



## STATE OF DELAWARE REASONABLE ACCOMMODATION Guidelines and Recommended Procedure

These guidelines and recommended procedure are offered to assist state agencies in providing reasonable accommodations to qualified employees with disabilities as defined in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) and the Delaware Persons with Disabilities Employment Protections Act.<sup>1</sup> The appendices listed below are to be utilized during the reasonable accommodation process.

- Appendix I - definition of key terms.
- Appendix II - resources to assist agencies during the reasonable accommodation process.
- Appendix III - Reasonable Accommodation Forms
  - Employee/Supervisor Accommodation Request Questionnaire to be completed in consultation with Human Resources by the supervisor in cooperation with the employee.
  - Medical Questionnaire to be completed by the medical provider. A list of the employee's essential job functions must be attached to the Medical Questionnaire by the employer.
  - Form letter to be completed by the employer which serves as a cover memo to the Medical Questionnaire and must be submitted by the employee to the medical provider.
  - HIPAA Medical Release Form to be completed by the employer and signed by the employee **only when updated or additional medical documentation is required.**

The State recognizes and respects an employee's right to privacy. Strict confidentiality will be maintained by informing others only to the extent necessary in compliance with the Act.

The following represents the basic procedure by which Delaware state agencies should evaluate a request for a reasonable accommodation.

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<sup>1</sup> *These guidelines are designed for current employees. For additional phases in the employment process, ADA procedures and documentation may be found in relevant functional areas.*

1. Each agency should designate an office/individual to authorize approval or denial of requests for reasonable accommodation.
  - The designee will facilitate all steps of the reasonable accommodation process.
  - The designee will be a liaison with the Statewide ADA Coordinator and should attend relevant Statewide EEO Officer meetings which will focus on the ADA.
  - It is recommended that the agency designee be trained annually on the reasonable accommodation process and the ADA obligations.
2. The reasonable accommodation evaluation process typically begins when an employee initiates a request for reasonable accommodation verbally or in writing. This request is typically made to any of the following: employee's supervisor; a supervisor or manager in employee's immediate chain of command; the agency's human resources office; or the authorized office/individual designated by the agency to oversee the reasonable accommodation process. A family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. The agency should then confirm with the employee that he/she in fact requests a reasonable accommodation. In some instances, it may be necessary for the employer to initiate an informal, interactive process with the employee in need of accommodation. This process should identify whether the employee meets the ADAAA definition and the precise limitations resulting from the disability and the potential reasonable accommodations that could overcome limitations. All interactions are to be thoroughly documented by the Agency. Agencies should consult with the Human Resource Management Office for further guidance.
3. Once the employee confirms the request for a reasonable accommodation, the employer may inquire as to the type. An interactive dialogue process should occur between the employee and the agency Human Resources Office. In appropriate circumstances, the employee's supervisor may be included in the interactive dialogue process. The employee must be capable of performing the essential functions of the job with or without a reasonable accommodation. A reasonable accommodation is not necessarily the best or most expensive accommodation, but is one that will help allow the employee to perform the essential functions of the job. Agencies should not require that individuals with disabilities use particular words to request a reasonable accommodation. In addition, agencies cannot require such requests be made at a certain time – the duty to provide reasonable accommodation is ongoing.
4. When an agency is provided with a request for reasonable accommodation, it is entitled to know that an employee has a covered disability that requires a reasonable accommodation. Thus, when a disability and/or need for accommodation is requested, the authorized office/individual will normally require the individual to provide reasonable documentation of medical/behavioral health information about the disability and his/her functional limitations as it

relates to the essential functions of the job, or the benefits and privileges of employment. Additionally, the authorized office/individual may request supplemental medical/behavioral health information when the information already submitted is insufficient to document the disability and/or the functional limitations as it relates to the essential functions of the job, or the benefits and privileges of employment. The authorized office/individual should explain why the documentation is insufficient and allow the employee an opportunity to provide the additional information in a timely manner.<sup>2</sup> Should the agency wish to contact the medical provider for further clarification, the HIPAA form must be completed and signed by the employee. Additional information requested should be limited to functional limitations related to the accommodation request. Failure to provide necessary documentation, where it has been properly requested, may result in a denial of reasonable accommodation. All medical/behavioral health information shall be kept confidential consistent with HIPAA. An agency may not be required to request medical information where:

- Both the disability AND the need for reasonable accommodation are obvious; or
  - The individual has already provided the agency with sufficient information to document the existence of the disability and his/her functional limitations relating to the essential functions of the job.
5. The authorized office/individual explains the agency's procedure for processing a request for reasonable accommodation, and from whom the individual will receive a decision. To ensure that all effective accommodations have been considered, the authorized office/individual continues the interactive process with the individual employee requesting the accommodation where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are choosing between different possible reasonable accommodations.
  6. The authorized office/individual should grant or deny requests for reasonable accommodation, in writing, when all information is received including any requested medical documentation in a timely manner. Providing reasonable accommodations should be processed as quickly as reasonably possible. The time necessary to respond to any particular request for accommodation will depend largely on the nature of that accommodation. Of course, there may be "extenuating circumstances" (factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation). Where there is a delay in either processing a request for, or delivering a reasonable accommodation, the authorized office/individual should notify the individual of the reason for the delay. If there are delays, the designated office/individual should examine temporary measures that may be taken to assist the individual with a disability.

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<sup>2</sup> For additional information on insufficient documentation visit the EEOC's website at <http://eoc.gov/policy/docs/accommodation.html>

7. If the agency is denying a specific accommodation and proposes alternate accommodations, the interactive process continues. If an agency determines an accommodation is not appropriate consistent with the ADAAA and denies an individual's request for a reasonable accommodation, it should notify the individual in plain language with the reasons for the denial, identifying the office/individual that made the decision and any further resource available.
  
8. All personnel information is confidential with the following exceptions:
  - Supervisors and managers who need to know may be advised regarding necessary restrictions on the work or duties of the employee and about the necessary accommodation(s) including for health and safety reasons on a need to know basis in accordance with the ADA;
  - First aid and safety personnel may be advised in confidence if the disability might require emergency treatment;
  - Government officials may be given information necessary to investigate the agency's compliance consistent with the requirements of the Rehabilitation Act; the ADA; the Delaware Persons with Disabilities Employment Protections Act or other applicable federal and state laws;
  - The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers consistent with statutory requirements; and
  - Agencies' designated office/individual may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation.
  - All information is to be kept in the confidential medical file separate from the employee's personnel file.

(Nothing in this procedure statement is intended to be a waiver of state sovereign immunity. This procedure is not intended to create any individual right or cause of action not already existing and recognized under state or federal law.)

APPENDIX I  
**KEY TERMS**  
**FOR GUIDANCE**

**Qualified individual with a disability or covered disability** – An individual who has: a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; b) a record of such impairment; or c) being regarded as having such impairment.

**Reasonable accommodation** - Title I of the ADA provides for reasonable accommodation to qualified employees with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. Reasonable accommodations that apply to all persons with disabilities include, but are not limited to, the following:

- modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job;
- modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

**Any disability related inquiry or medical examination of an employee must be “job-related and consistent with business necessity” based on objective evidence that:**

- **an employee’s ability to perform essential job functions will be impaired by a medical condition; or**
- **an employee will likely pose a direct threat (to the employee or others) due to a medical condition.**

**Duty to Reasonably Accommodate** – Upon request by a qualified individual with a disability, agencies must provide reasonable accommodations to a qualified individual with a disability so that the person may have equal employment opportunities and benefits and privileges of employment. Agencies are not required to remove an essential job function as a form of reasonable accommodation.

**Undue hardship** - Agencies do not have to provide reasonable accommodations that would impose an undue hardship on the operation of the agency. An undue hardship means that a specific accommodation would require significant difficulty or expense. This determination, which must be made on a case-by-case basis, considers factors such as the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the agency.

**Essential functions** - The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. 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 function if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

**Benefits and Privileges of Employment** – Examples of benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).

**Office of Disability Affairs.**– This office houses the State's ADA Coordinator within the Department of Safety and Homeland Security and provides technical assistance to State agencies regarding ADA matters.

**Office of EEO and Diversity** – This office houses the State's EEO Manager and provides guidance to State agencies regarding Executive Order 8. The mission is to actively strive for a more diverse work environment, express sensitivity toward the needs of others, and increase cultural diversity among state employees as outlined in Executive Order 8.

## APPENDIX II

### **RESOURCES FOR THE REASONABLE ACCOMMODATION PROCESS**

The list of reference is being provided for the convenience of the employee or agency. The state is in no way endorsing any independent or private agency.

#### **U.S. Equal Employment Opportunity Commission**

Phone: 1-800-669-3362 (Voice) 1-800-800-3302 (TTY)

Web Site: <http://www.eeoc.gov>

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq., and the regulations, 29 C.F.R. § 1630. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9; (2) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, 8 FEP Manual 405:7601 (1999); and (3) *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992) (*Technical Assistance Manual*). The *Technical Assistance Manual* includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the American with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employee Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000). Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the *Technical Assistance Manual* and the poster, are also available through the Internet at [www.eeoc.gov](http://www.eeoc.gov). All of these documents provide guidance that applies to state agencies through the ADA.

#### **Delaware Department of Labor, Division of Industrial Affairs, Office of Discrimination**

The Office of Discrimination enforces laws against employment discrimination because

of race, color, religion, sex (including pregnancy), sexual orientation, national origin, disability, age (40 or older), marital status or genetic information. These laws can be found in 19 Delaware Code Chapter 7.

Phone: 302-761-8200 & (302) 422-1134

Web Site: <http://dia.delawareworks.com/discrimination/>

### **Job Accommodation Network (JAN)**

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

Phone: 1-800-232-9675 (Voice/TTY)

Web Site: <http://janweb.icdi.wvu.edu/>

### **Mid-Atlantic ADA Center**

Provides information, guidance and training on the Americans with Disabilities Act (ADA), tailored to meet the needs of businesses, government entities, organizations, and individuals in the Mid-Atlantic Region.

Toll Free: 800-949-4232 V/TTY (DC, DE, MD, PA, VA, WV)

Local: 301-217-0124 V/TTY

Web Site: <http://www.adainfo.org/>

### **Registry of Interpreters for the Deaf**

The Registry offers information on locating and using interpreters and transliteration services.

Phone: (703) 838-0030 (Voice/TTY)

Web Site: [www.rid.org](http://www.rid.org)

### **State Council for Persons with Disabilities, Delaware ADA Coordinator**

Provides technical assistance to State agencies on ADA issues.

Phone: (302) 739-3620

Web Site: <http://scpd.delaware.gov/>

### **Human Management Services**

The Employee Assistance Program is designed to provide services to employees, pensioners, and their dependents enrolled in a non-Medicare health insurance plan. HMS has been selected by the State of Delaware to provide these services. Members are strongly encouraged to reach out to HMS for guidance as they attempt to balance the high demands of home and work life issues. HMS is available seven days a week, 24 hours a day to meet all of your needs. Contacts to HMS are completely confidential and provided at no cost.



Phone: 1-800-343-2186

Website: <http://www.hmsincorp.com>

### **Architectural Accessibility Board**

The Architectural Accessibility Board reviews plans to ensure that individuals with disabilities can use public facilities with the maximum of safety and independence by providing for the implementation of standards for the elimination of architectural barriers.

Phone: (302) 760-2569

### **Division of Vocational Rehabilitation**

DVR helps individuals with disabilities prepare for, obtain, and maintain employment. They provide people who want to work with access to the best resources for training, support and career placement services. DVR is a partner in helping job seekers develop skill sets to find employment.

Phone: (302) 761-8275

Web Site: <http://dvr.delawareworks.com/>

### **Division for the Visually Impaired**

Utilizing education, outreach, training and technology, DVI works to strengthen the capacity of our agency, our consumers and the community so that those who are blind and visually impaired may become and/or remain, employed, independent and self-sufficient.

Voice: (302) 255-9800 TDD: (302) 255-9854

Web Site: <http://dhss.delaware.gov/dhss/dvi/>

### **Delaware Assistive Technology Initiative**

The Delaware Assistive Technology Initiative (DATI) connects Delawareans who have disabilities with the tools they need in order to learn, work, play, and participate in community life safely and independently. DATI operates Assistive Technology Resource Centers that offer training as well as no-cost equipment loans and demonstrations.

Phone: (302) 831-0354 or 1-800-870-DATI

TDD: (302) 651-6794

Web Site: <http://www.dati.org/>