

DEPARTMENT OF HUMAN SERVICES

ORIGINAL EFFECTIVE DATE: June 24, 2005

SUBJECT: ADA Policy & Procedures

I. PURPOSE

The purpose of this Administrative Order is:

To designate an ADA Coordinator for the Department of Human Services (DHS) and designate DHS Central Office, division and institution ADA Coordinators for each DHS division and institution within DHS and to define the duties thereof.

To establish procedures, in accordance with State and federal statute and the interpretive regulations, for receiving and timely responding to requests for reasonable accommodation by an employee or applicant with a disability.

To establish guidelines for the confidential treatment of the medical records of employees and applicants requesting a reasonable accommodation.

II. SCOPE

This order has Department-wide applicability.

III. 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 Under the NJLAD, the definition of disability is broader in scope than the ADA. Under the LAD, a disability includes virtually any physical or mental impairment without regard to whether it substantially limits a major life activity.

A **physical disability** under the NJLAD is defined as “suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, any degree of paralysis, amputation, lack of physical

coordination, blindness or visual impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device.”

A **non-physical disability** under the NJLAD is defined as “suffering from any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which either (a) ‘prevents the normal exercise of any bodily or mental functions’ or (b) ‘is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques’.”

IV. LEGAL AUTHORITY

N.J.S.A. 10:5-29.1 et seq.
N.J.A.C. 13:13-2.1 et seq.
28 CFR 35.104

V. POLICY

It is the policy of DHS to provide reasonable accommodation based on the provisions of the NJLAD and the ADA and the interpretive regulations. The NJLAD provides that:

“Unless it can be clearly shown that a person’s disability would prevent such person from performing a particular job, 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 or because such person is accompanied by a service or guide dog.” See N.J.S.A. 10:5-29.1.

Further, the regulations governing the NJLAD provide that:

“All employers shall conduct their employment procedures in such a manner as to assure that all people with disabilities are given equal consideration with people who do not have disabilities for all aspects of employment including but not limited to, hiring, promotion, tenure, training, assignment, transfers, and leaves on the basis of their qualifications and abilities.” See N.J.A.C. 13:13-2.5(a).

VI. RESPONSIBILITIES

A. Designated ADA Coordinators

1. There shall be a designated DHS Central Office ADA Coordinator for the DHS Central Office which shall be located within Human Resources.
2. 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 DHS division’s or institution’s Office of Human Resources or

equivalent office, to receive and coordinate the timely response to requests for reasonable accommodation.

B. Reasonable Accommodation

1. Background

- a. Pursuant to the regulations governing the NJLAD an employer must make a reasonable accommodation to the limitations of an employee or applicant with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business.
- b. Examples of reasonable accommodation may include: making facilities used by employees readily accessible and usable by people with disabilities; job restructuring, modified work schedules; acquisition or modification of equipment; job reassignment and other similar actions, where appropriate. Efforts may be made to explore any available vacant position for which the individual qualifies.
- c. An employer must consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a person with a disability on the grounds that his or her disability precludes job performance. [See N.J.A.C. 13:13-2.5(b)]

2. Procedures for making and responding to requests for reasonable accommodation

- a. An employee or applicant generally initiates the process by making a request for a reasonable accommodation. Individuals with a disability may make a request for reasonable accommodation to their supervisor, manager, or the DHS Central Office or DHS division or institution designated ADA Coordinator. In the case of an applicant, requests should be made to the interviewer or the appropriate human resources unit.

Note It is generally the obligation of the employee or applicant with a disability to request a reasonable 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.

- i. Requests for reasonable accommodation do not have to be in writing, nor must the words “reasonable

accommodation” be used in order to trigger a response thereto. However, for record keeping purposes, individuals should be instructed to complete and return, as soon as possible, an Accommodation Request Form (see Appendix Form A). If an applicant or employee is unable or unwilling to complete the Accommodation Request Form, the form should be completed by the DHS Central Office or DHS division or institution designated ADA Coordinator or supervisor, manager, interviewer of the individual requesting the accommodation, and presented to the individual for verification and signature. Note: The processing of such requests for accommodation should be acted upon receipt of a verbal request and should not be delayed in order to wait for written confirmation.

- ii. 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 same person to whom the employee or applicant would otherwise make the request.
- b. The supervisor/manager/interviewer receiving the request for accommodation should, as soon as possible (generally within two days absent extenuating circumstances), refer the request to the designated DHS Central Office or DHS division or institution ADA Coordinator for timely coordination and processing of the request and a response thereto.
 - c. The designated DHS Central Office or DHS division or institution 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.

- d. DHS has a right to know if an individual requesting a reasonable accommodation has a condition which qualifies as a disability under the NJLAD and/or the ADA and whether such condition requires an accommodation. In some cases, the disability and the need for accommodation will be obvious or otherwise already known to DHS. In those cases, DHS will generally not seek any further medical information. In other cases, however, a disability and/or the need for a reasonable accommodation may not be obvious or otherwise already known. In such cases, 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 (See Appendix Form B1 for sample form letter which contains the type of information the employer may need to request of the medical provider) and to execute a narrowly tailored **Authorization for the Release of Health Information** (See Appendix Form B2) in order to obtain relevant information regarding the individual's medical condition. The information received from the health care provider is confidential and must be dealt with in accordance with Section VII.
- e. Disability/handicap related inquiries may not be made of a job applicant until a conditional offer of employment is made. However, if an applicant has an obvious disability or voluntarily discloses information regarding a disability prior to a conditional offer of employment, the employer may inquire into the applicant's ability to perform the essential functions of the job with or without a reasonable accommodation. This inquiry may include a request for a description or demonstration of how the applicant would perform certain essential job functions. The **NJ Department of Personnel Guide for Conducting Professional Interviews** should be consulted by all individuals conducting interviews (See Appendix Form F).
- f. Determinations regarding the requested accommodations should be made as soon as practicable (generally within fourteen days absent extenuating circumstances). The employee or applicant should be given written notification of the determination concerning the reasonable accommodation. If a request for a reasonable accommodation is approved, the DHS Central Office or DHS division or institution ADA Coordinator shall issue, as soon as possible, to the individual requesting the accommodation an **Approval Letter** consistent with the form letter found at Appendix

Form C. If the request for accommodation is denied, the DHS Central Office or DHS division or institution ADA Coordinator shall issue to the requesting individual a Denial of Request Letter (See Appendix Form D).

- g. Upon completion of the reasonable accommodation request process, the DHS Central Office or DHS division or institution ADA Coordinator and/or the supervisor/ manager/ interviewer of the individual requesting the accommodation shall complete a **Reasonable Accommodation Information Reporting Form** (See Appendix Form E). A copy of this reporting form shall be sent to the DHS Office of Equal Employment Opportunity and maintained by the appropriate ADA Coordinator. These forms should be sent to the EEO quarterly.

C. Workforce Responsibilities

1. Applicant/Employee

- a. In general, it is the responsibility of an individual with a disability to make known that an accommodation is needed to participate in the application process, to perform essential job functions or to receive equal benefits and privileges of employment. The individual however, 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.
- b. Employees and applicants are responsible for providing, when so requested, appropriate medical documentation concerning the medical condition(s) which forms the basis of their request for a reasonable accommodation. Where additional medical documentation is needed to make a determination regarding the requested reasonable accommodation, employees and applicants may be required to have their physicians provide timely responses to questions regarding their medical condition (See Appendix Form B1) or sign a narrowly tailored **Authorization for the Release of Health Information Form** (See Appendix Form B2) that will enable DHS to obtain additional medical information from the individual’s medical provider.

Note: An employer may not request medical documentation of an applicant until a conditional offer of employment has been made.

2. Supervisors/Managers/Interviewers

The responsibilities of Supervisors/Managers/Interviewers shall include:

- a. Receiving requests for reasonable accommodation and immediately forwarding such requests to the designated DHS Central Office or DHS division or institution ADA Coordinator. Generally such requests should be, absent extenuating circumstances, forwarded to the DHS Central Office or DHS division or institution ADA Coordinator within two days.
- b. Assisting employees and applicants, if necessary, in completing an **Accommodation Request Form** (See Appendix Form A).
- c. Identifying, in consultation with the designated DHS Central Office or DHS division or institution ADA coordinator, the essential functions of the job for which an employee or applicant is requesting an accommodation. (The essential functions of the job shall be based upon the job description, with particular attention paid to the actual functions of the job performed or to be performed.)
- d. Obtaining all relevant job related information upon which a determination of the requested accommodation will be made.
- e. Upon direction of the designated DHS Central Office or DHS division or institution ADA Coordinator, participating in the “interactive process” to help identify an effective accommodation.

3. DHS Central Office, Division or Institution ADA Coordinators

The responsibilities of each DHS Central Office, division or institution ADA Coordinator shall include:

- a. Receiving requests for accommodation and coordinating the timely processing and response thereto.
- b. Determining whether or not there is sufficient medical documentation to establish that the individual has a qualifying disability and/or that the disability requires an accommodation.

- c. Assisting supervisors, managers, or interviewers in identifying the essential functions of the job.
- d. Initiating and participating in an “interactive process” with an individual who requests a reasonable accommodation to help identify an effective accommodation.
- e. Consulting with the Department ADA Coordinator regarding a proposed response to a request for reasonable accommodation, as necessary.
- f. Any proposed **denial** must be reviewed by the Department ADA Coordinator prior to issuance of a final determination.
- g. If a request for a reasonable accommodation is approved, the DHS Central Office, division or institutional ADA Coordinator shall issue to the individual requesting the accommodation an approval letter consistent with the form letter found at Appendix Form C. If the request for accommodation is denied, a **Denial of Request Letter** (See Appendix Form D) shall be completed and provided to the employee or applicant who requested the accommodation.
- h. Retaining for a period of not less than five years copies of the **Reasonable Accommodation Information Reporting Form** (See Appendix Form E).
- i. Providing a quarterly report to the EEO Office of all accommodation requests received and the disposition of same. The Reasonable Accommodation Information Reporting Forms should be attached to the Quarterly Report.
- j. Ongoing monitoring, where appropriate, of the effectiveness of the reasonable accommodations that have been implemented.
- k. Upon consultation with the respective HR Director, designating a “backup” DHS division or institution ADA Coordinator who, in the Coordinator’s absence, will receive and coordinate a timely response to requests for reasonable accommodation.
- l. ADA Coordinators will ensure that all managers are aware of the ADA Policy and Procedures and shall distribute said policy to all managers.

4. Department ADA Coordinator

The responsibilities of the Department ADA Coordinator shall include:

- a. Communicating, as needed, with the DHS Central Office, division or institution ADA Coordinators, reviewing recommended responses to requests for accommodation, and, where appropriate, identifying possible alternative responses to accommodation requests.
- b. Any denial of an accommodation request by any ADA Coordinator shall be reviewed with the Department ADA Coordinator prior to any denial being issued.
- c. 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 shall be directed to and coordinated by:

Barbara G. Allen, Esq., Director
Department of Human Services
Office of Legal & Regulatory Liaison
P.O. Box 700
Trenton, NJ 08625-0081
(609) 984-5486

VII. 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 a reasonable 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/handicap 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 or handicap;
 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. (Note: Legal advice should be sought prior to the release of any medical information/records of an employee or 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.

VIII. TRAINING

- A. All designated ADA Coordinators and their back-ups, should be trained at least annually. The training will be coordinated by the Office of Legal and Regulatory Liaison.
- B. All managers should be trained on the policy at least annually. The training will be coordinated by the ADA Coordinator.

IX. DISCRIMINATION POLICY

- A. Any employee who expresses a belief that he or she has been subjected to any form of prohibited 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).

- B. ADA Coordinators 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.

James M. Davy
Commissioner