

**DEPARTMENT OF ADMINISTRATION AND FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES
June 18, 2009**

CIVIL SERVICE BULLETIN 8.19B

TO: Agency Heads, Service Center Directors, Service Center HR Directors, Agency HR Representatives

SUBJECT: REISSUE OF POLICY AND PROCEDURE FOR PROCESSING REQUESTS FROM EMPLOYEES AND APPLICANTS FOR REASONABLE ACCOMMODATION

The Policy And Procedure For Processing Requests From Employees And Applicants For Reasonable Accommodation Including Reassignment has been updated and is attached.

Please direct questions concerning this policy or the implementation of this policy to the following staff of the Office of Employee Relations:

Laurel Shippee – State Equal Employment Opportunity Coordinator
Kathleen Lincoln – Equal Employment Opportunity Coordinator

S/ Alicia Kellogg

Alicia Kellogg, Director
Bureau of Human Resources

AK/jtc

Attachment 1: Policy and Procedure for Processing Requests from Employees and Applicants for Reasonable Accommodation Including Reassignment

Attachment 2: Reasonable Accommodation Forms

STATE OF MAINE
POLICY AND PROCEDURE FOR PROCESSING REQUESTS FROM
EMPLOYEES AND APPLICANTS FOR REASONABLE ACCOMMODATION
INCLUDING REASSIGNMENT

POLICY

It is the policy of the State of Maine to provide reasonable accommodations in a timely manner for any qualified individual with a disability who is an employee or applicant for employment in accordance with provisions of the Maine Human Rights Act, the Americans with Disabilities Act and the Rehabilitation Act of 1973. All state agencies will adhere to all applicable state and federal laws, regulations and guidelines with respect to providing reasonable accommodations to afford equal employment opportunity to any qualified individual with a disability.

PROCEDURE

1. Requests for accommodation may be directed to the supervisor/manager of that employee, the agency EEO Officer, or, in the case of a job-related injury, the Workers' Compensation representative. This does not preclude a supervisor/manager from initiating the reasonable accommodation procedure in appropriate circumstances. All requests for accommodation must be documented and processed as expeditiously as possible and in all cases forwarded to the agency EEO Officer. **No request shall be approved or denied prior to review by the agency EEO Officer or the State EEO Coordinator and a determination that the decision is consistent with both state and federal law and state policy.**

2. The agency EEO Officer will work with the supervisor/manager to determine whether the request is reasonable within the framework of existing laws and regulations. The EEO officer may determine that it is necessary to request a statement from the applicant/employee's treatment provider verifying the limitations/restrictions and necessity for the requested accommodations. If additional information is required, the applicant/employee will be contacted for a release of medical information. Any request for additional medical opinions will be made in accordance with applicable contractual agreements currently in force. **No requests for medical information will be made without approval from the agency EEO Officer.**

3. If the request is approved by the agency, the accommodation will be provided as promptly as possible. If denied, the employee may request that the decision be reviewed by the State EEO Coordinator in the Bureau of Human Resources.

4. If at any time during the process it is determined that an employee is unable to perform the essential functions of his/her position even with reasonable accommodation, s/he may be eligible for reassignment.

REASSIGNMENT OF EMPLOYEE AS A REASONABLE ACCOMMODATION

If reasonable accommodations cannot be made within the employee's current position, state and federal laws require the employer to explore reassignment to a vacant position. Agencies **must** first explore equivalent positions and then demotion options for disabled employees who can no longer successfully perform their current jobs with or without reasonable accommodation.

The transfer or demotion of a disabled employee that is necessary to provide a reasonable accommodation for continued employment must be given priority over other means to fill available vacant positions, unless the reassignment would cause an undue hardship on the agency.

A position is available if it is currently vacant, approved to be filled, and there are no individuals with a contractual right to the position.

Demotion to a position in a lower pay grade is appropriate only if there are no accommodations that would enable the employee to remain in a position that is equivalent in terms of pay, status or other relevant factors, or if both the agency and the employee agree that demotion is the most appropriate accommodation.

There is no obligation to promote an employee as a reasonable accommodation under the ADA. The transfer/demotion provisions of this policy do not apply to applicants for employment but are applicable only to employees currently holding or having rights to positions in State government.

Employees Who are Injured on the Job

Whether an employee who is injured on the job is covered by this policy will depend on whether the employee meets the definition of qualified individual with a disability under state or federal law.

Definitions

Disability – A condition that meets the definition of a physical or mental disability under the Maine Human Rights Act or that meets the definition of disability under the Americans with Disabilities Act or the Rehabilitation Act of 1973.

Qualified Individual with a Disability – Any disabled individual who can perform the essential functions of a position with or without reasonable accommodation.

Reasonable Accommodation – Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. It is unlawful not to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the organization. Reasonable accommodations may take such forms as:

- Making a facility accessible to employees;
- Job restructuring, within job's classification and compensation and without unreasonable impact on other workers;
- Some changes or flex in work hours or days;
- Providing interpretive services or assistive devices;
- Reassignment to a vacant position

Essential Job Functions – The fundamental job duties of the position. A job function may be considered an essential function if employees in the position must perform the function and: 1) the position exists to perform that function, or 2) the function is essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or 3) the function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the function.

Undue Hardship – Significant difficulty or expense in, or resulting from, the provision of an accommodation. The determination of “undue hardship” takes into consideration anything that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature of the operation of the business.

Qualification Standards – The personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements that an individual must meet in order to be eligible for the position held.

Reassignment Provisions

Each agency must first attempt to make reasonable accommodations that will enable the employee to successfully perform the essential job functions of the current position. If such reasonable accommodation is not possible, or if both the employee and the agency agree that reassignment to another position within the agency is a more appropriate accommodation than accommodation in the current job, then the following provisions apply.

1. The agency must attempt to place the employee in an equivalent vacant position that the employee can perform, with or without reasonable accommodations, provided one is available within the agency. An equivalent position is a position with similar pay, status, promotional opportunities, and other conditions of employment but not necessarily in the same job classification or pay grade to which the employee is currently assigned. The agency may nominate such employee without testing, provided that the employee meets the established minimum qualifications for the classification.

2. An agency may demote an employee to a lower graded available position if: 1) there are not accommodations that would enable the employee to remain in the current position and there are no equivalent positions available for which the individual is qualified with or without reasonable accommodation, or 2) both the agency and the employee agree that demotion is the most appropriate accommodation. In the event that an employee demotes to another position, standard salary policies regarding demotions will apply. The agency may nominate such employee without testing, provided that the employee meets the established minimum qualifications for the classification.

3. If demotion is being considered as a reasonable accommodation for a disability, or if no accommodation is available within the agency, the agency must inform the employee of his/her right to access existing vacancies in other agencies. If the employee selects this option, the agency must refer the employee to the Bureau of Human Resources where the employee will be assisted in identifying equivalent position vacancies in state government for which they qualify as defined in paragraph 1 above. If no equivalent positions exist, demotion opportunities will be considered in accordance with paragraph 2 above.

Agencies will be required to consider all such employees immediately after any individuals with contractual rights to the position. No candidates other than these may be hired by an agency until disabled employees seeking transfer or demotion from other agencies as a reasonable accommodation have been considered. A disabled employee is qualified and must be hired if the employee is qualified to perform the essential

functions of the position with or without reasonable accommodation.

Transitional Status

The ADA requires the search of positions that are available at the time that it becomes evident that transfer must be explored as a reasonable accommodation. Recognizing that this search may take some time to complete, employees will be allowed to use accrued sick, vacation, and/or compensatory time to cover any time period that may elapse between the determination that the employee cannot continue to perform the duties of his/her present position and the time that the employee is reassigned or terminated in the event that reassignment cannot be made.

Procedures

The potential for reassignment as a reasonable accommodation begins when a request for accommodation is made in accordance with established procedures, but may be considered **only** when no reasonable accommodation can be made in the employee's current position.

1. Requests for consideration for reassignment can be initiated by the employee needing accommodation, the supervisor/manager, the EEO Officer or agency/State Workers Compensation staff. Requests can be made at any time. Agency EEO Officers **must** be notified of all requests for accommodation. The State EEO Coordinator is also available for technical assistance in the reasonable accommodation search/documentation process. All requests for accommodation and efforts to provide accommodation must be documented. It is recommended that medical documentation of the employee's limitations and need for accommodation be required. Accommodations must be explored in the following order:

- Accommodation within the existing job
- Reassignment to an equivalent position
- Demotion

Full documentation must be provided concerning efforts to make reasonable accommodation in accordance with this policy, including reasons for bypassing reassignment to an equivalent position

2. If the employee is transferred or demoted, the agency must submit a

statement that the action is taken in accordance with this policy to the Bureau of Human Resources when the transaction is entered on MFASIS. This statement will serve as authorization for the reassignment and will serve as notice to the Bureau that such an accommodation has been made.

3. Whenever a reasonable accommodation cannot be made within the employing agency, or whenever the only accommodation available within the agency is demotion, the employee must be informed of his/her right to access existing vacancies in other agencies and referred to the Bureau of Human Resources.

4. The Bureau will review all such referrals and the agency's accommodation documentation to ensure that more favorable accommodations cannot be made for the employee within the agency before considering placement to another agency.

Interpretive Guidance and Technical Assistance

A complete understanding of essential job function, reasonable accommodation and undue hardship is necessary to properly administer the provisions of this policy.

Additionally, agencies may need technical assistance when it is necessary to explore the need for reasonable accommodation that may or may not include reassignment. Technical assistance is available from the following:

State EEO Coordinator, Office of Employee Relations – 287-4651
Legal Counsel, Office of Employee Relations - 287-4447

Revised 5/09

**HEALTH CARE PROVIDER QUESTIONNAIRE
FOR THE PURPOSE OF PROVIDING REASONABLE ACCOMMODATION**

Employee Name: _____

Employee's Position: _____

IMPORTANT NOTE TO HEALTH CARE PROVIDER: When answering these questions, please **do not take into consideration any ameliorative effects of mitigating measures**, such as medications, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

Does the employee have a physical or mental **impairment**? Yes _____ No _____
(An impairment is a physiological disorder affecting one or more body systems, or a mental or psychological disorder, including, but not limited to, the conditions listed below.)

If yes, what is the impairment? _____

Please **circle** any of the following conditions, **without regard to severity**, unless otherwise indicated, that the employee may have.

- | | | |
|--|---------------------|--------------------|
| Acquired Brain Injury | Alcoholism | Cancer |
| Amyotrophic Lateral Sclerosis | Bipolar Disorder | Crohn's Disease |
| Blindness or abnormal vision loss | Cerebral Palsy | Cystic Fibrosis |
| Major Depressive Disorder | Lupus | Epilepsy |
| Deafness or abnormal hearing loss | Diabetes | HIV or AIDS |
| Substantial disfigurement | Heart Disease | Mastectomy |
| Kidney or Renal Diseases | Mental Retardation | Muscular Dystrophy |
| Major Depressive Disorder | Multiple Sclerosis | Paralysis |
| Pervasive Developmental Disorders | Parkinson's Disease | |
| Rheumatoid Arthritis | Schizophrenia | |
| Chronic Obstructive Pulmonary Disease | | |
| Absent, artificial or replacement limbs, hands, feet or vital organs | | |

Is the employee currently impaired, or is the impairment episodic or in remission? _____

What is the anticipated **duration** of the impairment? _____

If the actual or expected duration is more than six months, does the condition impair the employee's physical or mental health to a significant extent as compared to what is ordinarily expected in the general population? Yes _____ No _____

If yes, please describe how the impairment impairs the employee's physical or mental health

Does the impairment require special education, vocational rehabilitation or related services?
Yes _____ No _____ If yes, please describe: _____

Please **circle** any of the following major life activities are affected by the impairment.

Walking	Speaking	Breathing	Caring for Oneself
Hearing	Seeing	Thinking	Communicating
Reading	Standing	Reaching	Interacting with Others
Learning	Lifting	Concentrating	Performing Manual Tasks
*Working	Sleeping	Eating	Bending
**Major Bodily Functions (Describe) _____			
Other (Describe) _____			

****If working is an activity affected by the impairment, please indicate the class of jobs, or broad category of work, which is affected by the impairment.***

*****Major Bodily Functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.***

Does the impairment **substantially limit** the employee's ability to perform such major life activities?
Yes _____ No _____

For each major life activity that is limited by the impairment, please describe how the employee is restricted as to the condition, manner, or duration under which that activity can be performed, as compared to the way in which an average person in the general population can perform that activity:

Based on your understanding of the employee's job requirements, please assess whether the employee can perform all job functions: Yes _____ No _____

If not, which job functions cannot be performed, and why not? _____

What reasonable accommodation(s), if any, would you recommend for the employer to consider in order to enable the employee to work? _____

Would performing any of the job functions result in a direct safety or health threat to this employee or other people (co-workers, members of the general public, etc.)? Yes* _____ No _____

* If yes, please describe:

(a) which job function(s) would pose such a threat: _____

(b) the direct safety or health threat posed: _____

(c) any reasonable accommodations that would eliminate or reduce such threat: _____

Signature _____

Date _____

Printed Name _____

Occupation _____

Revised 4/09

State of Maine
Department of Administrative & Financial Services

**Certificate Authorizing Release of
Medical/Health Care and Personnel Information**

Employee Name: _____ Home phone: _____

Address: _____

Job Class Title: _____

Health Care Provider: _____

Address: _____

I authorize my employer to obtain medical records and information from my physician, osteopath, chiropractor, therapist or other health care provider for the specific purposes of:

- ❖ determining whether I have a disability under the Maine Human Rights Act, the Americans with Disabilities Act, and/or the Rehabilitation Act of 1973;
- ❖ determining the effect of the disability on performance of essential job functions; and/or
- ❖ determining appropriate reasonable accommodations.

I understand that any medical records or other information will be released only for the purposes stated above and will be maintained in a separate location from my personnel file and will remain confidential except to the extent necessary to make the determinations stated above.

This authorization includes substance abuse treatment records to the extent necessary to make the above determinations. (See PL-92-225, PL 93-382, 42 CFR Part 2).

Unless I revoke this release, it will remain in effect for one year from this date. I am entitled to a copy of this release.

I have the right at any time to revoke this release and to refuse authorization to disclose all or some medical information, but my revocation or refusal may result in denial of my request for reasonable accommodation. I can revoke this release by providing written notice to my personnel officer or the departmental equal employment opportunity coordinator.

I also hereby authorize my employer, the State of Maine, to release to my health care providers any and all documents related to me and my employment with the State of Maine, including, but not limited to: workers' compensation information, medical information of any kind, performance evaluations and personal references submitted in confidence, complaints, charges, or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action.

Employee Signature: _____

Date: _____

EMPLOYEE'S REQUEST FOR REASONABLE ACCOMMODATION(S)

Employee Name: _____ Home phone: _____

Address: _____

Job Class Title: _____

Employment status (circle): Full Time Part Time Seasonal Applicant

Nature of impairment / condition: _____

Do you have any of the following conditions? If so, please circle the appropriate condition(s):

- | | | |
|--|---------------------|--------------------|
| Acquired Brain Injury | Alcoholism | |
| Amyotrophic Lateral Sclerosis | Bipolar Disorder | Cancer |
| Blindness or abnormal vision loss | Cerebral Palsy | Crohn's Disease |
| Major Depressive Disorder | Lupus | Cystic Fibrosis |
| Deafness or abnormal hearing loss | Diabetes | Epilepsy |
| Substantial disfigurement | Heart Disease | HIV or AIDS |
| Kidney or Renal Diseases | Mental Retardation | Mastectomy |
| Major Depressive Disorder | Multiple Sclerosis | Muscular Dystrophy |
| Pervasive Developmental Disorders | Parkinson's Disease | Paralysis |
| Rheumatoid Arthritis | Schizophrenia | |
| Chronic Obstructive Pulmonary Disease | | |
| Absent, artificial or replacement limbs, hands, feet or vital organs | | |

Date that impairment/condition began: _____

Anticipated duration of the impairment/condition, including whether the impairment is current, episodic, or in remission: _____

Please list special education, vocational rehabilitation or related services, if any, that your impairment/condition requires: _____

Please circle any of the following major life activities are affected by the impairment.

- | | | | |
|----------|----------|---------------|-------------------------|
| Walking | Speaking | Breathing | Caring for Oneself |
| Hearing | Seeing | Thinking | Communicating |
| Reading | Standing | Reaching | Interacting with Others |
| Learning | Lifting | Concentrating | Performing Manual Tasks |
| *Working | Sleeping | Eating | Bending |

**Major Bodily Functions (Describe) _____

Other (Describe) _____

****If working is an activity affected by the impairment, please indicate the specific tasks or duties of your work that are affected by the impairment, and what functions you are still able to perform.***

*****Major Bodily Functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.***

I am requesting the following accommodations or modifications to my employment:

Signature of Employee

Date: _____

Request Received By: _____

Date: _____