



OREGON DEPARTMENT OF FISH AND WILDLIFE POLICY

Human Resources Division

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| Title: | Americans with Disabilities Act and Reasonable Accommodation in Employment | HR_450_16 |
| Supersedes: | x | HR_450_16, dated November 1, 2010 |
| 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: | January 7, 2020 | 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. 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.
- D. 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.

- E. 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.
- F. 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.
- G. 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
 - 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.
- H. 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 continues to abstain from illegal drug use may qualify.
- I. 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 without 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.

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:

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

J. 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 and financial resources and employee’s official worksite.,
- 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 in the facility.
- 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. The department will acknowledge in writing all written requests for accommodations within seven calendar days from the date of receipt.

- 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. 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.
- 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.
- H. Policy Notifications.
 - 1. The department will ensure information regarding ADA and department procedure for requesting an accommodation are readily accessible via the public website.
 - 2. The department 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. The agency shall post the signs in a conspicuous and accessible location in or about the premises where employees work.
 - a. In addition to posting signs, agencies shall provide a written copy of the notice to:
 - i. New employees at the time of hire.
 - ii. Existing employees, within 180 days after the effective date of this policy.
 - iii. Any employee who informs the agency of the employee's pregnancy, within 10 days after the employer receives the information.

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. The ADA Coordinator will acknowledge in writing all written requests for accommodations within seven calendar days from the date of receipt.
3. 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 will determine whether the accommodation is reasonable or would pose an undue hardship.
 - 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.
4. 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 within thirty (30) days from receipt of request. The timeline will not apply if requested documentation is not provided in a timely manner or if other extenuating circumstances arise.
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 rejects an effective accommodation and is unable to perform the essential functions of the job, 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.

The ADA Coordinator and/or Human Resource Analyst, under the direction of the Human Resources Administrator, shall promptly investigate any complaint received, and shall send a written response to the complainant within fifteen (15) days following receipt of the complaint. The complainant may be given the opportunity to meet with the ADA Coordinator and the Human Resource Analyst, whenever feasible in an effort to resolve the complaint. The written complaint and response shall be distributed to the complainant, to any relevant parties (Supervisor, HR, Final Decision Maker) to the alleged action(s), and the Agency officials. The results of this internal review are final.

If the complainant is dissatisfied with the decision, they may file a complaint with:

1. Affirmative Action Director
Governor's Office
155 Cottage Street NE
Salem, OR 97301
503-373-7444 (voice)
2. Oregon Bureau of Labor and Industries
800 NE Oregon St, Suite 1045
Portland, OR 97232
971-673-0761 (voice)

and/or:

3. Equal Employment Opportunity Commission
1801 L Street NW
Washington, D.C. 20507

202-663-4900 or 1-800-669-4000 (voice)
202-663-4399 or 1-800-669-6820 (TDD)

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