

FEDERAL TRADE COMMISSION
REASONABLE ACCOMMODATION PROCEDURES

**Chapter 3: Section 300 – Employment of Persons with Disabilities
(Updated September 2004)**

Part IV - Reasonable Accommodation

Duties and Limitations

A. *General.* The Rehabilitation Act places an affirmative obligation on the FTC to provide reasonable accommodations to qualified individuals with disabilities unless the accommodation would create an undue hardship. The law also requires the FTC and employees to engage in interactive dialogue as described in Part IV, paragraph 3E(1-2) to alter, restructure, and change the way of performing jobs or agency activities:

- (1) To accommodate *known* physical or mental limitations of qualified persons with disabilities;**
- (2) To accommodate qualified employees with disabilities so that they can perform essential job functions and enjoy the benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities; and**
- (3) To remove barriers in the hiring process and ensure that applicants with disabilities have equal opportunity to compete for jobs.**

Once an accommodation is properly requested, the responsibility for fashioning an effective accommodation is shared by the employee/applicant and the agency. (*See Part IV, paragraph 3E.*) If the accommodation does not result in undue hardship, the FTC has no option but to provide an accommodation on a continuing basis until or unless doing so becomes an undue hardship. (*See Part IV, paragraph 3E(3).*) While the preference of the employee must be considered, the agency may select an accommodation as long as it is effective.

B. *Consideration of Disability.* Because the concept of reasonable accommodation centers on the needs of applicants and employees with disabilities, it is only within this context that a person's disability may be considered. By contrast, consideration of a person's disability that does not relate to elimination of workplace barriers affecting job performance or the enjoyment of equal employment opportunity is inappropriate.

C. *Limitations on the Obligation to Accommodate.* The obligation to accommodate employees or applicants is not without limits. The law does not require:

- (1) Change or modifications that would cause an undue hardship. (*See* Part IV, paragraph 3E(3)).
- (2) Accommodations for persons who are not qualified for the position in question. (*See* Part I, paragraph 7G).
- (3) Elimination of legitimate selection criteria or essential job functions. (*See* Part I, paragraphs 7G and 7H).
- (4) Lowering standards – whether qualitative or quantitative – that are applied uniformly to employees with and without disabilities. (*See* Part I, paragraphs 7G and 7H, and Part II, paragraph 2).
- (5) Creating a new position as an accommodation, although the agency must consider reassignment to a vacant position that the individual is qualified to perform.
- (6) Excusing a violation of uniformly applied conduct rules. (*See* Part II, paragraph 3).
- (7) Monitoring medication, because doing so does not eliminate a barrier unique to the workplace.

1. Accommodations for Persons with Disabilities

A. *Job Applicants.*

(1) *General.* The obligation to provide reasonable accommodations applies to all aspects of the hiring process, including the application and interview processes. It also extends beyond those who ultimately demonstrate they are qualified to perform the job at issue. Applicants with disabilities must be accommodated when the applicants meet the application deadline or make timely requests for assistance. Care should be given to the restrictions placed on making disability-related pre-employment inquiries at the pre-offer and post-offer stages. (*See* Part III, paragraphs 2A and 2B).

(2) *Types of Accommodations.* An effective accommodation will enable an applicant with a disability to have an equal opportunity to participate in the hiring process and compete for a job. Possible accommodations include modifying a job application process, such as providing application forms in large print, or a sign language interpreter for the interview process could be appropriate.

B. *Employees.*

(1) *General.* The duty to accommodate applies to all aspects of the employment process. Reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time, or are considered probationary. This obligation often requires consideration of different kinds of accommodation. If an accommodation is or becomes ineffective, supervisors must consider an alternative accommodation that would not pose an undue hardship. Note that only qualified persons with disabilities are entitled to reasonable accommodations. This means that even if an employee is unable to perform the

essential job functions in his or her current position and no alternative accommodation exists, the employee would still be a qualified person with a disability, if, with or without accommodation, the employee could perform the essential function of any position (s)he could have held as a result of job restructuring or reassignment. In this situation, the FTC must attempt reassignment to a vacant position, unless to do so would cause an undue hardship. Only after a determination is made that reassignment to a vacant position is not possible or would result in undue hardship, does the Rehabilitation Act permit an agency to conclude that an employee is not a qualified person with a disability.

(2) *Types of Accommodations.* Possible accommodations, both permanent and temporary, that allow the employee to perform the essential job functions with a reasonable expectation of success include:

(a) *Approval of Leave (annual, sick, or leave without pay).*

(i) *General.* Allowing employees to use accrued paid and unpaid leave for reasons related or possibly related to a disability may be an appropriate accommodation. The FTC, however, does not need to provide leave if it can provide an effective accommodation that allows the person to keep working or show that granting leave would cause an undue hardship. (Part IV, paragraph 3E(3)).

(ii) *Relationship Between the Rehabilitation Act, as amended and the Family Medical Leave Act (FMLA).* The FMLA leave provisions are totally distinct from the reasonable accommodation obligations under the Rehabilitation Act, as amended. However, these laws overlap in several areas, including leave and modified schedules.¹ (See Part I, paragraph 7, and *Administrative Manual* Chapter 3-655, Family Medical Leave Program). The agency should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.

(iii) *Rehabilitation Act.* Under the Rehabilitation Act, an employee who needs leave related to his or her disability is entitled to such leave if there is no other effective accommodation and the leave will not cause undue hardship. The agency must allow the employee to use any accrued paid leave first, but if that is insufficient to cover the entire period, then the agency should grant unpaid leave. The agency *must* hold the employee's position open while (s)he is on leave unless it can show that doing so causes undue hardship. Assuming that there is no undue hardship in holding it open, the agency must allow the employee to return to the same position when the employee is ready to return to work if the employee is still qualified (*i.e.*, the employee can perform the essential functions of the position with or without reasonable accommodation). If holding an employee's position open during a period of leave imposes an undue hardship, or an employee is no longer qualified to

¹The FMLA's legislative history explains that the FMLA is "not intended to modify or affect the Rehabilitation Act of 1973 as amended, the regulations concerning employment" It further explains that "the purpose of the FMLA is to make leave available to eligible employees ... and not to limit already existing rights and protection." (See the FMLA rule at §§ 825.702(b)-(e)).

return to his or her original position, then the agency must reassign the employee as described in Part IV, paragraphs 2B(2)(e) and 3E(2)(c).

(iv) *FMLA*. Under the FMLA, an eligible employee is entitled to a maximum of 12 weeks of leave per 12-month period. The FMLA guarantees the right of the employee to return to the same position or to an equivalent one. The agency must allow the employee to use any accrued paid leave first, but if that is insufficient to cover the entire period, then the agency should grant unpaid leave. The examples outlined below should assist in analyzing a request for leave related to or possibly related to a disability as a request for an accommodation separately under the Rehabilitation Act and the FMLA:

- *An employee with a disability under the Rehabilitation Act needs 13 weeks of leave for treatment related to the disability.* The employee is eligible under the FMLA for 12 weeks of leave, the maximum available, so this period of leave constitutes both FMLA leave and a reasonable accommodation. Under the FMLA, the agency could deny the employee the 13th week of leave. But, because the employee is also covered under the Rehabilitation Act, the agency cannot deny the request for the 13th week of leave unless it can show undue hardship. The agency may consider the impact on its operations caused by the initial 12-week absence, along with other undue hardship factors.
- *An employee with a disability under the Rehabilitation Act has taken 10 weeks of FMLA leave and is preparing to return to work.* The agency wants to put her in an equivalent position rather than her original one. This is permissible under the FMLA. However, the Rehabilitation Act requires that the agency return the employee to her original position. Unless the agency can show that this would cause an undue hardship, or that the employee is no longer qualified for her original position – with or without reasonable accommodation – the agency must reinstate the employee to her original position.
- *An employee with a disability under the Rehabilitation Act has taken 12 weeks of FMLA leave.* He notifies his supervisor that he is ready to return to work, but he no longer is able to perform the essential functions of his position or an equivalent position. Under the FMLA, the agency could terminate his employment, but under the Rehabilitation Act the agency must consider whether the employee could perform the essential functions with reasonable accommodation, such as additional leave, part-time schedule, job restructuring, or use of specialized equipment. If not, the Rehabilitation Act requires the agency to reassign the employee if there is a vacant position available for which he is qualified, with or without reasonable accommodation, and there is no undue hardship.

Under the FMLA, the agency must provide leave under whichever statutory provision provides the greater rights to employees. However, if the employee states that (s)he only wants to invoke rights under the FMLA, the FTC should not make additional inquiries related to Rehabilitation Act coverage. These principles also apply to modified and part-time schedules discussed below.

(b) ***Modified or Part-Time Work Schedule.*** Modified schedules requiring change in arrival or departure time, periodic breaks, reduced schedules, and part-time schedules are forms of accommodation. If a modified schedule is needed because of an employee's disability and there is no other effective accommodation, a change in work schedule may be an effective accommodation unless it would impose an undue hardship. (See Part IV, paragraph 3E(3)). Any change in a schedule would apply only to the employee requesting accommodation. If the employee cannot perform the essential functions of his or her current job and an accommodation is not possible in the employee's current position, the FTC must consider reassignment to an equivalent, existing vacant position that would allow the employee to work a modified or part-time schedule. Part IV, paragraph 2B(2)(e) describes the agency's duty to reassign and the limitations imposed on that duty.

(c) ***Modified Workplace Policies.*** Changing policies, procedures, or rules, such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed, absent undue hardship, may be an appropriate accommodation when such action is required. The change in policy, procedures, and/or schedules would apply only to the employee requesting accommodation.

(d) ***Job Restructuring.*** Job restructuring, involving assigning nonessential job functions that the employee cannot perform to other employees, and/or changing when and/or how a function, essential or nonessential, is performed, may be an appropriate accommodation if an employee is unable to perform job functions based on disability-related limitations. Consideration must be given to reassigning the employee as outlined in Part IV, paragraph 3E(2)(c), if the employee cannot be reasonably accommodated in his or her current position.

(e) ***Reassignment to Vacant Positions.***

(i) ***Coverage.*** All employees, except probationary employees who have *never adequately* performed their essential job functions with or without accommodation, are entitled to reassignment. When a probationary employee has exhibited adequate performance of essential job functions before the need for reassignment arises, the agency's obligation to reassign increases proportionally with the length of time that the employee has demonstrated adequate performance.

(ii) ***Definitions.*** Reassignment means placing an employee in a vacant, funded position that is not yet occupied and one that the employee is qualified to perform. A "vacant" position is one that is available when the employee asks for accommodation, or a position that is expected to become available within a reasonable amount of time.

(iii) ***The Duty To Reassign.*** Reassignment is an accommodation of last resort. The law requires reassignment only when an employee is unable to continue performing the essential functions of his or her current position, with or without reasonable accommodation, and no effective accommodation exists that would allow the employee to perform essential functions, or all other accommodations would impose an undue hardship. As a result, even after an employee is unable to perform the essential functions of his or her current position, the employee can still be a

qualified individual with a disability if, with or without reasonable accommodation, (s)he could perform the essential functions of any position (s)he could have held as a result of job restructuring or reassignment. The following criteria apply to re-assignment:

- The employee must be qualified – not necessarily the *best* qualified individual – for the vacant position to obtain a reassignment. This means the employee must meet the requisite skills, experience, education, and other job-related requirements of the vacant position, and must be able to perform the essential job functions, with or without accommodation.
- If there is a vacant position and the employee qualifies for that position, the employee is entitled to be reassigned unless it imposes an undue hardship. A position is considered vacant even if the FTC has posted a notice or announcement seeking applicants for that position.
- If there is no vacancy at a comparable grade which the employee is qualified for within his or her organization, then the search should turn to lower-grade positions.
- Reassignment should be to a position that is equivalent in pay and status. Absent a position at the same grade or status, reassignment to the highest grade below the employee's current position is required. Further efforts to accommodate are not required if these efforts are unsuccessful.

(iv) *Exception.* If both the agency and the employee voluntarily agree that a transfer is preferable to remaining in the current position with some form of accommodation, the employee can be reassigned.

(v) *Limitations on the Obligation To Reassign.* The obligation to reassign does *not* require:

- Either creating a new position or bumping another employee from a position.
- Providing training to acquire new skills or assistance in acquiring necessary skills to become qualified for the position. However, a reassigned employee must be provided the same on-the-job instructions provided to a new employee.
- Promoting an employee. (*See also*, Part IV, paragraph 3E(a-d)). However, an employee may be offered a position that (s)he qualifies for which has promotion potential to a higher grade than his or her current position.

(f) *Making Existing Facilities, Material, and Services Accessible.* The acquisition or modification of equipment may be an effective accommodation. These accommodations range from very simple solutions, such as elastic bands that will enable a person with cerebral palsy to hold a pencil, to the more complex solutions requiring assistive technology, such as voice-activated software.

(g) *Other Accommodations.* These accommodations include providing readers or interpreters and referrals to a rehabilitation program.

3. Accommodation Process

A. Purpose. The primary goal of the accommodation process is to respond to accommodation requests and to remove obstacles in the workplace that interfere with applicants' and employees' opportunity for equal employment in as short a time frame as reasonably possible. Toward this end, managers, supervisors, and employees at all levels involved in the process must make good faith efforts to participate in the accommodation process and help to ensure expeditious consideration of requests and delivery of effective accommodations.

B. Disability Management Program. To expedite processing of accommodation requests, the HRMO Assistant Director for Policy and Special Programs has been delegated primary responsibility for the Disability Management Program. The Assistant Director for Policy and Special Programs serves as the agency's advisor on:

- (1) Coordinating and implementing Disability Management Program initiatives in partnership with employees and management to ensure compliance with FTC policies and procedures relating to a reasonable accommodation process;
- (2) Establishing mechanisms for monitoring the processing of accommodation requests;
- (3) Hiring and accommodating persons with disabilities;
- (4) Maintaining records related to the Disability Management Program;
- (5) Evaluating the effectiveness of the Program, including policies and procedures, particularly those related to obtaining, evaluating, and maintaining medical information; and
- (6) Seeking guidance and assistance, as needed, from the Office of the General Counsel and EEO on policy and procedures, the Administrative Services Office when a request requires acquisition or modification of equipment or making FTC facilities accessible, and the Information and Technology Management Office when a request requires assistive technology. (*See Part I, paragraphs 5A-5D*).

The Assistant Director for Policy and Special Programs will carry out these duties in consultation with the HRMO generalist assigned to the organization involved.

C. Time Limits for Processing Requests.

- (1) **General.** Requests for reasonable accommodation must be processed and provided, where appropriate, in as short a time frame as reasonably possible. When a request for accommodation is related to participation in any aspect of the hiring process or a specific agency activity that is scheduled to occur within a short time period, such requests must be processed expeditiously. In such circumstances, HRMO and the hiring official or the supervisor *must expedite* processing the request as quickly as possible, that is, making a decision and, if appropriate, providing a reasonable accommodation in a time frame that is shorter than the time limits discussed below. For example, expedited processing is required when an applicant requests a sign language interpreter to participate in the interview process.

(2) *Time Limits.* A request, whether oral or written and/or explicit or implicit, triggers the agency's time limits for processing and providing or denying an accommodation. (See Part IV, paragraph 3E(2)(c)). Once a request is received, absent extenuating circumstances, the maximum time limits for processing requests for accommodation are:

(a) *For Applicant Requests.*

(i) No more than fifteen (15) business days from the date of receiving the request for accommodation, if the request relates to an applicant's participation in the hiring process and medical information *is not* required. (See Part V, paragraph 2).

(ii) No more than twenty (20) business days from the date of receiving the request, if the request relates to an applicant's participation in the hiring process and medical information *is* required.

(b) *For Employee Requests.*

(i) No more than fifteen (15) business days from the date of receiving the request for accommodation, when the request is *very simple*, does not require medical documentation, and does not involve extenuating circumstances.

(ii) No more than twenty (20) business days from the date of receiving the request for accommodation, when the request requires medical documentation.

(iii) No more than thirty (30) business days from the date of receiving a request for accommodation that requires considering reassignment as a possible accommodation. (See Part IV, paragraph 3E(2)(c)(ii)).

(c) *When the Assistance of the Assistant Director for Policy and Special Programs Is Required.*

(i) As soon as possible, but before the relevant time period specified above in paragraphs 2(b)(i-iii) expires, a supervisor or hiring official receiving a request for accommodation should seek the assistance of the HRMO Assistant Director for Policy and Special Programs to determine whether:

- Medical information and/or an impartial second opinion is needed and should be obtained;
- Medical information provided is sufficient;
- A variance to the collective bargaining agreement is required; or
- Positions are available for reassignment.

Such time periods in paragraphs 2(b)(i-iii) will be suspended to allow the Assistant Director for Policy and Special Programs to obtain medical information or impartial second opinions as needed and to make an informed decision on the sufficiency of or need for medical information, the need for a variance to the collective bargaining agreement, or the availability of positions for reassignment.

(See Part V, paragraphs 2-3). The Assistant Director for Policy and Special Programs will have no more than fifteen (15) business days from the date from the receipt of a request for assistance to make relevant determinations and provide appropriate assistance.

(ii) If the Assistant Director for Policy and Special Programs determines that medical information or a variance to the collective bargaining agreement is:

- ***Not needed*, the time period specified above resumes as soon as the Assistant Director for Policy and Special Programs notifies the deciding official that (s)he can continue processing the request.**
- ***Needed*, the supervisor will – within fifteen (15) business days from the date the supervisor receives the relevant information from the Assistant Director for Policy and Special Programs – grant or deny, and implement the accommodation, if granted.**

(iii) If the Assistant Director for Policy and Special Programs determines that a position for reassignment is:

- ***Not available*, the time period specified above resumes as soon as the Assistant Director for Policy and Special Programs notifies the deciding official that (s)he can continue processing the request.**
- ***Available*, the supervisor will – within fifteen (15) business days from the date the supervisor receives the relevant information from the Assistant Director for Policy and Special Programs – grant or deny, and implement the accommodation, if granted.**

Unnecessary delay or a failure to process a request promptly may result in a violation of the Rehabilitation Act.

(d) *For Requests Approved By the Assistant Director for Policy and Special Programs.*

No more than twenty (20) business days from the date of the request was initially made. If medical documentation is necessary, the decision must be made within twenty (20) business days from the receipt of the documentation.

(3) *Extenuating Circumstances.* When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as long as reasonably necessary. Extenuating circumstances are factors that cannot reasonably be predicted or avoided in advance that could justify not processing an accommodation request within the established time limits. Such circumstances include:

- (a) An outstanding initial or follow-up request to an employee or the employee's health care professional to provide needed medical information when the agency has made a proper request.
- (b) The need for the Assistant Director for Policy and Special Programs to complete evaluation of medical information submitted as described in paragraph 3(a) above.
- (c) The purchase of equipment requiring more than fifteen (15) or twenty (20) business days under Federal and FTC acquisition regulations, policies and procedures.
- (d) The need to back-order equipment because the vendor that the agency typically uses for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- (e) The need for a trial period for the employee to try working with equipment to ensure, before it is purchased, that it is effective.

The failure to meet the agency's time frame solely because of a deciding official's delay in processing a request is not an extenuating circumstance.

(4) *Temporary Measures.* If a delay occurs in processing or providing an accommodation, the deciding official must notify the employee of the specific reasons for the delay and the anticipated date for completion of the process. In addition, the deciding official should also investigate alternative measures to determine if temporary steps, such as providing a less effective accommodation to remove at least some of the barriers that the employee faces, or providing the requested accommodation on an interim basis, could be taken. The agency has no obligation to continue such interim temporary measures. Therefore, the deciding official should take steps to ensure that the employee is clearly informed that such accommodations are being provided only on a temporary, interim basis. If a delay results from the need to obtain or evaluate medical documentation and no determination on an employee's entitlement to an accommodation has been made, the agency may also provide an accommodation on a temporary basis. In such a case, the deciding official will notify the employee in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

D. *Delegation of Authority To Approve or Deny Requests.* The authority to approve or deny accommodation requests is vested as follows:

- (1) The Assistant Director for Policy and Special Programs, in consultation with the Deputy Executive Director and the immediate supervisor of the requestor, is authorized to make final determinations on:
 - (a) Requests from applicants for employment; and
 - (b) Special requests relating to:

- (i) Adaptive equipment, including information technology and communications equipment, in consultation with the Information and Technology Management Office and the immediate supervisor,
- (ii) Removal of architectural barrier(s), by means of reconfigured work spaces or specially designed furniture, in consultation with the immediate supervisor, the Administrative Services Office, or the owner of the building as necessary, and the Financial Management Office,
- (iii) Headquarters accessible parking for staff,
- (iv) Requests for materials in alternative formats (e.g., Braille, large print) which cannot be handled by the immediate supervisor or Deputy Bureau or Office Director, and
- (v) The assistance of sign language interpreters or readers.

In the absence of the Assistant Director for Policy and Special Programs, the Deputy Executive Director will make final determinations on the above identified requests.

- (2) The employee's immediate supervisor is responsible for making final determinations on:
 - (a) Requests that would enable the employee to perform essential job functions,
 - (b) Requests for reassignments, only after consulting with the Assistant Director for Policy and Special Programs and the Deputy Bureau or Office Director or his or her designee, and
 - (c) Requests to provide equal benefits and privileges of employment, including FTC-sponsored training, services (e.g., employee assistance program, cafeteria, and employee celebrations and outings).

The Deputy Bureau or Office Director will designate another supervisor to serve in the absence of the employee's supervisor to receive, process, and make final determinations on the above identified requests for accommodation.

E. *Steps in the Accommodation Process.*

- (1) ***Triggering the Interactive Process— Request for Accommodation.***
 - (a) ***Triggering Obligation To Engage in the Interactive Process and Provide Reasonable Accommodations.*** A request for accommodation triggers the agency's obligation to:
 - (i) Engage in the interactive process unless the disability, its limitation, and an effective accommodation are clear; and
 - (ii) Provide, absent undue hardship, reasonable accommodations. (*See Part I, paragraph 7K, and Part IV, paragraphs 1 and 3 E(2)*).
 - (b) ***Obligation When There Is No Request.*** As a general rule, a supervisor does not have to ask if an accommodation is needed when there is no request for an

accommodation. However, the agency is obligated to initiate the interactive process, even without a request, when a supervisor:

- (i) Knows that the employee has a disability,
- (ii) Knows or has reason to know that the employee is experiencing workplace problems because of the disability, and
- (iii) Knows or has reason to know that the disability prevents the employee from requesting a reasonable accommodation. (*See Part III, paragraphs 2A(2)-2B(2)*). In such situations, the agency satisfies its obligation to engage in the interactive process if the employee states that (s)he does not need a reasonable accommodation.

(c) *Making a Proper Request.*

(i) A request for reasonable accommodation is a statement that an individual 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. The EEOC considers statements such as those outlined below as requests for accommodation:

- An employee tells her supervisor, “I’m having trouble getting to work at my scheduled starting time because of medical treatments I’m undergoing.”
- An employee tells his supervisor, “I need six weeks off to get treatment for a back problem.”
- A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office.

(ii) A request need not be in writing, nor contain particular words. It is also essential to understand that it *is inappropriate* to wait until a written request is received before processing an oral request. A proper request, however, must inform the agency of a need for a workplace adjustment or a change because of a medical condition. Note that a request for accommodation is the first step in the interactive process. (*See Part IV, paragraph 3E(2)*). In some instances, prior to addressing the merits of the accommodation request, the agency must first determine if the employee's medical condition meets the definition of disability, a prerequisite for the individual to be entitled to a reasonable accommodation. (*See Part I, paragraph 7*).

(iii) The request may come from an employee, applicant, family member, friend, health care or rehabilitation professional, or other representatives of the employee or applicant. When a request for accommodation is made by a third party, it is appropriate to, if possible, confirm with the applicant or employee with a disability that (s)he in fact wants a reasonable accommodation, before proceeding. When it is not possible to confirm the request, the agency will process the third party’s request and will consult directly with the individual needing the accommodation as soon as it is practicable.

(d) *Presenting a Request.* Depending on the circumstances, a request for accommodation may be presented to one of the following employees, who will refer

the request to the Assistant Director for Policy and Special Programs for processing:

(i) *Employees.* An employee may present a request for accommodation to his or her supervisor; the Deputy Bureau or Office Director in the employee's organization; the FTC official organizing an event, program, or activity that is open to all employees or the public; the Assistant Director for Policy and Special Programs; a union representative; or the Director of EEO and EEO counselors. (See Part IV, paragraph 3B).

(ii) *Applicants.* An applicant's request for accommodation may be presented to any HRMO official with whom the applicant has contact during the application or hiring process, or any FTC official organizing an event, program, or activity that is open to job candidates.

These designated employees, except the Assistant Director for Policy and Special Programs, must, within no more than five (5) business days, forward accommodation requests to the Assistant Director for Policy and Special Programs. The Assistant Director for Policy and Special Programs will copy requests to the immediate supervisor and the Deputy Director of the employee's organization. If the person receiving the request is also the immediate supervisor, (s)he should promptly notify the organization's Deputy Bureau or Office Director and the Assistant Director for Policy and Special Programs that the request has been made.

(e) *Confirming Request.* An employee or applicant must confirm an oral request either by completing FTC Form 642, *Confirmation of Request* (see FormsFlow), or other equivalent writing and submitting it to the Assistant Director for Policy and Special Programs. A written confirmation is not required if an employee needs an accommodation previously approved on a repeated basis. In this situation, the employee may obtain the accommodation, absent undue hardship, after notifying the Assistant Director for Policy and Special Programs or the supervisor or another appropriate official in the employee's organization of the need to continue the accommodation. (The assistance of sign language interpreters or readers for a blind person is an example of an accommodation likely to be needed on a repeated basis.)

(2) *Responding to a Request – Interactive Discussions.*

(a) *General.* If either the specific disability, its limitations, or an effective accommodation is not obvious, or where the parties are choosing between different possible accommodations, both the employee and the immediate supervisor *must engage* in a flexible, interactive process to identify effective accommodation(s). (See Part IV, paragraph 3E(1)). The focal point of this process is to identify the disability and its functional limitations, and to determine what is an effective accommodation. The interactive process is not required when the disability, its functional limitations, and an effective accommodation are apparent. If an employee fails to cooperate in identifying his or her disability or providing medical documentation, an accommodation might be denied. By contrast, the agency's failure to make a good

faith effort to provide a reasonable accommodation could result in liability. When no agreement is reached during the interactive process, the circumstances involving this process will be examined closely to determine whether the agency or the employee failed to make a good faith effort in the accommodation process.

(b) *Accommodating Employees Who Can Perform Essential Functions in Their Current Positions.* The interactive approach outlined below relates to accommodating an employee with a disability so that (s)he can perform the essential functions of his or her current position. However, the same approach should be used to identify accommodations for a disabled applicant to enable him or her to perform the essential functions of the position (s)he applied for. (See Part III, paragraph 2B). Supervisors should follow the steps outlined below when engaging in the interactive process:

(i) Conduct an individualized assessment of the specific job to determine or confirm its purpose, essential functions, and requirements.

(ii) Consult with the employee or applicant to identify his or her specific abilities and limitations as they relate to the essential job functions, identify barriers to job performance and potential accommodations, and assess how those limitations can be overcome with potential accommodation(s).

(iii) Seek guidance and assistance from the Assistant Director for Policy and Special Programs to:

- **Evaluate the need for medical documentation and obtain required medical information. (See Part V, paragraphs 1-3).**

- **Determine whether the employee's medical condition meets the definition of "disability," that is, a condition that substantially limits the ability to perform a major life activity. If so, then determine whether the employee is a qualified person with disability. In this context, it is essential to consider whether the employee can perform essential job functions with or without a reasonable accommodation. (See Part I, paragraph 7A-G, and Part IV, paragraph 2B(1)).**

- **Contact public and private resources, as needed, to help identify possible accommodations after assessing functional limitations and workplace barriers that impact on the employee's ability to perform essential job functions. (See Appendix C).**

- **Give careful consideration to specific requests or recommendations of a health care professional and evaluate such requests or recommendations, as needed, with a physician of the agency's choice.**

- **Evaluate the reasonableness of each suggested accommodation and assess its effectiveness in enabling the employee to perform essential job functions. (See the items listed in Part V, paragraph 2, and Part IV, paragraph 3C).**

(iv) Identify potential accommodation(s) and consult with the employee, health care professionals, and accommodation specialists, as needed, to determine if the accommodation is feasible or whether other options are available.

(v) Consider the preference of the employee and verify the effectiveness of potential accommodation. Select, if appropriate, the accommodation that best serves the needs of the employee and the organization.

(c) *Accommodating Employees Who Cannot Perform Essential Functions in Their Current Positions.* When an employee cannot perform the essential functions of his or her current job because of a disability and no effective accommodation exists that would allow the employee to perform his or her current essential functions, or all other accommodations would impose an undue hardship, reassignment must be considered as an accommodation. (See Part IV, paragraphs 2B(2)(e)). It is important to remember that a reassignment is the accommodation of last resort. Supervisors should follow the steps outlined below in this aspect of the interactive process:

(i) Engage in interactive discussions with the employee to determine the employee's qualifications for a particular job or skills that might not be reflected in FTC records, or the need for an accommodation to perform the essential functions of available vacant positions. As part of this process, the employee should assist in identifying appropriate vacancies to the extent that (s)he might have access to such information.

(ii) Consult with the Assistant Director for Policy and Special Programs to determine the scope of the search for vacancies and identify vacant positions within the immediate organization that are substantially equivalent to the employee's current job in terms of pay, status, and other relevant factors based on the employee's qualifications and functional limitations. Determine whether a comparable grade position is available elsewhere in the agency, where the employee may be willing to take such a position in order to retain his or her grade, before resorting to lower-grade positions. Such positions must include vacant positions that the employee:

- Could hold as a result of job restructuring or reassignment.
- May be qualified for, with or without accommodation, and that FTC officials have reason to believe will become vacant over the next 60 business days after making a determination that reassignment is an effective accommodation.

Positions outside the employee's immediate organization must be identified, when a vacant position is not identified within the employee's organization. If a person is qualified for a vacant position, the Assistant Director for Policy and Special Programs will confer with the supervisor and employee to determine, based on medical restrictions, whether the employee can perform the essential job functions, with or without reasonable accommodation.

(iii) Inform the employee of the results of the search, and depending on the particular situation, either offer an appropriate vacancy to the employee or advise the employee that no appropriate vacancies are available. Consult with the

employee if there is more than one vacancy and place the employee in the position that is closest to the employee's current job.

(d) When there is no vacant equivalent position for which the employee is qualified, reassignment to a lower graded vacant position will not affect the employee's entitlement, if any, to disability retirement.

(3) *Assessing Undue Hardship.*

(a) *General.* There is no duty to accommodate if the accommodation poses an undue hardship. A determination that a particular accommodation would impose an undue hardship must be based on a case-by-case analysis of current circumstances that shows that particular accommodation would cause significant difficulty or expense, would be unduly extensive, substantial, or disruptive, or would fundamentally alter the nature of FTC operations. (*See EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*). A claim of undue hardship based on employees' or customers' fears or prejudices toward the individual's disability is impermissible. Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of other employees. However, undue hardship may be shown where an accommodation would be unduly disruptive to other employees' ability to work. The balance between an accommodation that is reasonable and one that would cause an undue hardship is usually dependent upon the resources available to the agency.

(b) *Criteria for Assessment.* Factors used to make an assessment of undue hardship include:

- (i) The type of FTC operation, including the composition and structure of the work force;
- (ii) The nature and net cost of the accommodation needed;
- (iii) The impact of the accommodation on the ability of other employees to perform their duties; and
- (iv) The impact on the FTC's ability to conduct business.

(c) *Continuance of Obligation.* Determining that a particular accommodation would result in undue hardship does not end the agency's obligation to provide accommodation. In this situation, it is necessary to determine whether other effective accommodations exist that could be provided and would not result in undue hardship.

(d) *Relationship of Collective Bargaining Agreement and Undue Hardship.* A conclusion that an accommodation would impose undue hardship based solely on a collective bargaining agreement is impermissible. Therefore, when no reasonable accommodation exists that would not violate a collective bargaining agreement, the agency and union representative must negotiate in good faith a variance to the

agreement to accommodate the employee. The only exception to this requirement is if the proposed accommodation would unduly burden the expectations of members of the bargaining unit, that is, result in undue hardship. To make this determination, the FTC and union representative must consider relevant factors, including the duration and severity of any adverse effects caused by granting a variance and the number of employees whose employment opportunities would be affected by the variance.

(4) *Decision on Requests.*

(a) *Approval of Accommodation.* If little or no cost is involved in providing the accommodation and the FTC deciding official and employee or applicant agree on the accommodation, the FTC deciding official should approve the request. The FTC deciding official will notify the employee of the approval. Approvals of accommodation must be confirmed on FTC Form 643, *Approval of Accommodation Request* (see FormsFlow), and forwarded with copies of related documents to the Assistant Director for Policy and Special Programs. (See Part IV, paragraph 3B). In addition, following granting of an accommodation, the Assistant Director for Policy and Special Programs, in consultation with the FTC deciding official and the employee, may in certain circumstances periodically review the status of the accommodation provided, assess its effectiveness, and make appropriate adjustments, if needed.

(b) *Denial of Accommodation.* When the FTC deciding official wishes to issue a denial of a request for accommodation, this decision, along with all supporting documents, must be reviewed by the Deputy Bureau or Office Director or his or her designee. All denials must be documented on the FTC Form 644, *Denial of Request* (see FormsFlow). A copy of the Form 644 denying the request will be furnished to the employee or applicant. An employee or applicant who believes that a denial of a request for accommodation is discriminatory and wishes to file an EEO complaint, a grievance under the negotiated grievance procedures, or Merit Systems Protection Board appeal must comply with the provisions outlined below in Part VI.

(c) *Accommodation Approved Different from the One Requested or Conflicts with Recommendation of a Health Care Professional.* Before issuing a decision under either of these circumstances, the FTC deciding official must provide specific explanations to the Assistant Director for Policy and Special Programs for both denying the requested accommodation and believing that the accommodation granted will be effective. The accommodation provided must be medically responsive and enable an applicant to have equal opportunities to participate in the recruitment process and compete for a job or enable an employee to perform essential job duties and enjoy the benefits and privileges of employment.

(5) *Reconsideration of Decision.*

(a) All denials of accommodation may be reconsidered. If an employee wishes to pursue reconsideration, the employee or applicant should first ask the deciding

official to reconsider the decision. The employee may present additional information in support of his or her request.

(b) The deciding official in all phases of reconsideration will respond to the request for reconsideration within ten (10) business days. If the deciding official is:

(i) *The employee's supervisor.* If the decision is not reversed, the employee may ask the Associate Director/Assistant Director in the employee's organization or the Associate Director/Assistant Director's designee to reconsider the decision.

(ii) *The Associate Director/Assistant Director or his or her designee.* If the decision is not reversed, the employee may ask the Bureau Director or his or her designee to reconsider the decision.

(iii) *The Assistant Director for Policy and Special Programs.* If the decision is not reversed, the employee or applicant may ask the Deputy Executive Director or his or her designee to reconsider the decision.

(c) Seeking reconsideration from the deciding official and appealing to the next level in the reconsideration process does not affect the time limits for initiating statutory and collective bargaining claims. The reconsideration process is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies provided for the denial of requests for reasonable accommodation. Employees and applicants must comply with the requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims.

(d) An employee or applicant who wishes to file an EEO complaint, union grievance procedures, or pursue Merit Systems Protection Board appeal must comply with the provisions outlined below in Part VI.