

## Administrative Policy No. 18.26

**Subject:** Disability Reasonable Accommodation

**Authorizing Sources:** Americans with Disabilities Act of 1990  
Rehabilitation Act of 1973; 29 CFR Part 1630  
Chapter 41.06 RCW (State Civil Service Law)  
Chapter 49.60 RCW (Discrimination -- Human Rights Commission)  
WAC 357-19-465 (Reemployment Services)  
Chapter 357-26 WAC (Reasonable Accommodation)  
WACs 357-46-160 and 165 (Layoff and Separation)  
WFSE CBA Article 32  
Coalition CBA Article 33  
SEIU CBA Article 27

**Information Contact:** DSHS Human Resources

**Effective Date:** July 1, 2005

**Revised:** November 5, 2020

**Approved By:** Original signed by Wendy Long  
Senior Director, Human Resources Division

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**Purpose:**

To provide guidance to Department of Social and Health Services managers and employees for meeting reasonable accommodation requirements of federal and state law.

**Scope:**

This policy applies to all current employees, including probationary and non-permanent employees, and candidates and applicants for employment with the department, in all aspects of the job including, but not limited to, recruitment, application, hiring, training, or office sponsored events/parties.

**Definitions:**

**Disability:**

**Washington law against discrimination** (RCW 49.60.040) is as follows:

- A. The presence of a sensory, mental, or physical impairment that:
  - 1. Is medically recognizable or diagnosable;
  - 2. Exists as a record or history; or
  - 3. Is perceived to exist whether or not it exists in fact.
- B. A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job.
- C. For purpose of this definition, impairment includes, but is not limited to:
  - 1. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or
  - 2. Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Americans with Disabilities Act:**

- A. A physical or mental impairment that substantially limits one or more of the major life activities of an individual such as but not limited to: walking, seeing, hearing, breathing, learning, caring for oneself, performing manual tasks, working, speaking, etc.;
- B. A record of such impairment; or
- C. Being regarded as having such impairment.

**Direct threat:** A significant risk of substantial harm to the health and safety of self or others, for reasons connected to a disability. The risk must be specific, substantial, demonstrable, likely, or imminent; and must be incapable of being eliminated or reduced to an acceptable level through reasonable accommodation.

**Effective accommodation:** In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, whether the accommodation will enable the person with a disability to perform the essential functions of the job in question.

**Equal employment opportunity:** An opportunity for individuals with a disability to enjoy the same opportunities to participate in the application process, to be considered for a job, and enjoy the benefits and privileges of employment that employees without disabilities enjoy.

**Health care professional:** A person who has completed a course of study and is licensed to practice in a field of health care, which includes the diagnosis and assessment of the particular disability or disabilities in question.

**Qualified person with a disability:** A person with a disability who meets the skills, experience, education, and other job related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential job functions at the established performance standards.

**Reasonable accommodation:** For persons with disabilities, as defined by state or federal law, reasonable accommodation may include, but is not limited to:

1. Accommodation in application procedures, testing, and the interview process; or
2. Modifications or adjustments to a job, work method, or work environment that make it possible for a qualified person with a disability to perform the essential functions of a position, or enjoy the benefits and privileges of employment equal to employees without disabilities.

**Undue hardship:** A request for reasonable accommodation that has been denied based on unduly costly, extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the agency.

**Policy:**

The human resources division (HRD) develops and administers the disability reasonable accommodation policy.

It is the policy of the department not to discriminate because of a disability in any term or condition of employment, or in access to programs, facilities, and services offered by the department.

The department is committed to equal access to employment for employees without regard of their race, color, national origin, religion, creed, sex, age (over 40), disabled veterans status, disability, genetic information, Vietnam era veterans status, recently separated veterans status or other protected veterans status, sexual orientation (as defined in chapter 49.60 RCW including gender expression or identity), marital status, or use of a trained guide dog or service animal by a person with a disability.

Persons with disabilities have the right to request and receive reasonable accommodation in all aspects of employment with the department. The department's reasonable accommodation process is designed to:

1. Ensure equal opportunity in the application process;

2. Enable a qualified individual with a disability to perform the essential functions of a job;  
and
3. Enable an employee with a disability to enjoy equal benefits and privileges of employment.

It is the responsibility of each employee to comply with and promote this policy.

#### **A. Employee Responsibility**

1. This policy provides that individuals who believe they have a disability have the right to request and receive reasonable accommodation.
2. To inform their immediate supervisor or the department's human resources division, either orally or in writing, of the existence of an impairment, and that they need a reasonable accommodation to perform their job functions or to receive equal benefits, privileges or terms and conditions of employment.
  - a. Individuals are not required to reveal diagnoses or the details of medical treatments to immediate supervisors or to coworkers.
3. Requests for a disability reasonable accommodation can also be initiated by completing an intake at the following department [reasonable accommodation website](#).
4. The employee is responsible for providing sufficient medical documentation that establishes a reasonable likelihood that engaging in job functions without a reasonable accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

#### **B. Department Responsibilities**

1. The department must acknowledge receipt of the request for reasonable accommodation. The department will begin processing a reasonable accommodation request within thirty (30) calendar days of receipt.
2. Supervisors are not to request medical documentation regarding the impairment or discuss medical information with the employee.
  - a. If an employee voluntarily shares information about their disability or impairment with their supervisor, the supervisor must keep that information confidential.
3. If an employee gives their supervisor written information, the supervisor is to immediately forward the documents(s) to HR.

4. Appointing Authority or designee is responsible for contacting, corresponding with, and receiving information from health care professionals.
5. Medical records received by the department are confidential and will be maintained separately from personnel records and supervisory files.

### **C. Interactive reasonable accommodation process**

1. Each request for reasonable accommodation will be assessed on a case by case basis. The duty to provide reasonable accommodation is ongoing and may arise any time an employee's disability, impairment, or job changes.
2. To qualify for a reasonable accommodation in employment, when the disability and/or the need for accommodation is not obvious, the employer may ask the employee and their health care professional(s) to provide sufficient documentation indicating that a disability or medical impairment is known or shown to exist in fact; and

The impairment has a substantially limiting effect on the individual's ability to:

- a. Perform their job;
- b. Apply or be considered for a job; or
- c. Have access to equal benefits, privileges, or terms or conditions of employment.

Refusal by the employee to provide sufficient medical documentation may result in denial of reasonable accommodation or separation from employment.

3. An interactive process may include (but is not limited to):
  - a. A request to obtain sufficient medical documentation from a qualified health care professional to support that a disability exists and to substantiate the need for a reasonable accommodation;
  - b. A review of the current position description, an analysis of the particular job functions and qualifications; and/or
  - c. A consultation with the individual to:
    - i. Ascertain the precise job related limitations imposed by their disability and how those limitations could be overcome with a reasonable accommodation;
    - ii. Identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.
4. The department may obtain a second opinion from a health care professional chosen and paid for by the department verifying the disability and limitations of

work.

5. Decisions regarding an employee's reasonable accommodation(s) will be made by the appointing authority or designee. If two or more effective accommodations exist, and after considering the preference of the individual with a disability, the appointing authority or designee may select the reasonable accommodation(s) to be provided.
  - a. The reasonable accommodation unit within HRD is available to assist and advise as needed.
6. Reassignment to a vacant position is the reasonable accommodation of last resort. This type of reasonable accommodation must be considered for a permanent employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation.
7. Under this policy, the department is not required to:
  - a. Eliminate an essential function or duty of the job;
  - b. Lower performance or productivity standards;
  - c. Create a position;
  - d. Displace another employee
  - e. Offer a promotion; or
  - f. Move an employee into a position for which the employee is not qualified.
8. The employee has the right to refuse a reasonable accommodation. However, if an employee refuses the reasonable accommodation and is unable to perform the job functions without the accommodation, they are not considered to be a qualified individual with a disability, and may be separated from employment.
9. The employee must be notified in writing if the department determines their request for reasonable accommodation is denied, documenting the reasons for the denial.

#### **D. Determining undue hardship**

1. The department must provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment unless doing so will impose an undue hardship on the operation of its business.
2. Before concluding a particular accommodation imposes an undue hardship, the department will consider whether or not there are alternative reasonable accommodations that would not impose such a hardship.

3. The secretary, or their designee, will review and make the final determination on requests for accommodations where concerns exist regarding undue hardship of the requested accommodation. The department will provide written justification to the individual for any decision not to provide a reasonable accommodation because of undue hardship.

#### **E. Establishing direct threat**

1. Reasonable accommodation may not be required if:
  - a. There is reasonable cause to believe that an employee poses a direct threat to the health or safety of self or others; or
  - b. A reasonable accommodation cannot reduce the risk below the direct threat level.
2. The determination that an individual poses a direct threat is to be based on an assessment of the individual's present ability to safely perform the essential functions of the job.
  - a. The department's appointing authority will complete an individualized assessment of the situation, which includes a current medical review and objective evidence.
  - b. A department employee may be sent to a health care professional of the department's choosing if there is objective evidence to support a reasonable belief that, due to a disability, an employee poses a direct threat to self or others, which means a high probability of a risk of significant harm.
  - c. In analyzing whether a department employee poses a direct threat, the department's appointing authority will consider these factors:
    - i. The duration of the risk;
    - ii. The nature and severity of the potential harm;
    - iii. The likelihood that the potential harm will occur; and
  - d. The imminence of the potential harm.

If it is then determined that the person poses a significant risk of substantial harm, the department's appointing authority will consider whether a reasonable accommodation exists that could mitigate or eliminate the risk.

#### **F. Disability separation**

A disability separation is an action taken to separate an employee from service when the department determines that the employee is unable to perform the essential functions of the employee's position, or alternative position, with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action per WAC 357-46-160 or applicable CBA Articles.

1. Department initiated separation
  - a. The department may separate an employee due to disability when any of the following circumstances exist:
    - i. The department is unable to reasonably accommodate the employee; or
    - ii. The department has medical documentation of the employee's inability to work in any capacity.
  - b. Appointing authorities are required to consult with the department's human resources division before implementing a disability separation.
    - i. Notice of disability separation must be in writing to the employee and must include information about the option to apply for re-employment under WAC 357-19-465.
2. Employee initiated separation
  - a. An employee unable to perform the essential functions of their position due to a mental, sensory, or physical disability may choose not to pursue an accommodation and may request to be separated from employment.
    - i. The employee must submit the request to their appointing authority in writing.
    - ii. Provide medical information documenting the employee cannot perform the essential functions of the employee's position or class (if not already provided).
    - iii. The appointing authority is not required to consider a reasonable accommodation in lieu of the employee's request for a voluntary disability separation.
3. Reemployment Assistance
  - a. Employees who are separated due to disability from employment are eligible for reemployment assistance for up to two years following separation. See WAC 357-19-470.

## **G. Training and resources**

1. The reasonable accommodation unit is available to provide training upon request. Please contact the reasonable accommodation unit at (360) 725-5813.
2. For additional information please contact the department's human resources division, reasonable accommodation specialist.