

1078 AMERICANS WITH DISABILITIES ACT

I. Purpose

It is the policy of the Arkansas Department of Human Services (DHS) that a qualified person with a disability will not be excluded from participating in any program or be denied benefits of any program or be subjected to discrimination under any program, service, activity or employment opportunity in violation of the Americans with Disabilities Act of 1990 (ADA), as amended, or the Rehabilitation Act of 1973, as amended in 2008.

II. Definitions

- (A) ADA: The Americans with Disabilities Act of 1990, including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009.
- (B) Appeal from Employee: a formal request to the DHS Human Resources Compliance Officer (Compliance Officer) to review a reasonable accommodation.
- (C) Complaint Alleging Discrimination: a DHS-2808 form filled out by the complainant or the complainant's representative. Documentation of disability or documentation supporting the allegation that the person is regarded as having a disability must be attached to the DHS-2808. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities upon request.
- (D) DHS Human Resources Compliance Unit (HR Compliance): team of HR compliance analysts (HR Analyst) who manage personnel compliance issues within the agency.
- (E) HR Compliance Officer: the person appointed by the DHS Director or designee as the administrator of personnel compliance activities.
- (F) Person with Disability: a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability.
- (G) Division Human Resources Liaison (HR Liaison): a person to serve as a liaison between HR Compliance, the public, and employees regarding ADA issues. Designees may also be assigned for institutional programs or county offices.
- (H) Equal Employment Opportunity Commission: an entity that enforces Federal laws prohibiting employment discrimination.
- (I) Essential Functions of the Job: the basic job duties that an employee must be able to perform, with or without reasonable accommodation. They are the tasks that are considered to be fundamental, critical, primary, and necessary. Supervisors are

required to determine what functions are actually performed in the job, and which, if eliminated, would fundamentally alter the nature of the job.

- (J) **Interactive Process:** the process of cooperative dialogue or discussions between the employee and DHS management representatives, including immediate supervisor/manager, and division HR staff. HR Compliance should be contacted for guidance. The process begins when an employee or applicant informs his or her supervisor, HR Liaison or hiring official of an impairment and requests a barrier removal, work-related accommodation or change in the work environment or procedures or needs special tools (other than personal use items) to participate in the application process or perform the essential functions of the job. The purpose of the interactive process is for:
 - (1) Evaluating whether the medical condition qualifies as a disability under ADA;
 - (2) Determining the disability's effect upon the essential functions of the job;
 - (3) Crafting an effective accommodation to enable the individual to participate in the application process or to perform the essential functions of the job; and
 - (4) Taking prompt action to offer and implement the reasonable accommodation.
- (K) **Qualified Person with a Disability:**
 - (1) A customer or client with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for receipt of services or participation in DHS programs or activities.
 - (2) An employee or applicant with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this policy, consideration shall be given to the hiring official's judgment as to what functions of a job are essential, and if the hiring official has prepared a written functional job description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job (DHS-1158).
- (L) **Reasonable Accommodation:** a modification in the work environment that enables a qualified person with a disability to perform the essential functions of a job without undue hardship to the employer. An individual (employee or qualified applicant) with a disability may request a reasonable accommodation during the job application process or during the period of employment.
- (M) **Reasonable Medical Documentation:** a DHS-2812-B form completed by a healthcare or rehabilitation professional as well as any medical information or documentation necessary to:
 - (1) Establish that a person has an ADA disability;
 - (2) Determine that the disability necessitates a reasonable accommodation; and

- (3) Establish whether an accommodation will enable a person to perform the essential functions of that person's job.
- (N) Request for Reasonable Accommodation: an employee request for a barrier removal, work-related accommodation or change in the work environment or procedures, or for special tools (other than personal use items) to participate in the application process or perform the essential functions of the job.
- (O) Staffing Review Committee: a committee consisting of DHS management representatives, consulted by the Compliance Officer to determine a response to an employee's request for reasonable accommodation.
- (P) Undue Hardship to Employer: an action requiring significant difficulty or expense when considered against factors including the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that would not pose such a hardship.

III. Request for Reasonable Accommodation (*See* APM Chapter 802)

- (A) If an employee requests reasonable accommodation of a disability, the employee should work with his or her supervisor, and HR Liaison, to complete a Request for a Reasonable Accommodation (form DHS-2812-A) and ensure that the Functional Job Description (form DHS-1158) is current, accurate and up-to-date.
- (B) Upon receipt of a request for reasonable accommodation, the HR Analyst may request reasonable medical documentation (form DHS-2812-B) regarding the nature of the disability and functional limits of the disability if the functional limitations are not obvious.
- (C) The HR Analyst may request the employee to execute a limited release (form DHS-2812-E) allowing the HR Analyst to submit a list of specific questions pertinent to the employee's health care provider. The employee may review the questions before executing the release.
- (D) The employee is responsible for submitting forms DHS-2812-B, DHS-1158, and any questionnaire to his/her physician or health care provider for completion, and ensuring the completed forms are returned to the HR Analyst in a timely manner.
- (E) The HR Analyst shall provide notice of a date by which the medical certificate must be returned or the request for accommodation will be deemed withdrawn.
 - (1) Once the medical documentation is received, the HR Analyst shall review the request and documentation and determine whether the employee is a qualified individual with a disability.
 - (2) DHS will make a reasonable accommodation for qualified individuals with disabilities if the reasonable accommodation does not create an undue hardship and is consistent in fulfilling the essential duties of the job. Examples of accommodation include, but are not limited to:

- (a) Acquiring or modifying work-related equipment or devices, including, but not limited to: monitors with magnification capability, desk chairs with appropriate back support, telephone amplification equipment, or voice recognition software. This does not include personal use items, such as hearing aids, eyeglasses, wheelchair, prosthetic limb, or similar devices if they are also needed off the job.
 - (b) Transferring or modifying the work location to make the area useable and accessible.
 - (c) Modifying the employee's work schedule.
 - (d) Restructuring the employee's job duties, including reassigning or exchanging non-essential functions with co-workers, or altering when or how an essential function is performed. DHS is not required to eliminate an essential job function or fundamental duty of the position to make an accommodation.
 - (e) Providing the employee reassignment to another position in an equal or lower pay grade if such a position is available within DHS and if there are no other types of accommodations to be offered. (*See* APM Chapter 802).
- (F) The HR Analyst and the employee or applicant will fully participate in the interactive process. This may involve one or more meetings or discussions with the supervisor or other division management to determine what accommodation, if any, will be made. The employee or applicant's input is an essential part of the interactive process. The final decision of what accommodation will be offered rests with the HR Analyst or the HR Compliance Officer.
- (G) If the determination in response to the request for a reasonable accommodation does not, in the opinion of the requesting employee, satisfactorily resolve the issue, the requesting employee may initiate an appeal with the HR Compliance Officer by submitting form DHS-2812-D and written appeal request within five (5) business days of the determination.

IV. Employee Conduct and Performance

DHS is not required to eliminate essential job functions or to alter conduct or job performance standards in response to an ADA accommodation request. Qualified employees with disabilities:

- (A) Must maintain satisfactory conduct and performance;
- (B) Are subject to the same evaluation, correction, and discipline processes as all other employees; and
- (C) Are not subject to any adverse action, such as discipline or a reduced performance score, on the basis of a disability.
 - (1) A disability is no excuse for absenteeism or chronic tardiness to work. Reporting to work on time as scheduled is an essential function of any job.

The qualified employee with a disability may request a different work schedule and DHS management may grant such request if it does not create an undue hardship or interfere with DHS operations.

- (2) If an employee is unable to perform the essential functions of his or her job and no reasonable accommodation can be identified, or a reasonable accommodation is offered but refused, the employee may be terminated without prejudice after the reasonable accommodation inquiry is complete.

V. Confidentiality of Medical Information

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. As a result, supervisors may not request, and employees are asked not to provide, genetic information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

All medical information received from employees or applicants shall be kept strictly confidential. Medical information, including an employee's disability status, shall not be disclosed to co-workers. Supervisors may need to anticipate and deflect questions from co-workers in some circumstances when reasonable accommodations are granted, particularly when an accommodation involves job restructuring or other action affecting other staff. Unauthorized disclosure of medical information is grounds for disciplinary action pursuant to DHS Policy 1084. Disclosure is required, or appropriate, under the following circumstances:

- (A) To the employee's supervisors and managers when necessary to assess job assignments or reasonable accommodations.
- (B) To government authorities to demonstrate compliance with the ADA or in accordance with workers' compensation laws.
- (C) HR Compliance is the custodian of official medical records received from, on behalf of, or regarding any division employee or applicant including documentation related to requests for reasonable accommodation, fitness-for-duty examinations and certifications, and information regarding an employee's illness or medical condition.

Under 29 C.F.R. § 1630.14(c), information from medical examinations and inquiries, and information regarding the employee's ability to perform job-related functions, must be treated as confidential medical information and must be collected and maintained on separate forms that are not disclosed with the following exceptions:

- (1) Supervisors and managers may be informed regarding necessary restrictions of the work or duties of the employee and necessary accommodations.

- (2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
- (3) Government officials investigating compliance with this part shall be provided relevant information on request.

VI. Program Accessibility

- (A) DHS will make appropriate auxiliary aids and services available when necessary to ensure effective communication.
- (B) DHS may not make modifications to programs, services, or facilities if it can demonstrate that to do so would result in a fundamental alteration to the nature of its programs or activities or cause an undue financial or administrative burden.

VII. Communications

- (A) DHS will make appropriate auxiliary aids and services available when necessary ensure effective communication.
- (B) When an auxiliary aid or service is required, DHS will provide an opportunity for individuals with disabilities to request the auxiliary aid and service of their choice, unless it can demonstrate that another equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the service, program or activity or cause an undue financial and administrative burden.

VIII. Contracting and Licensing

- (A) DHS does not discriminate on the basis of disability in contracting for the purchase of goods and services.
- (B) DHS does not discriminate on the basis of disability in its licensing certification and regulatory practices.

IX. Complain Procedure Alleging Discrimination

Anyone who wishes to formally allege discrimination on the basis of disability in the provision of services, activities, programs, benefits, employment opportunity, or employment by DHS shall complete DHS-2808. The completed DHS-2808 should be sent to:

DHS OFFICE OF EMPLOYEE RELATIONS/OFFICE OF EQUAL OPPORTUNITY
P.O. BOX 1437 – SLOT N250
LITTLE ROCK, AR 72203-1437
TELEPHONE: (501) 682-6003
FAX: (501) 682-8926
TDD: (501) 682-7958

OR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF CIVIL RIGHTS, REGION VI
1301 YOUNG STREET – SUITE 1169
DALLAS, TX 75202
TELEPHONE: (214) 767-4056
FAX: (214) 767-0432
TDD: (214) 767-8940Section 504 Compliance

DHS will maintain compliance with Section 504 of the Rehabilitation Act of 1973, as amended.