

Broadcasting Board of Governors

International Broadcasting Bureau

Office of Civil Rights

Reasonable Accommodation Procedures

This Summary explains the provisions of Executive Order 13164, which requires federal agencies to establish effective written procedures for processing requests for reasonable accommodation by qualified employees and applicants with disabilities. Therefore, the provisions of this summary apply to all employees of the Broadcasting Board of Governors, International Broadcasting Bureau, and applicants for employment.

#### **A. WHAT IS REASONABLE ACCOMMODATION?**

The Rehabilitation Act of 1973 requires federal agencies to provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship.

In general, an accommodation is a change in the work environment or in the application process that would enable a person with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations:

- a) Changes to a job application process to permit people with disabilities to be considered for jobs;
- b) Changes to enable qualified employees with disabilities to perform the essential functions of the job;
- c) Changes to give employees with disabilities equal access to the benefits and privileges of employment

#### **B. KEY TERMS**

**Disability:** a physical or mental impairment that substantially limits one or more of the major life activities of an individual (42 U.S.C. 12102 (2)). According to the EEOC regulations, a physical impairment is a physiological disorder or condition, cosmetic disfigurement or anatomical loss that affects one or more of the following body systems:

- Neurological
- Musculoskeletal
- Special sense organs
- Respiratory (including speech organs)
- Cardiovascular
- Reproductive
- Digestive
- Genito-urinary
- Hemic and lymphatic:
- Skin; and
- Endocrine (29 C.F.R. Part 1630.2 (h)(1))

A mental impairment is a mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities (29 C.F.R. Part 1630.2 (h)(2)).

**Qualified Individual with a Disability:** An individual with a disability is qualified if:

- a) s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position;
- b) s/he can perform the essential functions of the position with or without 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. Determination of the essential functions of a position must be done on a case-by-case base so that it reflects the job as actually performed, and not simply the components of a generic position description.

**Reassignment:** It is a form of reasonable accommodation that, absent undue hardship, is provided to employees only who, because of a disability, can no longer perform the essential functions of their job with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. Determinations in these cases are made in consultation with the Agency's Office of Personnel. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it. Reassignment of an employee is an option available as a "last resort".

### **C. WHY IS REASONABLE ACCOMMODATION IMPORTANT?**

While many people with disabilities can apply for and perform jobs without the need for reasonable accommodation, workplace barriers may keep others from entering the work force and still others from performing jobs for which they are qualified. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or when job tasks are to be done). Reasonable accommodation removes workplace barriers for people with disabilities. It also allows agencies to expand their pool of qualified workers.

#### **D. AGENCY'S COMMITMENT**

Effective procedures for processing reasonable accommodation requests will enable the Broadcasting Board of Governors, International Broadcasting Bureau, to handle the request in a prompt, fair, and efficient manner. By establishing procedures in advance, we ensure that all employees understand the requirements and procedures for requesting reasonable accommodations and that agency managers understand their responsibility to the process.

The agency is committed to provide reasonable accommodations to its qualified employees and applicants for employment in order to assure that qualified individuals with disabilities enjoy full access to equal employment opportunities at all levels.

#### **PROCEDURES**

The agency provides reasonable accommodations as follows:

1. When an applicant with a disability needs an accommodation to be considered for a job;
2. When a qualified employee with a disability needs an accommodation to enable the person to perform the essential functions of the job; and
3. When a qualified employee with a disability needs an accommodation to gain access to the workplace or to enjoy equal benefits and privileges of employment.

The agency will process requests for reasonable accommodation and, where appropriate, provide reasonable accommodation in, a prompt, fair and efficient manner.

To effectuate this policy the agency has dedicated centralized funding resources to pay for reasonable accommodation. The Office of Civil Rights will designate a staff member as a Disability Program Manager (To Be Announced or TBA) who shall have direct administrative responsibility for the program agency-wide.

## **1. REQUESTS FOR REASONABLE ACCOMMODATION**

The reasonable accommodation process begins when an employee, applicant, or their representative requests, because of a disability, an adjustment or modification that will enable the individual to perform the essential functions of the position, to complete the application process, or to allow them to enjoy a benefit or privilege of employment. A health care professional, family member or other representative may make a request on an employee or applicant's behalf. Whenever possible the IBB will confirm the request with the individual. The requests can be made to several agency officials such as:

- a) an employee's first line supervisor,
- b) an employee's office or division director,
- c) a personnel management specialist responsible for the recruitment and/or selection process,
- d) the disability program manager (TBA), or
- e) the Employee Assistance Program Director (ARCS)

A request does not have to use any special words, such as "reasonable accommodation," "disability" or "Rehabilitation Act". Employees may consult with the Disability Program Manager (TBA) in the Office of Civil Rights (OCR) for further information or assistance in connection with requesting or processing a request for reasonable accommodation.

For record keeping purposes, individuals must follow up an oral request by completing the "Confirmation of Request for Reasonable Accommodation" form (included as an attachment to these procedures) or by confirming their request in writing (including e-mail) to the OCR Disability Program Manager (TBA). However, the IBB will not wait for this form before processing the request.

### **Repeated Requests**

Once an employee is granted a type of reasonable accommodation that he or she is likely to need on a repeated basis (e.g. a sign language interpreter), the employee is not required to submit a written request for record keeping purposes each time the accommodation is needed. After the reasonable accommodation is approved the first time the employee may subsequently obtain the accommodation by providing notice to his/her first line supervisor, office or division director, the Disability Program Manager (TBA) or the EAP director.

### **Processing Requests for Reasonable Accommodations**

- **First line supervisor or Division Director:** These include requests involving personnel actions (other than reassignment) or simple requests that can be accomplished within the scope and responsibility of the first line supervisor or Division Director. However, the supervisor and/or the division or Office Director remain the sole responsible official for deciding whether the request is a reasonable accommodation and the request doesn't result in an undue hardship as defined in these procedures.

- **Disability Program Manager (TBA):** is the responsible official in charge of handling the following:
  - a) Requests for adaptive equipment, including information technology and communication equipment, or specially designed furniture in consultation and coordination with the Office of the CFO, the Office of Computer Technology for adaptive equipment and the Office of Administration for furniture requests.
  - b) Requests for a reader or sign language interpreter, or other staff assistant to enable employees to perform their job functions and enjoy equal employment opportunities. The Disability Program Manager (TBA) will do this in consultation with the Office of Personnel.
  - c) Requests for reconfiguration of workspaces. In these cases the Disability Program Manager (TBA) will consult and coordinate with the Office of Facilities and Office of Human Resources when bargaining unit members are involved.
  - d) Requests by staff for accessible parking. In these cases the Disability Program Manager will coordinate with the Office of Administration and approve/clear all requests for disability parking.
  - e) Requests for materials in alternative format (e.g. Braille, large print).
  - f) Processing requests for reassignment.
  
- In addition, the Disability Program Manager (TBA) will be available, as needed, to provide assistance to employees and decision makers in processing requests.
- All decision makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodations when the decision maker is unavailable. Decision makers should ensure that individuals know who has been designated as back up. The Disability Program Manager should be notified of the designated back-ups. Time frames will not be suspended or extended because of the unavailability of a decision maker.
- Where an individual performing the functions of a disability program manager is involved in processing or implementing a request for reasonable accommodation, s/he will recuse him/herself from processing complaints in which conflicts or perceived conflicts of interest may exist.

## **2. TIME FRAME FOR PROCESSING REQUEST FOR REASONABLE ACCOMMODATION**

The amount of time it takes to respond to a request for reasonable accommodation will depend on the nature of the accommodation and whether it is necessary to obtain supporting medical information.

The time limit should be as short as reasonably possible. These procedures permit an agency, absent extenuating circumstances, up to 15 business days to approve or reject requests for reasonable accommodation. However, where a particular reasonable accommodation can be provided in less time than is authorized under these procedures, the failure to respond promptly to the request may result in a violation of the Rehabilitation Act of 1973.

### **Reasonable Time Frames:**

- ❖ If a request can be processed by the employee's supervisor or division director, the request shall be processed and a decision given in no more than 15 business days from the date the supervisor or division director received the request.
- ❖ If an agency official other than the employee's supervisor or division director initially receives the request, the official must forward it to the employee's supervisor or division director within 2 business days from the date he/she received it. If the accommodation is approved, it will be normally provided within the 15-day period, unless extenuating circumstances delay implementation.
- ❖ Certain "extenuating circumstances" may delay providing reasonable accommodations within the time frame listed above. In these situations, agency managers will be instructed to provide temporary accommodations.

**Extenuating Circumstances:** are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. The following are some examples of extenuating circumstances:

- ✓ There is an outstanding initial or follow-up request for medical information, or the Disability Program Manager or the Agency's Medical expert are evaluating medical information which has been provided;
- ✓ The purchase of equipment may take longer than 15 business days because of requirements under the Federal Acquisition Regulation;
- ✓ Equipment must be back-ordered, the vendor typically used for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available;
- ✓ The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before the Agency buys it;
- ✓ New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers or reconfiguration of working space.

### **Expedited Processing**

In special circumstances expedited processing may be required thus reducing the 15 day time frame. Examples are when the reasonable accommodation is needed to enable an individual to apply for a job or to participate in a specific agency activity that is scheduled to occur shortly.

### **Delays in Processing Requests**

If there is a delay in either processing a request for or delivering a reasonable accommodation, the decision-maker must notify in writing the employee requesting the reasonable

accommodation of the specific reasons for the delay, and to the extent possible, keep the employee informed of the date on which the agency expects to complete the process.

### **3. APPROVAL OF REASONABLE ACCOMMODATION REQUEST**

When a request for reasonable accommodation is approved, the individual requesting the accommodation will be notified either verbally or in writing. There is no requirement that the official approving the request provide specific reasons for his/her decision. However, the agency is required to track and monitor the processing of each request.

### **4. DENIAL OF REASONABLE ACCOMMODATION REQUEST**

When the agency denies an individual's request for accommodation, it must be recorded on a "Denial of Request" form. This form (included as an attachment to these procedures) must be completed by the agency official denying the accommodation request and must be provided to the individual who requested the accommodation. The form shall: (a) be in writing, (b) contain the specific reason(s) for the denial, (c) state why the requested accommodation would not be effective and/or (d) state why the requested accommodation would post an undue hardship. The reasons for the denial should be written in plain language with as much specificity as possible and should identify the employee or office that made the decision to deny the request.

If the agency has denied the specific requested reasonable accommodation but offered to make a different one in its place, the "Denial of Request" form should explain both the reasons for the denial of the requested accommodation and the reasons why it believes the chosen accommodation will be effective.

The supervisor of the individual whose request was denied must complete an "Information Reporting" form within 10 business days of the decision and forward it to the Disability Program Manager (TBA).

### **5. APPEAL RIGHTS**

Included in the "Denial of Request" form will be the following appeal rights:

- The right to request reconsideration from either the decision maker denying the request or the next level supervisor above the decision maker;
- The right to seek redress through an agency approved informal dispute resolution process (e.g. Alternative Dispute Resolution); and
- The right to file a formal EEO complaint with the agency's Office of Civil Rights.

#### **Requests for Reconsideration**

If an individual wishes reconsideration, s/he should first ask the decision maker to reconsider the decision within five business days. The individual may present additional information in

support of his/her request. The decision maker should respond to the request for reconsideration within five business days.

### **Filing a Formal EEO Complaint**

If the individual wishes to file a formal EEO complaint, s/he must contact the Office of Civil Rights (OCR) within 45 calendar days from the date they received the form denying their request for accommodation. The individual shall, during the informal complaint stage, initially elect either traditional EEO counseling or mediation through the agency's Alternative Dispute Resolution (ADR) program. If the matter is not resolved during the informal complaint stage or ADR process, the individual may subsequently file a formal complaint with the Director, OCR. The complaint must be received by OCR within 15 calendar days from the date the individual is notified that the informal stage or ADR process has ended and has received a notice of right to file a complaint. During both the informal and formal complaint processing stages, the individual has the right to representation.

## **6. REQUEST FOR MEDICAL INFORMATION**

The Agency is entitled to know that an employee or applicant who requests reasonable accommodation has a disability covered by the Rehabilitation Act. In some cases the disability and need for accommodation will be obvious or the individual has already provided the supervisor or other agency official with sufficient information to document the existence of the disability and his/her functional limitations. In these cases, the Agency will not seek additional medical information to document the existence of the disability. However, when a disability and/or need for reasonable accommodation is not obvious or already known to the Agency, the individual will be required to provide reasonable documentation about the disability and his or her functional limitations. The immediate supervisor will discuss the case with the Disability Program Manager who will make a determination as to whether additional medical documentation is necessary. If it is not necessary, the request for accommodation will be returned promptly to the immediate supervisor to complete the processing.

The Disability Program Manager is responsible for requesting additional medical information. In these cases, the Disability Program Manager will explain to the individual in specific terms, why the information is insufficient, what additional information is needed, how it impedes the individual's ability to perform the job or activities and how the requested accommodation will improve work performance/participation in agency activities. The agency may request additional documentation, giving the employee a list that explains what information is necessary and why it is necessary for a determination of the reasonable accommodation request. This list will address such areas as:

- ✓ 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;
- ✓ If there is a particular reasonable accommodation requested; and

- ✓ How this accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit in the workplace.

In order to get the most helpful information, requests for additional medical information will describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The Disability Program Manager will work with the supervisor, manager or the Office of Personnel in seeking appropriate information. The request letter will inform the physician to address the medical documentation to the Disability Program Manager. It is the employee's responsibility to provide all medical information requested within 30 calendar days.

Medical documentation may be reviewed by a medical expert of the agency's own choice at the Agency's expense.

If the individual requesting an accommodation is still unable to provide sufficient information in support of the request, the Agency may request that the individual be examined by a health care professional of the agency's choice at the agency's expense. Also, the agency and the requestor may agree that the requestor will sign a limited release allowing the agency to submit a list of specific questions or to otherwise contact the individual's health care professional to obtain additional information.

The agency may not ask the employee to sign a release form so that the agency can talk directly with the physician.

**Note: The failure to provide appropriate documentation or to cooperate with the agency's efforts to obtain such documentation can result in a denial of the reasonable accommodation.**

## **7. CONFIDENTIALITY REGARDING MEDICAL INFORMATION**

All medical information should only be disclosed if strictly necessary.

The Rehabilitation Act requires that all medical information obtained in connection with the reasonable accommodation process be kept confidential. This means that all medical information, which the Agency obtains in connection with a request for reasonable accommodation, including information about functional limitations and reasonable accommodation needs, must be kept in files separate from the individual's personnel file. It also means that an Agency employee who obtains or receives such information is strictly bound by these confidentiality requirements.

All records obtained or created during the processing of a request for reasonable accommodation, including medical records will be kept under the main custody of the Disability Program Manager in the Office of Civil Rights. The Disability Program Manager, or the Director of the Office of Civil Rights, will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act. The existence of the request, costs, or other

aspects should not be shared with other employees. To do so would violate the employee's rights under 29 CFR 1630.

The information will be disclosed only as follows:

- 1) Supervisors and managers who are involved in the processing of a request for reasonable accommodation may be told about necessary restrictions on the work or duties of the employee about the necessary accommodation(s);
- 2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;
- 3) Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act to respond to legal challenges, or to maintain records and evaluate and report on the Agency's performance in processing reasonable accommodation requests;
- 4) The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers.

## **8. REASSIGNMENT**

Reassignment may be offered as a form of reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position or if all other possible accommodations would impose an undue hardship upon the agency. Reassignment is a "last resort" accommodation and is available only to employees, not to applicants.

In considering whether there are positions available for reassignment, the Disability Program Manager will work with both the Office of Personnel and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions for which the

Office of Personnel has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The agency will first focus on positions which are equivalent to the employee's current job in terms of pay, status and other relevant factors. If there is no vacant equivalent position, the agency will consider vacant lower level positions for which the individual is qualified.

## **9. INFORMATION TRACKING**

The agency will maintain records related to a particular individual who has requested an accommodation for the duration of the employee's tenure with the agency. In addition, the agency shall retain, for at least three years, information or any other cumulative records used to track the agency's performance with regard to reasonable accommodation. These records shall be made available to the Equal Employment Opportunity Commission upon request.

## **10. THE INTERACTIVE PROCESS**

Paramount to the effectiveness of these procedures and a successful outcome of the process is for the parties involved to begin the interactive process from the very first contact. An open, continuous dialogue will expedite and facilitate the best possible solution. That means that the individual requesting the accommodation, the immediate supervisor or division/office director, the personnel official handling an applicant's request, and the Disability Program Manager must talk to each other about the request(s), the process for determining whether an accommodation will be provided, and potential accommodations available.

## **11. REASONABLE ACCOMMODATION RESOURCES**

The specific type of reasonable accommodation to be provided a disabled individual varies and will be determined on a case-by-case basis. In evaluating the specific type of reasonable accommodation needed for an individual, the person seeking the accommodation and/or other appropriate agency officials should consult with the agency's Disability Program Manager. For additional guidance, attached to these procedures is a list of external reasonable accommodations resources. A copy of these resources may also be found at the following agency website ([www.ibb.gov/ocr](http://www.ibb.gov/ocr)). Additional guidance materials found on the EEOC website ([www.eeoc.gov](http://www.eeoc.gov)) are also available to supervisors and managers. They include, but are not limited to the following materials – EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (July 27, 2000), and EEOC Enforcement Guidance: Reasonable Accommodations and Undue Hardship under the Americans with Disabilities Act (March 1, 1999).