

DEPARTMENT OF HUMAN SERVICES

EFFECTIVE DATE: March 11, 2016

ISSUE DATE: May 25, 2016

SUBJECT: ADA POLICY AND PROCEDURES

I. PURPOSE

- A. To designate ADA Coordinators for the Department of Human Services (DHS) and its offices, divisions and institutions to define their duties thereof.
- B. To establish procedures, in accordance with State and federal laws, for receiving and timely responding to requests for reasonable accommodation by an employee or applicant with a disability.
- C. To establish requirements for the confidential treatment of the medical records of employees and applicants requesting a reasonable accommodation.

II. SCOPE

This Administrative Order has Department wide applicability.

III. AUTHORITY

Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)
29 C.F.R. 1630 et seq.
New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.
N.J.A.C. 13:13-2.1 et seq.
New Jersey State Policy Prohibiting Discrimination in the Workplace
N.J.A.C. 4A-7.3 et seq.

IV. DEFINITIONS

The following terms when used in this Order have the meanings indicated:

ADA means the “Americans with Disabilities Act”.

NJLAD means the “New Jersey Law Against Discrimination”.

Disability as used in this Administrative Order will have the same meaning as the term “disability is given by the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-5q.

A Person with a Disability is a person who is perceived as or believed to be a person with a disability, whether or not that individual is actually a person with a disability; and a person who has been a person with a disability at any time.

Reasonable Accommodation means an adjustment or alteration that enables a qualified person with a disability to apply for a job, perform job duties, or enjoy benefits and privileges of employment.

Request for Reasonable Accommodation means a request from an individual who needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition.

V. **POLICY**

DHS is committed to providing reasonable accommodation to employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to employment.

DHS shall provide reasonable accommodation for the known physical or intellectual/developmental limitations of qualified employees and applicants with disabilities, unless DHS can demonstrate that a particular accommodation would impose an undue hardship on the operation of its programs.

The NJLAD provides that it is an unlawful employment practice to deny to an otherwise qualified person with a disability the opportunity to obtain or maintain employment, or to advance in position in his job, solely because such person is a person with a disability. All employment procedures must be conducted to provide individuals with disabilities equal consideration with individuals who do not have disabilities for all aspects of employment, including hiring, advancement, discharge, compensation, training, and other conditions and privileges of employment.

VI. **RESPONSIBILITIES**

A. Designated ADA Coordinators:

There shall be a designated DHS Central Office ADA Coordinator for the DHS Central Office who shall be located within the Office of Human Resources. In addition to the ADA Coordinator for DHS Central Office, all

DHS divisions and institutions shall designate at least one ADA coordinator located within that division's or institution's Office of Human Resources or equivalent office. The responsibilities of the designated ADA Coordinators shall include:

1. Receiving requests for accommodation and coordinating the timely processing and response thereto.
2. Acknowledging requests for accommodation.
3. Assisting supervisors, managers, or interviewers to identify the essential job functions and to complete the Essential Functions Worksheet and the Job Demands and Medical Capabilities form, as necessary.
4. Obtaining appropriate medical documentation, utilizing the Request for Medical Documentation form, the Essential Functions Worksheet and the Job Demands and Medical Capabilities form, as necessary. Note, the ADA Coordinator may not request medical documentation of an applicant until a conditional offer of employment has been made.
5. Engaging in and documenting the interactive process with the employee or job applicant to identify the best means of accommodating his or her disability.
6. Submitting proposed denials of request for a reasonable accommodation to the DHS Office of Legal and Regulatory Affairs prior to finalization.
7. Issuing to the employee or applicant requesting the accommodation, a written determination regarding the requested accommodation.
8. Retaining copies of all of the documentation regarding the request for reasonable accommodation.
9. Implementing procedures to monitor, where appropriate, the effectiveness of the reasonable accommodations that have been implemented including:
 - a) Responding to any ongoing concerns the supervisor/manager or the employee has about the effectiveness of the identified reasonable accommodation; and

b) Resuming the interactive process, if necessary.

10. Upon consultation with the respective HR Director, designating a “backup ADA Coordinator who, in the Coordinator’s absence, will receive and coordinate a timely response to requests for reasonable accommodation and carry out other responsibilities of the ADA Coordinator, as necessary.
11. Consulting with the DHS Office of Legal and Regulatory Affairs, as needed, regarding requested accommodations and the process.
12. Ensuring that all managers/supervisors are aware of the ADA Policy and Procedures, and distributing this Administrative Order to all manager/supervisors.

B. Supervisors/Managers/Interviewers

The responsibilities of Supervisors/Managers/Interviewers shall include:

1. Receiving requests for reasonable accommodation and immediately forwarding such requests to the designated ADA Coordinator.
2. Identifying, in consultation with the designated ADA coordinator, the essential functions of the job for which an employee or applicant is requesting an accommodation.
3. Providing to the ADA Coordinator all relevant job related information, including the operational needs of the work unit and how a requested accommodation may impact business operations.
4. Upon direction from the designated ADA Coordinator, participating in the “interactive process” to help identify an effective accommodation.
5. Supervisors/managers and interviewers **shall not** render determinations on requests for reasonable accommodation without the involvement of the designated ADA Coordinator.

C. Applicant/Employee

The responsibilities of applicants/employees shall include:

1. Making known that an accommodation is needed. The individual does not have to specifically request a “reasonable

accommodation,” but must only let the employer know that some adjustment is needed to do a job because of a medical condition.

2. Providing, when requested, appropriate medical documentation concerning the medical condition(s) which forms the basis of his/her request for a reasonable accommodation. Documentation to include, but not be limited to, the Request for Reasonable Accommodation Form and the Authorization to Disclose Protected Health Information form.
3. Immediately notifying the ADA Coordinator of any change to his/her medical condition relative to an approved accommodation.

D. The DHS Office of Legal and Regulatory Affairs

The responsibilities of the DHS Office of Legal and Regulatory Affairs shall include:

1. Communicating, as needed, with the designated ADA Coordinators, reviewing recommended responses to requests for accommodation, and, where appropriate, identifying possible alternative responses to accommodation requests.
2. Reviewing and approving all denials of requests for reasonable accommodation.
3. Responding to requests for legal advice regarding reasonable accommodations, the release of confidential employee or applicant medical information, or compliance with the NJLAD and/or ADA or any other state or federal laws or policies prohibiting discrimination on the basis of disability. Requests should be submitted to:

Office of Legal and Regulatory Affairs
Department of Human Services
P.O. Box 700
Trenton, NJ 08625-0081
(609) 777-2026 or
DHS-CO.OLRA@dhs.state.nj.us

VII. PROCEDURES

- A. An employee or applicant initiates the process by making a request for an accommodation to his/her supervisor, manager, Office of Human Resources, or the designated ADA Coordinator. In the case of an

applicant, requests should be made to the interviewer or the appropriate Office of Human Resources.

- B. It is the obligation of the employee or applicant with a disability to request an accommodation. Management may ask an employee or applicant with an obvious disability, (e.g. an individual who requires the use of a wheelchair) or someone returning to work with a temporary or permanent disability about the need for a reasonable accommodation.
- C. An employee or job applicant making a request for an accommodation should be instructed to complete and return, as soon as possible, Attachment A, Request for Reasonable Accommodation Form.

Note Requests for reasonable accommodation do not have to be in writing nor do the words “reasonable accommodation” have to be used in order to trigger the interactive process.

1. If an employee or job applicant is unable to complete the Accommodation Request Form, the form should be completed by the designated ADA Coordinator and presented to the individual for verification and signature.
2. The processing of such requests for accommodation should be acted on upon receipt of a verbal request and should not be delayed pending written confirmation.
3. A family member, health professional, or other representative may request an accommodation on behalf of an employee or applicant. The request should be directed to the designated ADA Coordinator immediately upon receipt.
4. The supervisor/manager/interviewer receiving the request for accommodation should, immediately (absent extenuating circumstances), refer the request to the designated ADA Coordinator for timely coordination and processing of the request. Supervisors/managers/interviewers should not unilaterally render determinations on requested accommodations.
5. The designated ADA Coordinator and, if appropriate, the supervisor/manager/interviewer of the individual requesting a reasonable accommodation shall, as soon as possible, engage in an “interactive process” with the individual. The purpose of the interactive process is to establish a dialogue between management and the individual requesting the accommodation in order to attempt to identify an effective reasonable accommodation. Communication is a priority throughout the entire process. The

designated DHS Central Office or DHS division or institution ADA Coordinator, along with the assistance of the supervisor/manager/interviewer, will have the primary responsibility for identifying an effective reasonable accommodation. However, an employee or applicant requesting an accommodation is expected to participate in the “interactive process” and assist in identifying possible accommodations. Individuals are not necessarily entitled to the accommodation they request. Rather, they are entitled only to a reasonable accommodation that allows them to effectively perform their jobs.

6. DHS has a right to know if an individual requesting an accommodation has a condition which qualifies as a disability under the NJLAD and/or the ADA and whether an accommodation is necessary. DHS may require the individual requesting an accommodation to have his/her physician timely provide a response to a series of medical questions regarding the individual's medical condition and associated limitations. The information received from the health care provider is confidential and must be dealt with in accordance with Section VIII.
7. If a job applicant has an obvious disability or voluntarily discloses information regarding a disability prior to a conditional offer of employment, and the employer reasonably believes that the applicant will not be able to perform an essential job function, the employer may ask the applicant to describe how he/she would perform the essential job function.
8. Determinations regarding the requested accommodations should be made as soon as practicable (generally within fourteen days absent extenuating circumstances). If a request for a reasonable accommodation is approved, the designated ADA Coordinator shall issue Attachment G, Reasonable Accommodation Approval Letter. If the request for accommodation is denied, the designated ADA Coordinator shall issue to the requesting individual Attachment H, Reasonable Accommodation Denial Letter.
9. DHS reserves the right to seek updated medical information regarding any accommodation and make any necessary changes as required by an employee's medical condition.
10. Unless an employee has an obvious disability, the ADA Coordinator will require the employee to confirm the continuing need for an accommodation at a minimum of once every six months.

11. DHS reserves the right to waive these procedural requirements as necessary to implement the goals and purpose of this policy.

VIII. CONFIDENTIALITY

All medical information/records of individuals seeking a reasonable accommodation shall be treated as confidential and shall be maintained in the following manner:

- A. Information regarding the medical history or condition of employees or applicants requesting an accommodation shall be maintained in a , confidential medical file separate from other personnel records.
- B. All medical related information must be kept confidential with the following exceptions:
 1. Supervisors and managers may be informed about necessary restrictions in the work or duties of an employee and necessary accommodations;
 2. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuations;
 3. Relevant information may be provided to government officials investigating an employee complaint regarding compliance with the NJLAD, ADA, or any other state or federal laws or policies prohibiting discrimination on the basis of disability;
 4. Relevant information may be provided to State workers' compensation offices or "second injury" funds in accordance with State workers' compensation laws;
 5. Relevant information may be provided in response to a duly executed court order. The DHS Office of Legal and Regulatory Affairs should be contacted for legal advice prior to the release of any medical information/records of an employee or job applicant.
- C. Whenever medical information is disclosed, in accordance with the above listed exceptions, the disclosing party shall inform the recipients of the confidentiality requirements that attach to the information.

IX. TRAINING

- A. All designated ADA Coordinators and their back-ups, will attend periodic meetings coordinated by the DHS Office of Legal and Regulatory Affairs.

- B. All supervisors/managers should be trained on the policy at least annually. The training will be coordinated by the designated ADA Coordinator with the assistance of the DHS Office of Legal and Regulatory Affairs, as required.

X. DISCRIMINATION POLICY

- A. Any employee or job applicant believing that he or she has been subjected to any form of discrimination as a result of their disability or filing of an accommodation request should be advised of the appropriate procedures for filing a complaint in accordance with the New Jersey Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace (Administrative Order 4:01). For more information, contact:

Director, Office of Equal Employment Opportunity
Department of Human Services
P.O. Box 700
Trenton, NJ 08625
609-292-5807

- B. Designated ADA Coordinators, supervisors and/or managers should immediately report all alleged violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, whether reported by an employee or observed directly, to the DHS Office of EEO.

XI. PROCEDURAL HISTORY

This Administrative Order revises and replaces Administrative Order 4:07 which was issued and effective on June 24, 2005. The 2005 Administrative Order replaced Personnel Circular #95-87.



Elizabeth Connolly
Acting Commissioner