

CITY OF CHESAPEAKE, VIRGINIA**NUMBER: 2.63****ADMINISTRATIVE REGULATION****EFFECTIVE DATE: 05/23/2017****SUBJECT: AMERICANS WITH DISABILITIES ACT (ADA)
POLICY AND PROCEDURE****SUPERCEDES: N/A****I. PURPOSE**

The purpose of this policy is to assist eligible candidates and employees in understanding certain basic provisions of the Americans with Disabilities Act, as amended (ADA), as well as the City's related procedures in order to ensure compliance with respect to its employment practices. The ADA prohibits employers from discriminating against individuals with disabilities and requires reasonable accommodation for qualified individuals with disabilities in the hiring process and after employment, under certain circumstances.

II. POLICY

It is the policy of the City to comply with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). It is also the City's policy to prohibit discrimination against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training, or other terms, conditions, and privileges of employment. Furthermore, the City shall provide reasonable accommodations for known physical or mental restrictions of qualified employees and candidates with disabilities, unless the accommodation would impose an undue hardship on City operations and programs or unless there is a direct threat to the safety of the individual or others.

III. ELIGIBILITY

All qualified individuals with disabilities employed or seeking employment within departments under the direction of the City Manager.

IV. RESPONSIBILITIES

The Department of Human Resources (HR) is responsible for the administration of this policy. All references to the City Manager, Director of Human Resources, and department heads shall include their designees.

V. DEFINITIONS

Direct Threat: A significant risk of substantial harm to the health or safety of the individual with a disability or others which cannot be eliminated or reduced by a reasonable accommodation.

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

Essential Functions of a Job: The fundamental job duties of the position the individual with a disability holds or desires.

Healthcare Provider: A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; a podiatrist, dentist, clinical psychologist, optometrist or chiropractor authorized to practice in his/her state and performing within the scope of practice as defined under state law; or a nurse practitioner or nurse-midwife who is authorized to practice under state law and who is performing within the scope of practice as defined under state law.

Interactive Process: The process by which the Human Resources Department, the appropriate departmental supervisor and a qualified individual with a disability requesting an accommodation identify and discuss the request, the precise limitations resulting from the disability, and potential reasonable accommodations.

Major bodily function: Examples include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Major life activities: Examples include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

Qualified individual: An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

Reasonable Accommodation: A modification or adjustment that enables a qualified individual with a disability to be considered for a position, to perform the essential functions of a position, or to enjoy equal benefits or privileges of employment.

Reassignment: Movement of an employee who can no longer perform the essential functions of his/her job, with or without reasonable accommodation, without competition to another vacant City-funded position for which the employee meets the minimum qualifications and is able to perform the essential functions.

Substantially Limits: Renders an individual unable to perform a major life activity, or restricts the duration, manner, or condition under which an individual can perform a major life activity, in comparison to most people in the general population.

Undue hardship: An action requiring significant difficulty or expense by the City.

VI. BACKGROUND

The Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The City has established policies and procedures in accordance with the Americans with Disabilities Act (ADA) Title I (1990); the ADA Amendments Act of 2008; and the Virginia Rights of Persons with Disabilities Act, as amended, to ensure that no qualified individual with a disability is discriminated against in regard to application procedures, hiring, advancement, discharge, compensation, training, or other terms, conditions, and privileges of employment.

The Department of Human Resources (HR), in consultation with the City Attorney's Office, advises City management on issues related to Title I, makes determinations as to the applicability of the ADA, and manages the interactive and reasonable accommodation process for recruitment, selection, and employment. HR, in consultation with the appropriate supervisor, is responsible for reviewing requests for reasonable accommodations and engaging the individual in the interactive process.

VII. REASONABLE ACCOMMODATION REQUESTS

An individual with a disability who is employed or seeking employment may request a reasonable accommodation at any time, orally or in writing. The specific roles of each individual or department, involved in the process are as follows:

A. Role of the Individual

1. When needed, the individual should request a reasonable accommodation by contacting HR. The request can initially be made orally or in writing. The City cannot require an individual to request an accommodation.
2. When given the Accommodation Certification Package by HR, the individual should submit the requested health care provider certification information within the prescribed timeframe set forth by HR. Failure to submit the requested information in a timely manner could result in the denial of the individual's request.

B. Role of the Employing Department

1. After an individual has submitted a request for an accommodation, the departmental management will be contacted by HR to review the essential functions of the position.
2. An employee's or candidate's department head will be contacted by HR to participate in the interactive process meeting.
3. A supervisor should not inquire about an individual's physical or mental health, even when discussing employee performance issues. If an employee discloses a physical or mental health condition that he/she believes contributed to the performance issue, the supervisor must consult with HR immediately.

C. Role of HR

1. Requests for reasonable accommodation(s) will be processed as quickly as possible. The length of time to process a request for reasonable accommodation may vary depending upon the nature of the accommodation requested and whether it is necessary to obtain supporting medical information.
2. HR, with input from the individual with a disability and the employing department, will research available reasonable accommodations, if any, which will enable the employee or candidate to perform the essential functions of the job.
3. When additional information from a health care provider is needed, HR will furnish the health care provider a full description of the essential functions of the position, questions pertinent to the individual's ability to perform those functions, and a release signed by the individual which permits the health care provider to disclose this information to HR. The health care provider will be asked to respond fully, and in writing, to HR.
4. HR will notify the employing department's department head and the individual when the individual's reasonable accommodation packet has been reviewed.
5. HR will facilitate the continuation of the interactive process with the individual and the employing department in an effort to finalize the accommodation process.
6. An individual's refusal to accept the recommended reasonable accommodation may result in the individual being viewed as not qualified under the ADA.

VIII. GRANTING OR DENYING A REASONABLE ACCOMMODATION

As soon as it has been determined that a reasonable accommodation will be granted to the individual with a disability, HR will provide a written decision to the individual, with a copy to the individual's employing department head.

In determining whether an accommodation would impose an undue hardship, the factors to be considered include, but are not limited to, the following:

- The nature and cost of the accommodation.
- Overall available financial resources.
- The impact of the accommodation upon operations, including the impact on the ability of other employees to perform their duties.

If it is determined that an accommodation cannot be granted, HR will provide a written decision to the individual, with a copy to the employing department head, outlining the reason(s) for the denial. If the request is not granted and an employee is not able to perform the essential functions of the job, the City will explore reassignment or separation, as applicable.

If the information gained through the interactive process supports an alternative that was not requested by the individual with a disability, HR will provide the individual with a written decision outlining why the requested accommodation was not provided and reasons for the alternate accommodation.

IX. APPEAL PROCESS

Individuals with a disability who are dissatisfied with a determination regarding an accommodation request or believe that the decision(s) was reached improperly or unfairly may request an appeal by using the following steps:

The first level appeal must be submitted to the HR Director in writing within fifteen (15) calendar days from the date of the denial or alternative accommodation notification. The HR Director shall review the matter and inform all parties of his/her decision within fifteen (15) calendar days of receipt of the appeal request. The HR Director may request additional information during the appeal process.

The decision of the HR Director may be appealed to the City Manager. The second level appeals must be submitted in writing to the HR Director within seven (7) calendar days of notification of his/her first level appeal decision. Upon notification, the HR Director shall forward all related documents to the City Manager. The City Manager may request additional information during the appeal process. The City Manager shall review the matter and inform all parties of his/her decision within fifteen (15) calendar days of receipt of documentation from the HR Director. The decision of the City Manager is final.

X. MEDICAL/DISABILITY RELATED INFORMATION

Under the ADA, employers are prohibited from asking medical/disability related questions as follows:

A. Interviews

1. Candidates should not be asked disability-related questions until after a conditional offer (e.g. promotion, transfer) has been made.
2. The interview panel members may ask if the candidate can perform the essential functions of the position with or without reasonable accommodation.

B. Conditional Offer

1. After the candidate has received a conditional offer, health history questions directly related to the essential functions of the job may be asked by HR.
2. Candidates who have received conditional offers may then be required to successfully complete job-related fitness for duty health history statements and/or examinations, including physical and mental examinations.

XI. REQUEST FOR MEDICAL INFORMATION

The City may require employees to provide medical documentation that is job-related and consistent with business necessity regarding the employee's functional abilities or limitations as it relates to performing the essential functions of his/her current position or the position for which he/she has been selected. The request for medical documentation will typically be made by HR. Public safety sworn position documentation may be requested by the respective department. All requests for information shall include a brief overview of the nature of the employee's job, the essential job functions the employee is expected to perform, and an overview of the work environment. The health care provider will be asked to respond fully in writing to HR or the respective public safety department, as appropriate. The medical information obtained from a disability-related inquiry will be kept as confidential medical records and will not be included in the employee's personnel file. If the employee fails to provide appropriate documentation or does not cooperate with the City's efforts to obtain the supporting medical information, the requested accommodation may be denied.

XII. TYPES OF EMPLOYEE ACCOMMODATION

After gathering and analyzing the information gained from the interactive process, HR will work with the individual and the employing department in evaluating the request for accommodation. Reasonable accommodations may include, but are not limited to, the following:

A. Job Restructuring

This can involve altering when or how an essential or non-essential duty is performed and/or transferring non-essential job duties that are affected by the restrictions to others.

B. Leave

As a form of accommodation, employees may be permitted to use appropriate accrued paid leave, or unpaid leave, when needed. Accrued paid leave must be exhausted before using unpaid leave.

C. Modified Work Schedule

Providing a modified work schedule through adjusting arrival or departure times, providing periodic breaks, or altering when certain functions are performed may be a form of accommodation as long as it does not cause undue hardship on departmental operations.

D. Reassignment

Reassignment to another City position is considered only when an employee is covered by the ADA, can no longer perform the essential functions of his/her position, and there are not any reasonable accommodations to allow the employee to remain in that position. Employees can only be transferred to vacant funded positions at or below their current pay grade for which they meet the minimum qualifications. In considering whether there are

positions available for reassignment, HR shall identify all vacant funded positions being recruited throughout the City for which the employee may be qualified. If a position which meets the reassignment criteria has been identified, HR will contact the hiring department/agency head and coordinate a non-competitive interview. If accepted, the employee may then be reassigned to the position without competition. If the employee is not reassigned to the vacant position, the hiring department/agency head must provide sufficient business justification in writing to the HR Director.

XIII. ANTI-RETALIATORY STATEMENT

The City will not tolerate any form of retaliation against a candidate or employee on the basis of a disability, a request for a reasonable accommodation, or participation in a complaint or investigation of disability discrimination.

APPROVED AS TO FORM AND CONTENT:



Dana E. Sanford, Deputy City Attorney

4.4.2017
Date

APPROVED AND ADOPTED:



James E. Baker, City Manager

5/23/17
Date