

CONTRA COSTA COUNTY
Office of the County Administrator

ADMINISTRATIVE BULLETIN

Number: 427.1
Date: August 25, 2008
Section: Personnel – Risk Management

SUBJECT: REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

I. APPLICABILITY. ALL STAFF RESPONSIBLE FOR HIRING AND SUPERVISING EMPLOYEES.

The California Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA) make employment discrimination against qualified individuals with a disability unlawful. Applicable law prohibits discrimination in training, promotion, retention, and other aspects of employment. It requires employers to provide reasonable accommodation(s) to qualified disabled employees and applicants for employment. It also requires employers to engage in a timely, good faith interactive process with the employee or applicant to determine effective accommodations, if any, in response to a request for an accommodation by an employee or applicant with a known physical or mental disability.

II DESCRIPTION OF POLICY.

A. Purpose.

This bulletin sets forth procedures to be followed by Contra Costa departments:

1. For determining whether an employee or applicant for employment is a “qualified individual with a disability”.
2. Processing requests from such individual for accommodations(s).

B. Definitions.

1. An “individual with a disability” is a person who has a physical or mental impairment that limits a major life activity, has a record of such impairment, or is regarded as having such impairment. It is important to note that some individuals with a history of or current substance abuse may also qualify.
2. “Limit” is defined as making the achievement of a major life activity difficult.
3. “Major life activities” is to be construed broadly and shall include caring for oneself, performing manual tasks, walking, seeing, sleeping, hearing, speaking, breathing, learning, thinking, concentrating, interacting with others and working.
4. The California Fair Employment Housing Act (FEHA) states that limitations are those physical, mental or psychological disorders or conditions that make a major life activity difficult and limitations shall be determined without respect to any mitigating measures (glasses, hearing aides, medication, etc).

5. "Working" is a major life activity whether the actual or perceived working limitation implicates a single job or a broad class of jobs. The County will use the FEHA definition when determining eligibility and providing accommodations.
6. A "qualified individual with a disability" is a person with a disability who, with or without reasonable accommodation(s), can perform the essential job functions of the position that the individual holds or desires. The individual must also meet the minimum qualification(s) of the position they hold or to which they seek to be appointed. This applies to applicants seeking employment or to employees seeking a transfer or new classification.
7. "Reasonable accommodation(s)" may include making facilities and programs used by employees accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials or policies; the provision of qualified readers or interpreters; or similar modifications to the application or examination procedures, job duties, or working conditions. Reasonable accommodations are viewed as any change in the work environment or in the way things are customarily done that would provide a qualified individual with a disability equal employment opportunities.
8. "Undue hardship" is a basis for denying a request for accommodation(s). Factors to be considered in determining whether a specific accommodation would impose an undue hardship include:
 - a. The nature and cost of the accommodation(s) needed. Significant difficulty or expense must be established to constitute an undue hardship on this basis.
 - b. The overall financial resources of the facility or facilities involved in the accommodation(s); the number of people employed at the facility; and the effect of expenses and resources or other impact of the accommodation(s) on the facility's operation.
 - c. The overall financial resources of the employer and its size: including the number of employees, type, location, and number of its facilities.
 - d. The type of operation(s) of the employer, including the composition, structure and functions of its work force, geographic separateness, and administrative or fiscal relationship of the facility or facilities to the employer.
9. "Essential job functions" are the fundamental job duties that an employee must be able to perform, with or without accommodation(s). "Essential job functions" do not include the marginal functions of the position.

Factors to consider in determining if a job function is essential include:

- a. Whether the reason the position exists is to specifically perform that job function.
 - b. The number of other employees available to perform the job function or among whom the performance of the job function can be distributed.
 - c. The degree of expertise or skill required to perform the job function, and whether the job function is specialized and the individual is hired based on his/her ability to perform the job function.
 - d. The actual work experience of present or past employees in the job;
 - e. The time spent performing a job function;
 - f. The consequences of not requiring that an employee perform a job function;
 - g. The terms of a collective bargaining agreement;
 - h. Written job descriptions;
 - i. The employer's judgment as to which job functions are essential;
 - j. Employee's classification
10. The County ADA Coordinators – Personnel assigned to Risk Management who provide technical assistance to County departments regarding reasonable accommodations and evaluating complaints based on denial of accommodations. The Coordinator(s) is familiar with both the State and Federal requirements to accommodate.
 11. Department ADA Coordinators – Liaison with County ADA Coordinators in the receipt of and management of ADA related issues.

III. EMPLOYMENT APPLICANTS - PROCEDURES FOR RESPONDING TO REQUESTS FOR ACCOMMODATION(S).

This section applies to **both** general applicants for positions with the County as well as existing employees who are seeking transfers, promotion, or a new job classification.

- A. The Human Resources Department and/or the department staff shall ask the applicant or employee what type of accommodation(s) he or she needs. When appropriate, they will confer with the applicant or employee about other possible types of accommodations. When the applicant's disability is not obvious or known or when additional medical clarification is needed, further documentation will be sought from the applicant. The necessary documentation will be obtained from the appropriate type of medical professional, learning specialist, or rehabilitation professional. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for an accommodation in order to ensure that an

applicant with a disability has an equal opportunity to be considered for a job. Therefore, the Human Resources and/or appropriate Department staff needs to move as quickly as possible to make a decision and, if appropriate, provide an accommodation.

- B. In the event the Human Resources Department or other appropriate departmental staff believes that accommodation(s) cannot be provided or has questions as to the technical aspects of the accommodation, the written request shall be referred to the County ADA Coordinator(s). The County ADA Coordinator(s) will review the written request and determine if accommodation(s) can be provided, and if so, what accommodation(s) shall be provided.
- C. The Human Resources Department or appropriate departmental staff will retain all requests for accommodation(s) and document the action taken within 10 business days of receipt. A copy shall be provided to the County ADA Coordinator and the Affirmative Action Officer.
- D. If the applicant's or employee's request for accommodation is denied, they will immediately receive a written explanation of the reason for the denial and information. They will also be advised in writing how they may appeal this decision to the Director of Human Resources.

IV. CURRENT EMPLOYEE REQUESTS FOR ON-THE-JOB ACCOMMODATIONS.

- A. Department Heads or their designees are responsible for providing reasonable accommodation(s) to qualified disabled employees in their departments and accommodating referrals from other departments. When the employee's disability is not obvious or known; or when additional medical clarification is needed; appropriate documentation of the disability, limitations, and the requested accommodation will be sought from the employee. The necessary documentation will be obtained from the appropriate type of medical professional, learning specialist, or rehabilitation professional. A physician's report may be requested that confirms the employee's ability to perform the essential functions of the job or their functional limitations. Clarification may also be obtained as to the estimated length of time the accommodation may be needed. **The medical documentation must be kept confidential. It needs to be placed in a separate medical file and secured in a locked cabinet. It is not to be kept as a part of the Personnel file.**

Decisions regarding accommodating an employee's current position will be completed in 30 business days unless extenuating circumstances cause a delay. Extenuating circumstances may include the need to obtain medical clarification, purchase of equipment, employee's health condition, staffing issues, etc. Such delays will "freeze" the 30 business day period until the delay is resolved. The employee and/or the department will be notified in writing of the reason for the delay and the anticipated time frame in which the issue(s) will be resolved. There will be periodic reviews during the delay to determine if the interruption can be suspended.

- B. An employee with a disability may make a written or oral request for reasonable accommodation(s) to his or her supervisor, manager, personnel staff, Department ADA Coordinator, or County ADA Coordinator(s). A family member of the disabled employee, health care practitioner, or representative acting on behalf of the employee may also request an accommodation on behalf of the employee. (See list of Departmental contacts.)
- C. Each request must be forwarded in writing within 5 business days to the department head or their designee. If the employee has not put the request in writing, the supervisor must do so. A copy of each request will also be forwarded to the appropriate County ADA Coordinator within 5 days for purposes of review and record keeping.
- D. The department head or designee will:
1. Request that the employee identify the nature of the disability, provide medical documentation, if necessary; describe why an accommodation(s) is necessary; the functional limitations; and what type of accommodation(s) the employee recommends. Medical documentation is not necessary when the disability is obvious, e.g. blindness, deafness, wheelchair bound, etc.
 2. Discuss the need for accommodation(s) and the employee's proposed accommodation(s). If the department and employee reach agreement, provide the agreed upon accommodation(s). The department head or designee, employee, and the County ADA Coordinator(s) shall engage in the interactive process within 10 business days of the request to determine if a reasonable accommodation can be made. An extension can be provided with notification to all parties. All available and necessary information and applicable County Regulations and collective bargaining agreements, if any, shall be reviewed in making a determination as to whether accommodation(s) can be made for an employee.
 3. Within 10 business days of the interactive meeting(s), the department will provide the employee and the County ADA Coordinator(s) with documentation of the action plan developed in the accommodation meeting.
- E. If the report from the employee's physician is inadequate or incomplete, the department will try to obtain necessary information. If this is not successful, the department may refer the employee's physician's report to a physician designated by the County for review. This physician may also examine the employee to determine whether the employee can perform the essential job functions with or without reasonable accommodation(s). Specialists may be required to assist the designated County physician in making this assessment. If the designated physician determines the employee can perform the essential job functions with or without reasonable accommodation(s), the physician will inform the department in writing and report to the department what, if any, accommodation(s) are required or recommended. Referrals to County designated physicians will be at the County's expense.

If the department and employee agree with the conclusions of the County's designated physician, the department will either: 1) Implement the recommendations of the County physician; or 2) Implement the recommendations of the County physician as modified by agreement with the employee.

F. Reassignment is one form of reasonable accommodation that, absent undue hardship, is provided to employees, who because of a disability can no longer perform the essential job functions, with or without reasonable accommodations. Promotions are not a required part of the accommodation process. Reassignments to another position are made only to vacant, funded positions and to employees who qualify for the new position. If the employee is qualified for the position, she/he will be reassigned to the job without competition. Departments are expected to provide positions to employees from other departments. If the employee is reassigned to another position as an accommodation, the employee must serve a trial work period for the job class even if he/she is transferred to a position in the same job class or is demoted. The length of the trial work period will be equal to the probationary period for the class. If the employee fails the trial work period, an assessment will be made by the County ADA Coordinator(s) as to the reason for the failure and whether there is any further obligation to provide an accommodation.

G. Factors to consider in reviewing an accommodation include:

- The requested accommodation would enable the employee to perform the essential job functions of the position.
- The requested accommodation would result in undue hardship for the County. In reaching this determination, the decision maker must have explored whether other effective accommodations exist which would *not* impose undue hardship. A determination of undue hardship means that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of business operations.
- Is there adequate medical documentation to establish that the individual has a qualifying disability? Is there adequate information regarding the limitations? Should further medical clarification be obtained?
- The requested accommodation would require the removal of an essential job function.
- The requested accommodation would require the lowering of a performance or production standard.

There are several **modifications or adjustments that are not considered forms of reasonable accommodation**. An employer does not have to eliminate an essential job function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential job functions,

with or without reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA. The employer is not required to lower production standards—whether qualitative or quantitative-- that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodations to enable an employee with a disability to meet the production standard.

V. DENIALS.

Within 10 business days of a determination that an accommodation cannot be provided, the department will advise the employee in writing that an accommodation(s) cannot be made along with an explanation of why the accommodation(s) cannot be made. An extension beyond the 10 days can be provided. However, notification must be provided to all parties in writing. The notification will include information as to when a decision will be made.

VI. APPEAL PROCEDURE.

- A. If an applicant's or employee's request for an accommodation in the testing or interviewing process is denied, the candidate shall receive a written explanation of the reason for the denial and information on how to appeal the denial to the Director of Human Resources.
- B. Denials of request for on-the-job accommodations shall be in writing and sent to the parties involved within 10 business days of the decision being made. The reasons the accommodation was not granted will be outlined. The employee can appeal the denial through the County's Affirmative Action Officer. The employee can file a discrimination complaint in accordance with the County's Administrative Bulletin 429.3.

REFERENCES:

1. County ADA Reasonable Accommodation Policy Manual
2. Time Frames for ADA Accommodation Process
3. Federal:
 - Americans with Disabilities Act of 1990
 - Title I and V of the ADA
 - Regulations 29 CFR Part 1630, 1640, 1641
 - EEOC Enforcement Guidelines and Policy Documents
4. State of California:
 - Fair Employment and Housing Act
 - Unruh Civil Rights Act
 - Civil Code Sections 51 and 54
 - Government Code 12900-12996
 - Administrative Bulletin 429.3

Originating Department:

Risk management

Contacts:

Risk Manager (925) 335-1400
ADA Coordinator (925) 335-1400