



U.S. Occupational Safety and Health Review Commission

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REASONABLE ACCOMMODATION POLICY AND PROCEDURES

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U.S. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Reasonable Accommodation Policy and Procedures

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U. S. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Reasonable Accommodation Policy and Procedures

I. PURPOSE

This directive implements Executive Order 13548, which requires each Federal agency to establish procedures to facilitate the provision of reasonable accommodation including establishing effective written procedures for processing requests for reasonable accommodation made by qualified job applicants and employees with disabilities. This directive further fulfills the U.S. Occupational Safety and Health Review Commission's (OSHRC or Review Commission) obligation to provide reasonable accommodation pursuant to the Rehabilitation Act of 1973, as amended, where applicable, and in accordance with the provisions of Title I of the Americans with Disabilities Act of 1990.

II. COVERAGE AND RESTRICTIONS

This directive applies to all applicants for employment with the Review Commission and Review Commission employees, but those who do not meet the statutory requirements of the Rehabilitation Act are not eligible for reasonable accommodation under this directive.

III. AUTHORITIES

- A. The Rehabilitation Act of 1973 (in particular, 29 USC § 791), as amended to date.
- B. The Rehabilitation Act Amendments of 1992, Pub. L. No. 102-569, 106 Stat. 4344.
- C. Americans with Disabilities Act Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.
- D. U.S. Equal Employment Opportunity Commission (EEOC) Final Regulations to Implement the Equal Employment Provisions of the Americans with Disability Act, as Amended (Mar. 25, 2011).
- E. Title I of the Americans with Disabilities Act of 1990, 42 USC §§ 12111-12117.
- F. Exec. Order No. 13,548, 75 Fed. Reg. 45,039 (July 26, 2010) ("Increasing Federal Employment of Individuals with Disabilities").
- G. Exec. Order No. 13,163, Fed. Reg. 46,563 (July 26, 2000) ("Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government").
- H. 29 CFR pt. 1614: Federal Sector Equal Employment Opportunity.
- I. 29 CFR pt. 1630: Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
- J. Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, as amended to date.
- K. EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915.003 (Oct. 20, 2000).
- L. Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 USC §§ 2000ff-1 through 2000ff-11.
- M. EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, No. 915.002 (Oct. 17, 2002).

- N. EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, EEOC-M-1A (Jan. 1992), as amended to date.
- O. Equal Employment Opportunity Management Directive 715 (Oct. 1, 2003).

IV. DEFINITIONS

Assistive Technology - An item, piece of equipment, or system that is commonly used to increase, maintain, or improve the functional capabilities of individuals with disabilities. Assistive technology includes ergonomic keyboards, screen-enlarging software, TTYs/TDDs (text telephones), split-screen reading software, etc. The term “assistive technology” is used interchangeably with “computer adaptive equipment.”

Day - Calendar day, unless otherwise specified.

Decision-Maker - The individual who is responsible for determining whether to grant or deny a request for reasonable accommodation. This person is typically the Disability Program Manager (DPM), but not always—for example, when a request relates to building accessibility or is made by a job applicant, other parties may have the final say in the decision. Supervisors are also authorized to respond to and approve requests for reasonable accommodation whenever possible. The DPM must be notified in every instance.

Direct Threat - A significant risk of substantial harm to the health or safety of the individual with a disability or others that cannot be eliminated or reduced by reasonable accommodation.

Disability - An impairment that substantially limits one or more of a person’s major life activities.

Disability Program Manager (DPM) - A Review Commission employee who assembles and organizes information relating to a request for reasonable accommodation, and assists and advises management on issues relating to disability accommodations. The DPM is also the final decision-maker who determines whether to grant a reasonable accommodation request. The DPM works in consultation with the Equal Employment Opportunity (EEO) Director and, when necessary, may consult with the Office of the General Counsel to obtain advice on pertinent legal questions.

Essential Function - A fundamental duty or task that is integral to the position or job to be performed. Determination of the essential job functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. A function can be essential if, among other things, the position exists specifically to perform that function, there are a limited number of other employees who could perform the job function, or the function is specialized and the individual is hired based on an ability to perform it.

Extenuating Circumstance - Unforeseen or unavoidable events that prevent the prompt processing of a request for, or delivery of, an accommodation. For example, a delay caused by a supplier’s inability to deliver a product in a timely manner because of manufacturing delays.

However, the unavailability of personnel to process a request for reasonable accommodation is not an extenuating circumstance.

Individual with a Disability - A person who (1) has a physical or mental impairment that substantially limits one or more of such person's major life activities; (2) has a record of such impairment; or (3) is regarded as having such impairment.

Interactive Process - The process by which the individual requesting a reasonable accommodation, supervisors, managers, and the DPM talk about the accommodation request and related issues, including forms of alternative accommodation and the time for providing an accommodation.

Major Life Activity - Basic activities that most people in the general population can perform with little or no difficulty. Major life activities generally include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, and reproductive functions.

Medical Review Officer (MRO) - Medical professional(s) acting on behalf of the Review Commission who review medical documentation, when necessary, and provide medical opinions as they relate to requests for reasonable accommodation. An MRO is procured on a case-by-case basis.

Non-Visible Disability - This term refers to disabilities that cannot be seen and are not obviously apparent. This term is preferred over "hidden" to avoid the connotations of purposeful concealment or shame that may be associated with the adjective "hidden." Non-visible disabilities include partial sensory impairments such as low vision or hearing loss; chronic health conditions like arthritis, asthma, or diabetes; mental health conditions; learning disabilities; and serious illnesses, such as cancer.

Physical or Mental Impairment - Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting (1) one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or (2) any mental or psychological disorder, such as severe intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

Reasonable Accommodation - An adjustment or alteration that enables a qualified individual with a disability an equal opportunity to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodation:

- Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job.
- Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job, such as providing assistive technology to allow a sight-impaired employee to use a computer.
- Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment, such as removing physical barriers in Review Commission office space or facilities.

Request for Reasonable Accommodation - An oral or written statement indicating that an individual needs an adjustment, change at work, or modification in the application process, for a reason related to a medical condition.

Requester - An applicant, employee (includes, for purposes of reasonable accommodation, all individuals who work at the Review Commission regardless of employment status), or representative acting on an employee's or applicant's behalf, who requests reasonable accommodation.

Substantially Limits - The inability of an individual to perform a major life activity that most people in the general population can perform; or being significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which most people in the general population can perform that same major life activity. Consistent with EEOC regulations found at 29 CFR, pt. 1630, the term "substantially limits" shall be construed broadly in favor of expansive coverage.

Undue Hardship - The significant difficulty or expense to the Review Commission that would result, or is likely to result, from a proposed reasonable accommodation. If a requested accommodation would cause undue hardship, the Review Commission is not required to provide that particular accommodation. Determination of undue hardship must always be made on a case-by-case basis, considering factors that include the nature and cost of the accommodation, the impact of the accommodation on the operation of the Review Commission, and other relevant considerations.

V. RESPONSIBILITIES

A. Executive Director

- 1) Ensure that an effective process for handling a request for reasonable accommodation is established.

- 2) Serve as the Review Commission's Selective Placement Program Coordinator (SPC) for individuals with disabilities. In this role, the SPC advises managers and supervisors about candidates available for placement in jobs under the Schedule A hiring authority, and provides managers with information on reasonable accommodations and needs assessments for applicants and employees.
- 3) Serve as the Disability Program Manager (DPM). The DPM will:
 - Manage employment matters affecting people with disabilities and serve as the technical advisor to the Review Commission workforce on all disability issues.
 - Engage in an interactive process with supervisors, managers, applicants, and employees on determinations of all reasonable accommodation requests.
 - Answer questions from the requester regarding the process, and the rules and regulations governing reasonable accommodation.
 - Provide guidance to managers and supervisors on statutory and regulatory requirements of reasonable accommodation and related issues.
 - Provide advice, guidance, and recommendations on determining effective accommodation, including determining whether additional information is needed from the requester, a disability requires reasonable accommodation, or a request for reasonable accommodation presents an undue hardship to the Review Commission.
 - Determine the need for medical documentation, review submitted medical documentation, determine whether to approve a request for reasonable accommodation, and inform the requester, the requester's supervisors, and the EEO Director of the approval or denial of an accommodation request.
 - Maintain confidentiality of all medical documentation submitted or obtained for the purpose of determining whether a reasonable accommodation should be granted.
 - Provide guidance to the human resources (HR) specialist (for applicant requests) and employees with disabilities and their supervisors to assist with identifying internal and external resources available to facilitate the selection of an effective accommodation.
 - Collect, prepare, and report Review Commission reasonable accommodation data (including barrier and trend analysis) to the EEO Director on an annual basis to identify and eliminate barriers as required by the EEOC Management Directive 715 (MD-715). MD-715 is the policy guidance that the EEOC provides to Federal agencies for their use in establishing and maintaining effective programs of equal employment opportunity under Section 717 of Title VII of the Civil

Rights Act of 1964, 42 USC § 2000e-16, and Section 501 of the Rehabilitation Act of 1973, 29 USC § 791.

- Work with the EEO Director to identify disability related training, such as training related to reasonable accommodation.

B. Equal Employment Opportunity Director

- 1) Establishes procedures to facilitate the provision of reasonable accommodation to qualified employees or applicants with disabilities.
- 2) Analyzes and evaluate the effectiveness of the process for responding to requests for accommodation.
- 3) Coordinates with the Chairman's office to ensure that sufficient resources are provided by the Review Commission to process requests for reasonable accommodation.
- 4) Coordinates with managers and supervisors to ensure they receive reasonable accommodation training in accordance with Executive Order 13164 and MD-715.
- 5) Refers all incoming reasonable accommodation requests and inquiries to the DPM within five (5) days of receipt.
- 6) Monitors the status of EEO complaints alleging unlawful discrimination on the basis of disability.
- 7) Assists the DPM in processing accommodation requests and ensures accurate tracking and reporting of accommodation provided to eligible employees.
- 8) Provides an annual report on all reasonable accommodation and disability program activities to the Chairman of the Review Commission and the Chair of the EEOC in accordance with MD-715 on or before December 31 of each calendar year.

C. Office of the General Counsel

Provide legal advice and guidance to the HR specialist, the EEO Director, the DPM, and Review Commission managers and supervisors regarding reasonable accommodation requests, policies, and procedures.

D. Managers and Supervisors

- 1) Actively participates in the reasonable accommodation process.
- 2) Engages in an interactive process with employees who request reasonable accommodation and the DPM to keep informed of steps in the process.

- 3) Identifies, in writing, the essential functions of the requester's job, if necessary.
- 4) Provides the Reasonable Accommodation Request Form to the requester.
- 5) Upon receipt of a request for reasonable accommodation, forwards the request to the DPM as soon as possible, but not later than five (5) days after receipt of the request.
- 6) Reviews and evaluates the request expeditiously and within the time and procedures established by this directive (30 days).
- 7) Upon receiving decisions from the DPM, responds to the requesting employee in writing within the 30-day period, unless extenuating circumstances require additional time (See Attachments B and C). Failure to respond promptly to the request may result in a violation of the Rehabilitation Act.
- 8) Ensures implementation of approved accommodation in the time specified by this directive or the time agreed upon by the DPM and the requesting employee.
- 9) Requests and ensures, when necessary, that appropriate training in the use of a reasonable accommodation is provided for Review Commission employees who are granted an accommodation.
- 10) Notifies the DPM upon the selection of an individual with an obvious or known disability to ensure that reasonable accommodation is in place, if necessary or required, before such new hire reports to work.

E. HR Specialist

- 1) Ensures vacancy announcements contain a statement that the Review Commission provides reasonable accommodation to applicants with disabilities.
- 2) Ensures that a point of contact is included on all vacancy announcements so that applicants have a direct resource to which they can make a request for reasonable accommodation.
- 3) Receives applicant requests for reasonable accommodation and forward to the DPM and/or appropriate decision-maker for processing.
- 4) Assists in identifying vacancies and anticipated vacancies when reassignment is being considered as a reasonable accommodation.

F. Review Commission Employees

- 1) Communicates any request for reasonable accommodation for a qualifying disability to a supervisor or manager in their chain of command, or to the DPM.

- 2) Where the disability or need for an accommodation is not obvious, provides recent medical and other relevant documentation specified by the agency in support of each request for reasonable accommodation to authorized agency officials in a timely manner.
- 3) Engages in an interactive process with agency officials concerning a request for reasonable accommodation.
- 4) Learns and maintains skills required for using any assistive technology provided as a reasonable accommodation.

G. Review Commission Applicants

- 1) Communicates any request for reasonable accommodation to an agency official involved in the application and hiring process, or contact the DPM.
- 2) Engages in an interactive process with agency officials concerning a request for reasonable accommodation.
- 3) Upon receipt of a job offer, provides recent medical and other relevant documentation specified by the Review Commission to support a request for reasonable accommodation to agency officials, including the DPM, in a timely manner.

VI. POLICIES AND PROCEDURES

It is the policy of the Review Commission to review each request for reasonable accommodation in a timely manner. It is also the policy of the Review Commission to implement a reasonable accommodation whenever the requesting applicant or employee meets all defined criteria and the requested accommodation does not significantly alter or affect Review Commission operations. Requests for which an applicant or employee does not qualify, or which would cause an undue hardship to Review Commission operations, will not be implemented.

A. Request

- 1) An employee may request a reasonable accommodation orally or in writing from the immediate supervisor, another supervisor or manager in the same chain of command, or the DPM. The Review Commission's reasonable accommodation process begins as soon as the request for accommodation is made (Attachment A). A qualified individual with a disability may request a reasonable accommodation at any time, even if the disability was not previously disclosed.
- 2) An applicant may request a reasonable accommodation from the DPM or any Review Commission official with whom the applicant has had contact in connection with the application process, such as the HR Specialist.
- 3) If authorized by the requester, a representative may request a reasonable

accommodation on behalf of an employee or applicant. It is preferred, but not required, that such request be submitted in writing.

- 4) For recurring requests of the same type (e.g., the assistance of sign language interpreters or readers), the written form is preferred only for the first request, although notice must be given each time the accommodation is needed.

B. Written Confirmation

Within five (5) days of a request for reasonable accommodation, the requester will receive written confirmation from an agency official that the request was received.

C. Interactive Process

- 1) Communication is a priority throughout the reasonable accommodation process. Review Commission officials involved in the reasonable accommodation process are to take a proactive approach in searching for and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation will participate in identifying an effective accommodation. The DPM and the employee's supervisor will utilize relevant resources to determine the appropriate effective accommodation (See Attachment E).
- 2) Ongoing communication is particularly important when (a) the specific limitation, situation, or barrier is unclear; (b) an effective accommodation is not obvious; or (c) the parties are considering different types of accommodation. When the DPM knows of the disability, the need for accommodation, and the type of accommodation, extensive discussions may not be necessary. Even so, the DPM will ensure that there is a full exchange of relevant information.

D. Request for Medical Information

- 1) The DPM may request medical information or documentation that verifies that an employee or applicant has a specific physical or mental impairment or condition, or to supplement medical information that has already been provided. In some cases the impairment or condition will be obvious and further medical information may not be necessary. However, when a medical or physical impairment or condition is not obvious or otherwise already known, the DPM may require that the individual provide relevant current documentation about the disability and any functional limitations to enable agency officials to respond to a request for reasonable accommodation. No agency official other than the DPM is authorized to request medical documentation from an employee or an employee's physician.
- 2) The DPM may require only the medical documentation that is needed to establish that a person has a disability that necessitates a reasonable accommodation. Thus, the DPM, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the

necessity for an accommodation.

In making a request for medical documentation, the DPM will be guided by principles set forth in the American with Disabilities Act Amendments Act (ADAAA) of 2008 and EEOC's Final Rules Implementing the ADAAA, published March 2011. Specifically, the ADAAA directs that the definition of disability be construed broadly, and that the determination of whether an individual has a disability generally should not require extensive analysis. The DPM may require medical information in order to determine that the requester meets the requirements for accommodation and design an appropriate and effective accommodation.

- 3) If the DPM believes that medical information is necessary in order to evaluate a request for reasonable accommodation, or that medical information already provided needs to be supplemented in order to evaluate the request and the individual requesting the accommodation fails to provide the information, the DPM shall notify the requester in writing that failure to provide the necessary medical documentation may result in a denial of the request.
- 4) The DPM may request a consultation with a medical review officer and/or, as necessary, OGC, to aid in the determination of whether medical documentation is necessary and, if so, the type and extent of the documentation required.
- 5) If medical documentation is necessary, it must address at a minimum:
 - The nature, severity, and duration of the individual's impairment;
 - The activity or activities that the impairment limits;
 - The extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
 - Why the individual requires reasonable accommodation or the particular reasonable accommodation requested and how the reasonable accommodation will assist the individual in applying for a job, performing the essential functions of the job, or enjoying a workplace benefit.

The individual will be asked to obtain such information from an appropriate healthcare professional such as a physician, physical therapist, or other individual with recognized expertise regarding the individual's condition. The individual is expected to describe the nature of the job and its essential function(s) to the healthcare professional, and provide any other information that will assist the healthcare professional in preparing the medical information needed.

- 6) Once the requested medical information is received, the DPM will evaluate the documentation and may consult with any other agency official, such as the HR Specialist or OGC. If the requested information is insufficient to enable the DPM to determine whether an accommodation is appropriate, the DPM may seek further information from

the requester. The DPM must explain why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

- 7) The DPM may ask the requesting individual to sign a limited release for the Review Commission to obtain additional information directly from the healthcare professional. This medical information may be needed to answer questions about the nature of the disability or the effectiveness of the accommodation under consideration (See Attachment D).
- 8) If the DPM determines that the medical information submitted must be reviewed by other medical experts, the Review Commission will make arrangements and inform the employee of such medical reviews. Additional medical reviews will be performed at the Review Commission's expense.
- 9) Failure by the individual to provide appropriate medical documentation or to cooperate with the Review Commission's efforts to obtain such documentation may result in a denial of the request for reasonable accommodation. Notification to this effect will be presented to the requester in writing. The notification shall identify the allotted additional time the requester will have (usually no more than 15 days), to present the necessary documentation to substantiate the request.
- 10) In cases where a disability is already known to the decision maker, the Review Commission will ensure there is appropriate record/documentation to substantiate the disability in the event that there is a new supervisor/decision maker.

E. Time for Processing a Request and Providing Reasonable Accommodation

The length of time to process a request for reasonable accommodation may vary depending upon the nature of the accommodation requested and whether it is necessary to obtain supporting medical information. Generally, a request shall be processed as follows:

1) Request Not Involving Extenuating Circumstances

Approval or denial of a reasonable accommodation request should generally take no longer than 30 days. However, if the request requires additional supporting medical or other information, the process may take longer. When medical documentation is required, the following will apply:

- a) The DPM will request medical documentation from the employee as soon as possible and before the expiration of the 30-day period.
- b) If the requested documentation is insufficient, see Section D8 above. If the DPM determines that the medical or other documentation is sufficient, the decision to grant or deny the request will be conveyed to the supervisor. The decision will describe the reasons for granting or denying the request and will include a

description of any accommodation provided. In some cases, an effective alternative accommodation may be recommended.

- c) Upon receipt of a recommendation to grant the accommodation, the DPM will inform the decision-maker (the supervisor or responsible management official) about the specific steps necessary to fulfill the request immediately.

2) Request Involving Extenuating Circumstances

- a) When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation may be extended. All Review Commission officials are expected to act expeditiously to process requests and provide reasonable accommodation.
- b) When extenuating circumstances are present, the DPM, in consultation with the supervisor, will notify the requester in writing of the reason for the delay, and the approximate date on which a decision regarding the request for reasonable accommodation will be provided or when provision of the agreed-upon accommodation may be expected. The DPM will inform the requester about any further developments or changes. Every attempt will be made to provide interim accommodation until the matter is resolved.
- c) If temporary measures are taken, the DPM and appropriate manager or supervisor are responsible for ensuring that they do not take the place of an approved accommodation and that the approved accommodation is provided as quickly as possible.

F. Expedited Process

- 1) In certain circumstances, a request for reasonable accommodation may require an expedited review in less than 30 days. This includes, for example, situations in which a reasonable accommodation is needed:
 - a) To provide an applicant with a disability an equal opportunity to apply for a job, or
 - b) To enable an employee to participate in a specific agency activity.
- 2) Where the expedited process is necessary, the supervisor is authorized to provide the accommodation, but he or she must notify the DPM of the action taken or proposed.

G. Granting or Denying a Reasonable Accommodation Request

- 1) If a request for reasonable accommodation is granted by a Review Commission official other than the DPM, the DPM must be informed in writing of the date the accommodation will be provided and, if there will be a delay in providing the

accommodation, the projected time for providing the accommodation and the reason for the delay. If a temporary accommodation can be arranged, the employee and DPM will be informed in writing by the approving agency official.

- 2) Employees and applicants may decline an accommodation offered by the Review Commission. If this occurs, the DPM should document that the offer was declined and notify the agency officials involved.
- 3) Before denying a request for accommodation, the DPM must first consult with the EEO Director and OGC, then notify the requester and management officials in writing, specifying why the request was denied (Attachment C). Factors supporting the denial of a request for accommodation include, but are not limited to:
 - a) A determination that the requested accommodation would result in undue hardship. This requires the Review Commission to find that a specific accommodation would result in significant difficulty or expense, and would have a significant negative impact on the Review Commission's operations or procedures. When evaluating reasonable accommodation requests to determine if undue hardship exists, the DPM should refer to the EEOC's "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act," EEOC Notice No. 915.002 (Oct. 17, 2002);
 - b) Medical documentation that is too vague or inadequate to establish that the individual is a qualified individual with a disability and/or needs a reasonable accommodation;
 - c) The requested accommodation would require the removal of an essential job function;
 - d) The requested accommodation would require lowering a performance standard;
 - e) The requested accommodation would not be effective, is not the most appropriate accommodation under the circumstances, and/or there is no alternative reasonable accommodation; and
 - f) The individual refuses to accept an effective alternative accommodation.
- 4) When the DPM or other agency official denies a specific requested accommodation but offers to provide an effective alternative accommodation, the written decision must explain both the reason for the denial of the requested accommodation and the reason the management official selected the chosen accommodation as an effective alternative.
- 5) In determining whether an individual with a disability poses a direct threat, the factors to be considered include:

- a) The duration of the risk;
- b) The nature and severity of the potential harm;
- c) The likelihood that the potential harm will occur; and
- d) The imminence of the potential harm.

A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, the DPM and supervisor must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm).

- 6) If a request for reasonable accommodation is denied, the Review Commission encourages the use of an informal dispute resolution process to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation.
- 7) When denying an accommodation request, the written denial notice must inform the individual that any EEO complaint must be filed with the Review Commission within 45 days. This notice must also contain the Review Commission's procedures for seeking reconsideration of a denial decision (See Attachment C).

H. Reconsideration of a Denial

- 1) Upon written denial of an accommodation, the individual may submit a written request for reconsideration to the Chairman's office within five (5) business days. The individual may present additional information or documentation in support of the request. The Chairman's office—after consultation with the DPM, EEO Director, manager, supervisor, or other agency official—must respond to the request for reconsideration within fifteen (15) days of receipt of the reconsideration request.
- 2) Pursuing reconsideration does not affect the time limits for initiating an EEO complaint in accordance with 29 CFR § 1614.105. An EEO complaint must be filed with the Review Commission's EEO Director within forty-five (45) days from the date of receipt of the written notice of the initial denial. Failure to file a timely EEO complaint may result in a loss of rights to participate in the EEO complaint process.

I. Re-Evaluation of Granted Accommodation

- 1) The re-evaluation process is intended to allow the agency to ensure that an accommodation, previously granted, is effective, still appropriate, and not causing an

undue burden to the agency.

- 2) A supervisor, manager, or other agency official within the employee's immediate supervisory chain may request a re-evaluation of an existing accommodation if it is believed that the reasonable accommodation is no longer required and the employee refuses to, or has not come forward with, information justifying the continuation of the accommodation. The request for a re-evaluation must be submitted in writing to the DPM. Re-evaluation of an existing accommodation will not be initiated as a form of disciplinary action, retaliation, or reprisal. Such actions are a violation of the Rehabilitation Act.
- 3) The DPM may initiate a re-evaluation of an existing accommodation upon a change of medical condition, work conditions, or if requested by an agency official.
- 4) The DPM is responsible for conducting all re-evaluations and determining whether they are warranted. If the DPM determines that a re-evaluation is warranted, then the DPM will notify the employee and the supervisor in writing within 10 days of the request.
- 5) In determining whether a change is necessary, the DPM will follow the policy and procedures (including deadlines) set forth within this directive for requesting reasonable accommodation. The re-evaluation will be conducted in consultation with the employee's supervisor and the employee.
- 6) The DPM will then notify the employee and the supervisor of the outcome of the re-evaluation, next steps, and any appeal rights.

J. Reassignment as an Accommodation

Reassignment will be considered as a reasonable accommodation only if a determination is made that no other reasonable accommodation is available to enable the individual to perform the current job's essential functions, or if the only other effective accommodation would cause the agency undue hardship.

In considering whether there are positions available for reassignment, the DPM is to work with the individual requesting the accommodation and the HR Specialist to identify:

- 1) Existing vacant positions within the Review Commission for which the employee may be qualified, with or without reasonable accommodation; and
- 2) Positions within the Review Commission for which the employee qualifies that will become vacant within 60 days of the request, or shortly after that period if extenuating circumstances prevent meeting the 60-day requirement.

Note: The first focus will be to identify positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is not an equivalent vacant position, the DPM will consider vacant lower-level positions for

which the individual is qualified. Reassignment cannot be made to a position with greater promotion potential than the original position held by the employee.

Reassignment may be made to a vacant position outside the employee's commuting area if the employee is willing to relocate. The Review Commission is not obligated to pay for the employee's relocation expenses.

K. Confidentiality and Disclosure

- 1) All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation, must be kept confidential. The information shall be kept in a file separate from the individual's official personnel folder. No one shall have access to this folder other than the DPM, the EEO Director, and the HR Specialist. Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except as follows:
 - a) Supervisors and managers who need to know may be told about the necessary restrictions on the work or duties of the employee and about the necessary accommodation;
 - b) First responders, such as fire department personnel, EMTs, police, etc. may be told of the disability if related to a need for emergency treatment;
 - c) Government officials may be given information necessary to investigate the Review Commission's compliance with the Rehabilitation Act;
 - d) The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers;
 - e) Agency EEO officials may be given the information to maintain records and evaluate and report on the Review Commission's performance in processing reasonable accommodation requests; and
 - f) To respond to challenges involving the processing of, and decisions made related to, requests for reasonable accommodation pursuant to this directive and/or the Review Commission's compliance with the Rehabilitation Act.
- 2) Whenever medical information is disclosed, the individual disclosing the information must inform the recipients about the confidentiality responsibility attached to the disclosed information.

L. Information Tracking and Reporting

- 1) The DPM will maintain records related to reasonable accommodation requests for the duration of the employee's tenure with the Review Commission, or 5 years, whichever is longer.
- 2) When an individual files an EEO complaint alleging denial of reasonable accommodation, all records shall be maintained in compliance with federal records management policy.
- 3) The DPM will provide an annual report to the EEO Director on or about November 1 of each fiscal year for the previous fiscal year.
- 4) The EEO Director will provide an annual report to the Chairman for review and approval in accordance with MD-715 on or before December 31 of each fiscal year. The report shall be maintained for at least 3 years and contain the following information:
 - a) The number, type, and cost of accommodations that have been requested in the application process and whether those requests have been granted or denied,
 - b) The number, type, and cost of accommodations that relate to the benefits or privileges of employment and whether those requests have been granted or denied,
 - c) Each job (occupational series, pay grade and organizational element) for which reasonable accommodation was requested,
 - d) The types of reasonable accommodation that have been requested for each of the jobs cited above,
 - e) The number and types of reasonable accommodation requests by employees, the number and types of accommodation that have been approved, and the number and types of accommodation that have been denied,
 - f) The reasons for denial of requests for reasonable accommodation,
 - g) The amount of time taken to process each request for reasonable accommodation,
 - h) The sources of technical assistance that have been consulted in working to identify possible reasonable accommodation, and
 - i) A qualitative assessment of the Review Commission's reasonable accommodation program, including any recommendations for improvement of policies and procedures.

VII. Approval

This Directive sets forth the policies and procedures for the establishment of the Occupational Safety and Health Review Commission's Reasonable Accommodation Plan. It supersedes OSHRC OFAS 1723-2 dated June 20, 2002. It is effective immediately, and will be placed in the Master File of Review Commission Directives.

OFFICIAL SEAL:



_____/s/_____
Cynthia L. Attwood
Chairman



U.S. Occupational Safety and Health Review Commission
1120 20th Street, NW Washington, DC 20036

REASONABLE ACCOMMODATION REQUEST FORM

Date: _____

Full Name:

Last

First

Middle Initial

Mailing Address:

Street

City

State

Zip Code

Email Address: _____ Fax: _____

Phone: _____

OSHRC Office (if applicable): _____

Supervisor: _____

Disability Claimed:

How Disability Affects Your Major Life Activity/ies:

*Accommodation Requested (describe the specific accommodation or modification that you are requesting):

*NOTE: If your need for an accommodation is non-visible, you must provide documentation from an appropriate medical professional, such as a doctor, rehabilitation counselor, or vocational counselor, concerning your disability and functional limitations as they pertain to the requirements of your current position or the one for which you are applying. We have included a medical consent form for you to sign if we need to contact your doctor for additional information.

Your request will be processed and evaluated by qualified personnel, who will work with you, to determine the most appropriate reasonable accommodation for your claimed disability. However, this assistance does not necessarily signify a determination by the agency that you are a qualified individual with a disability under the Rehabilitation Act. You will be contacted at the email address, FAX, or telephone number you provided. Any documentation you submit will become part of your record of request for an accommodation, or part of your application package if you are an applicant for employment with our agency. Your identity and information pertinent to your request for accommodation may be revealed to federal officials with a need to know.

Your failure to provide this information may result in the inability of the Review Commission to grant your request. Fax the completed form and documentation to the Disability Program Manager, at fax number (202) 418-3017. Requests may also be mailed (or hand-delivered) to the attention of the Disability Program Manager at the U.S. Occupational Safety and Health Review Commission, 1120 20th Street, NW, 9th Floor, Washington, DC 20036.



U.S. Occupational Safety and Health Review Commission
1120 20th Street, NW Washington, DC 20036

REASONABLE ACCOMMODATION REQUEST APPROVAL

[Date:]

[Recipient Name]

[Title]

[Company Name]

[Street Address]

[City, State, Zip Code]

Dear [Recipient Name]:

After consideration of your request for a reasonable accommodation, I have determined that your request meets the criteria for a reasonable accommodation and is approved. This decision is based on my discussions with you, a review of your medical documentation (if provided), and consultation with your supervisor.

As your request has been approved, your supervisor and I will immediately arrange the specific accommodation you requested. If there are any delays in providing you this accommodation, you will be notified.

This approval letter completes the reasonable accommodation process and will become the final documentation within the file. If you have any questions about the reasonable accommodation process or this letter, please contact me (202) 606-5397 or via email at dhall@oshrc.gov.

Sincerely,

Disability Program Manager



U.S. Occupational Safety and Health Review Commission
1120 20th Street, NW Washington, DC 20036

REASONABLE ACCOMMODATION REQUEST DENIAL

[Date:]

[Recipient Name]

[Title]

[Company Name]

[Street Address]

[City, State, Zip Code]

Dear [Recipient Name]:

On [insert date here] I received a request for reasonable accommodation from you. In your request you specifically asked for _____. Since receiving your request, I have consulted with you and your supervisor, and have also reviewed the medical documentation. After careful consideration, I have determined that your request does not meet the criteria for a reasonable accommodation and is denied for the reasons identified below.

_____ **Medical documentation is inadequate** to establish that the individual is a qualified individual with a disability and/or needs a reasonable accommodation. Explain:

_____ **Failure to provide further medical documentation as requested** to establish that the individual is a qualified individual with a disability and/or needs a reasonable accommodation. Explain:

_____ **Another accommodation has been offered and accepted**, which the supervisor and DPM believe to be effective. Explain:

_____ **Removal of an essential function/lowering performance standards** from the position was not considered since it would render the employee ineligible for the position. However, reassignment to a qualified position has been offered and accepted and will be effective by or on [insert date here].

_____ **Requester provided an inadequate explanation to justify the need for a reasonable accommodation.** Explain:

_____ **To grant such an accommodation would pose an undue hardship for the Review Commission.** Explain:

If you wish to request reconsideration of this decision, you may take the following actions:

- Submit a written request for reconsideration to the Chairman's office within five (5) business days following receipt of this letter.

You may also choose one of the following options:

- Pursue an EEO complaint under 29 CFR 1614 and contact the Review Commission's EEO Director within 45 days from the date of this notice or denial. As part of this process, the requester will have the option to resolve the matter through Alternative Dispute Resolution.
- Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 CFR § 1201.3.

This denial letter completes the processing of your request for reasonable accommodation and a copy will be placed in the file. If you have any questions about this decision or your options, feel free to contact me at (202) 606-5397 or dhall@oshrc.gov.

Sincerely,

Disability Program Manager



U.S. Occupational Safety and Health Review Commission
1120 20th Street, NW Washington, DC 20036

MEDICAL CONSENT FORM

Please check the appropriate block and sign below. Return the original signed copy to this office and keep a copy for your records.

I authorize the U.S. Occupational Safety and Health Review Commission (OSHRC) Disability Program Manager to request and receive materials and information about me pertinent to my request for accommodation based on an asserted disability. I authorize OSHRC officials to contact the medical professionals I have listed in my request and supporting materials to gather further information about my medical condition as it may pertain to my request. I understand that it may be necessary to reveal to others my identity and medical information regarding my request to OSHRC officials.

I understand that any information gathered to process my request will be considered by OSHRC when making the decision to grant or deny my request and will become a part of my record of request for accommodation or, if a job applicant, it will be part of my application for employment.

Please check one of the following blocks and sign below:

_____ **Consent.** I have read and understand the above notice and authorize OSHRC to request and receive medical information about me pertinent to my request for accommodation.

_____ **Consent Denied.** I have read and understand the above notice. I do not want OSHRC to request and receive medical information about me. I understand that OSHRC's lack of access to this information is likely to impede the review of my request and could result in denial of my request.

Signature: _____
Name: _____

Date: _____
Telephone: _____

Address:

Selected Reasonable Accommodation Resources

[ADA National Network](#)

[Computer/Electronic Accommodations Program \(CAP\)](#)

[Disability.gov](#)

[EEOC, The ADA: Your Responsibilities as an Employer](#)

[Jobs Accommodation Network](#)

[USDA TARGET Center](#)

[USDOL, Office of Disability Employment Policy \(ODEP\)](#)