



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
Information Contact:	Human Resources Director Building # 33 (253) 512-7940
Effective Date:	June 30, 2005
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Revised:	February 1, 2013
Approved By:	 Bret D. Daugherty, Major General The Adjutant General Washington Military Department 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, in any aspect of the employment process. This policy also sets provisions for meeting the reasonable accommodation requirements of State and Federal law.

Applicability

This policy applies to all state employees within the WMD. 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.

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.

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.

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.

Direct Threat – there is reasonable cause to believe that an employee poses a direct threat to the health or safety of themselves or others.

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.

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.

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

Policy

Qualified individuals with disabilities have the right to request and receive reasonable accommodation in all aspects of employment, so that they may: enjoy the benefits, rights and privileges of equal employment opportunity afforded to other applicants, candidates and, employees; and access to WMD programs, facilities and services, consistent with applicable laws, regulations, WMD policies and labor contracts.

1. Non-Discrimination

WMD will not discriminate against any qualified individual with a disability, or anyone perceived or believed to have a disability, in any aspect of the employment process. Requesting, receiving and/or needing an accommodation will not adversely impact the individuals' right to enjoy equal employment opportunity.

2. Accessibility

The WMD will provide an opportunity for qualified applicants, selected candidates and employees with disabilities to request and receive reasonable accommodations to ensure equal access to employment, facilities, programs and services.

3. Essential Functions

Essential functions are identified and documented on the Position Description Form. Copies of Position Description forms are available, upon request, from the Human Resources Office (HRO).

4. Notice to Accommodate

The WMD will notify applicants and employees of their right to request and receive reasonable accommodation.

Individuals with qualifying disabilities that require accommodation are generally expected to notify the WMD that an accommodation may be required.

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 employees' ability to perform the essential functions of their position.

5. Interactive Process

The WMD will engage in an interactive process with employees, in response to their accommodation requests, to determine reasonable and appropriate accommodation that

provided employees with equal opportunity. The WMD shall consider each request and corresponding accommodation on a case-by-case basis.

6. Medical Information

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.

7. Determinations

Accommodation determinations will be made on a case-by-case basis and only after careful consideration. The Human Resources Director (HRD) or designee shall engage in an interactive process prior to making determinations regarding reasonable accommodation requests. This may include consultation with appropriate sources of technical expertise on accommodations.

Although employee preference is considered when multiple effective accommodations are identified, the WMD selects the accommodation option provided.

The WMD is not obligated to make accommodations that are not reasonable; involve a direct threat that cannot be reduced to safe levels; and or impose undue hardship on the operation of the WMD. Decisions to deny accommodations on these grounds must be authorized by The Adjutant General (WMD Director) or designee.

8. Declined Accommodations

Qualified individuals with disabilities have the right to decline offered accommodations. When accommodations are declined and the involved individuals cannot participate in recruitment/selection processes or perform the essential functions of the position, they will no longer be considered as otherwise qualified individuals with a disability for the purposes of accommodation.

9. Separations

Employees may be separated 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.

10. 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 HRD or designee.

11. Complaints

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

12. Guidelines for Processing Requests

A. Applicants

Notification

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 shall identify, to a representative from the WMD's HRO, the need for reasonable accommodation at the time of application and/or interview.

Processing

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.

Recommendations to deny reasonable accommodation requests shall be forwarded to The Adjutant General (WMD Director) for review and final determination.

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

Notification

Timely notification to employees of their right to request reasonable accommodation will occur as follows:

New Employees: Human Resource Consultants or designees will inform newly hired employees during New Employee Orientation of the WMD's reasonable accommodation policy and of their right and responsibility to request accommodation.

Current Employees: Human Resource Consultants or designees will inform current employees identified as disabled, or who become disabled, of the reasonable accommodation policy and their right to request accommodation, at the time the adoption of this policy or at the time the identification is made known to management.

Electronic Posting: The current Reasonable Accommodation Policy is posted on the WMD's SharePoint intranet site.

Requests

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

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

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

Supervisors, receiving verbal notice of a need for accommodation should direct staff to make requests through the HRO. The supervisor shall promptly notify the HRO in writing when verbal accommodation request are received.

If supervisors/managers become aware of qualifying disabilities and physical limitations, and/or there is reason to believe that known disabilities may impact employees' ability to perform the essential functions of their positions they should notify the HRO, in writing, of the potential need to accommodate.

Processing

Reasonable accommodation requests shall be processed as follows:

Supervisors shall promptly forward all accommodation requests in writing to the HRD for initial evaluation and guidance.

The HRD or designee will engage in an interactive process with the requesting employee.

Employees seeking reasonable accommodation shall cooperate and assist the WMD in obtaining the necessary medical verification from their health care professional regarding the nature/extent of the disability.

When more specific medical information is needed, a medical release may be required so that additional information can be requested from the individual's health care professional. The WMD may also require an independent medical opinion, at its own expense, regarding the disability.

When the nature and extent of the disability is established, the HRD 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, the Department of Personnel's Workforce Diversity Program, and/or other appropriate technical assistance resources) will be pursued as appropriate.

If the accommodation is agreed upon through an interactive process that includes the affected parties, the HRD shall confirm this in writing. If an agreement is not reached, the HRD will notify the employee of the reasonable accommodation the WMD will provide.

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

The HRD 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.

13. Dispute Resolution

Employees may request a review of the outcome of their accommodation request as follows:

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.

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 provided 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.