



# POLICY

<b>Approved by:</b> Rebecca R. Hunter, Commissioner	<b>Policy Number:</b> 18-001
<b>Signature:</b> <i>Rebecca R. Hunter</i>	<b>Supersedes:</b> N/A
<b>Application:</b> Executive Branch Agencies and Employees	<b>Effective Date:</b> 9/1/2018
<b>Authority:</b> T.C.A. § 4-3-1703, T.C.A. § 8-30-104	<b>Rule:</b> N/A

**Subject:**

## **Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)**

It is the policy of the State of Tennessee to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship or a direct threat.

The State of Tennessee, in order to ensure compliance with applicable state and federal laws, establishes this policy regarding reasonable accommodation and the interactive process. This policy is intended to provide guidance to individuals seeking reasonable accommodation as well as agencies responding to accommodation requests.

### **Definitions**

*Disability –*

- (1) A physical or mental impairment that substantially limits one or more major life activities, or
- (2) A record of a physical or mental impairment that substantially limits a major life activity, and/or
- (3) Being regarded as having such an impairment, meaning the individual has been subjected to an action prohibited by the ADA because of an actual or perceived impairment that is not both minor and transitory (will last fewer than six months).

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

*Essential functions –* Fundamental job duties of the position the individual with a disability holds or desires.

<b>DOHR Policy: Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)</b>	<b>Policy Number:</b> 18-001
--------------------------------------------------------------------------------------------------------------------------	---------------------------------

*Physical impairment* – Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

*Mental impairment* – Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*Substantially limits* – An individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the general population.

*Major life activity* – Activities such as 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. Major life activities also include the operation of major bodily functions and/or individual organs within a body system, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

*Reasonable accommodation* –

- (1) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;
- (2) 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 an individual with a disability who is qualified to perform the essential functions of that position; or
- (3) Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

*Interactive process* – An informal process between the agency and individual requesting the accommodation to clarify what the individual needs and to identify the appropriate reasonable accommodation.

*Undue hardship* – An accommodation that causes significant difficulty or expense to the agency. In determining whether an accommodation would impose an undue hardship, factors to be considered include:

- (1) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;
- (2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

<b>DOHR Policy: Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)</b>	<b>Policy Number:</b> 18-001
--------------------------------------------------------------------------------------------------------------------------	---------------------------------

- (3) The overall financial resources of the agency, the overall size of the business of the agency with respect to the number of its employees, and the number, type and location of its facilities;
- (4) The type of operation or operations of the agency, including the composition, structure and functions of the workforce of the agency, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the agency; and
- (5) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

*Direct Threat* – A significant risk of substantial harm, based on objective, factual evidence regarding the individual's present ability to perform essential job functions, which cannot be eliminated or reduced to an acceptable level with a reasonable accommodation.

*ADA Coordinator(s)* – The individual or individuals designated and authorized by the agency to receive, process, and make decisions regarding ADA accommodation requests.

*Retaliation* - Any adverse action taken against an individual or individuals for exercising rights under this policy.

### **Requests for Accommodation**

When an applicant or employee needs an accommodation, the individual or his or her representative must let the agency know that he or she needs an adjustment or change at work for a reason related to a medical condition or disability. Merely self-identifying as an individual with a disability is not considered a request for a reasonable accommodation. Although not a requirement, an applicant or employee seeking an accommodation may complete the request in writing using the attached form (Employee Request for Reasonable Accommodation (ADAAA)). In order to ensure timely processing, requests should be submitted directly to the agency's ADA Coordinator when possible. However, if the individual seeking the accommodation submits to the request to a supervisor or manager-level employee, whether verbally or in writing, the supervisor or manager shall forward the request to the ADA Coordinator as soon as practicable.

### **Interactive Process**

The ADA Coordinator shall initiate the interactive process by contacting the individual seeking accommodation within 10 business days following the Coordinator's receipt of the request, absent extenuating circumstances requiring extension of this timeframe. During the interactive process, if the disability and type of accommodation required are not obvious, the ADA Coordinator may ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. The individual seeking the accommodation must describe the problems posed by the workplace barrier. The ADA Coordinator may ask the individual for reasonable documentation about his or her disability, functional limitations, and the need for reasonable accommodation. Requested documentation must be submitted to the ADA Coordinator as soon as practicable. The ADA

<b>DOHR Policy: Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)</b>	<b>Policy Number:</b> 18-001
--------------------------------------------------------------------------------------------------------------------------	---------------------------------

Coordinator may require that the documentation come from an appropriate health care or rehabilitation professional. If the individual's disability or need for a reasonable accommodation is not obvious, and he or she fails to provide the reasonable documentation requested by the ADA Coordinator, then he or she is not eligible to proceed in the interactive process until the documentation is provided.

If the ADA Coordinator requests reasonable documentation from the individual's health care provider, and the documentation provided is insufficient (i.e. does not specify the existence of a disability and explain the need for reasonable accommodation), the ADA Coordinator should explain to the individual why the documentation is insufficient and allow the individual a reasonable timeframe to provide the missing information.

The ADA Coordinator(s) shall choose the accommodation within 30 business days following receipt of sufficient documentation, absent extenuating circumstances requiring extension of this timeframe. If no documentation was requested, the accommodation shall be selected within 30 business days of initiating the interactive process, absent extenuating circumstances requiring extension of this timeframe. If there are multiple possible reasonable accommodations, the ADA Coordinator has the discretion to choose the accommodation that is most effective in removing the workplace barrier for the individual seeking accommodation. The individual is not required to accept the accommodation offered by the ADA Coordinator. However, if the individual needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective reasonable accommodation, he or she may not be qualified to remain in the job.

Once an accommodation has been selected, the ADA Coordinator shall notify the individual in writing of the selected accommodation and estimated date of implementation and reasons for any delay, if applicable. The agency shall make reasonable efforts to implement the accommodation as soon as practicable.

Reasonable accommodations may be implemented on a temporary or trial basis. In this case, the ADA Coordinator shall notify the individual in writing of this, and inform the individual the date the accommodation will be reassessed.

For any granted accommodation, the agency has the authority to monitor and/or reassess the effectiveness of the accommodation and whether it creates an undue hardship (as needed). In addition, the individual with the accommodation shall notify the ADA Coordinator if the selected accommodation is not effective at removing a workplace barrier. If an accommodation becomes an undue hardship to the agency or is not effective at allowing the individual to perform the essential functions of the job, the ADA Coordinator and the individual shall reengage in the interactive process.

As a result of the interactive process, if the ADA Coordinator determines that the individual cannot perform the essential functions of the job with or without reasonable accommodation, the individual may no longer be qualified for the job. In this case, the ADA Coordinator may recommend the individual be reassigned to a vacant position within the agency, unless it would be an undue hardship. The individual must be qualified for the new position (i.e. must satisfy the requisite skill, experience,

<b>DOHR Policy: Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)</b>	<b>Policy Number:</b> 18-001
--------------------------------------------------------------------------------------------------------------------------	---------------------------------

education, and other job-related requirements of the position), and must be able to perform the essential functions of the new position with or without reasonable accommodation. When considering reassignment, the agency must reassign the employee to a vacant position that is equivalent in terms of pay, status, or other relevant factors. If there is no vacant equivalent position, the agency may reassign the employee to a vacant lower position for which the individual is qualified. When reassignment is granted as a reasonable accommodation, the individual is not required to compete for the vacant position.

If reassignment to a vacant position would create an undue hardship, or there are no vacant positions within the agency for which the individual qualifies, the individual may be separated for the good of the service. The individual is not required to accept reassignment as a reasonable accommodation. However, if reassignment is necessary to allow the individual to perform an essential function or to eliminate a direct threat, and he or she refuses to accept the reassignment, the individual may not be qualified to remain in the job.

### **Confidentiality**

ADA Coordinators shall keep medical information obtained in connection with the reasonable accommodation process confidential. All medical information obtained by the agency must be kept in files separate from the individual's personnel file. This includes the accommodation request, and any documentation related to the approval and/or implementation of the request.

If the individual requesting accommodation provides medical documentation to a supervisor, the supervisor shall forward such documentation to the ADA Coordinator as soon as practicable. The supervisor shall not maintain copies of medical documentation received from the employee or the employee's representative. The agency's ADA Coordinator may share certain information with an individual's supervisor or other authorized manager as necessary to make appropriate determinations on a reasonable accommodation request or implementation of an accommodation. Under these circumstances, the supervisor or manager shall keep such information confidential.

In some circumstances, an individual seeking accommodation may make the request via a representative, such as an attorney, health care provider, or family member. In such circumstances, medical or other confidential information shall not be shared with the representative unless the agency receives authorization from the individual seeking the accommodation.

### **Retaliation and Interference**

Agencies are prohibited from retaliating against an applicant or employee for asserting rights under this policy.

Agencies are prohibited from interfering with the exercise or enjoyment of rights under this policy, or with the assistance of another in exercising or enjoying those rights. Agencies are prohibited from coercion, threats, intimidation, or interference with respect to rights under this policy.

<b>DOHR Policy: Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)</b>	<b>Policy Number:</b> 18-001
--------------------------------------------------------------------------------------------------------------------------	---------------------------------

Agencies are also prohibited from discriminating against or harassing an applicant or employee on the basis of disability.

If an employee or applicant believes he or she has been subjected to conduct that violates this policy, he or she is encouraged to report those incidents as soon as possible after the event occurs, pursuant to the State's Workplace Discrimination and Harassment Policy (12-008).

### **Supervisory Responsibility**

Supervisors who receive requests for reasonable accommodation shall forward the request to the agency's ADA Coordinator as soon as practicable. During the interactive process, supervisors are required to cooperate with the ADA Coordinator's directives or requests.

Supervisory personnel who fail to appropriately handle reasonable accommodation requests may be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

Questions regarding this policy should be directed to the Department of Human Resources Office of the General Counsel.

**DOHR Policy: Employment Reasonable Accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)**

**Policy Number:**  
18-001



**Request for Reasonable Accommodation (ADAAA)**

Date of Request: \_\_\_\_\_  
Requestor's Name: \_\_\_\_\_  
Requestor's Title: \_\_\_\_\_ Supervisor: \_\_\_\_\_  
Agency: \_\_\_\_\_ Division or Work Facility: \_\_\_\_\_  
Work Phone: \_\_\_\_\_ Work Email: \_\_\_\_\_

What limitation, impairment, or condition is interfering with your ability to perform your job function(s)? Describe the nature of the impairment:

Describe the job function(s) you are having difficulty performing because of the impairment, and the extent to which the impairment limits that activity:

What accommodation(s) are you requesting? How will the requested accommodation(s) assist you?

Please provide any additional information you believe is necessary to evaluate the request. You may attach additional information if necessary:

I understand that this request does not entitle me to the accommodation which I am seeking, but will be helpful in determining the accommodation which best assists me and the agency. I understand that I may be required to provide additional medical documentation about my impairment and the requested accommodation(s). I further understand that the agency will maintain and use this information solely in evaluating my request.

\_\_\_\_\_  
Requestor or Representative's Signature

**Tennessee Department of Human Resources**

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