

## **Number 3.2 - REASONABLE ACCOMMODATION**

**Effective Date: March 1, 1996**

**\*\*Supersedes Policy Dated September 30, 1992\*\***

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

**Issued By:** Department of Personnel

**Approved By:** William Sorrell, Secretary of Administration

### **PURPOSE AND POLICY STATEMENT**

The State of Vermont endorses the mandate of the Americans with Disabilities Act of 1990 (ADA) which prohibits employment discrimination on the basis of disability.

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

### **DEFINITIONS**

**DISABILITY** - An individual with: (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) being regarded as having such an impairment.

**ESSENTIAL FUNCTIONS** - The fundamental job duties of the employment position that an individual with a disability holds or desires.

**QUALIFIED INDIVIDUAL 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** - Modifications or adjustments to a job application process that enable 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 benefits and privileges of employment as they are enjoyed by other similarly situated employees without disabilities. Reasonable accommodation may include, but is not limited to: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; equipment or devices; adjustment or modification of examination, training materials or policies; and the provision of qualified readers or interpreters.

**UNDUE HARDSHIP** - Any accommodation that would be unduly costly, extensive, substantial or disruptive, 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 Personnel. The RAC may be contacted through the Department of Personnel, Employee Relations Division, 802-828-3454.

## **GENERAL**

Applicants or employees cannot be asked whether they have a disability, or to describe the nature or severity of their disability. An applicant can only be asked: "Will you be able to perform all the essential functions of this position with or without a reasonable accommodation"? (See Number 4.11, Interviewing and Reference Checking.)

Employment opportunities shall not be denied to anyone based solely on the need to provide reasonable accommodation.

## **REASONABLE ACCOMMODATION PROCEDURES**

### **Accommodation Request Initiated by an Employee or Applicant**

1. An employee or applicant shall make a written request to the immediate supervisor using the Request for Reasonable Accommodation form to include: (1) name, department/agency, job title, address, phone number; (2) description of functional limitations for which accommodation(s) are being requested; and (3) description of any potential reasonable accommodation(s) that would overcome the limitations (See Attachment B).
2. In cases of routine requests for accommodation in the interview process which cost less than \$500 (i.e. 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 contact the departmental personnel officer and, if necessary, other departmental resources for technical assistance.
2. If necessary, 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 personnel files.
3. The supervisor and departmental personnel officer, 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;
  - o determine if the individual can have the disability reasonably accommodated without undue hardship.
4. 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 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 department personnel officer, and the appointing authority. Whenever possible, an initial response will be communicated within ten (10) work days of receipt of the accommodation request.
2. As an employer, the State is not obligated to provide the "best" accommodation possible, as long as the accommodation offered is sufficient to enable the individual to perform the essential functions of the job.
3. 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 five-hundred dollars (\$500); 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.

4. Notwithstanding the above, nothing shall preclude a department from seeking an advisory opinion from the RAC by calling the Department of Personnel Employee Relations Division at 802-828-3454.

### **Reasonable Accommodation Committee Review**

5. 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;
  - determine if the disability can be reasonably accommodated without undue hardship.
6. 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.
7. The RAC will attempt to issue its decision within ten (10) 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.
8. 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.
9. 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**

10. 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.
11. 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.
12. 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.
13. An employee may be temporarily relieved from duty with pay until the RAC makes a decision.

## **Remedies**

14. An employee aggrieved by a decision of the RAC may grieve the decision pursuant to the ADA Grievance Procedures (See Number 10.2).
15. 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 Grievance Procedures (See Number 10.2).
16. Nothing herein shall preclude any aggrieved individual from pursuing any other legal remedy. To explore other remedies, individuals may also contact the following:

*Human Rights Commission 135 State Street, Drawer 33 Montpelier, VT 05633-1201 802-828-2480 (Voice/TDD)*

*VT State Employees' Association, Inc. 155 State Street, P.O. Box 518 Montpelier, VT 05601 802-223-5247*

## **ATTACHMENT A ACCOMMODATION THROUGH RECLASSIFICATION**

### **INTRODUCTION**

In compliance with the Americans with Disabilities Act of 1990 (ADA), these procedures will expand the State's Reasonable Accommodation Policy by providing State employees Statewide 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 policy **does not** apply to temporary and exempt employees.

### **PROCEDURES**

17. 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.

18. When there is no other reasonable accommodation available within the employee's current position, the personnel officer must determine if there is another position **at the same pay** grade which management intends to fill and for which the employee meets the minimum qualifications and is able to perform, with or without reasonable accommodation. The personnel officer must look first within the employing department, and second within the employing agency,
19. 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** 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 reassignment 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.
20. If there is **no position at the same pay grade** in the employing Agency under sections 2 & 3, above, the appointing authority shall, as soon as practicable, notify the Commissioner of Personnel 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 (Per-10); a list of the employing agency's current vacant positions; pertinent medical reports; and medical end results for any applicable Workers' Compensation case.
21. 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 Personnel's Recruitment Division to establish his or her parameters for assignment to a position. This process allows the employee to inform the Department of Personnel what work (s)he is willing to do and where. The Accommodation through Reclassification status shall last for **twenty (20) calendar days** and shall begin upon date of receipt of notice.
22. An employee in an Accommodation through Reclassification status shall have, after establishing his or her parameters with the Department of Personnel, 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 position 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 the Accommodation through Reclassification status has been cleared. Positions will not be RIF-cleared if there is an employee eligible for the position.

23. 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 at once initiate a disability RIF for the employee in accord with the Injury on the Job Article of the current Agreements between the State of Vermont and the Vermont State Employees' Association, Inc. After that point RIF rehire priority will be established in accordance with applicable contractual RIF procedures.
24. Normal contract 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 provisions of the contract.

