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## Clackamas County Policy

Name of Policy	Workplace Accommodations	Policy #	EPP 3
Policy Owner Name	Evelyn Minor-Lawrence	Effective Date	9/1/23
Policy Owner Position	Human Resources Director	Approved Date	8/24/23
Approved By	Gary Schmidt, County Administrator	Next Review Date	9/1/26

### I. PURPOSE AND SCOPE

This policy addresses reasonable accommodation requests in compliance with federal and state disability laws. This policy applies to all County employees and job applicants.

### II. AUTHORITY

This policy is established by the County Administrator’s administrative rule-making authority pursuant to County Code 2.09.060.E.

### III. GENERAL POLICY

It is the County’s policy to ensure that qualified individuals are not discriminated against on the basis of disability and to comply with the reasonable accommodation requirements of the Americans with Disabilities Act (42 USC §§ 12101 to 12213, as modified by the Americans with Disabilities Act Amendments Act of 2008), state disabilities laws (ORS 659A.100 to 659A.145), and pregnancy-related limitations accommodation law (ORS 659A).

The County is committed to providing reasonable accommodations to qualified employees and applicants to ensure that individuals with disabilities and/or pregnancy-related limitations enjoy full access to equal employment opportunities at the County.

### IV. DEFINITIONS

**Direct threat:** A significant risk of substantial harm to the health, safety, or well-being of the disabled individual or others that cannot be eliminated by reasonable accommodation.

**Disability:** A physical or mental impairment that substantially limits one or more major life activities of the individual, a verified record of such an impairment, or being regarded as having such an impairment. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

**Essential functions:** The fundamental job duties of a position as determined by the County.

**Major life activities:** Includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of major bodily functions, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive function.

**Pregnancy-Related Limitations:** Restrictions related to pregnancy, childbirth, lactation, and related medical conditions.

**Qualified individual:** An individual who, with or without reasonable accommodation, can perform the essential functions of their position. Individuals who currently use drugs illegally are not individuals with disabilities protected by the ADA.

**Reasonable accommodation:** A modification or adjustment to job functions, processes or to the work environment that enables a qualified individual to perform the essential functions of the job.

**Reassignment:** Reassignment is a form of reasonable accommodation that is provided to employees (not applicants) who, because of a disability and/or pregnancy-related limitations, can no longer perform the essential functions of their position, with or without reasonable accommodation.

**Undue hardship:** Significant difficulty or expense incurred by the County given the nature and net cost of the accommodation, overall county financial resources, and the type of business operation performed, which makes an accommodation unreasonable.

## **V. POLICY GUIDELINES**

To help determine effective accommodations, Clackamas County uses an “interactive process,” which simply means that the County as an employer and applicants or employees with disabilities who request accommodations work together.

When an employee or applicant with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, the employee or applicant will be given the same consideration as any other employee or applicant.

If an individual does not participate in the interactive process the County will not be able to make a determination on the request for accommodation. If an individual refuses an accommodation necessary to complete the employment process or perform the essential functions of the job, and as a result they cannot perform those functions, the individual may be considered not qualified for the position.

The County is not required to:

- Lower quality or quantity standards to make an accommodation or change the essential functions of the employee’s position.
- Make a reasonable accommodation if it will cause undue hardship.
- Stop disciplinary action based on a belated notice of disability and/or pregnancy-related limitations and request for accommodation.

### Confidentiality

- All medical information and records of individuals seeking reasonable accommodations shall be treated as confidential and shall be maintained in Human Resources in a confidential file separate from other personnel records.
- Managers and supervisors may be informed about necessary restrictions, modifications, or accommodations to the required work or duties of an employee.

## **REASONABLE ACCOMMODATION PROCESS**

All requests for accommodation must be submitted to Leave Administration for eligibility determination, entitlements, and approval.

### Submit Reasonable Accommodation Request

An individual with a disability and/or pregnancy-related limitations may request a reasonable accommodation at any time during the application process or during employment, orally or in writing.

- Documentation must identify the nature of the physical or mental disability and identify the functional limitations with respect to the disability, or identify pregnancy-related limitations, related to the job.

### Gather Information

Leave Administration will initiate an interactive process with the qualified individual once the individual has disclosed a disability or requested accommodation. The individual must participate in the interactive process and provide any information necessary to allow a determination to be made. The individual may be required to execute a release allowing their health care provider(s) to disclose necessary medical information.

Upon request, the employee or applicant's health care provider must assist in:

- the determination of the individual's specific abilities or limitations in performing the essential functions of the position, with or without reasonable accommodation,
- the type of accommodation required, if any, and
- determining whether the applicant or employee can perform the job without posing a "direct threat" to the health or safety of themselves or others.

If the documentation provided by the health care provider is not helpful, the Leave Administration Team or designee may contact the health care provider directly, solicit advice from other resources, or arrange for an independent medical evaluation to elicit accurate and complete information regarding the employee's abilities and limitations to perform essential functions of the job.

### Explore Accommodation Options

Determinations of reasonable accommodations will be made based on the essential functions of the job and identified limitations of the qualified individual.

Leave Administration will work with the employee and manager to develop a list of potential accommodations.

### Select Accommodation(s)

Leave Administration will work with the employee and the employee's manager to select which reasonable accommodations to implement. If there is more than one option acceptable to the manager, the employee's preference(s) will be taken into account; however, the final decision is the manager's.

If the manager believes available options would cause an undue hardship, they must notify Leave Administration.

### Implement Accommodation(s)

The employee's manager is responsible for ensuring the accommodation is implemented including:

- Proper installation of equipment and training the employee on its use
- For represented employees, notifying the appropriate union if there is a schedule change or other modification
- Prompt and effective provision of any selected outside services

### Monitor Accommodation(s)

Managers should periodically check with the employee to see if the accommodation continues to be effective.

### Reassignment Process

Reassignment is the accommodation of last resort and is considered by Leave Administration only after it is determined that: (1) there are no reasonable or effective accommodations that would allow an employee to perform the essential functions of their current position; or (2) all other reasonable accommodations would impose an undue hardship.

- In considering whether there are positions available for reassignment, the Leave Administration team will identify all open and available positions for which the employee meets the minimum qualifications, and is able to perform the essential functions of the job with or without reasonable accommodation.
- Employees will not be reassigned to a position if such a reassignment would violate another employee's rights under a collective bargaining agreement.
- Employees reassigned to another position as an accommodation will serve any trial service and probationary periods generally required for the position.

### Medical Layoff

The county may propose medical layoff in accordance with EPP 4 when an employee is unable to perform the essential functions of the job with or without a reasonable accommodation, or a reasonable accommodation cannot be identified.

## **VI. ACCESS TO POLICY**

Access to this administrative policy shall be as follows:

- Filed in PowerDMS.
- Posted to the County's internet.

## **VII. ADDENDA**

### **LINKS TO COUNTY FORMS & INFORMATION:**

Additional information about reasonable accommodations can be found here:

<https://www.clackamas.us/des/leave-administration>

[Layoff for Inability to Perform Job Duties \(EPP 4\): https://www.clackamas.us/des/epp.html](https://www.clackamas.us/des/epp.html)

## **APPENDIX A**

### **SUMMARY OF THE AMERICANS WITH DISABILITIES ACT**

The ADA was adopted to ensure that individuals with covered disabilities do not experience discrimination in the employment process. In addition, it seeks to ensure that individuals with covered disabilities are not denied access to public programs, activities or services due to a qualified disability.

Disability is defined under the ADA as: a) a physical or mental impairment that substantially limits a major life activity; b) a record of impairment; or c) being regarded as having such an impairment.

#### **REQUIREMENTS FOR SUPERVISORS**

- A. Prior to opening a recruitment, the position should be reviewed to determine essential job functions and to ensure standards for the position are job related and consistent with business necessity.
- B. Pre-employment inquiries may not address an applicant's disabilities in any way. Pre-employment inquiries must be limited to the applicant's ability to perform essential job related functions without inquiring as to why the person may or may not be able to perform those job functions.
- C. An applicant or employee may only be requested to undergo an employment related physical after a job offer has been made. The job offer must first be made and it should be contingent upon the applicant's successful completion of an employment related physical.
- D. Medical records and results of employment related physicals must be kept separate from other applicant and employee files. Departments should never retain copies of medical records or employment related physical or psychological examinations.
- E. If an applicant or employee initiates a discussion regarding reasonable accommodation, the employer should discuss with the applicant/employee what reasonable accommodation can be made. In all instances the Department of Employee Services should be consulted to discuss what would constitute appropriate and reasonable accommodation in any particular situation.
- F. Threatening, coercing, intimidating, or otherwise interfering with someone's rights under the ADA is prohibited.

## **APPENDIX B**

### **OBLIGATIONS UNDER THE ACT**

#### **Prohibition of Employment Discrimination**

Discrimination based on a person's disability with respect to any term, condition, or privilege of employment including hiring is prohibited under the Act. Included under this would be the following:

1. Classifying applicants or employees with disabilities in any way that adversely affects their opportunities or status.
2. Participating in any arrangement with another organization that has the effect of discriminating against applicants or employees with disabilities. This would include entering into service contracts or collective bargaining agreements when such contracts include arrangements which discriminate against a particular group of applicants or employees.
3. Using standards or methods that have the effect of discriminating or perpetuating discrimination.
4. Denying equal jobs or benefits because of a relationship or association with a person with a disability. This would include the situation of not hiring a person who has a sick dependent that would tap benefit resources or refusing to hire someone who is known to do volunteer work with someone who has a disability such as a person who has AIDS, epilepsy, etc.
5. Refusing to make reasonable accommodation unless the accommodation would impose undue hardship. Also denying employment opportunities to an otherwise qualified individual with a disability to avoid making a reasonable accommodation would be prohibited.
6. Using standards or tests that tend to screen out individuals with disabilities unless the tests are job related and consistent with business necessity.
7. Failing to select and administer tests in the most effective manner to ensure that the results accurately reflect skills, aptitude, etc. An example of this would be a situation where the standard recruitment procedure for a position includes a written test. If, due to a disability, as defined under the Act, someone could not read the instructions and questions, then the test should be read to them.
8. Denying health insurance benefits to a person covered under the Act.

#### **Reasonable Accommodation**

Reasonable accommodation includes but is not limited to making physical modifications to the facilities and providing equipment to assist in the performance of job duties, non-physical accommodations such as job restructuring, modifying work schedules, and reassignment to vacant positions. If an applicant or employee discloses a disability and requests accommodation, a dialogue should take place with the applicant or employee to determine what would be an appropriate and reasonable accommodation.

An individual needs to have a disability as defined under the ADA before being considered for reasonable accommodation.

In determining what is reasonable, the standard "undue hardship" is used. A person with a disability may already have equipment which could be used at the work site or may have access to grants from another agency to purchase such equipment. Also, if two options for accommodation are available, it is the employer's right to choose the least expensive option. However, advancement of the person on the job and future needs as the person develops in the position should be taken into consideration when determining what is an appropriate and reasonable accommodation. The accommodations made should not limit an employee's opportunities for advancement. (For further information on providing a reasonable accommodation refer to the ADA section of the County Website: <https://www.clackamas.us/des/ada/html>).

### Employment Related Physical and Psychological Examinations

Under the Americans with Disabilities Act, any pre-offer physical or psychological examination is prohibited.

A job offer can be made on the condition that the applicant pass a physical and/or psychological examination if all entering employees in the same job category are subject to such an examination and/or inquiry regardless of disability. The job offer must first be made and it is essential to clearly state that the offer is contingent on the results of the exam. Under any circumstance, an examination must meet the test of job relatedness and be consistent with business necessity. This would also be the criteria for any post-employment exams. To utilize employment related physical and psychological exams as an employment criterion, an assessment of the position must first be made by an approved agency. (See EPP #24 for further information on employment related physical/psychological exams.) Physical agility tests which may be used in screening for law enforcement positions are not considered physical exams. Any physical/psychological exam beyond this must meet the above criteria.

Medical inquiries must be made on separate forms from other application materials. Medical information must also be kept confidential and separate from other employee files. Critical results of physical/psychological exams and drug testing be accessible only to individuals on a need-to-know basis. Results of employment related physical and psychological examinations must be forwarded to the Risk & Safety Division where they will be maintained separate from the employee's personnel file and secured with restricted access. Departments may not retain copies of any employee medical information under any circumstances. (See EPP #42 – Employment Records.)

### Pre-Employment Inquiries/Determination of Essential Job Functions

An employer may inquire as to an applicant's ability to perform essential job related functions. Further, an employer may ask an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will be able to perform essential job related functions.

Determining essential job functions requires an analysis of the position to determine what functions are essential as a matter of business necessity. Determining essential functions of a position should be completed before a recruitment is opened for a

position. Those fundamental or essential job functions should then be appropriately documented.

A job function may be considered essential for any of several reasons. The primary reasons are as follows: 1) the reason the position exists is to perform that function; 2) there is a 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 to perform that particular function. Some ways to substantiate this are through the amount of time spent performing the function and the consequences of not requiring a person in the job to perform that function.

For example, if lifting 50 pounds is an essential function of a position, it would be appropriate to ask an applicant, "Can you lift 50 pounds ten times an hour?" However, it would be inappropriate to inquire, "Do you have any disabilities which would prohibit you from lifting 50 pounds at a time?" The first manner of inquiry does not solicit information as to why the person may not be able to perform the function, merely if they are able to perform an essential function of the position. Note that if the inquiry is being made about lifting, then it should be an essential function of the job. Inquiries or assessments involving physical standards must be based on job requirements and business necessities. If the function can be eliminated or removed from the job, then the function is probably not essential and inquiries on the subject should be avoided as they cannot be used as a basis for screening out otherwise qualified applicants with disabilities.

#### Alcohol and Illegal Drug Usage

Current use of an illegal substance is not considered a disability under the Act. However, if someone currently uses illegal drugs and has another covered disability, that person would be covered under the ADA based on the other covered disability. Under the ADA, an employer still has the right to prohibit the use of alcohol or illegal drugs at the workplace and may still prohibit employees from being under the influence of alcohol or illegal drugs at the workplace. A person who uses alcohol or illegal drugs may be held to the same qualification standards for employment or job performance and behavior standards as other employees. If someone's substandard work performance is related to alcohol or illegal drug usage, that person may still be disciplined for the work performance and held to the same standards as other employees.

#### Positions Involving Food Handling

The ADA recognizes that persons with certain communicable diseases should not be employed in positions involving food handling. The Secretary of Health and Human Services has the responsibility for maintaining a list of diseases which are transmitted through the handling of food. An employer may refuse to assign or may discontinue assigning an individual with such a disease to a job which includes food handling.

#### Prohibition Against Retaliation and Coercion

Threatening, coercing, intimidating or otherwise interfering with someone's rights under the ADA is prohibited. The ADA specifically protects from retaliation individuals who oppose any act made unlawful by the ADA. In addition, anyone who makes a charge,

testifies, or participates in any investigation covered under the ADA is protected from retaliation, intimidation, and harassment.

### Physical Barriers

New buildings must be built so that they are readily accessible to individuals with disabilities. Architectural barriers must be removed from existing buildings if such removal is "readily achievable." Readily achievable is a standard which allows organizations to determine if the changes can be made without great difficulty or expense. If a facility is undergoing renovation, then the renovated area must be made accessible. Another aspect of being accessible to individuals with disabilities is providing special phone service for the hearing impaired. County departments should be accessible to hearing impaired individuals. Numbers for phone lines for the hearing impaired should be published in local phone directories.

In all instances, Human Resources is available to assist departments in working through individual issues surrounding the ADA such as determining what reasonable accommodation would be for a particular position, defining the essential functions of a position, or determining appropriate pre-employment inquiries.

