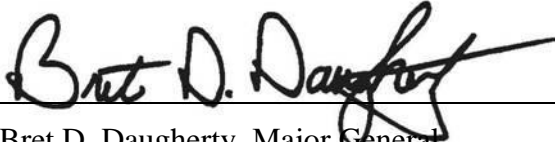




Department Policy HR 211-05

Title:	Reasonable Accommodation Policy and Guidelines
Former Number:	03-202-05
Authorizing Source:	Americans with Disabilities Act (ADA) of 1990, as amended Rehabilitation Act of 1973 RCW 49.60, Discrimination – Human Rights Commission RCW 41.06.490 State Employee Return-to-Work WAC 357-26, Reasonable Accommodation WAC 162-22-065, Reasonable Accommodation Governor’s Executive Order 96-04 State HR Directive 20-03
Information Contact:	Human Resources Director Building # 33 (253) 512-7940
Effective Date:	June 30, 2005
Mandatory Review Date:	January 1, 2025
Revised:	January 1, 2021
Approved By:	 Bret D. Daugherty, Major General The Adjutant General Washington WMD Director

Purpose

The Washington Military Department (WMD) affirms its commitment to equal opportunity and access to employment, facilities, programs and services offered to individuals with disabilities. WMD will not discriminate against any qualified individual with a disability or anyone perceived or believed to have a disability, or anyone unable to perform their job due to a medical condition related to pregnancy or childbirth, in any aspect of the employment process. This policy also sets provisions for meeting the reasonable accommodation requirements of State and Federal law.

Scope

This policy applies to all state employees within the WMD, applicants and select candidates seeking accommodations in the hiring process. It does not apply to guardsmen on state active duty or to federal personnel to include Active Guard Reserves (AGRs), traditional guardsmen in a federal military status, or military technicians. For represented employees, the collective bargaining agreement will supersede any conflicting provisions stated in this policy.

Policy

In order to achieve the diversity and inclusion goals referenced in our Diversity, Equity and Inclusion (DEI) policy, the WMD is committed to equitable and meaningful access to employment and any terms or conditions thereof, for people with disabilities. This work requires a meaningful review of our facilities to ensure the environment we work in is welcoming to all regardless of ability. (See our DEI Policy # HR-265-20.)

We recognize that access and opportunity for all employees and applicants require the design of workforce practices tailored to ensure there is a pathway to participation for individuals with disabilities. Employees, applicants and selected candidates have the right to request and receive reasonable accommodation, without stigma, harassment or retaliation.

A reasonable accommodation is a modification or adjustment to a job, work environment, rules, policy, practice or procedure that enables a qualified individual with a disability to gain access to an employment opportunity.

Examples of reasonable accommodation include:

- Modifying application procedures;
- Modifying a work schedule or a supervisory method;
- Providing telework beyond that provided by telework policy;
- Providing assistive technology, including information technology and communications equipment or specially designed furniture;
- Providing a reader or interpreter;
- Providing material in an alternative format (e.g., Braille, large print);
- Providing a reassignment to another job, or
- Authorizing intermittent or extended leave.

Examples of accommodations that are not considered reasonable:

- Eliminating essential job functions (i.e., fundamental duties of the position);
- Lowering standards (qualitative or quantitative) that are applied uniformly to employees with and without disabilities (though a reasonable accommodation may be provided to enable an employee with a disability to meet the standards);
- Creating a new job or position;

- Placement in a job that is considered a promotion without a competitive process;
- Allowing or ignoring inappropriate conduct, and
- Providing personal use items, such as prosthetic limbs, wheelchairs, eyeglasses, hearing aids, or similar devices, that are needed to accomplish daily activities both on and off the job.

Pregnancy reasonable accommodations include (items a through d do not require a medical certification or for limits lifting over seventeen pounds):

- a. Providing more frequent, longer, or flexible restroom breaks.
- b. Modifying a no food or drink policy; Providing seating or allowing an employee to sit more frequently if the job requires standing;
- c. Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express breast milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs;
- d. Job restructuring, part-time or modified work schedules, reassignment to a vacant position or acquiring or modifying equipment, devices, or an employee's workstation.
- e. Providing a temporary transfer to a less strenuous or less hazardous position;
- f. Providing assistance with manual labor and limits on lifting;
- g. Scheduling flexibility for prenatal visits, and
- h. Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the Department of Labor and Industries or the employee's attending health care provider.

An employee who is pregnant or has a pregnancy-related health condition cannot be required to take leave if another reasonable pregnancy accommodation can be provided.

The WMD is not required to create additional employment that the WMD would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

WMD may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficult or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (i). WMD may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits on lifting over seventeen pounds

If an employee, applicant or selected candidate believes they require a reasonable

accommodation due to a disability during the application process or to perform the essential functions of a position, the individual may request an accommodation following the procedures outlined in this document. Such contact can be made orally or in writing.

WMD will acknowledge receipt of the request for reasonable accommodation within five business days from receipt and will begin processing the reasonable accommodation as soon as practicable but no later than 15 days from the date of the request.

This is an interactive process. WMD will work with the requester to figure out what it can do to help. WMD believes that the person who has the need is often the best person to identify what is needed to accommodate them and their ability to perform the essential functions of their position. To aid in this process, WMD may request medical documentation. This information, in conjunction with the qualifications of the individual (see “qualified” above), will be used by WMD to grant or deny a reasonable accommodation.

If WMD denies an employee’s accommodation, it will work with the employee to determine if there is an effective alternative accommodation that can be made.

WMD may choose to deny a request where the accommodation would cause the agency undue hardship because it is costly, extensive, substantial and/or disruptive and/or would fundamentally alter the nature or operation of the agency.

If WMD denies a request for accommodation, such denial and the reasons for it will be documented in writing and sent to the individual requesting the accommodation. Employees may request a review of the denial from the Adjutant General / Department Director and/or their designee.

A. Direct Threat

In rare circumstances, an accommodation request may be denied if there is reasonable cause to believe that an individual poses a direct threat to the health or safety of self or others. This determination will be based on objective evidence, including current medical information and an assessment of the individual’s present ability to safely perform the essential functions of the job. In some cases, an employee may be sent to a doctor of WMD’s choosing (at the agency’s expense) if there is objective evidence to support a reasonable belief that, due to a disability, an employee poses a direct threat to self or others.

B. Disability Separation

A disability separation is an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee’s position, or alternative position, with or without reasonable accommodation, due to a disability. Disability separation is not a disciplinary action per WAC 357-46-160 or applicable collective bargaining agreement articles. Notice of this type of action must be in writing to the employee

and must include information about the option to apply for reemployment under WAC 357-19-465.

An employee may choose not to pursue an accommodation request and instead request to be separated from employment if they are unable to perform the essential functions of their position.

C. Confidentiality

All disability related information shall be treated as a confidential medical record and maintained in a secure manner, apart from the personnel files. Access to this information will be restricted and requires the approval of the Human Resources Director or designee.

D. Policy Review Requirements

Leadership will review this policy for effectiveness at least once every three years, unless there is a rule or statutory change necessitating a sooner review, change, or update.

E. Supervisor Training Requirements

Supervisors, managers or leaders will be required to take reasonable accommodation training within six months of employment and every two years thereafter.

F. Failure to Follow Policy

Engaging in the interactive process and offering reasonable accommodation for individuals with disabilities is not optional for supervisors, managers and leaders. Failure to follow agency accommodation provisions may lead to discipline, up to and including termination. Supervisors and managers who are uncertain about how to navigate any part of this process should contact Human Resources for support and assistance.

G. Inquiries / Complaints

1. Inquiries:

Inquiries regarding the policy can be made to the State Human Resource Director at 253-512-7940 or Reasonable Accommodation Specialist at 253-512-8983.

2. Complaints:

Employees may register complaints through the internal dispute resolution process listed in this procedure or directly with the Washington State Human Rights Commission under RCW 49.60, or with the Federal Equal Employment Opportunity Commission.

H. Responsibilities

1. Applicants:

WMD generated job announcements will notify applicants applying directly to the WMD of their right to request reasonable accommodation throughout the recruitment/selection process. Applicants have the responsibility to provide timely notification of the need for reasonable accommodation(s) to participate in the recruitment/selection process. Applicants requesting accommodation should identify, to a representative from the WMD's Human Resources Office (HRO), the need for reasonable accommodation at the time of application and/or interview.

2. Employees:

- a. Employees have the responsibility to provide timely notification of the need for reasonable accommodation(s) to perform the essential job functions as follows:

Selected Candidates / New Employees, who have not previously notified the WMD of the need for reasonable accommodation, should do so at the time of New Employee Orientation.

For Current Employees, it is preferable that requests are made in writing using the Reasonable Accommodation Request Form. However, verbal requests may be made to the appropriate Human Resources staff who will confirm verbal requests with the requesting individuals in writing.

Note: Regardless of employee notification, the WMD will also engage employees in the reasonable accommodation process when supervisors/managers become aware of qualifying disabilities and physical limitations, and/or there is reason to believe that known disabilities may impact an employees' ability to perform the essential functions of their position.

- b. Employees and applicants who make requests for accommodations must fully cooperate in the interactive process to ensure that effective accommodations are provided. This includes cooperating and/or authorizing the WMD to obtain information from their physician(s), licensed mental health care professional(s), or other health care professional(s).
- c. Employees in positions such as information technology/facilities services that received requests for Reasonable Accommodations directly from the employee and or their supervisor must promptly notify the HRO of the accommodation request.

3. Supervisors / Managers / Executive Staff:

- a. Promptly communicate all accommodation requests to the HRO once "put on notice" either verbally, in writing, or if they notice a medical condition is making tasks more difficult than normal for an employee.

- b. Encourage employees to make verbal/written request directly through the HRO by completing and submitting the request for an accommodation form.
- c. Document all requests for accommodation in writing specifically documenting the date received and the actions taken.
- d. Maintain confidentiality of requests and any medical documentation provided.
- e. Ensure all medical documentation is forwarded to the HRO to be filed in the employee's occupational health record.
- f. In their responsibility as agency leaders, division directors will be accountable to ensure required training, diversity council participation and inclusionary hiring practices.

4. Human Resources Director or Designee:

- a. Acts as the primary contact for accommodation requests.
- b. Trains human resource specialists involved in the hiring process to recognize and respond timely to requests for reasonable accommodations in the job application process. This may be done by another responsible party designated by the component.
- c. Ensures the rights to request reasonable accommodation are listed on all job announcements.
- d. Ensures a current copy of the Reasonable Accommodation Policy is posted on WMD's SharePoint intranet site.
- e. Ensures essential functions are identified and documented on the Position Description Form and that copies of the form are available, upon request, from the HRO and on the WMD's SharePoint site.
- f. Serves as a resource to employees, managers, and supervisors regarding matters pertaining to the provision of reasonable accommodation.
- g. Facilitates the interactive process, if designated to do so, between the supervisor or deciding official and the employee who is requesting an accommodation. This may include clarifying the requests so that an effective accommodation can be provided.
- h. Coordinates with the appropriate personnel to ensure workspace is accessible to persons with disabilities.
- i. Assists, if designated to do so, with procuring furniture, equipment, and services, such as sign language interpreters.
- j. Acts as a deciding official if designated.
- k. Maintains reasonable accommodation-related materials and compiles cumulative data for tracking purposes.

Procedure

A. Applicants

1. The process begins when the applicant requests an accommodation. This should occur at the time of application/interview.
2. A representative of the HRO will assist applicants with accommodation requests. Requests that cannot be accommodated will be sent to the Human Resources Director for review.
3. Recommendations to deny reasonable accommodation requests shall be forwarded to The Adjutant General (WMD Director) for review and final determination.
4. Applicants will be notified in writing if their accommodation requests are denied. This notification will include the right of applicants to register complaints with the Human Rights Commission and/or Federal Equal Employment Opportunity Commission.

B. Employees

1. Notice of potential need for an accommodation:

The process for determining whether or how to provide a reasonable accommodation of an employee's disability begins when the employer is "put on notice" of the need for such an accommodation. There are many ways this can occur. Some examples include:

- The employee completes a Reasonable Accommodation Request Form and submits it to the HRO (preferred method) or supervisor for processing.
- The employee makes an oral or written request for some adjustment at work (for instance-to facilities, schedule, or the manner of doing a job task) because of a medical condition.
- The employee provides a note from a health care provider stating the need for an adjustment at work due to a medical condition.
- Supervisors/managers observe behavior that indicates the employee may be having difficulty performing an essential function of the job because of a medical condition.
- Co-workers come to management representatives with objective observations that indicate the employee may be having difficulty performing an essential function of the job because of a medical condition.

Note: An employee does not have to use the words "reasonable accommodation," "disability," the "ADA" or any other so-called magic words. The employee is only required to indicate a need for change at work because of a medical condition.

Important Note: It is best for employees to ask for accommodations before any work-related issues or concerns arise. While an employee does not have to disclose their disability until they feel they need an accommodation, it is highly recommended that employees don't wait until their performance appraisal meeting or during a disciplinary proceeding as the WMD does not have to rescind disciplinary actions administered prior to a request for an accommodation.

C. Notify Human Resources Director or designee (if not already notified)

The HRO should be promptly notified on any requests for accommodation that are not filed directly with their office. This can be done through e-mail at ReasonableAccommodation@mil.wa.gov or by phone at 253-512-8983 or 253-512-7940. The HRO will acknowledge receipt of the request in writing to the employee within five workdays of receipt.

D. Interactive Process Begins

The WMD will engage in an interactive process with employees, in response to their accommodation requests, to determine reasonable and appropriate accommodation that provide employees with equal opportunity. The interactive process will start as soon as possible but no later than 15 days after receipt of the request. The WMD shall consider each request and corresponding accommodation on a case-by-case basis.

E. Medical Verification (if necessary)

When necessary, individuals requesting or requiring possible accommodations need to cooperate with and/or authorize the WMD to obtain information from their physician(s), licensed mental health care professional(s), or other health care professional(s). In some cases, an independent examination may be required to determine the nature of and/or limitation related to a disability. The WMD is not obligated to continue the reasonable accommodation process when employees elect not to provide requested medical information and/or refuse to cooperate with related independent medical exams.

If the employee requests reasonable accommodation for the purpose of expressing breast milk, an employer may not require the employee to provide written certification from a health care professional.

F. Determination of Possible Accommodations

When the nature and extent of the disability is established, the Human Resources Director or designee, supervisor and requester shall work together to identify essential job functions and possible accommodations required for the employee to perform those functions.

The WMD may seek technical assistance with respect to the accommodation from the Human Rights Commission or the Office of Civil Rights. Consultation with outside agencies (Governor's Committee on Disability Issues and Employment, DSHS's Division of Vocational Rehabilitation, Services for the Blind, the Developmental Disabilities Planning Council, State HR's Workforce Diversity Program, and/or other appropriate technical assistance resources) will be pursued as appropriate.

Although employee preference is considered when multiple effective accommodations are identified, the WMD selects the accommodation option provided to the employee. The WMD is not obligated to make accommodations that are not reasonable; involve direct threat that cannot be reduced to safe levels, and or impose undue hardship on the operation of the WMD. Once some method of accommodation is chosen, the Human Resources Director will memorialize what they have offered in a written format.

G. Temporary Accommodations

Many accommodations are implemented long-term, while some accommodations last for only a temporary period. Every situation is unique and requires case-by-case analysis of the individual's limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and business operations.

Implementing a temporary change offers the opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term and also demonstrates good faith.

Situations that can warrant provision of a temporary or trial accommodation may include, but are not limited to when:

- Time is needed to research a permanent accommodation solution, to acquire equipment, arrange a service, or identify an alternative vacancy;
- It is necessary to test an accommodation to determine if it is effective;
- The medical impairment is temporary but sufficiently severe enough to entitle the employee to receive accommodation;
- It is necessary to avoid temporary adverse conditions in the work environment, or
- When an accommodation can currently be provided but may eventually pose an undue hardship if provided long-term.

H. Reassignments

Reassignment is the term for the WMD-facilitated process for locating alternative vacant, non-promotional positions within the WMD that a disabled employee can perform, with or without accommodation. This is the final step in the accommodation process prior to disability separation.

To be eligible for a given reassignment position, the employee must meet the minimum qualifications for the job, be able to pass job-related tests, and perform the essential functions of the position (with or without accommodation). Additionally, the employee must be medically cleared to perform the work in question.

If the employee and the identified position meet these parameters, the employee should be placed in the identified open position and should not be required to compete with other applicants for the job. Once placed, the employee must, however, successfully complete a review period as required by the applicable personnel rules or labor agreement.

If the employee declines an offer to be reassigned to a vacant, non-promotional position for which they are both qualified and able to perform essential functions, with or without reasonable accommodation, reassignment services may terminate. At that point, the employee will be disability separated from WMD employment and may be placed on a reemployment list.

I. Disability Separations

If the reassignment process is exhausted, and the WMD has not been able to identify a vacant, non-promotional position for which the disabled employee is qualified, the employee will be medically separated from employment. The employee will be notified of this in writing. They will also be notified of any rights to apply for the reemployment register.

J. Monitoring an Accommodation

It is the obligation of the manager to monitor the effectiveness of the accommodation. This monitoring should occur outside of the WMD Performance Appraisal process. While employees with disabilities must be able to perform essential functions of their job with or without accommodation, it is also the responsibility of the manager to ensure an accommodation is effective for the employee. If an accommodation is no longer effective, then the interactive process should be revisited.

K. Declined Accommodations

Any recommendation by the Human Resources Director to deny a request for accommodation shall be forwarded to The Adjutant General (WMD Director) for review and final determination.

Note: An individual's receipt or denial of an accommodation does not preclude the individual from making another request at a later time if circumstances change and they believe that an accommodation is needed due to workplace needs associated with evolving limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different reasonable accommodation).

L. Dispute Resolution Process

Employees may appeal the outcome of their accommodation request as follows:

1. Executive Team Member Review

Employees must submit a written request for review of their accommodations to their Division Director or designee within seven (7) calendar days following their receipt of the reasonable accommodation decision. Requests must be signed, dated and include detailed descriptions of the concerns/disagreement with the accommodation outcome.

The Executive Team Member shall meet with the employees and provide a written response within fifteen (15) calendar days following the meeting.

2. The Adjutant General (WMD Director) Review

If the Executive Team Member's response does not resolve the issues under dispute, employees may request a review by The Adjutant General (WMD Director) or designee. The written request must be received within seven (7) calendar days following receipt of the Executive Team Member's response. This request must be signed, dated, include a copy of the original request for review and the reasons why the issues are not resolved.

The Adjutant General (WMD Director) will review the information and provide a written response within twenty-one (21) calendar days from the date of receipt. The Adjutant General's (WMD Director) review and subsequent determination is final.

Use of this dispute resolution process does not preclude the right of employees to register complaints with the Human Rights Commission and/or Federal Equal Employment Opportunity Commission

The HRO shall inform employees of their right to pursue redress for resolution of disputes through appropriate administrative procedures and civil agencies prior to concluding the accommodation process.

M. Metrics and Data Points

The following data and criteria will be reviewed at least annually and will be used to determine the success of this policy:

- 100% of New Employees are trained on the reasonable accommodation process within the first three days of hire.
- 100% of All Employees sign annual review checklist each year that they have reviewed the policy and know their right to request accommodation and the process for doing it.
- 100% of supervisors have taken the on-line Reasonable Accommodation Training as required in this policy (within six months of employment and every two years thereafter).

- Human Resources Office is notified of accommodation requests within two days of receipt.
- Accommodation requests are processed in less than 30 days (time it takes for the doctors to respond to requests is not counted in the number of days).

Definitions

Applicant – A job seeker who has requested consideration for a vacant position by following instructions as specified in the recruitment announcement for the vacant position.

Direct Threat – A significant risk of substantial harm to the health or safety of the individual or others than cannot be eliminated or reduced by reasonable accommodation.

Disability - The **presence of a sensory, mental, or physical impairment that:** is medically cognizable or diagnosable; or exists as a record or history; or is perceived to exist whether or not it exists in fact.

A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

For purposes of this definition, "impairment" includes, but is not limited to:

- Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemi and lymphatic, skin, and endocrine; or
- Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities, or
- Any medical condition related to pregnancy or childbirth which temporarily causes an employee to be unable to perform their job.

Only for the purposes of qualifying for reasonable accommodation in employment, impairment must be known or shown through an interactive process to exist in fact and:

- The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, terms or conditions of employment, or
- The employee must have put the employer on notice of the existence of impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect. A limitation is not substantial if it has only a trivial effect.

Disability Separation – A separation from employment due to a disability when: upon conclusion of the accommodation process there is no viable option; medical documentation confirms an employee’s inability to work in any capacity; or employees voluntarily request separation due to disability and provide a medical certification documenting their inability to perform the essential functions of their position/classification. Employees who have been disability separated and are able to return to work within two years of the effective date may have their names placed on the General Government Transition Pool as outlined in the official separation letter.

Essential Functions - Primary duties of a position that are fundamental to why the position exists. This does not include “marginal functions” – job duties that are peripheral or secondary to the main functions.

Health Care Professional - A person who has completed a course of study and is licensed to practice in a field of health care that includes the diagnosis and assessment of the particular disability in question.

Impairment – The act of impairing something or the state or condition of being impaired; diminishment or loss of function or ability.

Qualified Individual with a Disability – A person who meets legitimate skill, experience, education or 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.

Reasonable Accommodation – A modification or adjustment to practices, procedures, policies, work environment, or a job, which determined on a case-by-case basis, enables a qualified individual with a disability to enjoy equal benefits and privileges of employment. This can include the use of leave.

Undue Hardship – An excessively costly, extensive, substantial or disruptive modification or one that would fundamentally alter the nature or operation of the WMD.