

**Regulation 34 to be established as follows:**

## Regulation 34: Disability Accommodations

**34.01. PURPOSE** The purpose of this section of the regulations is to establish a mechanism to provide employment opportunities to qualified employees and applicants with disabilities, as defined by the Americans with Disabilities Act, as amended (“ADA”), the Pennsylvania Human Relations Act (“PHRA”), or the Philadelphia Fair Practices Ordinance (“PFPO”) who can perform the essential functions of the, permanent position held or sought with or without a reasonable accommodation.

**34.02 – EFFECT OF DETERMINATION OF DISABILITY.** A determination that an employee is disabled and eligible for accommodation under the Regulation is not to be construed as establishing eligibility under any other benefit that the employee may or may not be entitled to, including but not limited to eligibility for any disability benefit pursuant to The Philadelphia Public Employees Retirement Code, Section 22-400.

### 34.03 - DEFINITIONS.

**34.03-1 - DISABILITY -** Disability is defined as a physical or mental impairment that substantially limits one or more major life activities or major bodily functions of an employee, as defined by the ADA, PHRA & PFPO, or who has a history or record of such an impairment.

**34.03-2 – INTERACTIVE PROCESS** – The interactive process is the procedure by which the City and the employee or applicant confer and exchange information to determine if a reasonable accommodation exists that will allow the employee or applicant to perform all the essential functions of the position held or sought.

**34.03-3 - UNDUE HARDSHIP -** An action requiring significant difficulty or expense, as defined in the ADA and its implementing regulations.

**34.04 - REASONABLE ACCOMMODATION.** The City will provide reasonable accommodations to the known disabilities of employees and applicants for employment. The City must respond to ADA requests expeditiously.

34.04-1 – Employees seeking a reasonable accommodation on a temporary or permanent basis should notify their Departmental Human Resource Manager.

34.04-2 – Applicants for employment seeking a reasonable accommodation should contact the Mayor's Office of Labor Relations Employee Relations Unit.

34.04-3 – After receiving the request for accommodation, the City may request additional documentation from the employee as part of the interactive process to

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determine if a reasonable accommodation exists that will permit the employee to perform all the essential functions of the position held or desired.

**34.05 - REASSIGNMENT AS A REASONABLE ACCOMMODATION.** Reassignment is the reasonable accommodation of last resort and may be necessary only after the appointing authority or delegated representative have made the following determinations: (1) the employee's disability is such that he or she can no longer perform the essential functions of their permanent position, with or without a reasonable accommodation; (2) after engaging in the interactive process, the City determines that there are no reasonable accommodations that will enable the employee to perform the essential functions of their current position, or that any such accommodations would pose undue hardships or pose a direct threat to the employee or other employees; and (3) there are no reassignments available within the employee's current Department.

**34.06 - ADA REASSIGNMENT PROCESS.** An employee who is unable to perform the essential functions of their current position, with or without a reasonable accommodation, as part of the interactive process, may be considered for accommodation placement in accordance with this regulation.

**34.06-1 - REQUEST FOR ADA REASSIGNMENT FORMAT.** All requests for ADA Reassignment shall be made in a format prescribed by the Director. On such requests the Director may require information concerning training, experience, references, work restrictions, and such other information as deemed pertinent, including possession of certificates, licenses, or other evidence of competence. Employees may be required to participate in such assessments as the Director determines are necessary to accurately assess the employees' skills, abilities and qualifications.

**34.06-1-1 - RIGHT TO REJECT A REQUEST.** The Director shall refuse to approve an employee's request for an ADA Reassignment, or, if such a request has already been approved, retroactively disapprove that request and remove the employee from the Accommodations List under the following circumstances:

**34.06-1-1-1 -** The employee unreasonably does not comply with the request format prescribed by the Director;

**34.06-1-1-2 -** The employee does not cooperate with the ADA reassignment process described in this Regulation;

**34.06-1-1-3 -** The employee is found to not be a qualified individual with a disability; or

**34.06-1-1-4 -** The employee has practiced or has attempted to practice any deception or fraud in their request for placement.

**34.06-1-2 - REJECTION NOTICE.** Whenever an employee's request for ADA Reassignment has been rejected, notice of such rejection with the

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reason or reasons shall be given to the employee. An employee whose request for ADA Reassignment has been rejected because their application was incomplete or defective may amend the request within a reasonable timeframe, ordinarily fourteen (14) calendar days of the date of the rejection notice.

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**34.06-2 - PLACEMENT ON THE ACCOMMODATIONS LIST.** The process of placing an employee on the Accommodations List is part of the interactive process contemplated by the ADA, PHRA, and PFPO and, as such, requires cooperation by all parties and engagement in an ongoing dialogue.

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When an employee has provided the Office of Human Resources with a completed request for ADA Reassignment, the Office of Human Resources shall, through a review of the employee's physical limitations, skills, educational and experiential qualifications, and such other assessments, as the Director determines are necessary, determine which positions within the Civil Service are (1) the same or lower grade than the employee's current position, and (2) for which the employee meets all qualifications and physical requirements.

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The Office of Human Resources, in conjunction with the Office of Risk Management, and the Mayor's Office of Labor Relations shall then engage in the interactive process with the employee to identify whether there are additional potential accommodation positions, and determine for which of the identified positions the employee would like to be considered. This process should be completed within a reasonable amount of time, which, under ordinary circumstances, should not exceed ten (10) business days. If, during the course of their time on the list, the employee's accommodation needs change, the employee can re-engage in this process through a written request to do so sent to the Office of Human Resources.

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After the employee has had an opportunity to participate in this process, the Office of Human Resources will then place the employee on the Accommodations List for reassignment to the potential placement positions in order of the date and time the Director approved the employee's completed request. The Director's determination on potential placement positions for which an employee will be considered is final.

**34.06-3 – CERTIFICATION FROM THE ACCOMMODATIONS LIST.** Eligibles on the Accommodations List shall be certified for reassignment to an open position in accordance with Civil Service Regulations 11.02 and 11.03, except that if there is only one eligible candidate on the Accommodations List for an open position, the Director shall certify only that candidate. Additionally, passing over an eligible certified from the Accommodations List shall not constitute a rejection for the purposes of Civil Service Regulation 11.05.

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34.06-4 - REMOVAL FROM THE ACCOMMODATIONS LIST. An employee, placed on the Accommodations List, will be removed under the following circumstances.

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34.06-4-1 - REFUSAL OF ADA REASSIGNMENT. Any employee who refuses reassignment from the Accommodations List to a placement position shall be removed from the Accommodations List.

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34.06-4-2 LACK OF COOPERATION. Any employee who, in the opinion of the Director, refuses to cooperate in the ADA reassignment process shall be removed from the Accommodations List.

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34.06-4-3 TIME ON LIST. If an employee has been on the Accommodations List for one year, he or she shall be removed from the Accommodations List.

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34.06-4-4 LACK OF QUALIFICATIONS. If an employee is found to lack any of the published requisite qualifications established by the Director for the position for which he or she is being considered for placement, he or she shall be removed from the Accommodations List for that position.

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34.06-5 - EFFECT OF REMOVAL FROM ACCOMMODATIONS LIST. An employee who is removed from the Accommodations List may exhaust all accrued leave consistent with regulations governing the use of such leave. When that employee exhausts their leave, or if an employee is removed from the Accommodations List and has already exhausted all leave, he or she shall be separated from employment. If the employee is on a leave of absence, that leave will terminate as of the date the employee is removed from the List.

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34.07 - STATUS AWAITING REASSIGNMENT FROM AN ACCOMMODATION LIST. So long as the Office of Human Resources is unable to reassign a qualified individual with a disability to a position because of lack of vacancies for which the employee is eligible based on their qualifications and medical restrictions, the employee shall remain under their appointing authority for administrative purposes, including the use of any accrued leave per this section, and administrative requirements related to any leaves of absence.

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34.07-1 - USE OF ACCRUED LEAVE. So long as the employee remains on the Accommodations List and the employee is unable to perform the essential functions of their permanent position, the employee shall be permitted to use their accrued paid sick, vacation, compensatory time and administrative leave.

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34.07-2 - LEAVES OF ABSENCE. An employee unable to perform the essential functions of their permanent position, who has exhausted all accrued leave, may request an unpaid leave of absence from their appointing authority, pursuant to Civil Service Regulation 22.02. The appointing authority, subject to the approval of the Director, may grant a leave of absence without pay to an employee upon the employee's written request.

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34.07-2-1 - PERIOD OF LEAVES OF ABSENCE WHILE ON THE ACCOMMODATIONS LIST. Appointing authorities shall, with approval of the Director, grant leaves of absence for the duration of the one-year period an employee may remain on the Accommodations list. This leave of absence shall be in addition to any leaves of absence previously granted to an employee. The Director shall not approve leaves of absence which exceed the amount of time the employee may remain on the list.

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#### 34.08 - APPOINTMENT FROM THE ACCOMMODATIONS LIST.

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34.08-1 - EFFECT ON THE ACCOMMODATIONS LIST. Once an employee is appointed from the Accommodations List, the Director shall remove that employee from the list.

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34.08-2 - EFFECT ON ACCRUED SICK AND VACATION LEAVE. Appointment from the Accommodations List will entitle the employee to carry to the appointed position any previously accrued leave.

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#### 34.08-3 - EFFECT ON COMPENSATION AND BENEFITS.

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34.08-3-1 - A qualified individual with a disability reassigned to an accommodation position shall be paid in accordance with the pay rates for such position.

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34.08-3-2 - A qualified individual with a disability reassigned to an accommodation position at the same pay range as their previous permanent position shall be paid at the employee's current pay step.

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34.08-3-3 - A qualified individual with a disability reassigned to an accommodation position at a lower pay range than their previous permanent position shall be appointed at the pay step in accordance with Civil Service Regulation 6.093(B) Voluntary Demotions.

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34.08-3-4 - The employee shall also be entitled to pay step increases in their new accommodation position under the Pay Plan.

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34.08-3-5 - The employee shall be represented by the union that ~~ordinarily~~ represents the position to which the employee has been reassigned pursuant to this Regulation.

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#### 34.09 - ACCOMMODATION POSITION PROBATIONARY PERIOD.

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34.09-1 - PROBATIONARY PERIOD. All persons appointed from the Accommodations List shall be subject to a probationary period of six (6) months. The period of probation is expressly understood to be part of the accommodation process and that the status of the qualified individual with a disability in the

Accommodated position is not permanent until successfully completing their period of probation.

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34.09-2 - REJECTION DURING THE PROBATIONARY PERIOD. The appointing authority, or their designated representative, may reject a probationary employee appointed from the Accommodations List, pursuant to Civil Service Regulation 14.04.

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34.09-2-1 – RESTORATION TO THE ACCOMMODATIONS LIST.

The individual rejected during probation may request that their name be placed back on the Accommodations List to be considered for other positions. The Director shall decide whether to restore the rejected probationer to the Accommodations List, taking into consideration the reason for the rejection, and whether the probationary employee's rejection was due to physical inability to complete the job, or due to misconduct.