



THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION



DIRECTIVE

<input type="checkbox"/> NEW <input type="checkbox"/> INTERIM <input checked="" type="checkbox"/> REVISED		SUBJECT	
EFFECTIVE DATE 09/04/01		*TERMINATION DATE / /	
CLASSIFICATION # 2232R		SUPERSEDES 2232	DATED 5/30/01
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RECOMMENDED FOR APPROVAL BY REVIEW BOARD MEMBER		AUTHORIZED BY THE COMMISSIONER	
ROBERT N. DAVOREN, CHIEF OF DEPARTMENT		WILLIAM J. FRASER	
SIGNATURE		SIGNATURE	

I. PURPOSE

To delineate the Department's policies and procedures regarding the provision of reasonable accommodations to qualified applicants and employees with disabilities, which enable them to reasonably perform the essential functions of their job, and enjoy the equal benefits and privileges of employment.

II. POLICY

- A. Consistent with the Department of Citywide Administrative Services Policy And Procedure on Reasonable Accommodation, and the Americans With Disabilities Act (ADA) of 1990, it is the policy of the Department of Correction to provide reasonable accommodations to qualified applicants and employees with disabilities that are known, or should have been known to the employer, in order to enable them to reasonably perform the essential functions of their job, and to enjoy equal benefits and privileges of employment.
- B. The Department affirms its commitment to provide reasonable accommodations, unless doing so will not enable the qualified applicant or employee to reasonably perform the essential functions of their jobs, or where providing an accommodation would impose an undue hardship on the agency, or pose a direct threat to the health or safety of other employees.

III. APPLICABILITY

The provisions of this Directive are not intended to supersede Operations Order #08/87, which applies to members in temporary limited duty (Medically Monitored Returned [MMR]) status, due to a disability that is not expected to be permanent.

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IV. DEFINITIONS

- A. "Qualified applicant or employee" - an individual with a disability who satisfies the requisite skills, experience, education and other job-related requirements of a position and who, with reasonable accommodation (if needed), or without accommodation (if none is needed), can perform the essential functions of that position.
- B. "Disability"- a physical, medical, mental or psychological impairment.
- C. "Essential functions" - duties that are fundamental to a position including, but not limited to, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated.
- D. "Undue hardship" - action that is excessively costly, extensive, substantial, disruptive, or that would fundamentally and negatively impact the operation, or alter the nature, of an employer's business.
- E. "Supervisor"- when referred to herein means Warden, Deputy Warden in Command, Assistant Commissioner or Director.
- F. "Reasonable accommodations" - modifications or adjustments to the application process, work environment, or to the manner or circumstances under which a position is customarily performed, that promote equal employment opportunity for an individual with a disability, and enable the individual to reasonably perform the essential functions of the job.
- G. "Disability Rights Coordinator" - employee assigned to the Department's Equal Employment Office, who is responsible for monitoring the process whereby an applicant or employee is granted or denied a reasonable accommodation, and adherence to the procedures described herein.
- H. "Reasonable documentation" - sufficient information to substantiate the existence of a disability and the need for the reasonable accommodation requested. Such documentation is to be treated as confidential, and made available only to those with a need to see it for purposes outlined in this Directive.

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V. PROCEDURES

Step I: Applicant or Employee Requests Reasonable Accommodation

- a. Employees must complete a Reasonable Accommodation Request Form (hereinafter referred to as the Request Form), and submit it together with reasonable documentation to the Disability Rights Coordinator (hereinafter, DRC).

Employees must forward a copy of the Request Form only to their respective Supervisors.

- b. Job Applicants shall submit the Request Form to the Department Personnel Division or Applicant Investigation Unit.

Applicants must forward a copy of the Request Form to the DRC.

- c. Reasonable Accommodation Request Forms may be obtained from the Personnel Division, Applicant Investigation Unit, the Department Equal Employment Opportunity Office, and the facility's Administration Office.

Note: Whenever assistance is requested in completing the Request Form, the agency staff supervising the application procedure, should assist applicants in completing the form. Supervisors shall assist employees in completing the form where requested. The Department staff receiving the request shall acknowledge each request by signing and dating the form in the space provided.

Step II: Initial Consultation and Review

- a. After acknowledging a request for reasonable accommodation and ensuring that both the applicant/employee and his/her Supervisor (where applicable) have copies of the request, the DRC shall review the employee request, or in the case of an applicant request, the Personnel Division shall review the request to determine the following:
 - whether the documentation supplied is adequate to make a determination;

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- whether or not the employee/applicant does in fact have a disability*;
 - whether or not the requested accommodation is reasonable and, if not, whether an alternate accommodation which is reasonable could be offered;
 - in the case of an employee, whether such accommodation would enable him/her to reasonably perform the essential functions of the position; and
 - in the case of an applicant, whether such accommodation will enable him/her to reasonably complete the required application process.
- b. If reasonable accommodation is requested for the application process itself, the agency staff supervising that process should consult with the applicant to determine how the process may reasonably be made accessible to the individual with a disability. Agency staff must confer with the DRC prior to granting or denying the applicant's request.
 - c. If upon initial review of an employee Request Form, the DRC determines that the request should be granted, the DRC must inform the employee's Supervisor and, where appropriate, the Chief of Administration of his/her determination. The DRC shall discuss with the Supervisor and/or Chief of Administration what accommodation is reasonable and how best to implement it prior to granting the request. If such a determination cannot be made based solely on the information provided in the Request Form, the DRC shall proceed to Step III below.
 - d. If the DRC and/or Supervisor are unable to agree on a determination on the request, the matter shall be submitted to the Appeals Committee for determination.

*The DRC or Personnel Division shall confer with HMD medical staff and/or the Office of the General Counsel to determine whether or not a disability exists.

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V. PROCEDURES (continued)

Step III: Analysis of Essential Functions and Consultation with Employee/Applicant

- a. Upon receipt of a Reasonable Accommodation Request Form from an employee, the DRC, in conjunction with the employee's Supervisor, must examine the position to determine its purpose and essential functions.

The DRC, at his/her discretion, may submit the Request Form and all supporting documentation to the Department's Health Management Division's Medical Director, or his/her designated medical staff, for review and medical opinion regarding the request.

Essential functions are the fundamental job duties of a position, excluding marginal functions. In making the determination of what the essential functions of a job are, the supervisor must consider the following:

- The function and goals of the agency;
- Written job descriptions, if any;
- The amount and proportion of time spent performing a function;
- The consequences of not requiring the employee to perform a function;
- The terms of a collective bargaining agreement;
- Work experience of prior employees in the same position;
- Work experience of current employees in similar positions; and
- Any other matter which, in the judgment of the supervisor, should be considered.

Note: This analysis is not intended to second-guess the Department's business judgment, or to result in lowered performance standards.

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V. PROCEDURES (continued)

- b. The DRC should consult with the employee, after the above analysis has been done, to assess the limitations that the disability imposes on the performance of each essential function. The DRC and employee or prospective employee (where a conditional offer of employment has been extended) should consider how any job-related limitations can be overcome, discuss possible reasonable accommodations, and the effectiveness of each.

The DRC/Personnel Division must consider an employee's/applicant's preference, along with what is reasonable under the circumstances of the work environment, in selecting accommodations.

- c. In limited circumstances, medical examinations or more detailed medical documentation may be required to determine whether the employee in fact has a disability, whether the employee can perform the essential functions of the job and what accommodations may be appropriate. However, because the circumstances under which such examinations or documentation may be required in the context of a reasonable accommodation request are narrow and fact specific, only the DRC and HMD medical staff are authorized to make such requests.

Step IV. Reasonable Accommodation Analysis

- a. When it has been determined that an employee does in fact have a disability, the DRC must determine whether or not with a reasonable accommodation the employee will be able to perform the essential functions of his/her position. The reasonableness of an accommodation will depend upon the circumstances of each, and must be determined on a case-by-case basis.
- b. Accommodations that may be reasonable may include, but are not limited to:
- Making facilities physically accessible to, and usable by people with disabilities (e.g., providing ramps, rest room grab bars, signage); and
 - Modifying work schedules to accommodate the employee's medical needs (e.g., permitting alternate starting and ending times); and
 - Providing or modifying equipment, devices or materials (e.g., raising a desk on boards for an employee who uses a wheelchair, providing volume controls on intercoms and telephones, installing text telephones, providing materials in alternative formats, including Braille, audio tape or enlarged print).

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V. PROCEDURES (continued)

- c. Accommodations which may not be reasonable include, but are not limited to:
 - No inmate contact (e.g., uniformed staff, chaplains);
 - Requiring two (2) individuals to perform the essential functions of a job;
 - Eliminating/reassigning the essential functions of a job;
 - Stress-free environment; and
 - No overtime (depending on the position the employee is in).
- d. The DRC, at his/her discretion may submit the Request Form and all supporting documentation to the Department's Health Management Division's Medical Director, or his/her designated medical staff, for review and medical opinion regarding the request.
- e. The Department may not shift the cost of providing accommodations to the employee to avoid an expenditure of funds that is reasonable for the employer to pay under the totality of the circumstances.

Step V. Determination and Action by DRC/Personnel Division

- a. Within ten (10) business days of submission of the Request Form by an employee/applicant, the DRC, Personnel Division or AIU respectively shall either grant or deny the request. The DRC/Personnel Division/A.I.U. should indicate in writing in the space designated for that purpose on the Request Form what accommodation will be provided.

Where the provision or implementation of a reasonable accommodation will take longer than ten (10) business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the employee. In all instances, however, the DRC/Personnel Division/A.I.U. shall act as expeditiously as possible to provide reasonable accommodations.

- b. The DRC, where a reasonable accommodation has been selected, shall monitor its implementation.
- c. Where further supporting documentation is sought from the employee, the grant or denial of a request for reasonable accommodation shall be rendered within ten (10) business days of the provision of the documentation requested, or within ten (10) business days of the applicant's or employee's objection to providing such documentation.

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V. PROCEDURES (continued)

- d. Where the Personnel Division/A.I.U. determines to deny a request for accommodation, or to provide an accommodation other than that for which the applicant has expressed a preference, the Personnel Division shall first consult with the DRC. After such consultation, the applicant shall be informed in writing on the Request Form of the accommodation, if any, that will be provided, or that the request has been denied.

In the case of an employee, the DRC shall notify him/her on the Request Form of the accommodation that will be provided or that the request has been denied.

VI. APPEALS COMMITTEE

An applicant or employee may appeal to the Appeals Committee any supervisory action or failure to act pursuant to this procedure by which the applicant or employee believes he/she is aggrieved.

The Appeals Committee consists of the following members:

the Deputy Commissioner for EEO and, in his/her absence, the Director of EEO;

the General Counsel and, in his/her absence, the Deputy General Counsel; and

the Chief of Administration and, in his/her absence, he/she may designate another Bureau Chief.

- A. Within ten 10 business days of receipt of the appeal, the Committee shall:
1. Obtain and review all documentation relating to the request for reasonable accommodation submitted to the Personnel Division and/or DRC; and
 2. Consult with the DRC, and any other appropriate staff.
- B. Within fifteen (15) business days of receipt of the appeal, the Committee shall issue a written determination on the request for reasonable accommodation.
- C. If the appeal is being granted, such written determination shall specify the accommodation that will be provided and direct the Supervisor or Personnel Division to implement such accommodation promptly. The DRC shall monitor implementation of the reasonable accommodation.

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VII. MISCELLANEOUS PROVISIONS

- A. This reasonable accommodation procedure is intended to ensure equal employment opportunities for applicants and employees with disabilities, but shall not impede the right of an individual to file a complaint with any outside governmental agency.

- B. The Disability Rights Coordinator reports to the Deputy Commissioner of the Department of Correction Equal Employment Opportunity, located at 60 Hudson Street, 6th Floor, New York, New York 10013, and may be reached at (212) 266-1438.

VIII. REFERENCE

Operations Order #08/87, ASSIGNMENT OF MEDICALLY MONITORED PERSONNEL, dated 03/09/87.

IX. ATTACHMENT

REASONABLE ACCOMMODATION REQUEST FORM (Form #2232R)

X. SUPERSEDES

Directive #2232, REASONABLE ACCOMMODATION, dated 05/30/01 (as amended)