

**ARTICLE 45**  
**REASONABLE ACCOMMODATION**

**Section 45.01 - General.** The Department will provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employees with a disability unless the Department demonstrates that the accommodation would impose an undue hardship on its operations, as defined by the U.S. Equal Employment Opportunity Commission's regulations at 29 CFR 1630. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with disability to enjoy equal employment opportunities. Categories of reasonable accommodations include, but are not limited to:

- (1) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential function of that position.
- (2) Modifications or adjustments that enable a qualified individual with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated individuals without disabilities.
- (3) Modifications or adjustments to the job application process that enables a qualified applicant with a disability to be considered for the position that such qualified applicant desires.

The parties agree that Handbook 7855.1 provides the responsibilities and processes for managers and employees to follow regarding reasonable accommodation requests. Where there is a conflict between this Agreement and the Departmental policies on Reasonable Accommodation, this Agreement will prevail.

The policy, procedures, and terminology established in this Article are in conformance with the governing law, rule, and regulations, including but not limited to:

- (1) The Rehabilitation Act of 1973;
- (2) The Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008;
- (3) Executive Order 13164;
- (4) EEOC's regulations implementing the ADA (29 CFR part 1630); and
- (5) Handbook 7855.1, dated April 2003.

## **Section 45.02 – Definitions.**

- (1) **Undue hardship.** Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the Department in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship means significant difficulty or expense incurred by the Department, in consideration of the following factors: (1) the nature and net cost of the accommodation; (2) the overall financial resources of the Department, the number of persons employed in the office or program area of the employee, and the effect on expenses and resources; (3) the overall financial resources of the Department, the overall size of the Department with respect to the number of employees, the number, type, and locations; (4) the type of operations of the Department including the composition, structure, and functions of the workforce; and (5) the impact of the accommodation on the Department’s operations, including the impact on the ability of other employees to perform their duties and the impact on the Department’s ability to conduct business; or would fundamentally alter the nature or operations of the Department. The Department must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.
- (2) **Individual with a Disability.** An individual who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such impairment, or (3) is regarded as having such impairment.
- (3) **Qualified Individual with a Disability.** An individual with a disability who, with or without reasonable accommodation, can perform the essential functions (grade controlling duties) of the position in question without endangering the health and safety of themselves or others.
- (4) **Major life activities.** Major Life Activities include but are not limited to (1), 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; and (2) Major bodily functions including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.
- (5) **Essential Functions.** In general, the term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position. The grade controlling duties that an employee must be able to perform, with or without a reasonable accommodation are a factor in determining whether job duties are essential functions. (See EEOC regulations at 29 CFR 1630.2(n) for more examples of factors.)

**Section 45.03 - Examples of Reasonable Accommodations.** Reasonable accommodations may include but shall not be limited to:

- (1) Modification of job duties including job restructuring.
- (2) Modification of job environment (i.e., making facilities readily accessible to and usable by disabled persons).
- (3) Telework modification, work at home (separate and apart from the Department's Telework policy), or an alternate worksite as a reasonable accommodation for disabled employees.
- (4) Part-time or modified work schedules.
- (5) Acquisition or modification of equipment.
- (6) Make available alternate forms of written examinations, Departmental written program and training materials, policies, laws, rules, and regulations.
- (7) Providing qualified readers and interpreters.
- (8) Reassignment. This type of reasonable accommodation is a last resort accommodation provided to an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, unless the Department can show that it would be an undue hardship. The reassignment accommodation will be based on positions the employee qualifies for at the same or lower grade, if necessary.

An employee must be "qualified" for the position to which they are reassigned. An employee is "qualified" for a position if they: (1) satisfy the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation. The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.

Before considering reassignment as a reasonable accommodation, the Department shall first consider those accommodations that would enable an employee to remain in their current position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of their current position, or (2) all other reasonable accommodations would impose an undue hardship. However, if both the Department and the employee voluntarily agree that the reassignment is preferable to remaining in the current position with some form of reasonable accommodation, then the Department may reassign the employee.

A vacant position is one in which the Department has an interest and authorization to fill.

Unless doing so would constitute an undue hardship, the Department must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the Department must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the Department must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc. If it is unclear which position comes closest, the Department should consult with the employee about their preference before determining the position to which the employee will be reassigned. Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

- (9) **Funded Positions.** The Department may consider reassigning the employee to a funded vacant position as a reasonable accommodation.

**Section 45.04 - Process for Requesting a Reasonable Accommodation.** The following are procedures for requesting and processing a request for reasonable accommodation as described Handbook 7855.1.

- (1) **Request for Reasonable Accommodation.** The process for requesting a reasonable accommodation may be initiated by an employee, a representative of the employee, the employee's supervisor, or other Departmental official. The request for the reasonable accommodation will be processed within 30 business days from the date of the written or oral request, absent any mitigating circumstances allowed under the law or unless otherwise agreed upon by the employee and the Department. If the proposed accommodation or an acceptable counter-proposal does not require expenditures of Departmental funds outside the control of the supervisor, the process should be concluded with the agreement between the employee and the supervisor.
- (2) **Interactive Process.** The employee and supervisor shall engage in an interactive process to propose and determine an appropriate accommodation. During the process, the Disability Program Manager may be utilized to facilitate the interactive process. This process should identify the precise workplace limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. It should provide the employee's supervisors with an opportunity to discuss how the proposed accommodation might affect other employees' performance and other aspects of Departmental operations. It is the Department's and Union's objective that the entire reasonable accommodation process be resolved, to the extent possible, between the employee and supervisor -to preserve privacy and confidentiality and to resolve matters in the most expeditious, informal means possible.

The process to consider a reasonable accommodation request should begin immediately upon the receipt by the receiving official of an oral or written request by the individual asking for the accommodation or their representative with a response due to the employee within seven (7) days of receipt. If the decision maker renders a "recommended denial" determination, they must, within three (3) business days, complete a "Denial of Request"

form and forward it, with all the supporting documentation, to the Disability Program Manager. The explanation for the denial must be written in plain language, clearly stating the specific reasons for the denial.

The supervisor may participate in a discussion with the employee concerning Reasonable Accommodation options, but it is not appropriate to independently initiate a request if the employee does not wish an accommodation.

Where the decision maker has denied a specific requested accommodation, but has offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the recommended accommodation will be effective.

If an individual wishes reconsideration, they should first ask the decision maker to reconsider the decision. The decision maker will respond to the request for reconsideration within five (5) business days. If the decision maker does not reverse the decision, the individual can ask the Principal Organization Head for reconsideration. The Principal Organization Head shall respond to this request within seven (7) business days.

If the Principal Organization Head does not reverse the decision, the individual can ask the Principal Organization Head to have the decision reviewed and evaluated by the Reasonable Accommodation Committee. The Principal Organization Head shall contact the Disability Program Manager who, in turn, will schedule a Reasonable Accommodation Committee meeting. The Committee will respond to this request within seven (7) business days.

(3) **Documentation.**

- (a) If medical information is needed, the receiving official or Disability Program Manager (DPM) will explain to the individual seeking the accommodation, in specific terms, why the need for information or if the provided information is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.
- (b) Upon reviewing and ensuring that the employee's position description is accurate, the manager or supervisor will provide the employee with a copy of their position description and a list of any supplemental essential job functions. The manager may also provide a copy of the employee's performance standards, when needed.
- (c) Documentation from the employee is not necessary when both the disability and the need for reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate that the employee has a disability and needs the requested reasonable accommodation. The employee's supervisor may forego requesting documentation of the employee's disability

and/or need for an accommodation if the disability is known to the supervisor and the supervisor believes the accommodation is reasonable and necessary.

- (d) When requested, the employee shall provide a written justification regarding the employee's medical condition from a health care provider or other credible source, including but not limited to a licensed professional social worker, rehabilitation counselor, representative of a benefits agency such as Social Security or similar agency, or other credible source. The employee may self-certify that the accommodation is necessary when the employee's disability is obvious or known to the Department. The justification will include an explanation of how the accommodation will permit the employee to perform essential functions, as well as the duration of the necessary accommodation.
- (e) If after submission of the information, the Department believes that it is insufficient, they shall provide to the employee, in writing, the reason and allow the employee an opportunity to provide the missing information within 15 days. Examples include medical documentation is inadequate to establish that the individual has a disability and/or the proposed reasonable accommodation meets the needs of the individual. Should the employee fail to produce documentation the process will be discontinued. The employee then has the right to appeal the Department's decision to discontinue the process through the Reasonable Accommodation Committee (RAC).
- (f) When the justification resubmitted to the Department is insufficient, at its option, the DPM may do any of the following:
  - i. offer a medical examination and/or review (including a psychiatric evaluation), at the agency's expense (Management will grant the employee a reasonable amount of administrative leave to attend an agency offered examination);
  - ii. allow the employee to provide additional medical documentation to the Department;
  - iii. allow the employee to provide the additional medical documentation in a sealed envelope directly to the Department to be forwarded to the DPM, or
  - iv. allow the employee's physician to provide the medical documentation directly to the DPM.
- (g) If additional documentation is required, the employee shall have up to 15 days to provide the additional documentation. However, the timeframes in Handbook 7855.1 will be suspended until the information is received.

- (4) **Denial.** Any disapproval of a reasonable accommodation must be made in writing in plain language providing the detailed reasons for denial of the accommodation, if alternate accommodations were considered and what was considered.
- (a) The Department is not legally required to accommodate an employee's disability in accordance with 29 CFR 1630, which includes the following:
- The disabled employee is unable to perform the essential functions of the job and that no reasonable accommodation exists that would enable the person to perform the essential functions of the job.
  - The employee would create an imminent and substantial danger or harm to him/herself or a substantial danger to others by performing the job; and that no reasonable accommodation can be made to remove or reduce the danger.
  - The Department can demonstrate that the accommodation would impose an undue hardship.
- A reasonable accommodation may also be denied on other bases consistent with statute and regulations.
- (b) The Department shall document the results of Reasonable Accommodation requests.
- (5) **Final Decision/Reconsideration.** The Department official(s) who denies a reasonable accommodation request will complete the Form HUD-11600, "Denial of Reasonable Accommodation Request," and forward it to the HUD DPM within 5 days of the denial. The employee has the option of taking a reconsideration request to the Principal Organization Head (POH) or directly to the Reasonable Accommodation Committee (RAC). The decision maker will provide details of the decision as outlined on the form to include the reconsideration process and will notify the employee of the next steps in the process.
- (6) **Appellate Rights.** If an employee's request for reasonable accommodation is denied or the decision maker does not reverse the decision in the reconsideration process, the employee has a right to file an EEO complaint. The employee may elect alternatively to appeal the denial through the Grievance process; however, they may only choose one process.

**Section 45.05 - Previously Approved Accommodation.** Once a permanent disability has been established it will not be subject to further medical documentation or revocation. However, when an employee requests a new or additional reasonable accommodation based on changing or expanding needs associated with an existing medical condition, only the new or additional needs shall be subject to review and evaluation.

**Section 45.06 - Training.** The Department shall provide training to all Departmental employees on Reasonable Accommodation. The training may be conducted via various methods including interactive and distance learning.

**Section 45.07 - Report.** The Department agrees to provide electronic access to the MD-715 EEO report which includes the Department's reasonable accommodation activity to the HUD Council of AFGE Locals (the Union).

**Section 45.08 - Assistive Technology Equipment.** Reasonable accommodation requests for Assistive Technology (AT) equipment will be submitted via Form HUD-22006. Form HUD-22006 will be submitted to the local Information Technology Director (ITD) representative for processing. Once the request is approved, the equipment requested or an appropriate alternative will be provided to the employee within the Reasonable Accommodation process timeframes outlined in Handbook 7855.1. If the request for AT equipment cannot be provided within the timeframes outlined in Handbook 7855.1, IT will provide the individual and the immediate supervisor a notice of when the equipment is expected to be provided. Requests that involve both electronic technology and other reasonable accommodation request processing will run concurrently.

**Section 45.09 - Update To Departmental Policies.** When the law on reasonable accommodations changes, the Department shall revise its reasonable accommodation policies accordingly. Where there is a conflict with this Agreement and the Departmental policies on Reasonable Accommodation, this Agreement will prevail.

**Section 45.10 - Emergency Evacuation Plan.** Any medical information released to assist in the development of the emergency evacuation plan shall be subject to the confidentiality requirements of Handbook 7855.1.

**Section 45.11 - Non-Essential Duties.** Once a reasonable accommodation is approved, the Department will review all assigned duties to determine whether any non-essential duties should be modified.

**Section 45.12 - Service Animals.** Requests for arrangements for an employee's service animal will follow the same procedures as outlined in Handbook 7855.1.

**Section 45.13 - Distribution of Disability Program Manager (PPM)**

**Information.** The Reasonable Accommodation policy which includes information on how to request a reasonable accommodation and the Department's DPM contact information, will be posted on HUD@work under the A to Z index -"Reasonable Accommodation".

**Section 45.14 - Privacy.** All information in support of a reasonable accommodation request, approval, or denial will be confidential. This means that all medical and other information the agency obtains in connection with a request for reasonable accommodation must be kept in files

separate from the individual's personnel files. It also means that any employee who obtains or receives such information is strictly bound by these confidentiality requirements. Managers and supervisors are responsible for the safe keeping and confidentiality of all information obtained during the processing of reasonable accommodation requests. Any employee who obtains or receives such information as part of the reasonable accommodation process is strictly bound by these confidentiality requirements.