

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**PROCEDURES FOR PROVIDING  
REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES  
Agency Administrative Order AAO 214-02**

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## **PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES**

### **I. PURPOSE**

The United States Patent and Trademark Office's (USPTO/Agency) policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 791 et seq. (Act); 29 C.F.R. pts. 1614, 1630. In 1992, the Rehabilitation Act was amended to apply the standards of the Americans with Disabilities Act (ADA) to complaints of discrimination by Federal employees or job applicants. Under the law, Federal agencies must provide reasonable accommodation to qualified individuals with disabilities unless to do so would cause undue hardship.

The USPTO is committed to providing reasonable accommodation to qualified individuals with disabilities and job applicants in order to ensure that they have equal employment opportunities at the USPTO.

Reasonable accommodation is a cooperative, interactive process between the individual with a disability and the USPTO. The USPTO will process requests for reasonable accommodation and, as required by law, provide reasonable accommodation in an efficient manner.

### **II. SCOPE**

#### **A. The Rehabilitation Act of 1973**

The Rehabilitation Act of 1973 does the following:

- Protects qualified individuals from employment discrimination based on disability;
- Requires Federal agencies to provide reasonable accommodation for known disabilities of qualified employees and job applicants;
- Prohibits retaliation for filing an Equal Employment Opportunity (EEO) complaint, participating in the EEO complaint process, opposing unlawful discrimination or requesting an accommodation;
- Ensures equal access to Federal programs, activities, and facilities to people with disabilities; and
- Requires agencies to keep medical information confidential regarding all employees.

#### **B. Coverage of the Act**

The Act protects both employees and job applicants who are determined, pursuant to the Act, to be qualified individuals with disabilities.

An individual with a disability:

- Has a physical or mental impairment that substantially limits one or more of the person's major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A **major life activity** is a function that the average person in the general population can perform with little or no difficulty. Major life activities include (but are not limited to) caring for oneself, seeing, hearing, walking, breathing, speaking, learning, sitting, standing, lifting, reaching, and working.

A **qualified individual with a disability** has the skills, experience, education, and other requirements of the job the individual holds or desires and can perform the essential functions of the position with or without reasonable accommodation.

Temporary, non-chronic impairments of short duration, with little or no long-term or permanent impact, are usually not disabilities. Providing workplace modifications for employees with temporary impairments is a discretionary decision.

Reasonable accommodation is a method or process that enables qualified individuals with disabilities to participate in the employment process. Reasonable accommodation is any change or adjustment to a job or work environment that enables a qualified individual with a disability to:

- Participate in the job application process;
- Perform the essential functions of a job; or
- Enjoy the benefits and privileges of employment.

Examples of reasonable accommodation include:

- Providing or modifying equipment or devices;
- Job restructuring;
- Part-time or flexible work schedules;
- Adjusting or modifying examinations, training materials, or policies;
- Providing readers and interpreters; and
- Making the workplace readily accessible to and usable by persons with disabilities.

With respect to the provision of an accommodation, **undue hardship** means significant difficulty or expense incurred by the Agency when considered in light of the following factors:

- The nature and net cost of the accommodation;

- The overall financial resources of the Agency as a whole, the number of employees, and the effect on expenses or resources; and
- The impact upon the operation of the Agency as a whole.
- Determination of undue hardship is made on a case-by-case basis.

**Reassignment**, another accommodation, is the non-competitive transfer of an employee who becomes unable to perform the essential functions of a position even with reasonable accommodation, to another funded, vacant position that has essential functions that the employee is able to perform with or without reasonable accommodation, unless it would impose an undue hardship on the Agency. There is no obligation for the Agency to assist the individual to become qualified. Thus, the manager does not have to provide training so that the employee acquires the necessary skills to take a job. Reassignment does not provide a promotion to an employee. Probationary employees who adequately performed the essential functions of the position before the need for reassignment arose may be eligible for this accommodation. In fact, the longer a probationary employee performed the essential functions of the position, the more likely a reassignment is appropriate for that employee. Reassignment is the accommodation of last resort.

### **III. PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION**

#### **A. Making the Request**

A request for reasonable accommodation is a statement that an individual needs an adjustment or change to a job or work environment for a reason related to a physical or mental impairment that will enable an individual to participate in the job application process, perform the essential functions of a job, and/or enjoy the benefits or privileges of employment. The reasonable accommodation process begins as soon as the request for accommodation is made, whether orally or in writing.

An individual requesting reasonable accommodation (Requester) does not have to use any special words, such as reasonable accommodation, disability, or Rehabilitation Act when making a request. An individual with a disability may request reasonable accommodation whenever he/she chooses even if he/she has not previously disclosed the existence of a disability. The Requester should consult with the Reasonable Accommodation Program Manager in the Office of Equal Employment Opportunity and Diversity for further information or assistance in connection with requesting or processing a request for reasonable accommodation.

An employee or representative of the employee may request reasonable accommodation orally or in writing from his/her immediate supervisor, other USPTO manager, or through the Office of Equal Employment Opportunity and Diversity Reasonable Accommodation Program Manager or Business Unit Reasonable Accommodation Liaison.

A job applicant or representative may request reasonable accommodation orally or in writing from any Human Resources (HR) Specialist with whom the job applicant has contact in connection with the application process.

Upon making the oral or written request for reasonable accommodation, the Requester may complete a form provided by the Agency if he/she has not already done so, or prepare an equivalent written request. If an individual with a disability requires assistance in completing a written form confirming the request for reasonable accommodation, the Reasonable Accommodation Program Manager will provide assistance. While a written confirmation should be completed as soon as possible after the initial request, the USPTO will begin processing the request as soon as it is made, whether or not a written confirmation has been provided. However, the reasonable accommodation request form provided by the Agency asks the Requester to provide specific information that is necessary in order for the Agency to make a determination regarding the request and to enable the Agency to keep accurate records regarding requests for accommodation.

**B. Processing the Request - The Interactive Process**

In order to start the interactive process, once the individual has made a request for reasonable accommodation, the USPTO supervisor, manager, Business Unit Reasonable Accommodation Liaison, or the Office of Equal Employment Opportunity and Diversity staff member receiving the request will promptly notify the Reasonable Accommodation Program Manager in the Office of Equal Employment Opportunity and Diversity. The Reasonable Accommodation Program Manager will:

- (1) Send the Requester an acknowledgment of the request within 3 business days of receipt by the Reasonable Accommodation Program Manager; and
- (2) Schedule a meeting between the Reasonable Accommodation Program Manager or his/her designee and the Requester.

This first meeting should be scheduled as soon as possible in order to begin the interactive process in a timely manner and determine what, if any, accommodation should be provided. The parties will discuss two main issues: (1) the job tasks that must be accomplished; and (2) the functional limitations of the person doing the job. A dialogue will be established between the parties in order to clarify the job tasks and to identify the individual's functional limitation(s). Communication is a priority throughout the entire process. At the first contact, the Reasonable Accommodation Program Manager will:

- (3) Explain to the Requester that he/she must complete the Agency's form requesting reasonable accommodation or its equivalent (unless already completed), and if the Requester is unable to complete the form, advise the Requester that the Office of Equal

Employment Opportunity and Diversity will provide assistance to do so; and

- (4) Discuss the request for reasonable accommodation with the individual.

During or following the initial contact, the Reasonable Accommodation Program Manager will:

- (5) Create a record for the reasonable accommodation file containing a detailed description of the Requester's job duties, the need for any special equipment, and the need for computer-related training;
- (6) Ask the Requester to provide medical documentation to support the request, if necessary;
- (7) Determine if the Requester is a qualified individual with a disability;
- (8) Share this medical documentation only with other Agency officials having a clear need-to-know;
- (9) Research possible accommodations, including review of appropriate case law, consulting management and other resources for assistance, where appropriate; and
- (10) Provide the reasonable accommodation file to the designated Reasonable Accommodation Liaison in each business unit for review and determination of appropriate/approved accommodation.

Upon request by the Reasonable Accommodation Program Manager, the Requester will:

- (11) Provide medical documentation and/or a statement from his/her health care professional that addresses the functional impairment at issue where the disability and/or need for accommodation are not obvious;
- (12) Provide a detailed job description to the Reasonable Accommodation Program Manager and the Requester's health care professional; and
- (13) Give a "Supervisor's Statement" form to his/her supervisor, if applicable.

### C. **Deciding the Request**

Requests will be decided on a case-by-case basis.

When warranted, the USPTO will provide an effective accommodation, but not necessarily the specific form of accommodation requested.

If the request is granted, the Business Unit Reasonable Accommodation Liaison will notify the Requester and his/her representative, in writing, and take immediate steps to implement the granted accommodation. If the decision-maker determines that the employee is not entitled to any reasonable accommodation, the Reasonable Accommodation Liaison must prepare a written decision, copy the Requester's supervisor, and give it to the individual who requested the accommodation. The explanation for the determination should be written in plain language clearly stating the specific reasons for the determination. Where the decision-maker has denied a specific requested reasonable accommodation but offered an alternative reasonable accommodation, the determination notice should explain both the reasons for the denial of the requested reasonable accommodation and the reasons supporting the alternative reasonable accommodation.

Reasons for the denial of a request for reasonable accommodation may include the following:

- The requested accommodation will not be effective, in which case alternative methods of accommodation will be explored;
- The requested accommodation would result in undue hardship. Before reaching this determination, the decision-maker must have explored other effective accommodations which would not impose an undue hardship;
- Medical documentation is insufficient to establish that the individual has a disability and/or needs reasonable accommodation;
- The requested accommodation would require the removal of an essential job function. An essential job function is a fundamental job duty of the employment position that the individual with a disability holds or desires;
- The requested accommodation would require the lowering of a performance or production standard; and/or
- Reassignment is not possible.

The written notice of determination must also inform the individual that he/she has the right to file a request for reconsideration of the decision with the head of the applicable Business Unit, and/or file an EEO complaint, and may have rights to pursue Merit Systems Protection Board (MSPB) or union grievance procedures. The process to request reconsideration or file complaints or appeals, including appropriate time frames, must be included with the decision.

#### **IV. FORMS**

The Reasonable Accommodation Program Manager will provide standard forms to assist employees and applicants for employment to submit their requests for reasonable accommodation. These forms may be revised as necessary to conform to regulatory changes, business needs, ease of use, and other reasons as determined by the Agency.

## V. TIME FRAMES

The USPTO will process requests for reasonable accommodation and provide appropriate accommodations in a timely manner. The time necessary to process a request will depend on the nature of the accommodation requested and the availability of supporting information. In general:

The decision-maker shall normally decide whether to grant a request for reasonable accommodation within 45 business days of receiving all necessary documentation, absent extenuating circumstances. If the request is granted, the reasonable accommodation shall be provided as soon as practicable.

If it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the individual's functional limitations, the decision shall be made and any accommodation will be provided, absent extenuating circumstances, within 45 business days from the date the decision-maker receives all necessary documentation, including relevant medical information.

When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary.

The following are examples of extenuating circumstances:

- There is an outstanding initial or follow-up request for medical information;
- The reasonable accommodation Program Manager requires expert assistance in order to adequately evaluate medical information that has been provided;
- The purchase of equipment may take longer than 45 business days;
- New staff needs to be hired or contracted for; or
- An accommodation involves the removal of architectural barriers.

Where extenuating circumstances are present, the Reasonable Accommodation Program Manager will notify the Requester of the reason for the delay, and of the anticipated date of a decision. This notice should be in writing, and may be an electronic communication. Any further developments or changes should also be communicated promptly to the Requester. When appropriate, an interim (temporary) accommodation may be granted until a final determination on the reasonable accommodation request can be issued.

## VI. MEDICAL INFORMATION

### A. Necessity and Use

The USPTO is entitled to information necessary to determine whether a Requester has a disability covered by the Act that requires reasonable accommodation. It is the responsibility of the individual with a disability to provide medical documentation related to the functional impairment at issue and

the requested accommodation where the disability and/or need for accommodation is not obvious or already known.

The Agency has the right to request supplemental medical documentation if the submitted information does not clearly explain the nature and/or severity of the disability or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the Requester to perform the essential functions of the job or to enjoy the benefits and privileges of employment.

The Reasonable Accommodation Program Manager is responsible for the initial evaluation of the medical documentation received. If the information provided by the health care professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the USPTO to determine whether an accommodation is appropriate, the Reasonable Accommodation Program Manager may ask for further information or may consult with a health care professional chosen by the USPTO to review any medical documentation.

The failure to provide appropriate documentation or to cooperate in the USPTO's efforts to obtain such documentation can result in a denial of the reasonable accommodation request.

**B. Confidentiality Requirements**

Under the Rehabilitation Act, as amended, and the Genetic Information Nondiscrimination Act of 2008, as applicable, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information including information about functional limitations and reasonable accommodation kept in connection with a request for reasonable accommodation will be maintained in files separate from the individual's personnel files, such as the Official Personnel File. It also means that any USPTO employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The Reasonable Accommodation Program Manager will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation including medical records, and will respond to all requests for disclosure of the records. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the confidentiality requirements that attach to it.

This information may be disclosed only as follows:

- Supervisors and managers in the employee's chain of command will be informed and consulted about necessary restrictions on the work or duties of the employee and the need for accommodation(s). Medical information will be disclosed only if necessary.

- Business Unit Reasonable Accommodation Liaisons, decision makers, and officials involved in the review and decisions on requests for reasonable accommodation or for reconsideration of denials of reasonable accommodation.
- First aid and safety personnel may be informed if the disability might require emergency treatment.
- Agency personnel may be given information necessary to investigate the Agency's compliance with the Act.
- Workers Compensation offices or insurance carriers may be informed, if necessary.

## **VII. INFORMATION TRACKING AND REPORTING**

The Reasonable Accommodation Program Manager, with the assistance of the business unit Reasonable Accommodation Liaisons, will prepare annually a report containing the following information:

- The number of reasonable accommodations, by type, that have been requested and whether those requests have been granted or denied;
- The jobs (occupational series, grade level, and Agency component) for which reasonable accommodation has been requested;
- The types of reasonable accommodation that have been requested for each of those jobs;
- The reasons for determination of requests for reasonable accommodation;
- The amount of time taken to process each request for reasonable accommodation; and
- The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodation.

To ensure that the data necessary for the annual report is collected, the Reasonable Accommodation Program Manager will provide a "Reasonable Accommodation Reporting Form" requesting information on each reasonable accommodation case processed by the Agency.

## **VIII. INQUIRIES**

Any person wanting further information concerning these procedures may contact the Reasonable Accommodation Program Manager in the Office of Equal Employment Opportunity and Diversity, either orally or in writing, including but not limited to telephone and e-mail.

## **IX. DISTRIBUTION**

These procedures shall be posted on the USPTO Web site. Copies also will be available in the Office of Equal Employment Opportunity and Diversity and the Office of Human Resources.

**X. EFFECT ON OTHER AAOs**

This Amended Order supersedes Department of Commerce's Department Administrative Order 215-10, Reasonable Accommodation for Disabilities in Employment, dated June 7, 1996, and USPTO Policy Statement 99-12, Submitting Requests for Reasonable Accommodation, dated January 29, 1999, both in their entirety.

ISSUED BY:



Bismarck Myrick  
Director, Office of Equal Employment Opportunity and  
Diversity

10-12-2010

Date

APPROVED BY:



David J. Kappos  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

12/10/10

Date

OFFICES OF PRIMARY INTEREST: Office of Equal Employment Opportunity and  
Diversity/Office of Human Resources