

TITLE: 400 HUMAN RESOURCES ADMINISTRATION

CHAPTER 108 EMPLOYMENT PRACTICES

PART 2 REASONABLE ACCOMMODATION

EFFECTIVE DATE: November 1, 2017

PURPOSE: To provide procedures for applying for reasonable accommodation.

APPLICABILITY: All LOPD employees

AUTHORITY: Section 31-15-7 NMSA 1978

CROSS REFERENCES: HRA 400.108.1 Discrimination, Harassment, Sexual Harassment, Retaliation; 10.12.11 NMAC; Human Rights Act, § 28-1-7, NMSA 1978; Recruitment; 400.104 Recruitment and Selection; 400.107 Discipline.

RELATED FORMS: Medical Provider Evaluation and Recommendation, Request for Reasonable Accommodation.

DEFINITIONS

Essential functions: Fundamental job responsibilities assigned to a position that an employee must be able to perform unaided or with the assistance of a reasonable accommodation.

Major life activity: Functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

New Mexico Human Rights Act. A State law protecting employees from acts of discrimination on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, physical or mental handicap, serious medical condition, and age, or as provided in 1978 NMSA § 28-1-7.

Physical or mental impairment: A physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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Qualified disability: A physical or mental impairment that substantially limits one or more of an individual's major life activities, a record of such impairment, or being regarded as having such an impairment.

Qualified individual with a disability: A person with a disability who satisfies the requisite skill, experience, and education requirements of the employment position that the individual holds or desires and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable accommodation: A modification or adjustment to the work environment or to the manner or circumstances under which the position held or desired is customarily performed that enables a qualified individual with a disability to perform the essential functions of that position.

Record or history of impairment: A person who has a history of impairment or has been diagnosed correctly or incorrectly as having an impairment.

Regarded as having an impairment: A person who has a physical or mental impairment which, though not substantially limiting a major life activity, is regarded as having such a limitation.

Serious medical condition: A serious health-related impairment other than a handicap, which substantially limits one or more of an individual's major life activities, as defined in this glossary, and which is verifiable by medical diagnosis. An individual is considered to have a serious medical condition, if he or she has a serious health-related impairment, or is regarded as having a serious health-related impairment. Serious health-related impairment means a history of having a serious medical condition that substantially limits one or more major life activities.

Undue hardship: An accommodation that is unreasonable for LOPD to implement due to significant difficulty and expense as determined by the following factors: the nature and cost of the accommodations; the overall budget of LOPD; the number of persons employed by LOPD; the overall financial resources and size of LOPD with respect to the number, type and location of the facilities; and the impact of the accommodation on the operation of the work unit and the agency as a whole, and any other factor that may be relevant to the determination.

Workplace: Any LOPD office, parking lot, or other location being used or accessed to conduct LOPD business.

1 Policy: LOPD provides reasonable accommodation to employees with covered disabilities in accordance with the Americans with Disabilities Act (ADA) of 1990 and the NM Human Rights Act. The LOPD is committed to providing all employees with a workplace free of discrimination including opportunities for professional growth and achievement regardless of disability. The LOPD is committed to removing barriers to continued employment.

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- A. All purchases of items or services needed to provide reasonable accommodations are subject to the provisions of the New Mexico Procurement Code, the regulations of the Department of Finance and Administration, the regulations of the General Services Department, and LOPD's budget availability. Outside resources will be considered when evaluating a reasonable accommodation request.
- B. The LOPD may request a medical examination that is job related and consistent with business necessity to determine the existence of a disability and the functional limitations that require reasonable accommodation.
- C. The duty to provide reasonable accommodation is on-going therefore each request must be considered to determine if an accommodation is needed, if needed what accommodation will be effective, and if effective will the accommodation pose an undue hardship.
- D. Employees who violate uniformly applied conduct rules that are job related and consistent with business necessity may be disciplined if the same discipline would be imposed on an employee without a disability. Examples include but are not limited to workplace violence, theft, or destruction of property.
- E. The LOPD is not required to provide a reasonable accommodation that would cause an undue hardship. An undue hardship assessment of circumstances must show that a specific reasonable accommodation would cause significant difficulty or expense. Factors to be considered include: the nature and cost of accommodation needed; the overall financial resources of the office including number of people employed and the effect on expenses and resources of the office; the overall financial resources of the agency, size, number of employees and type and location of sub-entities; the type of operation of the agency including geographical separateness and administrative / fiscal relationship with State of New Mexico; and the impact of the accommodation on the operation of the office.

2 Responsibilities and procedure for employees. An employee with a qualified disability may request a reasonable accommodation if the employee believes an accommodation is necessary to perform the essential functions of his or her position.

A. The initial request for reasonable accommodation does not have to be in writing however, the employee requesting reasonable accommodation is required to submit documents to his or her supervisor and HR that identify the disability and describe the functional limitations that require reasonable accommodation. Employees are encouraged to contact HR prior to initiating a request for reasonable accommodation to obtain a copy of the essential functions of their position and guidance on the request process including the forms.

1. The *Medical Provider Evaluation Tool* is a doctor's statement describing the condition necessitating reasonable accommodation, the anticipated duration of the

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condition, recommendations for accommodation and any other relevant facts necessary to determine a request for reasonable accommodation. If this information is provided in a different format, the actual form is not required. If information provided on any form is insufficient to provide a response to the request, then the employee must provide information sufficient to make a determination.

2. A completed *Request for Reasonable Accommodation* which identifies the essential function for which a reasonable accommodation is needed and the employees suggestions for reasonable accommodation. If an employee is unsure of what kind of accommodation to request, the employee should visit Job Accommodation Network at <https://askjan.org>.

B. Employees are required to participate in the interactive process with their management and HR.

3 Responsibilities of Managers and Supervisors. Managers and supervisors are required to enforce this policy by complying with the following.

A. Fostering a workplace environment free of harassment, discrimination and retaliation against employees with disabilities.

B. Abstain from making any statements or engaging in any behavior that could be interpreted as sexual harassment, discrimination or retaliation.

C. Maintaining confidentiality regarding an employee's disability and request for reasonable accommodation.

D. Supervisors must participate in the interactive process to include reviewing information from the Job Accommodation Network and suggesting alternative reasonable accommodations, if appropriate.

E. Supervisors shall notify HR if an employee reports that inability to perform job duties is related to a medical condition or disability.

F. Supervisors may initiate the reasonable accommodation interactive process if they know the employee has a disability; knows or believes the employee may be experiencing workplace problems because of the disability; and know or has reason to know that the disability prevents the person from requesting a reasonable accommodation.

G. Supervisors monitor agreed upon reasonable accommodations to assess if the accommodation is effective.

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H. Contact HR and request a return to the interactive process if the accommodation is not effective.

4 Human Resources (HR) Responsibilities. HR facilitates the interactive process and evaluates a request for reasonable accommodation utilizing the following guidelines.

- A. HR opens a separate file for employees when a reasonable accommodation is requested.
- B. The Reasonable Accommodation file shall contain the employees Request for Reasonable Accommodation, the Medical Provider's Evaluation, the essential functions of the position, applicable information from the Job Accommodation Network, communications regarding scheduling of interactive meetings, and memorandum recording the outcome of the interactive meetings.
- C. HR schedules and facilitates interactive meetings between the employee and the supervisor. The focus of the interactive meeting shall be to determine whether an accommodation is needed; if needed, what accommodation would be effective; and if effective, whether the accommodation would pose an undue hardship. Essential functions may not be removed from the employee's duty assignments. Reasonable accommodations may be evaluated using but not limited to the following guidelines:
 - 1. The LOPD may offer an accommodation different from the employee's request if it is determined to be as effective as the employee's request.
 - 2. The LOPD shall explore alternative reasonable accommodations as requested.
 - 3. If there is more than one reasonable accommodation the LOPD may choose which accommodation to approve, providing it is effective.
 - 4. If the employee declines an offered reasonable accommodation which would allow the employee to perform the essential function then the employee may not be qualified to remain in the job.
 - 5. Adjusting an employee's work schedule through arrival or departure time or breaks may be approved if client services and work performance of other employees are not impacted.
 - 6. Modifying call in or attendance policies may be considered if client services are not impacted.
 - 7. Marginal functions may be removed but may be replaced by another function the employee is able to perform.
 - 8. Altering when and/or how a function is performed if it does not impact client services.
 - 9. Reassignment to a different position may be offered if there is a vacant position and the employee is qualified. Reassignment to a different vacant

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position should be a last resort.

10. Modifications or adjustments to office space may be offered.
11. Purchase of specialized furniture or office equipment may be considered with the focus on supporting the employees ability to perform job functions.
12. Modifications of workplace policies may be approved provided employee safety is not compromised.
13. The LOPD is not required to provide a new supervisor however, supervisory methods may be altered.
14. FML shall be part of every reasonable accommodation where absences related to the disability may occur and the employee is otherwise qualified for family medical leave. Granting additional leave may be considered in some circumstances.
15. Agreements to reasonably accommodate an employee should be as specific as possible and provided in writing to the employee and the supervisor.

D. Reasonable accommodation agreements between the employee and the LOPD apply only to the disabled employee and are not precedent setting.

E. Determination of undue hardship shall be carefully evaluated with respect to disruption of provision of services to clients; the impact on the ability of other employees to perform their work; sources of funding; and working with landlords to obtain needed modifications to premises.

Authorized Signature

APPROVED: _____

Bennett J. Baur, Chief Public Defender
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