

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT CITY POLICY FOR INDIVIDUALS WITH DISABILITIES: EMPLOYMENT	Number 96.21	Issue 4	Page 1 of 12
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1. PURPOSE

- 1.1. To comply with the Americans with Disabilities Act (“ADA”), as amended by the ADA Amendments Act of 2008 (“ADAAA”), 42 U.S.C. §§ 12101 et seq., the California Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code §§ 12900 et seq., and any other applicable local, state and federal laws and regulations prohibiting employment discrimination against individuals with disabilities.

2. SCOPE

- 2.1. This Regulation shall apply to all City departments, boards, commissions, committees, task forces, and other duly constituted bodies and offices operated by the City of San Diego.

3. DEFINITIONS

- 3.1. Qualified Individual with a Disability (Employment) - A person who possesses the required skill, experience, education, certifications and other requirements of an employment position that he or she holds or seeks, and who can perform the *Essential Functions* of the position with or without *Reasonable Accommodation*.
- 3.2. Disability - The definition of a *Disability* shall be construed consistent with state and federal law and includes, but is not limited to, the following:
- 3.2.1. Mental Disabilities - A *Mental Disability* includes, any mental or psychological disorder or condition that limits a major life activity.
- a. A *Mental Disability* may include, but is not limited to: emotional or mental illness, intellectual or cognitive *Disability*, organic brain syndrome, specific learning disabilities, autism spectrum disorders, schizophrenia, and chronic or episodic conditions such as clinical depression, bipolar disorder, post-traumatic stress disorder, and obsessive compulsive disorder.
- 3.2.2. Physical Disabilities - A *Physical Disability* may include any anatomical loss, cosmetic disfigurement, physiological disease, disorder or condition that affects a bodily system and limits a major life activity, and includes deafness, blindness, partially or completely missing limbs, mobility impairments, cerebral palsy, and

(Supersedes Administrative Regulation 96.20, Issue 3, effective November 25, 2013)

Authorized

(Signature on File)

CHIEF OPERATING OFFICER

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chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis and heart disease.

3.2.3. Medical Conditions - A medical condition includes any health impairment related to, or associated with, a diagnosis of cancer or a record or history of cancer. *Medical Conditions* also include genetic characteristics.

3.2.4. The definition of a *Disability* includes having a record or history of, or being regarded as having, or having had a *Disability*, as defined by the ADA and FEHA. Impairments that require special education or related services may also be *Disabilities*. Whether an individual is limited in a major life activity shall be determined without regard to any mitigating measures (such as medications, assistive devices, prosthetics, or *Reasonable Accommodations*), unless the mitigating measure itself limits a major life activity.

3.3. Reasonable Accommodation - Modifications or adjustments that are (1) effective in enabling an applicant with a *Disability* to have an equal opportunity to be considered for a desired job, or (2) effective in enabling an employee to perform the *Essential Functions* of the job the employee holds or desires.

3.3.1. A *Reasonable Accommodation* may include, but is not limited to: temporary light duty; making facilities used by employees readily accessible to, and usable by, individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; adjustment or modification of examinations, training materials or policies; the provision of qualified readers or interpreters; providing leave; additional training; modifying supervisory methods; telecommuting; and other similar accommodations for individuals with disabilities.

3.3.2. The City will engage in a timely, good faith *Interactive Process* with the applicant or employee to determine effective *Reasonable Accommodations*, if any, in response to a request for *Reasonable Accommodation* by an applicant or employee with a known or defined *Disability*.

3.3.3. For an accommodation related to access to City facilities, programs, services and activities, refer to Administrative Regulation 96.20.

3.4. Essential Functions - The fundamental job duties of the position the individual with a *Disability* holds or desires.

3.4.1. Factors to consider in determining *Essential Functions* may include but are not limited to:

a. Whether the position exists to perform that function;

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- b. The degree of expertise or skill required to perform the function;
- c. The amount of time spent performing a function; and,
- d. The consequences of not requiring an employee to perform the function.

3.5. Undue Hardship - An individualized assessment of current circumstances that show that a specific *Reasonable Accommodation* would cause significant difficulty or expense for the City.

- 3.5.1. Factors to consider in determining an *Undue Hardship* include but are not limited to:
- a. The nature and cost of the accommodation needed;
 - b. The overall financial resources of the department making the *Reasonable Accommodation*; the number of persons employed in this department or division; the effect on expenses and resources of the department or division;
 - c. The type of operation of the department, including the structure and functions of the workforce; and
 - d. The impact of the accommodation on the operation of the department or division.

3.6. Direct Threat - A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated by a *Reasonable Accommodation*.

3.7. Extenuating Circumstances - Delaying factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation.

3.8. Interactive Process - A timely, good faith communication with the applicant or employee to explore whether or not he or she needs *Reasonable Accommodation* to perform the *Essential Functions* of the job and, if so, how the individual can be reasonably accommodated.

4. POLICY

4.1. It is the policy of the City of San Diego to prohibit *Disability* discrimination in all employment practices, including job application procedures, hiring, advancement, discharge, compensation, job training and other terms, conditions and privileges of employment.

4.2. It is the City's policy to provide *Reasonable Accommodation* for the known *Disability* of an applicant or employee unless it would impose an *Undue Hardship* to the City or result in a *Direct Threat* to the applicant, employee, or others.

4.3. It is the City's policy to continue to informally accommodate, at Appointing Authorities' discretion and within existing policies, the needs of City employees for a variety of

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reasons, including some physical or mental limitations that may not otherwise qualify for protection under the ADA and similar laws.

- 4.3.1. An informal accommodation can be as a result of an industrial or non-industrial injury or illness, and may not be related to a Long Term *Disability* or Workers' Compensation claim.
- 4.3.2. It is the Appointing Authorities' responsibility to ensure that informal accommodations are periodically monitored and assessed.
- 4.3.3. The fact that an employee is informally accommodated does not necessarily establish a continuing right to that accommodation nor does it imply that the City regards that employee as being disabled as defined by the ADA or FEHA.
- 4.4. The City of San Diego is committed to ensuring that applicants with *Disabilities* have equal access to employment opportunities, and are provided necessary *Reasonable Accommodations* upon request, such as employment information and testing in alternative formats, qualified readers and interpreters, and assistance with completing applications.
- 4.5. Filing a *Reasonable Accommodation* Request
 - 4.5.1. Any *Qualified Individual with a Disability* may request a *Reasonable Accommodation*, verbally or in writing. Requests for *Reasonable Accommodation* should be made to an employee's immediate supervisor or department management, or through the Personnel Department for applicants.
 - a. Upon request for a *Reasonable Accommodation*, the applicable department shall provide the employee a *Reasonable Accommodation* Request Form (Attachments A and B), or the employee may access the form on the City's intranet.
 - b. It is the responsibility of the employee to complete and submit the form to his or her immediate supervisor or department management.
 - c. It is the responsibility of the applicant to complete and submit a Request for Special Testing Accommodation to the Personnel Department.
 - 4.5.2. The City shall protect and maintain the privacy and confidentiality of medical information provided by, or on behalf of employees and applicants with disabilities, unless otherwise required by law.
 - 4.5.3. Upon receipt of a completed *Reasonable Accommodation* Request Form, the employee's immediate supervisor or department management shall review the request. The parties shall, in good faith, promptly engage in the *Interactive Process*, to determine the appropriateness of the request and select and implement a *Reasonable Accommodation*.

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- a. Include the *Reasonable Accommodations* Manager in all employee related *Interactive Processes*.
- b. The determination as to whether or not an accommodation can be provided is made on a case-by-case basis. The *Reasonable Accommodation* Manager must sign-off on all employee related denials of a requested accommodation.
- c. During the *Interactive Process*, the department and employee requesting an accommodation will analyze the *Essential Functions* of the position in question, determine how the *Disability* limits the performance of the *Essential Functions* of the position, identify accommodation options that overcome or eliminate those limitations, determine the effectiveness and feasibility of the proposed accommodations, and select a suitable accommodation with consideration for the employee's preference.
- d. Although primary consideration should be given to the preferences of the employee in determining an appropriate accommodation, the City has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.
- e. Materials, devices, and other goods or services being purchased in order to provide some form of accommodation shall follow the City's purchasing and contracting process.

4.6. Medical Documentation

- 4.6.1. When the *Disability* and/or the need for accommodation are not obvious, the department shall ask the employee or applicant for reasonable medical documentation. Additionally, the department may request medical documentation from an employee with an obvious *Disability* if the employee's restrictions related to that *Disability* are not obvious. If medical verification is required, the employee or applicant shall be provided a *Reasonable Accommodation* Medical Documentation Form (Attachment B) or Request for Special Testing Accommodations for Persons with Disabilities, respectively.
- 4.6.2. The employee requesting accommodation must complete and sign the Authorization for Release of Medical Information section (Attachment B, Part 1). The Job Description section (Attachment B, Part 2) is to be completed by the employee and supervisor. The employee shall have the Medical Review section (Attachment B, Part 3) completed by his or her health care provider.
- 4.6.3. When necessary and appropriate, the City may request a medical review by the City's examining physician (on City time and at City expense). Departments must consult with the *Reasonable Accommodations* Manager prior to making this request.

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- 4.7. Once the *Reasonable Accommodation* Request Form is received by the Department the process should be completed as soon as possible, but not to exceed 30 business days, unless the employee and the Department agree to an extension of time, or there are *Extenuating Circumstances*. Examples of *Extenuating Circumstances* may include, but are not limited to:
- 4.7.1. There is an outstanding initial or follow-up request for medical information, or a delay in obtaining or receiving appropriate medical information;
 - 4.7.2. The purchase and delivery of assistive devices or accommodative equipment may cause the process to exceed 30 business days;
 - 4.7.3. The assistive device or other accommodative equipment is out of stock, or the vendor cannot otherwise promptly supply the needed goods or services and another vendor is not immediately available; and
 - 4.7.4. The employee may need to work with the equipment on a trial basis to ensure that it is effective before the City purchases the equipment.
 - 4.7.5. The employee is absent from the workplace on protected leave and unable to participate in the *Interactive Process*.
- 4.8. The Appointing Authority responsible for processing *Reasonable Accommodation* requests shall authorize the accommodation and give final approval for the accommodation. However, if the request for accommodation is denied or if any of the following apply, the request shall be forwarded to the *Reasonable Accommodations* Manager for review and approval:
- 4.8.1. The cost exceeds \$500.00;
 - 4.8.2. The accommodation places an *Undue Hardship* on the City;
 - 4.8.3. The accommodation directly affects other workers negatively;
 - 4.8.4. There is a *Direct Threat* issue;
 - 4.8.5. There is a conflict with the applicable MOU, Civil Service Rules or Personnel Regulations;
 - 4.8.6. A modification to the duties could change the classification of the requestor's position;
 - 4.8.7. The accommodation involves moving the employee to another position;

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4.8.8. Questions remain regarding the medical necessity of the accommodation; and,

4.8.9. The employee does not authorize the supervisor or department manager to receive applicable medical documentation.

4.9. Upon final approval, the Department/Division Head or designee shall notify the employee or applicant of the final determination and shall make the necessary implementation arrangements for any accommodations to be provided.

4.10. If the employee cannot be accommodated in his or her current position, and the denial is approved by the *Reasonable Accommodations Manager*, *Interactive Process* should continue consistent with the following steps:

4.10.1. The *Reasonable Accommodations Manager* will notify the Personnel Department that the employee should be placed on the *Reasonable Accommodations Transfer List* for 90 calendar days.

4.10.2. Determining Eligibility – The Personnel Department will schedule a meeting with the employee to determine which classifications the employee is eligible; eligibility is based on a review of the employee’s knowledge, skills, abilities and experience respective of the minimum qualifications of any classification of interest that meets the Personnel Department’s transfer requirements [Personnel Manual Index E-7 (III)(B)(1) and (2)]. Following their meeting with the employee, the Personnel Department will issue a *Reasonable Accommodation Transfer List* to the employee and *Reasonable Accommodations Manager* for the purpose of initiating a citywide search for qualifying classifications.

4.10.3. *Reasonable Accommodation Transfer* – The *Reasonable Accommodations Manager* will look citywide in an effort to find a vacancy that can accommodate the employee with or without a *Reasonable Accommodation*. Only vacant positions within classifications for which the employee is eligible will be considered for *Reasonable Accommodation Transfer* (i.e., reassignment into the vacancy). At the commencement of the search, the employee’s current department shall search for transfer opportunities within the department, while the *Reasonable Accommodation Manager* explores transfer opportunities in other departments. If all efforts to reassign the employee within their original department fail, then the department will notify the *Reasonable Accommodations Manager*.

4.10.4. Reassignment – Any reassignment must meet the provisions for transfer procedures specific to a *Reasonable Accommodation Transfer*, including, the:

- a. classification satisfies requirements for transfer under Personnel Manual E-7 as stated above;
- b. employee meets the minimum qualifications for the classification based on

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- their review with Personnel;
- c. vacancies exist within the applicable classification(s); and
- d. employee can perform the *Essential Functions* of the new position with or without accommodation.

Assuming the provisions of the transfer procedures are met, the *Reasonable Accommodation* Manager has final authority to reassign an employee to a vacancy.

- 4.10.5. It is not a *Reasonable Accommodation* for an employee to remain on the *Reasonable Accommodation* Transfer List indefinitely. Employees may remain on the *Reasonable Accommodation* Transfer List for 90 calendar days plus any amount of additional time necessary to exhaust all avenues of potential reassignment within the City.
- a. After the 90 day transfer period expires and it is determined that there are no positions available that the employee can perform the *Essential Functions* of with or without *Reasonable Accommodation*, the employee can consider other options such as *Disability Retirement* (if qualified), resignation, or request a Special Leave Without Pay from the Civil Service Commission. If the employee does not exercise any of these options, the employee may be separated from the City.
- 4.11. A copy of all completed *Reasonable Accommodation* Materials (Attachment A – *Reasonable Accommodation* Request Form, and Attachment B – *Reasonable Accommodation* Medical Documentation Form if applicable, or Request for Special Testing Accommodations for Persons with Disabilities) shall be sent to the Human Resources Department’s *Reasonable Accommodations* Manager, and to the Personnel Department’s Medical Program Administrator.
- 4.12. All documents relating to an employee’s request for *Reasonable Accommodation*, including medical information, *Reasonable Accommodation* Request Forms and Medical Review Forms, shall be maintained by the Department/Division Head in a confidential, secure medical file that is separate from the requestor’s personnel file. Applicant’s requests for Special Testing Accommodations are maintained in a secure file by the Personnel Department.
- 4.13. If there is a delay in providing an accommodation which has been approved, temporary measures which may assist the employee must be investigated. The temporary measures may include providing an alternate accommodation on a temporary basis.
- 4.14. If the employee’s limitations change or if the employee changes positions within the City, another *Reasonable Accommodations* process may take place. Accommodations can be reevaluated as positions, roles, duties and/or restrictions change.

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- 4.15. The Human Resources Department, *Reasonable Accommodations* Manager, the City Attorney's Office and the Personnel Department are available as resources to departments in the application and implementation of this Administrative Regulation.
- 4.16. Reporting a Violation
- 4.16.1. If, at the end of the process, the employee or applicant believes that he or she has not been properly accommodated or believes he or she is being discriminated against based on *Disability*, the employee should be referred to the City's Equal Employment Investigations Office (EEIO) at (619) 236-7133 for a description of his or her rights under the ADA, FEHA and City policies, as well as procedures for filing complaints of discrimination with EEIO, the Equal Employment Opportunity Commission (EEOC) and Department of Fair Employment and Housing (DFEH).
- 4.16.2. In addition, any employee or applicant who feels this Regulation is being violated may bring the matter to the attention of any of the individuals or offices listed below:
- a. Department Director or other department Appointing Authority
 - b. Any supervisor (it is not necessary to follow the chain of command)
 - c. Human Resources Department, *Reasonable Accommodations* Manager (619-236-5521)
- 4.16.3. The employee or applicant may choose to file a complaint directly with the following external agencies (due to filing time limits, to protect legal rights it is always best to contact external agencies promptly when discrimination is suspected):
- a. State of California Department of Fair Employment and Housing (DFEH) (800) 884-1684 or TDD (800) 700-2320
 - b. Federal Equal Employment Opportunity Commission (EEOC) (800) 669-4000 or TTY (800) 669-6820
- 4.17. Funding/Purchases for Employee Accommodations
- 4.17.1. Funding Source
- a. Specific funding for accommodations will be the responsibility of each department.
 - b. Other sources of funding may also be investigated. These include, but are not limited to, Worker's Compensation and the California Department of Rehabilitation.
- 4.17.2. Purpose and Use of Funding
- a. Items purchased with City funding should not be used in any way to support non job-related activities.

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- b. City funding will not be used to purchase equipment, devices or other items for the personal use of employees, such as walking canes, hearing aids, and glasses.
- c. Costs of equipment, supplies, materials, furniture, maintenance work, and/or monthly rental fees will be the responsibility of the department receiving the goods and services.
- d. All requests will be reviewed on a case-by-case basis and must not cause an *Undue Hardship* for the City.

4.17.3. Property/Ownership of Equipment

- a. All items purchased are the property of the City, and are assigned to the employee who is being accommodated.
- b. In the event that an employee is promoted, transferred, or in any way assumes new job assignments or responsibilities within the City, the assigned equipment, furniture, or other items purchased on behalf of that employee may continue to be used by that employee as long as the need for the *Disability*-related accommodation remains.
- c. In the event that the employee no longer needs the assigned equipment, furniture or other items or leaves City service, the department must notify the Human Resources Department's *Reasonable Accommodations* Manager. The Human Resources Department *Reasonable Accommodations* Manager may coordinate the provision of the assigned equipment, furniture or other items as an accommodation to an employee working in any City department.

5. RESPONSIBILITY

5.1. City of San Diego

- 5.1.1. The City will ensure that individuals with disabilities are treated equally in all aspects of the employment process, including recruitment, hiring, testing, promotions, training, compensation, benefits, discipline, layoffs, termination, and other terms, conditions, and privileges of employment.
- 5.1.2. Recruitment information must contain a statement that the City does not discriminate on the basis of *Disability*. The Personnel Manual contains specific policies and procedures related to issues of non-discrimination in City employment.

5.2. Equal Employment Investigations Office

- 5.2.1. The Equal Employment Investigations Office (EEIO), in accordance with the provisions of the Personnel Manual Section K-2, is responsible for reviewing and investigating complaints of *Disability* discrimination filed with that office.

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5.3. Human Resources Department

- 5.3.1. The Human Resources Department's *Reasonable Accommodations* Manager shall be the primary contact for appointing authorities and employees who seek assistance in reviewing *Reasonable Accommodations* issues and developing recommendations for practical responses.
- 5.3.2. The *Reasonable Accommodations* Manager shall review and approve all denials of requests for accommodations before the denial is communicated to the employee.

5.4. Applicants

- 5.4.1. Applicant requests for accommodation are initiated through the Personnel Department via a Request for Special Testing Accommodations for Persons with Disabilities.

5.5. Employees

- 5.5.1. Any *Qualified Individual with a Disability* may request a *Reasonable Accommodation*, verbally or in writing. Requests for *Reasonable Accommodation* should be made to an employee's immediate supervisor or department management, or through the Personnel Department for applicants.

5.6. Office of the City Attorney

- 5.6.1. The City Attorney's Office is available as a resource for appointing authorities and Departments who seek assistance in the interpretation and application of this Administrative Regulation.

5.7. Personnel Department

- 5.7.1. The Personnel Department will be responsible processing any applicant's requests for accommodations as initiated through a Request for Special Testing Accommodations for Persons with Disabilities.
- Following a request from an applicant, the Personnel Department will evaluate the request and, if approved, *Reasonable Accommodation* will be provided.
 - For questions regarding requests for special testing accommodations, call the Testing Office at (619) 236-6358, Monday through Friday from 8:00 a.m. to 5:00 p.m.
- 5.7.2. The Personnel Department will be responsible for meeting with any employee seeking a transfer as a form of accommodation to determine classification

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eligibility based on a review of the employee's knowledge, skills, abilities and experience respective of the minimum qualifications of any classification of interest that meets the Personnel Department's transfer requirements [Personnel Manual Index E-7 (III)(B)(1) and (2)].

- a. Following their meeting with the employee, the Personnel Department will issue a *Reasonable Accommodation* Transfer List to the employee and *Reasonable Accommodations* Manager for the purpose of initiating a citywide search for qualifying classifications.

5.8. Department Directors

- 5.8.1. Department Directors or their designated representative(s) will be responsible for ensuring that the requirements stated in this Regulation are carried out for all aspects of employment.
- 5.8.2. It is the responsibility of each department to provide a work place that is free of discrimination against applicants and employees with disabilities.

APPENDIX

Legal References

42 U.S.C. §§12101 et seq.
Cal. Gov't Code §§ 12900 et seq.

Attachments

Attachment A - *Reasonable Accommodation* Request Form
Attachment B - *Reasonable Accommodation* Medical Documentation Form
 Part 1 – Authorization for Release of Medical Information
 Part 2 – Job Description
 Part 3 – Medical Review

Subject Index

Employment Policy for Individuals with Disabilities: Employment

Administering Department

Human Resources Department
Personnel Department