

REASONABLE ACCOMMODATION

Number 3.2

Effective: January 19, 2016

Supersedes: Policy 3.2 dated March 1, 1996

Subject: REASONABLE ACCOMMODATION

Applicable To: All classified, exempt, appointed, and temporary employees, and applicants for employment, with the Executive Branch of the State of Vermont

Issued By: Department of Human Resources

Approved By: Justin Johnson, Secretary of Administration

PURPOSE & POLICY STATEMENT

The State of Vermont endorses the mandate of the Americans with Disabilities Act of 1990 (ADA) and ADA Amendments Act of 2008 (ADAAA), which prohibit employment discrimination on the basis of disability.

Consistent with the ADA, ADAAA, and Vermont's Fair Employment Practices Act, it is the policy of the State of Vermont to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee or applicant with a disability, upon request, unless such accommodation would cause an undue hardship. This policy applies to all aspects of employment, including the application process.

DEFINITIONS

Disability - (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual (i.e. caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working); (2) a record of such an impairment; or (3) regarded as having such an impairment.

Essential Functions - The primary and fundamental job duties of an employment position.

Qualified Individuals with a Disability - An individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Reasonable Accommodation - Modification or adjustment to a job application process that enables a qualified applicant with a disability to be considered for the position the person desires; 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 functions of that position; or modifications or adjustments that enable an employee with a disability to enjoy equal rights and privileges of employment as they are enjoyed by other similarly situated employees without disabilities.

Undue Hardship – Any accommodation that would represent a significant difficulty or expense when considered in light of a number of factors, including the nature and cost of the accommodation. Undue hardship is determined on a case-by-case basis, but generally includes an obligation which is not in proportion to the reciprocal cost, benefit, or that would alter the nature or operation of the business.

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

Reasonable Accommodation Committee (RAC) - A committee established to review and monitor the provisions of this policy. The members of the committee shall be selected by the Commissioner of Human Resources.

GENERAL

Applicants or employees shall not be asked whether they have a disability, or to describe the nature or severity of their disability. An applicant may be asked: "Will you be able to perform all the essential functions of this position with or without a reasonable accommodation?" (See also Personnel Policy Number 4.11, Interviewing and Reference Checking.) Employment opportunities shall not be denied to anyone based on the need to provide reasonable accommodation.

As an employer, the State is not obligated to provide the "best" accommodation possible, or the one desired by the employee, as long as the accommodation offered is sufficient to enable the individual to perform the essential functions of the job.

REASONABLE ACCOMMODATION PROCEDURES

Notwithstanding the process outlined below, employees may initiate a request for reasonable accommodation by any method, and are not required to use words such as "reasonable accommodation" or "disability" in order to trigger a requirement for management to engage in an interactive process to determine whether a reasonable accommodation for a disability is appropriate or necessary. If a communication demonstrates that a request for reasonable accommodation for a disability is being made, the process below should be followed.

To Initiate an Accommodation Request

1. An employee or applicant shall make a request to the immediate supervisor and may do so using the Request for Reasonable Accommodation form.
2. In cases of routine requests for accommodation in the interview process which cost less than one thousand dollars (\$1000), e.g. for sign language interpreters, it is generally not necessary to use the Request for Reasonable Accommodation form or review process described below.

Department Review

1. After receiving an accommodation request, the supervisor shall notify the appointing authority and the Human Resources personnel assigned to support the Agency/Department.
2. Medical verification of the disability may be requested from the individual. Any information supplied pursuant to the request for medical verification shall be treated as confidential, to the extent required by law, and shall be kept separate from the Official Personnel File.
3. Supervisors and managers are required to enter into an interactive process with the employee requesting reasonable accommodation, and work with the employee to gather appropriate medical information and consider solutions.
4. The supervisor and Human Resources personnel assigned to support the Agency/Department shall review the accommodation request to:
 - o determine whether the individual is a qualified individual with a disability covered by this policy;
 - o analyze the job description for essential functions;
 - o review medical verification, if applicable;
 - o review the individual's current limitations;
 - o review the individual's suggested reasonable accommodation(s);
 - o investigate other possible accommodations; and
 - o determine if the individual can have the disability reasonably accommodated without undue hardship.
6. If there is no reasonable accommodation which will allow the employee to perform the essential functions of his or her present job (i.e. if steps 1 - 3 above have been exhausted), then the Accommodation through Reclassification procedures must be followed (See Attachment A).

Department Response

1. The supervisor or Manager shall be responsible for completing the department response section of the Request for Reasonable Accommodation form, to include a description of the accommodation proposed or provided, or a description of why an accommodation request was not granted. The original form must be submitted to the Chair of the RAC, with copies forwarded to the requesting individual, the appointing authority, and the Human Resources personnel assigned to support the Agency/Department. Whenever possible,

an initial response will be communicated within ten (10) work days of receipt of the accommodation request.

2. In the following situations, an accommodation request initiated by an individual must be referred to the RAC:
 - If the cost of the proposed accommodation exceeds one thousand dollars (\$1000); has an impact on the duties of any other position; or has an impact on the workload or schedule of another employee.
 - If there is a dispute between the department and the individual requesting the accommodation as to the accommodation to be provided.
 - If, for whatever reason, it is determined that an accommodation request cannot be granted.
3. Notwithstanding the above, nothing shall preclude a department from seeking an advisory opinion from the RAC.

Reasonable Accommodation Committee Review

1. After receiving the completed Request for Reasonable Accommodation form, the RAC will conduct its review to:
 - analyze the job description for essential functions;
 - review medical verification if applicable;
 - review the individual's current limitations;
 - review the individual's suggested reasonable accommodation(s);
 - investigate other accommodations; and
 - determine if the disability can be reasonably accommodated without undue hardship.
2. If deemed necessary by the Chair of the RAC, expert opinion will be solicited to determine if there is an appropriate accommodation under the circumstances which is possible.
3. The RAC will attempt to issue its decision within fifteen (15) work days of receipt of a Request for Reasonable Accommodation form. The RAC will communicate its decision in writing to the requesting individual and the appointing authority. The RAC will set forth the rationale for its decision.
4. The requesting individual is not required to accept an accommodation recommended by the RAC. However, if the individual rejects a recommended reasonable accommodation that would enable the individual to perform the essential functions of the position held or desired, and cannot as a result of that rejection perform the essential functions of the job, the individual will not be considered a qualified individual with a disability.
5. Any appointing authority or designee dissatisfied with a decision of the RAC may request, by letter to the RAC Chair, an opportunity to discuss the committee's decision within ten (10) days of receipt of the decision.

DIRECT THREAT

As an employer, the State may refuse to hire an applicant, or retain an employee who poses a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or sufficiently reduced by reasonable accommodation. If an individual is believed to pose a direct threat, the appointing authority or designee will complete a Request for Reasonable Accommodation form and forward it to the RAC for a decision. In cases of direct threat, the RAC will endeavor to render and communicate its decision within five (5) workdays of receipt of a Reasonable Accommodation Report. Determination will be made on the individual's present ability to safely perform the essential functions of the job. Factors to be considered include: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. An employee may be temporarily relieved from duty with pay until the RAC makes a decision.

REMEDIES

An employee aggrieved by a decision of the RAC may grieve the decision pursuant to the ADA/ADAAA Grievance Procedures (See Number 10.2). Any applicant who feels (s)he has been discriminated against as an applicant for employment with the State of Vermont may file a complaint through the ADA/ADAAA Grievance Procedures (See Number 10.2).

Nothing herein shall preclude an aggrieved individual from pursuing any other legal remedy. To explore other remedies, individuals may also contact the following:

Vermont Human Rights Commission
14-16 Baldwin St., Montpelier, VT 05633-6301
802-828-2480 (Voice); 877-294-9200 (TTY)
Human.rights@vermont.gov

Vermont State Employees' Association, Inc.
155 State Street, Montpelier, VT 05601
802-223-5247

Vermont Troopers' Association, Inc.
7 Baldwin Street, Montpelier, VT 05601
802-419-4829

Equal Employment Opportunity Commission
1 Congress Street, Boston, MA 02114
617-565-3200 (Voice/TDD)

ATTACHMENT A ACCOMMODATION THROUGH RECLASSIFICATION

INTRODUCTION

These procedures expand the State's Reasonable Accommodation Policy by providing classified Executive Branch employees broader access to positions they are able to perform at the same or lower pay grades, in lieu of Reduction in Force (RIF) when the employee is disabled and incapable of performing in his or her current job.

This process **does not** apply to temporary, exempt, or appointed State employees, although reassignment to similar non-classified positions for such employees will be considered if no other reasonable accommodation is available in the current position.

PROCEDURES

Reasonable accommodation alternatives in an employee's current job must be exhausted before reassignment to the duties of a different position is considered. Such an assignment is appropriately designated as a reasonable accommodation only when it is determined that no reasonable accommodation is available in the current job, as determined by the Reasonable Accommodation Committee (RAC). Any dispute over the reassignment should be referred to the RAC in accord with established procedures.

1. When there is no other reasonable accommodation available within the employee's current position, Human Resources personnel assigned to support the Agency/Department must determine if there is another position **at the same pay grade** that Management intends to fill, and for which the employee meets the minimum qualifications and is able to perform, with or without reasonable accommodation. The Human Resources personnel must look first within the employing department, and second within the employing agency.
2. If there is such a position **at the same pay grade** within the employee's geographic area [i.e., within a thirty-five (35) road-mile radius of the regular duty station] which the employee is able to perform with or without reasonable accommodation, the employee **shall be required to perform the duties of the position** and will be **reclassified or reassigned** accordingly. No further reasonable accommodation steps are required after that point, except those accommodations which may be necessary to permit the employee to perform the new duties. The right of Management to require an employee to perform such duties shall be superior to the rights of any current classified State employee or current or former employee on the RIF list. This review shall normally be completed **within ten (10) calendar days** of the RAC determination that the employee can no longer perform the duties of his or her current position.
3. If there is **no position at the same pay grade** in the employing Agency under sections 1 & 2, above, the appointing authority shall, as soon as practicable,

notify the Commissioner of Human Resources and the RAC Chair of their need to determine whether there are any positions within the remainder of the classified service for which the employee is qualified and is able to perform, with or without reasonable accommodation. The employer shall provide the RAC Chair with all relevant documentation, including at least: the employee's current job description; a list of the employing agency's current vacant positions; and pertinent medical reports and Workers' Compensation medical end results, if applicable.

4. When the RAC Chair determines that the employing Agency has complied with all applicable reasonable accommodation steps, the employee shall be placed in a **Pre-Separation Accommodation through Reclassification** status. The employee shall be notified by the RAC Chair that (s)he has been placed in such status, and that the employee has the responsibility to meet with the Department of Human Resources' Recruitment Division to establish his or her parameters for assignment to a position. The Accommodation through Reclassification status shall last for **twenty (20) calendar days** and shall begin the date of the employee's receipt of notice.
5. An employee in an Accommodation through Reclassification status shall have, after establishing his or her parameters with the Department of Human Resources, the right to be assigned to the duties of positions that Management intends to fill that fall within these parameters and which are at the same or lower pay grade for which (s)he meets the minimum qualifications, and which (s)he is capable of performing with or without reasonable accommodation. That right shall be superior to the rights of any current classified State employees or current or former State employees on the RIF list. The employee shall be assigned to the duties of a position for which (s)he is eligible. Refusal of any one such assignment, or no response within five (5) workdays of notice, shall terminate any and all Accommodation through Reclassification status rights, and the employee will be considered to have resigned his or her State employment and will be separated accordingly. Any questions as to whether an employee is qualified must be resolved by the RAC.

NOTE: A position will not be considered "vacant" in any agency/department until such position has been cleared through the Accommodation through Reclassification process. Positions will not be RIF-cleared if there is an employee eligible for the position.

6. If there is no position available to the employee within the twenty (20) calendar day period of the Accommodation through Reclassification status, the appointing authority shall initiate a Medical RIF for the employee in accordance with the Injury on the Job Article of the current collective bargaining agreements. After that point, RIF reemployment priority will be established in accordance with applicable contractual RIF reemployment procedures.

7. Contract and/or regulatory provisions affecting status, seniority, salary, and benefits shall be applicable to any changes effected. In these instances, an employee's salary will be determined by the RIF reemployment provisions of the contract.

Approved:


Justin Johnson
Secretary of Administration

1/20/2016
Date