



May 28, 2010

MEMORANDUM

To: Civil Rights Division Employees

From: Thomas E. Perez *TEP*  
Assistant Attorney General

Subject: Process for Requests for Reasonable Accommodations by Individuals with Disabilities

The Civil Rights Division (CRT) is currently working to develop a comprehensive policy governing the provision of reasonable accommodations for individuals (employees and applicants for employment) with disabilities. In the interim and until that policy is completed, this memorandum sets forth the process applicable to requests for reasonable accommodations for individuals (employees and applicants for employment) with disabilities within CRT.<sup>1</sup>

The purpose of this memorandum is to implement CRT's continued commitment to equal employment opportunity, which includes compliance with the requirements of Sections 501 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 794, to provide equal employment opportunities to individuals with disabilities. That commitment includes providing – swiftly and fairly – the reasonable accommodations and equal access to technology and information that individuals with disabilities need to perform the essential functions of their jobs.

1. THE REHABILITATION ACT AND SCOPE OF THIS POLICY

- a. This policy and process applies to reasonable accommodations for individuals with disabilities covered by the Rehabilitation Act, which incorporates the definitions and standards from the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*
- b. Consistent with the Rehabilitation Act, individuals with disabilities are those individuals who have an impairment that substantially limits one or more major life activities, have a record of such an impairment, or are regarded as having such an impairment that is not transitory (e.g., temporary).
  - “Major life activities” include functions such as performing manual tasks, walking, seeing, hearing, speaking, and working, as well as major bodily

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<sup>1</sup> The Department's 2002 guidance on reasonable accommodations is available at <http://www.usdoj.gov/jmd/eeos/ddaccomprocfinal081502.htm>.

functions (e.g., functions of the immune, respiratory, circulatory, endocrine and reproductive systems).

- In the context of impairments affecting the major life activity of working, “substantially limits” means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.
- c. Reasonable accommodations include modifications or adjustments that enable qualified individuals with disabilities to apply for a job and/or perform the essential functions of a job (e.g., those functions that are so fundamental to the job that the individual cannot do the job without being able to perform them); modifications or adjustments that enable individuals with disabilities to enjoy equal benefits and privileges of employment; and modifications or adjustments needed to provide equal access to technology and information.
- d. CRT will provide reasonable accommodations to otherwise qualified individuals with disabilities absent undue hardship on CRT’s or the office’s operations. The provision of a requested accommodation may result in undue hardship where it imposes significant difficulty or expense, including significantly impacting the ability of other employees to perform their duties or the ability of the office to carry out its functions.
- e. Where appropriate, section managers may provide needed flexibility to individuals with health conditions that do not rise to the level of a disability within the meaning of the Rehabilitation Act.

## 2. **REASONABLE ACCOMMODATION MANAGER AND COORDINATORS**

- a. To ensure consistent compliance with the Rehabilitation Act, as part of this interim policy, CRT has designated a Reasonable Accommodation Manager (RAM) with responsibility for general oversight of the accommodation process, and two Reasonable Accommodation Coordinators (RACs). The RACs will serve as neutral liaisons between management and the individual to work through the accommodation process, gathering the necessary documentation and information, and working with the individual and management to find an appropriate accommodation.
- b. Allison Nichol, Deputy Chief in the Disability Rights Section, will serve as CRT’s interim Reasonable Accommodation Manager (RAM).
- c. Kate Nicholson (202-514-0547), an attorney in the Disability Rights Section, and Carolyn Weiss (202-514-6269), an attorney from the Employment Litigation Section, will serve as CRT’s RACs.

### 3. **REQUESTS FOR REASONABLE ACCOMMODATIONS**

- a. An individual may request a reasonable accommodation by contacting one of the RACs, the individual's supervisor or another member of section management. Applicants for employment may also contact a member of CRT's human resource staff.
- To ensure consistency where appropriate and feasible, if a supervisor, manager or a member of CRT's human resource staff receives a request for a disability or medical-related accommodation (even if the individual does not label the request as an "accommodation,") he/she must notify one of the RACs.
  - In some circumstances, a supervisor, manager or member of CRT's human resource staff should initiate an inquiry about the need for an accommodation. For instance, if an employee tells his supervisor that he cannot come to work due to the effects of anti-depressants or that he needs advanced leave to seek treatment, the employee may need a reasonable accommodation under the Rehabilitation Act. Under such circumstances, the supervisor, manager or member of CRT's human resource staff should refer the individual to the RACs and/or notify the RACs.
  - If an applicant for employment requests an accommodation (e.g., assistance in completing the application process or attending an interview) or asks accommodation-related questions during the interview/hiring process, the RAC must be notified. The RAC will work with the applicant and section managers to respond to the request and/or answer any questions.
- b. The RAC can explain the process and the requisite forms/documentation, and assist individuals with impairments in completing those forms or providing them in alternative formats, such as in electronic format or large font.
- c. All requests for accommodations must be supported by a CRT Form 100A Request for Reasonable Accommodation.  
[http://mycrt/human\\_resources/eeo/crt100a.pdf](http://mycrt/human_resources/eeo/crt100a.pdf)
- Individuals may initiate the accommodation process by verbally requesting an accommodation, but must follow that request with a CRT Form 100A.
  - In completing CRT Form 100A, individuals should provide the information necessary to assess their request, including a description of the impairment/health condition and how that impairment/health condition

limits his/her life activities and ability to perform the essential functions of his/her job.

- Individuals should also identify the accommodation(s) requested and explain how the accommodation(s) will enable the individual to perform the essential functions of his/her job.

d. Recurring / on-going requests.

- The RACs will also coordinate recurring and/or on-going accommodation requests, such as requests for sign language interpreters, readers, travel assistants and accommodations for participation in training programs (e.g., providing printed handouts in larger font or ensuring access to assistive technology at training sites).
- Employees who need sign language/oral interpreters on a regular basis may contact the Division's Supervisory Sign Language Interpreter (Beth.Maclay@usdoj.gov) to request and schedule interpreting services. Requests should be made in advance of the event (meeting, conference, speech, etc.) to ensure availability of interpreting services.
- Individuals who have previously submitted a CRT Form 100A for a recurring accommodation do not need to re-submit that documentation for subsequent requests for the same accommodation. Where feasible, individuals are asked to notify the RAC at least seven (7) business days in advance of the date the accommodation is needed to allow sufficient time for the RAC to coordinate the accommodation.

e. Minor modifications to existing accommodations.

- Supervisors and managers are encouraged to work with individuals to make minor modifications to existing accommodations. For instance, if an employee with a disability works a later schedule on Wednesdays as an accommodation to attend weekly medical appointments, and those appointments are moved to Thursdays, the supervisor may make that adjustment without re-starting the accommodation process.

f. Requests for reassignment.

- Reassignment is an accommodation of last resort; a request for reassignment to a vacant position will be considered only where no other reasonable accommodations will enable an individual with a disability to perform the essential functions of his/her current position.

4. **MEDICAL DOCUMENTATION, CONFIDENTIALITY AND RECORDKEEPING**

- a. Medical documentation of the impairment/health condition may be required.
- If the impairment/health condition is not obvious, or if the need for the requested accommodation or how the requested accommodation will assist the individual in performing the essential functions of his/her job is not obvious, the individual must also submit CRT Form 100B Medical Documentation for Request for Accommodation.  
[http://mycrt/human\\_resources/eeo/crt100b.pdf](http://mycrt/human_resources/eeo/crt100b.pdf)
  - The top portion of Form 100B Medical Documentation for Request for Accommodation (items 1-3) should be completed by the individual's manager or the individual may complete that portion and attach a copy of his/her position description. The bottom portion of Form 100B (items 4-5) must be completed by the individual's health care provider and include the information necessary to support the accommodation request, including the nature and severity of the impairment, the expected duration of the impairment, and how the impairment limits the individual's life activities or ability to perform the essential function(s) of his/her job.
  - The individual may be asked to provide only medical documentation related to the impairment/health condition at issue in the accommodation request; he/she may not be asked to provide general medical information or information about an impairment/health condition unrelated to the accommodation request.
  - If the individual has previously provided medical documentation of his/her impairment/health condition and limitations that is sufficient to support the current accommodation request, and his/her impairment/health condition has not changed, he/she is not required to provide additional medical documentation. Additional medical documentation may be required for re-assessment purposes following temporary accommodations.
  - CRT may request supplemental medical documentation if the documentation provided is vague, does not clearly explain the nature of the disability and/or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee in performing the essential functions of his/her position.
  - CRT may have medical documentation reviewed by a medical expert selected by CRT and at CRT's expense.
- b. The RACs, managers and anyone else involved in the accommodation process shall maintain the confidentiality of all information and documents received in

connection with an accommodation request consistent with the requirements of the Rehabilitation Act. 29 C.F.R. § 1630.14(c). The RACs will maintain requests, supporting documentation and other information and documents received in connection with an accommodation request for the duration of the individual's employment and in files separate from the individual's personnel files, including password-protected electronic files. Access to such information and documents is strictly limited to those employees with an identifiable need to know as part of the accommodation process.

- c. Failure to provide medical documentation or other information necessary to assess an accommodation request may result in the denial of the request.
- d. The RACs and/or CRT's Office of Employment Counsel (OEC) generate periodic reports (without individual identifiers) of accommodation activity to enable CRT to track its compliance with the Rehabilitation Act, including assessing aggregate data, volume, cost and repeat accommodation requests that may warrant systemic changes.

#### 5. **THE INTERACTIVE PROCESS**

- a. The RACs will work with the individual and his/her manager(s) to engage in an interactive process to assess the nature of the individual's impairment/health condition (e.g., does the individual have a "disability" under the Rehabilitation Act), how that impairment/health condition limits his/her ability to perform the essential functions of his/her job, and what accommodations are available, feasible and/or appropriate under the circumstances.
- b. The RACs will notify the OEC of all accommodation requests upon receipt. Where appropriate, the OEC will work with the managers involved and/or the OAG to ensure consistency, where appropriate, as well as compliance with the Rehabilitation Act and all applicable CRT/DOJ policies.

#### 6. **DECISIONS ON REQUESTS FOR REASONABLE ACCOMMODATIONS**

- a. Decisions on accommodation requests should be made as expeditiously as possible; where feasible, such decisions should be made within seven (7) business days of the date of the request or receipt of supporting medical documentation, where such documentation is requested, whichever is later. If a decision will not be made within that time frame, the individual should be notified of the status and reason(s) for the delay.
- b. The RAM may approve/disapprove requests for basic accommodations where the cost does not exceed \$2000, including requests for ergonomic keyboards and chairs, as well as for assistive technology, such as voice recognition software.

- c. Decisions on all other requests are made by section managers with the exception of requests that involve transfers, reassignments or other accommodations that involve more than one section. Such requests must be approved by the Chief of Staff within the Office of the Assistant Attorney General (OAAG).
- d. Decisions on accommodation requests should be reflected on the Form 100A Request for Reasonable Accommodation, and include the specific accommodation(s) requested, the specific accommodation(s) granted, the reason for denials, and, for temporary accommodations (such as leave for treatment or working from home while undergoing treatment), the time period for re-assessment and/or termination of the accommodation. A copy of the Form 100A with that information should be provided to the individual and the RAC.
- e. The RACs will work with CRT's Disability Program Manager (Diane Petrie) to coordinate/implement human resource, administrative and information technology-related accommodations (such as moving or procuring furniture or equipment; leave, flexi-tour or flexi-place agreements; providing or coordinating with the Department of Defense's Computer/Electronic Accommodations Program (CAP) to provide IT-related training, software or support, ergonomic assessments; modifying approved travel expense limits; providing travel assistance or specialized vehicles while on travel, etc.).
- f. Where feasible, once an accommodation request is approved, the accommodation should be provided and/or implemented within 15 business days of that approval. If an accommodation will not be made within that time frame, the individual should be notified of the status and reason(s) for the delay (e.g., difficulty procuring a particular type of equipment), and that information should be reflected on the Form 100A related to the request.

## 7. **REQUESTS FOR RECONSIDERATION**

- a. CRT encourages the use of informal dispute resolution to allow individuals with disabilities to obtain prompt reconsideration of denials of accommodation requests.
- b. If a request for a reasonable accommodation is denied, individuals may request reconsideration from (1) the manager who denied the initial request and/or (2) the Section Chief. Where the Section Chief was the initial decision-maker, an individual may request reconsideration from the Chief of Staff with the OAAG. Where the Chief of Staff was the initial decision-maker, an individual may request consideration from the Principal Deputy Assistant Attorney General (PDAAG). Alternatively, for denials of procurement-related accommodation requests (e.g., a request for furniture, computer equipment, etc.) where the initial decision-maker was someone other than the RAM, individuals may request reconsideration from the RAM.

- c. Requests for reconsideration must be submitted within five (5) business days of notice to the individual of the denial of the accommodation.
- d. Decisions on requests for reconsideration are final.

8. **RELATIONSHIP TO STATUTORY AND COLLECTIVE BARGAINING RIGHTS**

- a. This memorandum sets forth CRT's process for responding to requests for reasonable accommodations. It does not alter any statutory or collective bargaining protections for individuals with disabilities and the remedies, if any, those protections provide for the denial of requests for reasonable accommodations.
- b. An individual who believes his/her request for an accommodation was denied in violation of the Rehabilitation Act may file a complaint with the Department's EEO Office within 45 days of the date of the denial. 29 C.F.R. § 1614.203.
- c. An individual who believes the denial of his/her request for an accommodation resulted in an appealable adverse action may initiate an appeal to the Merit System Protection Board (MSPB) within 30 days of the adverse action. 5 C.F.R. § 1201.3.
- d. An individual covered by a collective bargaining agreement with a grievance procedure governing the denial of requests for reasonable accommodations may file a written grievance pursuant to the terms of the applicable collective bargaining agreement and within the time frames set forth in that agreement.
- e. This memorandum does not create any procedural or substantive rights beyond those already granted by applicable federal law.

9. **508 COMPLIANCE AND ACCESSIBILITY ISSUES THAT AFFECT MULTIPLE INDIVIDUALS**

- a. Individuals are encouraged to notify the RACs of any 508 compliance and accessibility issues that may affect multiple individuals, such as links or documents on the CRT website that are not accessible to individuals with vision or dexterity limitations, or accessibility problems with the transition from Word Perfect to Word.
- b. Additionally, the RAC's will be notified of any changes to division-wide systems, including equipment, web-based communication systems and software, at the design/pre-acquisition stage to ensure that those systems will be accessible to individuals with disabilities.



10. **ADDITIONAL INFORMATION AND RESOURCES**

- a. Department of Justice, Manual and Procedures for Providing Reasonable Accommodation, Oct. 2002  
(<http://www.usdoj.gov/jmd/eeos/ddacomprocfinal081502.htm>).
- b. Executive Order 13164, July 26, 2000  
([http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000\\_register&docid=fr28jy00-140.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr28jy00-140.pdf))
- c. Additional information about accommodations generally is available from the Job Accommodation Network (JAN) (<http://www.jan.wvu.edu/lead/>) and the Department of Defense's Computer/Electronic Accommodations Program ([www.tricare.mil/cap](http://www.tricare.mil/cap)).
- d. Equal Employment Opportunity Commission's Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Oct. 2002  
(<http://www.eeoc.gov/policy/docs/accommodation.html>).

This memorandum supersedes prior CRT policies and/or memoranda on the same topic.