



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

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MEMORANDUM

TO: All OGE Employees

FROM: Amy L. Comstock *Amy L. Comstock*
Director

SUBJECT: Agency Procedures for Providing Reasonable Accommodation
for Individuals with Disabilities

OGE Policy on Reasonable Accommodation

In accordance with the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities unless to do so would cause undue hardship. Reasonable accommodation is provided to such individuals so that they may enjoy the same access in the workplace as individuals who are not disabled. The Office of Government Ethics (OGE) fully supports this policy.

OGE provides reasonable accommodation when:

- ▶ an applicant with a disability needs an accommodation in order to be considered for a job;
- ▶ an employee with a disability needs an accommodation to enable the employee to perform the essential functions of the job or to gain access to the workplace; and
- ▶ an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

OGE will process requests for reasonable accommodation and, where appropriate, provide reasonable accommodations in a prompt, fair and efficient manner.

Definition of Key Terms

Essential Functions: Those job duties that are so fundamental to the position that the individual holds or desires that the employee

or applicant cannot do the job without performing them. A function can be "essential" if, among other things, the position exists specifically to perform that function or the function is specialized and the individual is hired based on his or her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed.

Qualified Individual with a Disability: An individual with a disability is qualified if: (1) the employee or applicant satisfies 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.

Reasonable Accommodation: Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

Reassignment: Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to non-probationary employees who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position.

Undue Hardship: Undue hardship arises when a specific type of reasonable accommodation causes significant difficulty or expense. Determination of undue hardship is made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the Agency.

Requests for Reasonable Accommodation

A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. The reasonable accommodation process begins when the request for accommodation is made.

An applicant or an employee may request a reasonable accommodation either orally or in writing. In the case of an employee, requests should be made to the employee's supervisor or manager. An applicant may make a request for a reasonable

accommodation either to the Personnel Officer or the Personnel Assistant. A family member, health professional, or other representative may request a reasonable accommodation on behalf of an employee or applicant. The request should go to the same person to whom the applicant or employee would make the request.

Written Requests for Record Keeping Purposes

To enable OGE to keep accurate records of any requests for accommodation, employees seeking a reasonable accommodation must follow up an oral request either by completing the attached "Confirmation of Request" form or otherwise confirm their request in writing to their supervisor or manager. For applicants seeking a reasonable accommodation, the Personnel Officer or the Personnel Assistant must give them the "Confirmation of Request" form to fill out. If an individual with a disability requires assistance with this requirement, the staff member receiving the request will provide that assistance.

Processing a Request for Reasonable Accommodation

The supervisor or manager who receives and handles the request for accommodation will be referred to as the "decision maker." The supervisor or manager of the decision maker should be notified immediately of any request for accommodation. Requests for the following types of accommodation shall be coordinated with the Deputy Director for Administration and Information Management:

- adaptive equipment, including information technology and communications equipment, or specially designed furniture
- a reader or sign language interpreter, or other staff assistant to enable employees to perform their job functions
- removal of an architectural barrier
- materials in alternative formats (e.g., braille, large print) which cannot be handled by the supervisor
- reassignment

Identification of an Accommodation

The individual requesting the accommodation and the decision maker must talk with each other about the request, the process for determining whether an accommodation will be provided, and any potential accommodations that may be appropriate. Because the individual requesting the accommodation is in a better position to know what accommodation would best meet his or her needs, it is expected that the individual will identify any possible

accommodations. However, the decision maker will have a responsibility to seek out and consider possible accommodations where the individual is unable to suggest an appropriate accommodation, where an effective accommodation is not obvious, or where several different possible reasonable accommodations are being considered. A list of resources that are available to assist both the decision maker and the individual requesting accommodation has been provided by the Equal Employment Opportunity Commission (EEOC) and is attached as Appendix A to this set of procedures.

Effectiveness of this process depends upon a full exchange of information between the decision maker and the individual requesting an accommodation. This is particularly important where the specific limitation, problem, or barrier is unclear.

Requests for reassignment will only be considered if no other accommodations are available that will enable an individual to perform his or her job or if the only effective accommodation would cause an undue hardship. Reassignment can only be made to a vacant position or one that is reasonably expected to become vacant within the next 60 business days. In considering whether there are positions available for reassignment, the Deputy Director for Administration and Information Management will discuss with the individual whether there are any vacant positions within the Agency for which the employee may be qualified, with or without accommodation. OGE will first consider positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, OGE will consider vacant positions at the next lower grade level for which the individual is qualified.

Requests for Medical Information

In some cases, the disability and need for accommodation is already known to the decision maker. In these cases, OGE will not seek any further medical information. However, when a disability or a need for reasonable accommodation is not already known to the decision maker, OGE may require that the individual provide documentation about the disability and any functional limitations. The purpose for requesting such information is to substantiate that the individual has a Rehabilitation Act disability and needs the reasonable accommodation requested.

OGE will seek information or documentation about the disability and any functional limitations from the individual or ask the individual to obtain such information from an appropriate professional such as a doctor, social worker, or rehabilitation

counselor. In order to get the most helpful information, all requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable OGE to determine whether an accommodation is appropriate, the decision maker may ask for further information.

Before requesting additional information, the decision maker will explain to the individual why the information that has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request. The individual may ask the health care or other appropriate professional to provide the missing information or OGE may ask the individual to sign a limited release so that OGE can submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor. If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, OGE may request that the individual be examined by a physician chosen by OGE at the agency's expense. Failure to provide appropriate documentation or to cooperate in OGE's efforts to obtain such documentation can result in a denial of the request for accommodation.

Confidentiality of Medical Information

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information that OGE obtains in connection with a request for reasonable accommodation will be stored and maintained in files separate from the individual's personnel file in accordance with the OPM/GOVT-10 Employee Medical File System of Records. Any OGE employee who obtains or receives such information is bound by the requirements contained in the Notice for that system of records. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the requirements that attach to it.

Disclosure of such information may only be made to those who need to know and who need to be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation. Medical information will only be disclosed if strictly necessary. Disclosure of information may also be necessary in the following situations: first aid and safety

personnel may be informed, when appropriate, if the disability might require emergency treatment; Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act; and the information may be disclosed in certain circumstances to workers' compensation offices or insurance carriers.

The Deputy Director for Administration and Information Management will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation and will respond to all requests for disclosure of the records. All such records will be maintained in accordance with the Privacy Act and the requirements at 5 C.F.R. part 2606.

Time Frames for Processing Requests and Providing Reasonable Accommodation

OGE will process requests for reasonable accommodation and provide accommodation, where appropriate, in as short a time as reasonably possible. However, the time necessary to process a request will depend upon the nature of the accommodation requested and whether it is necessary to obtain supporting information.

In certain circumstances, a request for reasonable accommodation may require an expedited review and decision in a shorter time than the 15 business days discussed below. The need to enable an applicant to apply for a job or to enable an employee to attend a meeting that is scheduled to occur shortly are two examples of situations where expedited processing would be required.

If a request for an accommodation can be processed by the requesting employee's supervisor or manager, no supporting medical information is required, and no extenuating circumstances apply, the request shall be processed and the accommodation (if granted) shall be provided within 15 business days from the date that the supervisor or manager receives the request. Failure to meet this deadline solely because the supervisor or manager did not immediately begin the interactive process when the request was received is not considered an extenuating circumstance that would extend the time limit.

Where the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability or to identify functional limitations, the 15-day period may be extended provided that the request for medical information is made within the 15-day period. If medical

documentation is needed, the decision shall be made and accommodation (if granted) shall be provided within 15 business days from the date the decision maker receives the relevant information.

Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation are considered extenuating circumstances. In such situations, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. Extensions based on extenuating circumstances shall be limited to circumstances where they are strictly necessary. Examples would include delay in receiving a response to an outstanding initial or follow-up request for medical information or the need to evaluate the information that has been provided; a delay that has not been caused by the Agency in obtaining equipment; the need of the employee to use the equipment on a trial basis to ensure its effectiveness; and any necessary delay required to hire staff or contract employees or delay due to the removal of an architectural barrier.

Where extenuating circumstances are present, the decision maker must notify the individual of the reason for the delay and the approximate date when a decision or the provision of the reasonable accommodation is expected. Any further developments or changes should also be communicated promptly to the individual.

Where there is a delay in providing an approved accommodation, the decision maker must investigate whether there are any temporary measures that can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. If delay is attributable to the need to obtain or evaluate medical documentation and OGE has not yet determined that the individual is entitled to an accommodation, OGE may provide an accommodation on a temporary basis. In such a case, the decision maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request. In addition, the decision maker may provide measures that do not constitute reasonable accommodation within the meaning of the law, such as temporary removal of an essential function, if those measures do not interfere with the operations of the Agency and the employee is clearly informed that the measures are being provided only on a temporary, interim basis. Decision makers who approve temporary measures must ensure that they continue to take all necessary steps to secure permanent accommodation.

The decision that a reasonable accommodation will be provided should be communicated immediately to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual when the accommodation can be provided.

Denial of Requests for Reasonable Accommodation

Whenever a request for reasonable accommodation is denied, the decision maker must complete the attached "Denial of Request" form and give it to the individual who requested the accommodation. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial, e.g., why the accommodation would not be effective or why it would result in undue hardship. Other explanations may include, but are not limited to, the following: the medical documentation was inadequate to establish that the individual has a disability or needs a reasonable accommodation; the requested accommodation would require the removal of an essential function; or the requested accommodation would require the lowering of a performance or production standard. Where the decision maker has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the chosen accommodation will be effective.

Reconsideration of Denials of Requests for Reasonable Accommodation

An individual desiring reconsideration should first ask the decision maker to reconsider the decision. The individual may present additional information in support of this request. The decision maker will respond to the request for reconsideration within five business days. If the decision maker does not reverse the decision, the individual can ask the Deputy Director for Administration and Information Management to do so. The Deputy Director will respond to this request within ten business days. If the decision maker was the Deputy Director for Administration and Information Management, the individual can ask the Director to reverse the decision. Individuals wishing to obtain reconsideration of denials of reasonable accommodation are encouraged to use OGE's Alternative Dispute Resolution program.

If an individual wishes to file an Equal Employment Opportunity (EEO) complaint or an action before the Merit Systems Protection Board (MSPB) upon receiving a final decision from the Agency concerning his or her request for reasonable accommodation,

he or she must follow the procedures that are appropriate for those claims. Participation in the reconsideration process described above does not satisfy any requirements for bringing a claim under EEO or MSPB procedures.

Record Keeping Procedures

The decision maker will complete the attached "Information Reporting" form and submit it to the Deputy Director for Administration and Information Management within 10 business days. The decision maker should attach to the form copies of all information, including medical information, that was received as part of processing the request. The Deputy Director will maintain these records for the duration of the employee's tenure at OGE or for five years, whichever is longer.

Inquiries

Any questions or further information concerning these procedures should be directed to the Agency's EEO Officer, Donald Williams, at extension 1151.

Distribution

These procedures will be distributed to all employees upon issuance and annually thereafter. Additionally, copies will also be available on OGE's Administration submenu on the Intranet, in the OGE Personnel Manual which is available in OGE's library, and also available from the personnel office and OGE's EEO Officer. They shall also be distributed to all new employees as part of their orientation on their first day of work.

Attachments

APPENDIX A

Selected Reasonable Accommodation Resources

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the Americans with Disabilities Act (ADA), including both the statute, 42 U.S.C. 12101 et seq. (1994), and the regulations, 29 C.F.R. 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9 (1997), and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents:

(1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995);

(2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996);

(3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997);

(4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and

(5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory, are also available through the Internet at <http://www.eeoc.gov>.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)
<http://janweb.icdi.wvu.edu/>

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

703-524-6686 (Voice); 703-524-6639 (TT)
<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- ▶ information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),
- ▶ centers where individuals can try out devices and equipment,
- ▶ assistance in obtaining funding for and repairing devices, and
- ▶ equipment exchange and recycling programs.

REASONABLE ACCOMMODATION INFORMATION REPORTING FORM

Name of individual requesting reasonable accommodation:

Office of requesting individual:

1. Reasonable accommodation: (check one)

Approved

Denied (If denied, attach a copy of the Denial of Reasonable Accommodation Request form.)

2. Date reasonable accommodation requested:

Who received the request: _____

3. Date reasonable accommodation request was referred to the decision maker (i.e., supervisor, Office Deputy Director):

Name of the decision maker: _____

4. Date reasonable accommodation approved or denied:

5. Date reasonable accommodation provided (if different from date approved):

6. If the time frames outlined in OGE's Reasonable Accommodation Procedures were not met, please explain why.

7. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office):

8. Reasonable accommodation needed for: (check one)

Application Process

Performing Job Functions or Accessing the Work Environment

Accessing a Benefit or Privilege of Employment (e.g., attending a training program or social event)

9. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier):
10. Type(s) of reasonable accommodation provided (if different from what was requested):
11. Was medical information required to process this request? If yes, explain why.
12. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organizations):
13. Comments:

Submitted by: _____ Phone: _____

Attach copies of all documents obtained or developed in processing this request.

CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION

1.

Applicant/Employee's Name

Applicant/Employee's Telephone No.

Today's Date _____

Employee's Office

Date of Request _____

2. ACCOMMODATION REQUESTED. *(Be as specific as possible, e.g., adaptive equipment, reader, interpreter)*

3. REASON FOR REQUEST.

If accommodation is time sensitive, please explain:

Return Form to Deputy Director for Administration & Information Management

DENIAL OF REASONABLE ACCOMMODATION REQUEST

(Must complete numbers 1-4; complete number 5, if applies)

1. Name of individual requesting reasonable accommodation:
2. Type(s) of reasonable accommodation requested:
3. Request for reasonable accommodation denied because: *(may check more than one box)*
 - Accommodation Ineffective
 - Accommodation Would Cause Undue Hardship
 - Medical Documentation Inadequate
 - Accommodation Would Require Removal of an Essential Function
 - Accommodation Would Require Lowering of Performance or Production Standard
 - Other *(Please specify)* _____
4. Detailed reason(s) for the denial of reasonable accommodation *(Must be specific, e.g., why accommodation is ineffective or causes undue hardship)*:
5. If the individual proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.

6. If an individual wishes to request reconsideration of this decision, she or he may take the following steps:

- Ask the decision maker to reconsider his or her denial. Additional information may be presented to support this request.
- If the decision maker does not reverse the denial:
 - and the decision maker was the individual's supervisor, the individual can ask the Deputy Director for Administration and Information Management to do so.
 - and the decision maker was the Director for Administration and Information Management, the individual can ask the Director of OGE to do so.

7. If an individual wishes to file an EEO complaint or pursue MSPB procedures, s/he must take the following steps:

- For an EEO complaint pursuant to 29 C.F.R. part 1614, contact an EEO counselor at OGE *within 45 days from the date of this notice of denial of reasonable accommodation;* or
- Initiate an appeal to the Merit Systems Protection Board *within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.*

Name of Deciding Official

Signature of Deciding Official

Date reasonable accommodation denied _____