



# UNITED STATES GOVERNMENT OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

## OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION POLICY ON REASONABLE ACCOMMODATION

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### POLICY

The following policy and accompanying procedures fully comply with the Rehabilitation Act of 1973, Executive Order 13164 (requiring federal agencies to establish procedures to facilitate the provision of reasonable accommodation) and EEOC regulations at 29 CFR S 1614.203(d)(3), (clarifying the written procedure requirement).

### SCOPE

The policies and procedures herein apply to all ONHIR employees and applicants for employment. The procedures to be followed when an accommodation is requested by an applicant to or employee of the Office of Navajo and Hopi Indian Relocation are in accordance with Executive Order 13164. Executive Order 13164 directs all federal agencies to establish effective written procedures to facilitate the provision of reasonable accommodation to employees and job applicants with disabilities. Pursuant to this Executive Order, and our continuing obligations under the Rehabilitation Act of 1973, the Office has issued these guidelines and provides the following accommodations: a) for the application process; b) to enable an employee with a disability to better perform essential job functions; and c) to provide equal benefits and privileges of employment.

### DEFINITIONS

#### ***Disability:***

To be eligible for a reasonable accommodation, an individual must either have a physical or mental impairment that substantially limits a major life activity, has a record of a physical or mental impairment that substantially limited a major life activity. An individual who is only regarded as having a disability is not entitled to reasonable accommodation. Determination of disability will comply with the requirements of the Americans with Disabilities Act of 2008 (ADA) which requires a broad interpretation of the term and not an extensive analysis.

***Reasonable Accommodation:*** Any change in the work environment or the way things are customarily done that provides an equal employment opportunity to a qualified individual with a disability.

***Qualified Individual:*** An individual with a disability is qualified if the individual (1) satisfies or meets the requisite skill, experience, education, and other job-related requirements of the position; and (2) can perform the essential functions of the position, with or without reasonable accommodation.

***Essential Functions:*** Essential functions are those job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of others who could perform the function; or the function is specialized and the individual is hired based on her/his

ability to perform it. Determination of the essential functions of a position is done on a case-by-case basis to reflect the job as actually performed. Essential functions do not include marginal functions of a position which are those that are less important or critical to the success or failure of the specific position.

**Interactive Process:** A discussion about an applicant's or employee's disability. The applicant or employee, health care providers and the agency will share information about the nature of the disability and the limitations that may affect his or her ability to perform the essential job duties.

**Reassignment:** Reassignment is a form of reasonable accommodation that may be provided to an employee (not an applicant) who because of a disability can no longer perform the essential functions of their current job with or without reasonable accommodation.

**Undue Hardship:** An undue hardship means that an employer would incur significant difficulty or expense in providing a certain reasonable accommodation. The Rehabilitation Act does not require the ONHIR to provide a reasonable accommodation that causes an undue hardship. Determination of undue hardship is made on a case by case basis and considers factors such as the nature and net costs of the accommodation, overall financial resources and impact on agency operations or ability to conduct business.

## **ROLES AND RESPONSIBILITIES**

### **Human Resource Officer**

- Reviews and assesses requests for completeness to determine if individual meets the definition.
- Relays final decisions, either approval or denial within 20 business days from the date the request is received.
- Before making a recommendation to the Executive Director for approval or disapproval, the Human Resources Officer may consult with a health professional (rehabilitation specialist, counselor, etc.) to obtain an opinion whether an accommodation sought is reasonable and can be expected to sufficiently mitigate barriers to allow the requester to perform the essential functions of the position.
- The consultation will adequately evaluate a request for accommodation, require the requester to provide medical information to substantiate the individual has a disability and needs the reasonable accommodation requested.
- Manages and administers the Reasonable Accommodation program.
- Reviews and evaluates documentation in support of accommodation request (medical information).
- Works with applicants with disabilities who need accommodation to apply or for job interview.
- Administers agency funds to cover costs and purchases associated with reasonable accommodation.

### **Supervisors and Managers**

- Submits request for reasonable accommodation as practicable within two business days to the agency Human Resources Officer.
- Provide requested medical documentation or information about disability, limitations and need for accommodation to HR Officer.

- Participate in the interactive process to ensure that request meets the needs and enables individual requesting reasonable accommodation to perform essential functions of the position.
- Will be familiar with the Reasonable Accommodation policy and procedures.

## **REASONABLE ACCOMMODATION PROCEDURES**

### **Recognizing A Reasonable Accommodation Request**

As the ADA does not require that reasonable accommodation be requested in a formal way, or at a particular time, it can sometimes be difficult for employers to recognize a request and to know when to engage in the Interactive process.

Employers are not expected to assume that someone has a disability or to guess what accommodations are needed. Generally, the responsibility to request accommodation falls on the individual with the disability.

A request for accommodation does not always come in the form of a letter that specifies an individual's disability and need for accommodation. Sometimes the need for accommodation is alluded to during ordinary workplace conversations or is understood because an employee shares a note from a healthcare provider that excuses absences for a medical reason or places restrictions on an individual's ability to perform certain job tasks.

In some situations, there is no clear sign, no flashing light, indicating a request or to trigger a request. Management staff and human resource professionals must be trained to recognize the flags. When an individual makes it known that an adjustment or change is needed at work, due to a medical reason, this is a request for accommodation under the ADA.

The duty to engage in the interactive accommodation process can also be triggered when an employer has a reasonable belief that an employee may need accommodation due to a known disability that is affecting job performance or their ability to access benefits and privileges of employment.

When a request for reasonable accommodation is received, or when an employer has a reasonable belief that an employee may need accommodation due to a known disability that is affecting job performance or the ability to access benefits and privileges of employment is needed, these factors will precede the usual process of requesting reasonable accommodation.

Individuals with disabilities and agency decision makers and managers/supervisors may also consult with the HR Officer who has expertise on the requirements of the reasonable accommodation plan to assist with potential accommodations and resources available for reasonable accommodation. Specific guidance can found for this process include:

- EEOC Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000). Online on [www.eeoc.gov](http://www.eeoc.gov)
- EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002). Online on [www.eeoc.gov](http://www.eeoc.gov)
- ONHIR Reasonable Accommodation Policy: Attachment A – List of Resources

### **Reasonable Accommodation Request Process**

- An applicant or employee may request a reasonable accommodation at any time, orally or in writing.
- A request does not have to include special words such as reasonable accommodation, disability or Rehabilitation Act.
- A request is any communication in which an individual asks or states a need for the ONHIR to provide or to change something because of a medical condition.
- A person does not have to specify a particular accommodation to state that some sort of change or assistance is required.
- A supervisor, manager, HR Officer, should ask an individual whether they are requesting a reasonable accommodation if the initial communication is unclear.
- An employee can submit a request orally to the HR Officer, their supervisor or manager or in the employee 's chain of command.
- If a manager or supervisor directly receives a reasonable accommodation request, they should forward the request to the HR Officer within two business days, if practicable.
- An applicant must make a request to the agency HR Officer who is identified in the vacancy announcement.
- A family member, health professional or other representative may request a reasonable accommodation on behalf of an individual.
- Upon making a request, employees or applicants will be provided with a copy of the agency's Reasonable Accommodation Policy.
- An employee needing a reasonable accommodation on a regularly recurring/repeated basis,( i.e. language interpreter, readers) will not be required to submit a written request each time other than the first request as long as the need for accommodation does not occur on an unscheduled or infrequent basis. Otherwise, the employee requesting accommodation must give appropriate advance notice each time it is needed. Once the accommodation is approved for the first time the employee may obtain the accommodation by notifying the appropriate individual or office.

### **Processing Time Frame**

- The reasonable accommodation process begins as soon as the request for accommodation is made whether orally or in writing, and addressed whether or not written confirmation has been provided.

- The ONHIR will process requests for reasonable accommodation in a prompt and efficient manner, within 20 business days of the request, or when appropriate in as short a time frame as reasonably possible.
- In cases where a disability is obvious and can be accommodated with little or no disruption accommodation will be made immediately to permit expeditious consideration and delivery of reasonable accommodation.
- Supervisors/Managers that receive a request for accommodation must forward the request to the HR Officer upon receipt of request.
- Applicants seeking an accommodation will need to provide information to the HR Officer regarding their disability prior to the hiring process before the accommodation be addressed and/or approved or denied. If approved, the agency will provide accommodation within 20 days of the start date of the applicant.
- The HR Officer who receives a request for reasonable accommodation will inform the supervisor in writing to provide an opportunity for response and to recommend a decision on the request.
- The HR Officer will forward a recommended decision to the head of the agency within business days following receipt of sufficient information on which to base a decision.
- The agency will not be expected to adhere to its usual timelines of the individuals health professional fails to provide needed documentation in a timely manner.
- The ONHIR can pause or adjust the timeframe once it has requested medical documentation. However, the processing timeframe resumes as soon as medical documentation is received.

### **Oral Requests/Written Requests**

- A written Confirmation of Request form is necessary before a decision on the request can be finalized.
- Employees or applicants seeking a reasonable accommodation must follow up any oral request by completing the attached “Confirmation of Request” form and submitting it to the Human Resources Officer.
- The Human Resources Officer will offer assistance in filling out the form, if needed.
- Employees or applicants should make the written confirmation requests as soon as possible following an oral request.

### **Medical Information/Supporting Documentation**

- The ONHIR has the right to request relevant medical information and supplemental medical information if the first submission was insufficient.
- The ONHIR may not request medical information where: both the disability and the need for reasonable accommodation are obvious; or the individual has already provided the agency with sufficient information to document the existence of the disability and his/her functional limitations.

- When medical information is required to support a reasonable accommodation request, it should describe the following: nature of individual's disability; the need for reasonable accommodation; and how the requested accommodation will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.
- The ONHIR has the right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.
- The Rehabilitation Act requires that all medical information be kept confidential. All medical information that the ONHIR obtains in connection with the request will be maintained in files separate from the individuals' personnel file.
- Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation will not disclose this information except as follows: supervisor and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about necessary accommodation; safety personnel may be told if the disability might require emergency treatment; government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act; the information may in certain circumstances be disclosed to workers' compensation officers or insurance carriers; and EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests.
- The agency will not be expected to adhere to its usual processing timeline of reasonable accommodation if the individual's health professional fails to provide needed documentation in a timely manner. However, the requester will be kept informed of the status of the request and reasons for delay.
- In cases where medical documentation has not been received the Human Resources Officer will investigate whether a temporary accommodation may be made.
- When it is reasonably likely that the individual will be entitled to an accommodation, but it cannot be provided immediately, the agency will provide the individuals with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship.

### **Supervisor Recommendation/Temporary Accommodation**

To eliminate unnecessary levels of review, first line supervisors can approve a request for reasonable accommodation for their staff in consultation with the Human Resources Officer. A Manager/Supervisor will make their recommendation to the Human Resources Officer following receipt of the request regarding a reasonable accommodation. The Human Resources Officer in consultation with the Supervisor will investigate whether the temporary accommodation for accommodation is feasible and the employee will be informed the accommodation is temporary pending receipt of additional information on which to base a final decision.

### **Delays to Reasonable Accommodation Request**

If the reasonable accommodation request cannot be provided immediately, it may be due to extenuating circumstances that are those factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation.

For instance, if equipment needed for the accommodation request must be back-ordered or a new vendor must be found, it will result in a delay of the reasonable accommodation request. During these instances, the agency will not be expected to adhere to its usual time frames which would result in a delay in processing a request if the requesting individual's health professional fails to provide the needed documentation needed to process the reasonable accommodation.

Where there is a delay in either processing a request for, or delivering, a reasonable accommodation, the agency will notify the individual of the reason for the delay. To the extent possible, the agency will also keep the individual informed of the date on which the agency expects to complete the process.

If there is a delay, the agency will investigate whether there are temporary measures that could be taken to assist the individual with a disability.

## **Reassignment**

Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their position, with or without reasonable accommodation.

Reassignments are made only when employees are qualified for the position, and are made without competition. The reassignment process will begin after the reasonable accommodation request has been made and reviewed by the supervisor, the Human Resources Officer or the head of agency. Upon review of the initial request, a determination for reassignment can be made when agency decision makers consult and determine that the employee can no longer perform the essential functions of their position.

When this determination has been made, the Human Resources officer will identify and evaluate other possible accommodations including reassignment. The agency will consider for example, temporary job restructuring or the use of equipment that might permit the individual to perform *some* of the functions of his/her job or reassignment.

A reassignment is made only to a vacant position that the ONHIR has authorized to be filled at the time of the accommodation request and intends to fill that is an equivalent position. If an equivalent position is not available it may be to a lower level position that is close as possible to the current position. If the employee is qualified they will be reassigned to a new position without competition.

## **Denial of Reasonable Accommodation Request**

A denial of a reasonable accommodation request will be provided in writing to the requester on the “Denial of Request” form. The form will be completed and will specifically state the reason(s) the accommodation is being denied, and if possible should offer an alternative accommodation. The same written denial process as stated above will apply to applicants as well. The denial

## **Final Approval**

The head of the agency will make the final decision on the reasonable accommodation request in consultation with the Human Resources Officer. The decision will be provided in writing to employee requesting the accommodation. If the accommodation is approved, that decision will be immediately communicated to the individual on the “Confirmation of Request” form. The same written approval process will apply to applicants as well.

## **Informal Dispute Resolution**

If the requesting individual wishes reconsideration of their request, they should ask the head of agency, in writing, to reconsider the denial. A request for reconsideration must be made within five working days of receipt of the initial decision. The individual may submit additional information in support of his/her request at this time, or may propose an alternative accommodation to the original request. The head of the agency will issue a final decision, in writing, no later than five working days after receipt of the request for reconsideration.

## **Information Tracking and Reporting**

The Human Resources Officer will maintain a record file reasonable accommodation requests to include the written request, response and analysis, decision and appellate activity, if any. The agency will maintain the minimum necessary information to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 and to make such records available to EEOC upon their request. The ONHIR must record the following information: specific reasonable accommodation; the position (occupational series, grade level, and agency component) sought by requesting applicant or held by the employee; whether the accommodation was needed to apply for a job, perform the essential functions of a job or enjoy the benefits and privileges of employment; whether the request was granted or denied; the identity of the deciding official; the basis of the denial; and the number of days taken to process the request. The ONHIR will keep records related to a particular individual who requested an accommodation for the duration of the individuals’ employment. The agency will keep any cumulative records used to track the agency’s performance with regard to accommodation for at least three years. Applicants and employees may contact the Human



Resources Officer to track the processing of request for reasonable accommodation. The head of the agency and Human Resources Officer, in consultation, will annually review reasonable accommodation request activity to determine whether the policy is adequate for ONHIR and employee needs or if changes can improve the program.

### **Confidentiality of Records**

The Human Resources Officer will keep all requests for accommodations, along with any medical or other documentation provided, in files separate from the employee's personnel file to ensure confidentiality of information. Access to this information is strictly limited to those employees with an identifiable need to review the information and will otherwise remain confidential in accordance with the Privacy Act procedures

### **Costs and Resources**

The agency will take the necessary steps to ensure that requests or reasonable accommodation are not denied for reasons of cost or that individuals with disabilities are not excluded from employment due to the anticipated cost of accommodation.

Resources are available to the agency as a whole, excluding those designated by statute for a specific purpose that do not include reasonable accommodation that will enable it to provide an effective accommodation without undue hardship.

The agency will also ensure that individuals who grant or deny requests for accommodation or who make hiring decisions have the necessary knowledge on how to arrange for the use of agency resources to provide the accommodation through consultation with the Chief Financial Officer.

Supervisors and Managers will be provided information from the Human Resources Officer on how to access additional information regarding reasonable accommodation including EEOC guidance and technical assistance documents. This information and resource materials can also be found on EEOC's public website to include: EEOC Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000) and EEOC Enforcement on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002).

### **Inquiries**

Any person wanting further information concerning this policy may contact, Teresa Slater, Human Resources Officer, 928-779-2721, ext 122 or via e-mail at [tslater@onhir.gov](mailto:tslater@onhir.gov).

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