



EQUAL EMPLOYMENT OPPORTUNITY



Supervisors Advanced Series Installment #1: Reasonable Accommodations



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Part 1: Instruction



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REASONABLE ACCOMMODATIONS

Legal Bases/References For Providing Reasonable Accommodations

- Section 501 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990, Titles I and V
- Executive Order 13164
- 29 Code of Federal Regulations 1614
- EEOC Management Directive 715
- DON CHR Manual, Subchapter 1601, EEO Program Policy
- USMC “Desktop Guide for Processing Requests for Reasonable Accommodations” (SOPs)



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Definition of an Individual with a Disability

- An individual who has a physical or mental impairment that substantially limits one or more major life activities
- An individual who is regarded as having such impairment, or
- An individual who has a record of such impairment.



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Pursuant to the ADA Amendments Act and the Rehabilitation Act as amended, the definition of disability “shall be construed broadly” and “should not demand extensive analysis.”

The primary object of attention in disability cases is not upon whether an individual has a disability, but rather whether the individual can be accommodated absent undue hardship.



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Definition of Reasonable Accommodation

Any **change in the work environment** (or in the way things are usually done) to help a person with a disability

- apply for a job;
- perform the duties of a job; or
- enjoy the benefits & privileges of employment.



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Reasonable Accommodation Includes:

- Making existing facilities readily accessible and usable by persons with disabilities.
- Job restructuring, modifying work schedules, telecommuting, and reassignment to a vacant position.
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.



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REASONABLE ACCOMMODATIONS

Reasonable Accommodation Process Overview:

- Accommodation is Requested
- RA POC (EEO) Is Notified
- Advisory Team is Convened
- Request for Reasonable Accommodation is Assessed
- If Necessary, Medical Documentation is Requested and Provided
- Individualized Assessment is Performed
- Decision to Accommodate/Not Accommodate
- Consider Reassignment as Accommodation of Last Resort
- Final Action



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Reasonable Accommodation Requests

- The accommodation process begins as soon as the applicant or employee makes a request for a change related to a disability
- The request can be oral or written, and made by an individual with a disability or by a family member on their behalf.
- The words “reasonable accommodation” or “disability” do not have to be used in making the request.
- The request can be made at any time.
- Once an employee has indicated that an accommodation is needed, the interactive process must begin.



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Notification of RA POC

- If the issue is simple and low- or no- cost, reasonable accommodations can be immediately approved by the supervisor, who should then contact the RA POC and fill out the appropriate paperwork so that the EEO Office has a record of the accommodation.
- If the issue is more complex, or there are questions regarding whether the requested accommodation is reasonable, or if there is substantial cost involved, the supervisor should contact the RA POC to convene the advisory team and work through the interactive process.



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The Advisory Team Consists of:

- Employee/Applicant Requesting Accommodation
- Supervisor
- HR Specialist
- RA POC

Others could be called in for coordination:

- Finance
- Legal
- Safety



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The Interactive Process is an Individualized Assessment made on a case-by-case basis

- Meet, discuss, communicate, exchange information, search for solutions, consult resources as needed
- If requestor only knows the problem, not the solution, employer must search for possible solutions
- If requestor specifies particular solution but it cannot be provided, employer must search for and consider alternatives
- If more than one possible accommodation exists, employer has discretion to choose among equally effective alternatives



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Individualized Assessment Can Include:

- Consult with the individual to determine what accommodations s/he believes would enable her/him to do the job.
- Determining essential functions (consult with HR)
- Assessing effectiveness of various accommodations
 - Job Accommodation Network www.askjan.org
 - Computer/Electronic Accommodations Program www.cap.mil
 - Meeting with the requestor and subject matter experts



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Individualized Assessment Can Include (cont.):

- The agency does not have to provide the exact accommodation that the employee or job applicant has requested. However, the accommodation provided must be effective in meeting the needs of the employee or applicant.
- Medical documentation may be required and requested to assist in determining the appropriate and most reasonable accommodation for the situation.



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Essential Functions

- The employee must be able to perform the essential duties of the job, with accommodation if necessary.
- The essential duties are those which are the core purpose of the job, the ones for which the individual's education, experience, and/or skills are valued.
- For example, speaking orally is not an essential duty for most positions, but may be for a public-facing customer service position.



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Factors in determining essential functions include:

- Whether the reason the position exists is to perform that function,
- The number of other employees available to perform the function or among whom the performance of the function can be distributed, and
- The degree of expertise or skill required to perform the function.
- The actual work experience of present or past employees in the job,
- The time spent performing a function, and
- The consequences of not requiring that an employee perform a function



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Actions NOT Required As Reasonable Accommodation:

- Removing an essential function or hiring someone else to perform it
- Lowering performance or production standards
- Excusing misconduct in violation of uniformly applied rules that are job-related and consistent with business necessity
- Providing “personal use items,” such as eyeglasses, wheelchairs, or prosthetic limbs



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Direct Threat Analysis

- An employer may require that an individual not pose a "direct threat" to the health or safety of himself/herself or others.
- A health or safety risk can only be considered if it is "a significant risk of substantial harm." Employers cannot deny an employment opportunity merely because of a slightly increased risk.
- An assessment of "direct threat" must be strictly based on valid medical analyses and/or other objective evidence, and not on speculation.
- **Do not** make this determination without input from SMEs



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Direct Threat Analysis – Factors to Consider

- Duration of the risk
- Nature and severity of the potential harm
- Likelihood that the potential harm will occur
- Imminence of the potential harm
- Whether the risk can be eliminated or reduced with a reasonable accommodation



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Undue Hardship

The only statutory limitation on an employer's obligation to provide reasonable accommodation is that no such change or modification is required if it would cause "undue hardship" to the employer.

- Significantly difficult
- Unduly Expensive
- Disruptive
- Substantial



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REASONABLE ACCOMMODATIONS

Pursuant to the Desktop Guide, Managers and Supervisors shall:

- Immediately contact their RA POC upon receipt of a request for reasonable accommodation
- Participate as a member of the Advisory Team
- Process all reasonable accommodation requests in accordance with References
- Maintain an open line of communication with employees seeking accommodation



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Pursuant to the Desktop Guide, Managers and Supervisors shall (cont.)

- Engage in on-going, informal discussion(s) with the employee during the reasonable accommodation process
- Consider ADR to resolve conflicts
- Implement the DON and Marine Corps policy to provide reasonable accommodation to qualified employees and applicants



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The determination regarding whether an employee can be accommodated and what accommodation is appropriate should be completed within **30 calendar days** from the initial request to the employee's supervisor.



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Decisions to Grant an Accommodation Request:

- Will be documented by the RA POC
- If there are several options that are equally effective in accommodating, Supervisor has final decision on which option to adopt.
- Should be revisited through the RA process if the adopted accommodation turns out to be ineffective or not appropriate



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Decisions to Deny an Accommodation Request:

- Must be made in writing (Samples included in Desktop Guide)
- Must include reason(s) for denial
- May include offer of assistance – not out of legal or regulatory necessity, but in a desire to be a good employer
- Must include options and instructions for ADR, reconsideration, appeal, or complaint
- Must include eligibility information and options for reassignment, disability retirement, or removal for inability to perform



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Reassignment – the Accommodation of Last Resort

Only available when it is determined that:

- There are no effective accommodations possible or
- All available accommodations would impose an undue hardship or direct threat.



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Reassignment – Eligibility

- Current DON Employee (not applicant)
- Able to perform the essential functions and meet the requisite KSAs of the potential vacancy, with or without an accommodation
- Employee does not need to be most qualified, only qualified
- Employee may be offered a lower grade position if no equivalent position is available
- No requirement to create a position or violate a seniority system
- Employee may not receive a promotion as a reasonable accommodation



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Reassignment – Process

- Supervisor works with Advisory Team to identify available positions within the activity
- Qualifications are determined
- Vacant positions are identified
- If an appropriate vacant position is identified, it is offered to the employee
- If no appropriate vacant position is identified, the search may be expanded – relocation costs do not have to be paid by the agency
- If no vacancy can be identified in 60 calendar days, the employee is notified and remaining options are set forth in writing, along with a full summary of actions taken



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REASONABLE ACCOMMODATIONS

Confidentiality of Medical Information

- Includes all medical information of all applicants and employees, from whatever source obtained
- Includes fact that someone has requested or received an accommodation
- Violation of law to disclose to other managers, co-workers, or even other employers unless exception applies
- Documents containing confidential medical information cannot be kept in regular personnel files



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Confidentiality of Medical Information – Limited Exceptions

Otherwise confidential medical information may be disclosed in the following circumstances:

- To supervisors and managers where they need it in order to provide a reasonable accommodation or to meet an employee's work restrictions;
- To first aid and safety personnel if an employee would need emergency treatment or require some other assistance in an emergency (such as help during an evacuation) because of a medical condition;



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Limited Exceptions to Confidentiality:

Otherwise confidential medical information may be disclosed in the following circumstances (cont.):

- To individuals investigating compliance with the ADA and with similar state and local laws; and
- Pursuant to workers' compensation laws (e.g., to a state workers' compensation office in order to evaluate a claim) or for insurance purposes.



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Part 2: Scenarios