

CHAPTER 21

REASONABLE

ACCOMMODATION

NOTE: This chapter should be read in conjunction with local activity instructions and with any negotiated agreements between your activity and an exclusively recognized labor organization. Contract language will generally take precedence over conflicting provisions in this manual. Areas of uncertainty should be discussed with the Human Resources Office.

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REASONABLE ACCOMMODATION OVERVIEW

1. POLICY

Activities are required to reasonably accommodate religious practices and known physical or mental limitations of qualified disabled applicants or employees (i.e., persons who, with or without reasonable accommodation, can perform the essential functions of a position without endangering the health and safety of the individual or others), unless the activity can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

2. REASONABLE ACCOMMODATION

- Change or adjustment to a job, work environment, or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.
- Required unless it would cause undue hardship on the operations of the employer.

3. REASONABLE ACCOMMODATION EXAMPLES

- Computer Assistance Program
- Job Restructuring
- Modifying Work Site/facilities
- Schedule Restructuring
- Provide interpreters/Assist Devices
- Reassignment

4. UNREASONABLE ACCOMMODATION EXAMPLES

- Elimination of one or more essential duties from an employee's position
- Acceptance of a lower performance standard
- Misconduct that is not tolerated of others
- Health or safety risk

RELIGIOUS PRACTICES

1. Agencies are required to make reasonable accommodation of the religious needs of employees and applicants provided the accommodation can be made without undue hardship on the business of the agency.
2. After an employee or applicant notifies the employer of their need for a religious accommodation, the employer has an obligation to reasonably accommodate the individual's religious practices.
 - A refusal to accommodate is justified only when an employer can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation.
 - A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation, is not evidence of undue hardship.
3. Significant sacrifices are not required to accommodate an individual's religious practices, but a good faith effort is required.
4. Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. Some means of accommodating the conflict between work schedule and religious practices include:
 - Voluntary substitutes and "swaps" without undue hardship to the employer
 - Flexible work schedules
 - Lateral transfer and change of job assignment

MENTAL AND PHYSICAL DISABILITIES

1. POLICY

Reasonable accommodation refers to the obligation to make adjustments that would not prove unduly burdensome to the agency in order to permit employees with disabilities to perform the essential duties of their positions.

2. DEFINITIONS

ESSENTIAL FUNCTIONS OF THE POSITION

- a. Job duties are so fundamental to the position the individual holds or desires that they cannot do the job without performing them.
- b. Determination of the essential functions must be based on the job as actually performed, and not simply the components of a generic position description.
- c. Factors to consider include the following:
 - Whether the position exists to perform the function.
 - The experience of present or past employees in the job
 - Whether the function requires a degree of specialization or skill.
 - Whether written job description or terms of the collective bargaining agreement define the function as essential.
 - Whether employees in the same or similar positions spend a significant amount of time performing the function and the consequences of not performing the function.

INDIVIDUAL WITH A DISABILITY

One or more of the following conditions must be met:

- Has a physical or mental impairment which substantially limits one or more of the person's major life activities
- Has a record (history of) of such an impairment
- Is regarded as having such an impairment

MAJOR LIFE ACTIVITY

- Must be qualified for the position and be able to perform the essential functions of the position with or without accommodation.
- A disabled employee is also not "qualified" for a position if they would pose a direct threat to their own safety or health or that of others when working in that position.

PHYSICAL OR MENTAL IMPAIRMENT

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems (e.g. neurological, cardiovascular, etc.) or any mental or psychological disorder such as mental retardation, learning disabilities, etc.

SUBSTANTIALLY LIMITS

- Total inability or severe restriction
- Factors to consider are the nature of the impairment and its severity, but also the long-term impact.
- An impairment substantially limits an individual's ability to work if it prevents or significantly restricts the individual from performing a class of jobs or a broad range of jobs in various classes.

3. MANAGEMENT ROLE IN DETERMINING ACCOMMODATION

a. Undue Hardship

Undue hardship involves quantitative, financial, or other limitations on an employee's ability to provide reasonable accommodation. It must be made on a case-by-case basis, considering factors such as the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the agency. Burden is on the agency to prove undue hardship.

b. Nexus

To be entitled to accommodation, the "qualified disabled" employee must show that there is a connection between the disability and the work or performance problem they want accommodated.

c. Medical Certification

An agency may request information or documentation regarding the following:

- The nature, severity, and duration of the individual's impairment the activity or activities which the impairment limits.
- The extent to which the impairment limits the individual's ability to perform the activity or activities.
- Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to perform the essential functions of the position.

d. Communication

Keep apprised of the situation.

4. EMPLOYEE RESPONSIBILITIES

- Comply with uniformly applied standards of performance and conduct.
- Must raise their need for accommodation and provide appropriate medical documentation related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious.



REQUESTING AN ACCOMMODATION

1. REQUEST FOR REASONABLE ACCOMMODATION

- An employee or job applicant may initiate a request for reasonable accommodation orally or in writing.
- If an initial request is made orally, for record keeping purposes, it must be followed up with a written request.
- See Appendix 21A for the Reasonable Accommodation Process and Appendix 21B Request for Accommodation.
- It is the individual's obligation to request reasonable accommodation and to provide any medical documentation required supporting the request.
- Failure to provide the necessary documentation may result in the activity's inability to provide reasonable accommodation.
- An accommodation request from an employee should be made to his/her first-level supervisor whenever possible, or if the first-level supervisor is unavailable, to the next level supervisor or manager in his/her immediate chain of command.

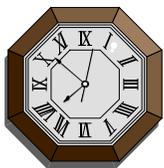
2. PROCESSING THE REQUEST

- a. Typically, an employee's first-level supervisor will handle the request and serve as the decision-maker. If the first-level supervisor is unavailable, the next level supervisor or manager in the immediate chain of command will handle the request and serve as the decision-maker.
- b. An interactive process should be used to identify and clarify an individual's accommodation need(s).
- c. To ensure that all effective accommodations have been considered, decision-makers should talk to the individual requesting the accommodation if the existence of the disability, the need for accommodation, or the nature of the effective accommodation are unclear such as the examples below.
 - The specific limitation, problem, or barrier is unclear.
 - An effective accommodation is not obvious.
 - The parties are choosing between different possible reasonable accommodations.
- d. Once a request is received, supervisor should contact the HR Office to discuss the processing of the request.
- e. If the request is not obvious and more information is needed, a request for further medical documentation or information can be made. An activity may require that documentation about the disability or functional limitations come from an appropriate health care provider.

f. Examples of possible medical information to be requested:

- The nature, severity, and duration of the individual's impairment.
 - The activity or activities that the impairment limits.
 - The extent to which the impairment limits the individual's ability to perform the activity or activities.
 - Why the individual requires reasonable accommodation or the particular reasonable accommodation requested.
 - How the reasonable accommodation requested will assist the individual to apply for a job, perform the essential functions of the job, or enjoy the benefit and privilege of the workplace afforded to all individuals.
 - Any other questions necessary to determine the nature of the disability and request for reasonable accommodation.
- g. The activity has the right to have medical information reviewed by a medical expert of its choosing at its own expense.
- The activity may ask the individual to sign a limited release and then either submit a list of specific questions to the individual's health care provider or simply have its own physician contact the individual's doctor.
 - Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require a reasonable accommodation.

3. TIME FRAMES



- a. Processing requests for reasonable accommodation, and providing an accommodation, where appropriate, will be done in as short a time frame as reasonably possible. If a request for accommodation can be processed by the decision-maker, no supporting medical information is required, and if no extenuating circumstances exist, the request should be processed and the accommodation, if granted, provided, in no more than 21 calendar days from the date the request is received by the decision-maker. Since the decision-maker may need to engage in the interactive process and collect all relevant information about possible accommodations, the decision-maker should not delay in beginning this process.
- b. If the decision-maker requests medical information, the 21-day period is frozen. Once the necessary information is received, the decision-maker should issue a decision, and provide the accommodation, if granted, within 21 calendar days, in most instances, from the date s/he receives the information.

4. INITIAL DENIAL OF A REQUEST FOR REASONABLE ACCOMMODATION

- a. An initial denial of a request for reasonable accommodation must be in writing and specify the reason(s) for denial, the office or employee who made the decision, and provide the employee the right to request an Alternate Dispute Resolution (ADR) or to file a request for consideration. See Appendix 21C for a sample "Initial Denial of Request for Accommodation and Chapter 19 Alternate Dispute Resolution for more information on ADR."

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- b. Where the decision-maker has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reason(s) for the denial of the requested accommodation and the reason(s) that the decision-maker believes that the chosen accommodation will be effective.
- c. When a reasonable accommodation request has been initially denied, the employee may, within 14 calendar days, choose to either request ADR or file a Request for Reconsideration (See Appendix 21D for a copy of the request for Reconsideration). If ADR is chosen and the denial stands, the employee may file a request for consideration within 14 calendar days of the ADR process. If the Request for Reconsideration results in a denial, the employee is notified of the right to file an EEO complaint within 45 Calendar days from the decision. See Chapter 19 Alternate Dispute Resolution for more information on ADR.

APPENDIX 21A

REASONABLE ACCOMMODATION PROCESS

Employee makes a request for reasonable accommodation to their supervisor using the request form in Appendix 21E.

Supervisor reviews form and discusses request with the employee.

Supervisor or decision-maker evaluates request and discusses with HR Office. If no uncertainties, then accommodation is approved and accommodation occurs **within 21 calendar days**. This time may be extended depending on the circumstances of the accommodation.

If questions or uncertainties, then supervisor contacts resource for clarification, documentation, evaluation, etc. If further medical documentation or information required, the 21 days is held in abeyance until documentation received. Once medical documentation or information received, if request can be granted, then accommodation should occur **within 21 calendar days** from the date of receipt.

If request initially denied, employee notified of denial in writing and given the reasons for the denial and given the right to request ADR **within 14 calendar days** **or** to submit a written request for reconsideration **within 14 calendar days**.

If ADR selected, and the initial denial stands, the employee may submit a written request for consideration **within 14 calendar days**.

The deciding official must provide a response **within 21 calendar days** from receipt of the request for reconsideration,

If the request is denied, then the denial must be specific as to the reasons for the denial, who made the decision, and provide the employee the right to file an EEO complaint **within 45 calendar days**.

**APPENDIX 21B
REQUEST FOR ACCOMMODATION/
APPROVAL OF REQUEST FOR ACCOMMODATION**

Individual's Name	Phone No.
Position/Series/Grade	Activity Code/Shop
Supervisor/HR Point of Contact	
Name	Phone No.

Describe the nature of your disability and your limitation(s).

Describe any impact your present limitation(s) has on the performance of the essential elements of your position or on your participation in the application process.

If accommodation request is time sensitive, please explain.

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MEDICAL DOCUMENTATION: Provide appropriate medical documentation from your private physician regarding the nature of the disability, the limitation(s) identified above, and the requested accommodation(s). Department of Navy assumes no financial responsibility relating to requested documentation.

Privacy Act Statement: The information provided by you would be used primarily to facilitate the processing of your request for accommodation. Parties with a need to know will have access to this information as necessary and appropriate to make a determination. Failure to provide accurate and complete medical reports may make it difficult to properly process your request.

I hereby give permission to release any information contained in this request to authorized agency officials with a need to know.

Employee / Applicant Signature

Date

Supervisor's/HR Point of Contact's signature acknowledges the receipt of this Request for Accommodation, along with medical documentation, as appropriate.

Supervisor/HR Point of Contact Signature

Date

Your request for the above accommodation has been approved and will be effective

Date

Supervisor Signature

Date

**APPENDIX 21C
INITIAL DENIAL OF REQUEST FOR ACCOMMODATION**

Individual's Name	Phone No.
Position/Series/Grade	Activity Code/Shop
On _____ you made an oral request for accommodation.	
On _____ you submitted a written request for accommodation.	
You identified your disability as _____, your limitation(s) as _____, and have requested the following accommodation(s): _____ _____ _____.	
On _____ we engaged in the interactive process and discussed _____ _____.	
This is to notify you that, after assessing all of the information you have provided, as well as using the resources available to me, I have determined [1. you do not have a disabling condition pursuant to the Rehabilitation Act of 1973; 2. you are not a qualified individual with a disability pursuant to the Rehabilitation Act of 1973; 3. there is no reasonable accommodation available to you [other than the alternative accommodation stated in this notice]; etc.]	
This decision is based on _____ _____ _____.	
[Explain why the individual is not a "qualified individual with a disability," why requested accommodation or any other accommodation would not be reasonable (undue hardship to the operations or mission of the Command), etc. Be specific and provide as much detail as necessary to justify why the individual cannot be accommodated.]	
Thus, I am not able to grant the accommodation you requested. Instead, the following accommodation will be provided to you: _____ _____.	
I believe this accommodation will be effective because _____ _____.	

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Since I have denied your request for accommodation [provided you with an alternative accommodation], you may submit a request for reconsideration. If you choose to request reconsideration, you must complete the election section of this form and it must be received by _____ [Appellate Authority's name] at _____ [office] at _____ [telephone number] within 14 calendar days of your receipt of this initial decision or, if the issue(s) are not resolved in the Alternate Disputes Resolution (ADR) process, within 14 calendar days of the conclusion of the ADR process. You do not have to participate in the ADR process in order to request reconsideration.

You also have the right to initiate an Equal Employment Opportunity (EEO) complaint pursuant to 29 CFR 1614. To initiate an EEO Complaint, you must contact _____ [EEO Counselor's name] at _____ [telephone number] within 45 calendar days from your receipt of this notification of the initial denial. If you initiate an EEO complaint prior to electing to participate in the ADR process, you may not participate in the ADR process identified above. The ADR process will be made available to you through the normal course of the EEO complaint process. However, you may submit a request for reconsideration as set forth above and initiate an EEO complaint so long as the appellate Authority identified above receives our request for reconsideration within 14 calendar days of your receipt of this initial decision.

[Include any other rights pursuant to MSPB and union grievance procedures.]

Decision-Maker Name, Title and Signature

Date

Employee/Applicant Signature

Date

_____ I choose to request reconsideration of this initial decision. I am requesting reconsideration because

_____. I have attached the appropriate medical documentation and other relevant information to this initial denial.

_____ I choose to file an EEO Complaint at this time.

Employee/Applicant Signature

Date

**APPENDIX 21D
REQUEST FOR RECONSIDERATION DECISION**

Individual's Name	Phone No.
Position/Series/Grade	Activity Code/Shop
<p>On _____ you received an initial denial of your request for accommodation.</p> <p>On _____ I received your request for reconsideration, along with appropriate medical documentation and other relevant information.</p> <p>You identified your disability as _____, your limitation(s) as _____, and have requested the following accommodation(s):</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>On _____ we engaged in the interactive process and discussed</p> <p>_____</p> <p>_____</p>	
<p>This is to notify you that I have decided to grant your request for accommodation. The following accommodation will be provided to you by _____ [date],</p> <p>_____ [accommodation to be provided]. If you have any questions, please contact _____ [name] at _____ [telephone number].</p>	
<p>This is to notify you that, after assessing all of the information you have provided, as well as using the resources available to me, I have determined [1. you do not have a disabling condition pursuant to the Rehabilitation Act of 1973; 2. you are not a qualified individual with a disability pursuant to the Rehabilitation Act of 1973; 3. there is no reasonable accommodation available to you [other than the alternative accommodation stated in this notice]; etc.]</p> <p>This decision is based on _____</p> <p>_____</p> <p>_____</p>	
<p>[Explain why the individual is not a "qualified individual with a disability," why requested accommodation or any other accommodation would not be reasonable (undue hardship to the operations or mission of the Command), etc. Be specific and provide as much detail as necessary to justify why the individual cannot be accommodated.]</p>	

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Thus, I am not able to grant the accommodation you requested. Instead, the following accommodation will be provided to you:

_____.

I believe this accommodation will be effective because

_____.

Since I have denied your request for accommodation [provided you with an alternative accommodation], you have the right to initiate an Equal Employment Opportunity (EEO) complaint pursuant to 29 CFR 1614. To initiate an EEO Complaint, you must contact _____ [EEO Counselor's name] at _____ [telephone number] within 45 calendar days from your receipt of this decision on your request for reconsideration.

[Include any other rights pursuant to MSPB and union grievance procedures.]

Appellate Authority Name, Title and Signature

Date

Employee/Applicant Signature

Date