistance.

F. Complaint Procedure

If dissatisfied with the department's reasonable accommodation decision, the requesting employee may submit a written complaint within 30 days from the date of the alleged violation. Exceptions may be granted in special circumstances.

All complaints shall be handled in accordance with the HR Policy 450_01, Promotion and Maintenance of a Respectful Workplace.

G. Confidentiality

1. Information obtained during the accommodation process concerning the medical condition or history of the applicant shall be held as confidential medical records. Access shall be provided only as necessary to the managers involved in the accommodation process; first aid/safety personnel if emergency treatment may be required; and government officials investigating compliance with the ADA, Rehabilitation Act, and Oregon's Civil Rights Laws.
2. Each employee shall decide whether to provide information for possible emergency treatment using the employee Emergency Information Record, PD100Y. This information shall be retained in a confidential file.

H. Supplemental materials related to this policy, including an ADA Resource List, are available on the ODFW website at: <http://www.dfw.state.or.us/hr/policies/>.

Attachment A Reasonable Accommodation Request Form



REASONABLE ACCOMMODATION REQUEST FORM

The Americans with Disabilities Act (ADA) protects qualified individuals with disabilities from employment discrimination. Reasonable accommodation is a key nondiscrimination requirement under the ADA. All requests are handled on a case-by-case basis.

Section 1. ACCOMODATION REQUEST

To be completed by the Employee. Please type or print clearly. Attach additional sheets if necessary. If you need help completing this form, contact your HR Analyst or the ADA Coordinator.

Name: Last	First	MI	Employee Identification Number (EIN):
			OR
Employee Classification Title:			Section/Work Unit:
Work Location (Number and Street Name):			Work Telephone Number:
City Code	State	Zip	Supervisor Name:

1. Identify and describe your impairment. *Please attach your medical documentation to this form.*

2. How does your impairment affect your ability to do your job?

3. What is your accommodation request? (What do you need to help you do your job?)

Under the ADA, when an employee makes a request for an accommodation, the employer is required to enter into an interactive process. A medical examination may be required to determine if an individual has a disability covered by the ADA and is entitled to an accommodation, and, if so, to help identify an effective accommodation based on the essential functions of your position. When an individual qualifies for reasonable accommodation, the employer is free to choose among effective accommodations, and may choose one that is less expensive or easier to provide

My signature indicates my permission for my medical practitioner(s) to release such information as applicable to and for the evaluation of my request for accommodation and for the department to contact my medical practitioner(s) to seek additional or clarifying information. The information provided by me is true and correct to the best of my knowledge.

Employee's Signature	Date
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Please return this form to the department ADA Coordinator, HR Analyst or your supervisor.

Section 2. REQUEST ACKNOWLEDGEMENT

Printed Name and Signature receiving request	Date and time request received
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THIS IS A CONFIDENTIAL MEDICAL RECORD. DO NOT PLACE IN THE EMPLOYEE'S PERSONNEL FILE.

Section 3. INTERACTIVE PROCESS

To be completed by the ADA Coordinator in cooperation with HR Analyst and the employee's supervisor.

Please attach the Job Description, the Essential Job Functions Form, and any other relevant document to this form. For assistance, refer to the HR Policy 450 16, or contact the ADA Coordinator or HR Analyst.

Checklist:

- Meeting with ADA Coordinator, HR and employee's supervisor to review essential functions and completion of essential job functions form, as needed
- Meeting with employee to discuss precise job-related limitation imposed by the employee's disability and how those limitations could be overcome with a reasonable accommodation.
- Request medical certification from medical practitioner(s), as necessary
- Identify accommodation options
- Determine which of the accommodation options are reasonable and do not create an undue hardship.

If the accommodation(s) are deemed reasonable, consider the preference of the requesting employee and select and implement the accommodation that is most appropriate for both the employee and the employer.

Accommodation recommended for implementation:

Section 4. AUTHORIZATION

To be completed by the department Appointing Authority or designee.

1. The request for accommodation is: () Approved () Denied () Other
2. If denied, state the justification for denial.

Printed Name and Signature	Date	Work Telephone Number
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Please forward the completed form and attachments to:

Human Resources Division
Attn: ADA Coordinator
3406 Cherry Avenue NE
Salem, Oregon 97303

THIS IS A CONFIDENTIAL MEDICAL RECORD. DO NOT PLACE IN THE EMPLOYEE'S PERSONNEL FILE.