

TECHNICAL ASSISTANCE – TEST ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised March, 2006.

GENERAL

The Americans with Disabilities Act (ADA) protects qualified individuals with disabilities from discrimination in the workplace. The ADA applies to all areas of employment, including pre-employment and employment testing. Employers are required to make reasonable accommodations in providing qualified applicants employment tests in formats that do not require use of the individual's impaired skills that are not essential to the job.

An applicant with a disability, like all other applicants, must meet the employer's requirements for a job, such as education, work experience, training, or skills. In addition, the applicant must be able to perform the essential functions of the job, with or without reasonable accommodations.

The purpose of this technical assistance is to provide information and guidance on testing accommodations for applicants with disabilities. This technical assistance does not address job accommodations on the worksite, testing or application site architectural concerns, or other non-test administration accommodation issues. For information or assistance concerning these subjects, contact your agency's ADA Coordinator or Human Resources Director. The ADA Coordinator is the main contact for resources on accessibility and accommodation.

DEFINITION OF DISABILITY

Under the ADA, an individual with a disability is defined as a person who:

- (1) Has a physical or mental impairment that substantially limits one or more major life activities,
- (2) Has a record of such an impairment, or
- (3) Is regarded as having such an impairment.

Examples of "major life activities" include walking, seeing, hearing, breathing, learning, performing manual tasks, working, and caring for oneself. "Substantially limits" means unable to perform a major life activity that an average person in the general population can perform, or the ability to perform a major life activity is significantly restricted.

In many cases, it is not simply the existence of an impairment or condition that defines a person as having a disability, but rather the effect of the impairment on one or more major life activities. To determine if an impairment creates a substantial limitation, one must look at the nature and severity of the limitation, how long it is expected to last, and the expected permanent or long-term impact. For example, a broken leg may impair a major life activity, but the impairment is temporary and does not have a long-term impact.

The ADA does not apply to individuals currently engaging in alcohol abuse or the illegal use of drugs. However, it may apply to recovering alcoholics or former drug users who are no longer engaging in the illegal use of drugs.

DETERMINING IF AN APPLICANT HAS A DISABILITY

The ADA prohibits employers from asking questions that are likely to reveal the existence of a disability before making a job offer. Employers may not ask applicants about the nature, existence, or severity of a disability. This includes such things as medical questions on an employment application or written questionnaire, health questions during an interview, or medical examinations.

Ultimately, it is the applicant's responsibility to inform the employer if a reasonable accommodation is needed. The applicant can make the request verbally, in writing, or have another person (such as a family member or friend) make the request.

Only after the applicant has informed the employer of a need for a reasonable accommodation, may the employer request additional information. If the disability is not obvious, the employer may ask the applicant to provide medical documentation pertaining to the need for accommodation.

REASONABLE ACCOMMODATION AND UNDUE HARDSHIP

The ADA requires employers to make a "reasonable accommodation" to qualified individuals with disabilities, unless to do so would cause undue hardship to the organization. An accommodation is any change in the work environment or the way things are usually done, so that the disabled individual may enjoy equal employment opportunities. A modification is considered "reasonable" if it is feasible and meets the needs of the individual. One should not assume that the accommodation during the employment test would be the same accommodation as needed on the job.

Some common examples of reasonable accommodations in the testing process include sign language interpreters, additional time, isolated test settings, readers, Braille or large print materials, and talking calculators. While some of these accommodations may be perceived as providing an unfair advantage for applicants with disabilities, the true intent is to ensure that applicants with disabilities have equal access to employment opportunities.

Some types of exams may only require minimal physical adjustments. Examinees who use a wheelchair but have full upper body coordination may only need adequate access to the testing room and a table that is the correct height. Adapting an oral exam to use another mode of communication may better test applicants with speech difficulties. Accommodations can range from simple solutions like the examples above to sophisticated software to be used with personal computers and talking calculators. As a rule, where an applicant with a disability can reasonably be accommodated, but such accommodation might be disruptive to other examinees, the individual should be scheduled and tested separately. This will not only be less disruptive for others, but may be less difficult for the applicant with a disability.

Accommodation does not extend to personal items that the individual with a disability needs in every aspect of their life (e.g., a wheelchair). If an accommodation is not wanted or needed by the person with the disability, the employer may not require that the individual accept the accommodation.

An employer is not required to make an accommodation by eliminating an essential function of the job or if an “undue hardship” is incurred, which is defined as significant difficulty or expense to the organization. Some factors to be considered in determining if an accommodation will create undue hardship are the cost of the accommodation, the employer's size, financial resources and the nature and structure of its operation. Employers must review accommodation requests on a case-by-case basis to determine if the accommodation would cause an undue hardship.

It is important to note that even if the accommodation is considered an undue hardship, the employer may still have to provide it if funds are available from other sources (e.g., state rehabilitation agencies, tax deductions or credits, even the individual with a disability may be able to offset some or all of the cost). When some of the cost is offset, the employer may consider only the unpaid cost in determining undue hardship.

Appointing authorities and employees should consult with their departmental ADA Coordinator concerning what constitutes a disability, reasonable accommodation, and undue hardship.

THE EXAMINATION PROCESS

An examination process must measure the applicant’s ability to perform the essential functions of the job without being required to use impaired skills that are not essential to the job.

There are several key steps to ensure equality of opportunity in the examination process:

Develop processes to address test accommodation requests.

Processes may include:

- A form to record and track accommodation requests;
- Designation of key staff to respond to accommodation requests;
- Development of a policy to determine when documentation of disability supporting the request is needed and what sort of documentation is acceptable;
- Establishment of a procedure to ensure confidentiality of disability information;
- Development of available resources to effectively comply with accommodation requests.

Agencies have some flexibility in establishing the process that works for them, but identified processes should be in place.

Train applicable staff on established test accommodation processes, including disability etiquette.

This is especially critical for reception staff who may be in a position to accept accommodation requests. Any medical information revealed through the accommodation process must be treated with confidentiality.

Establish methods to inform applicants of the testing process.

All applicants should be made aware of the following:

- Test format (e.g., written exam, oral exam);
- Agency's obligation to comply with the ADA;
- Applicant's responsibility to request reasonable accommodation in advance of the administration of the exam process.

Generally, these can be included in the test notification letter or Internet self-scheduling instructions. The accommodation request process should not create a hardship for the applicant and should give the applicant sufficient time to notify the agency of any accommodation needs.

When an accommodation is requested, apply the 4-step reasonable accommodation process.

1. Analyze and determine the objective (e.g., administration of a written objective exam).
2. Consult the individual with the disability to ascertain the specific limitations presented by his or her disability in the completion of the exam.
3. While consulting with the individual with the disability, identify potential accommodations and assess the effectiveness of each in achieving the objective.
4. Select and implement the accommodation that is most suitable to the applicant and the employer and does not create an undue hardship for the organization.

The employer should consider the applicant's preference of accommodation; however, the accommodation does not have to be the "best" accommodation possible, so long as it sufficiently meets the needs of the individual with a disability.

Sometimes the accommodation is so obvious that this step-by-step process may be unnecessary. Other times this process may not lead to an agreed-upon accommodation. In this case, the agency should seek technical assistance from the agency's ADA Coordinator. The ADA Coordinator is responsible for providing resource guidance and assistance as well as conducting investigations of discrimination complaints based on disability. Each agency's ADA Coordinator is available to respond to staff inquiries concerning disability issues and compliance with the ADA.

DOCUMENTATION**Test Notices**

Examination notices should inform applicants of the type of test so that the applicant may request a reasonable accommodation if necessary. For example, the notice should state if the test will require that answers be written in essay format, on a "bubble" answer sheet, or if it is an oral exam. It may be helpful to an applicant to know what skills the test will measure (e.g., math,

spelling, filing). It remains the applicant's responsibility to notify the testing agency of the need for an accommodation.

Documentation of an Applicant's Disability

When an applicant notifies an agency that a testing accommodation is needed, the agency contact should document the following information: applicant's name, phone number, and test code. If the test is being administered for a specific vacancy, the registration number should be noted. If the disability is not obvious, the agency may ask the applicant to provide reasonable medical documentation stating the limitations of the disability. It is the applicant's responsibility to comply with this request. The applicant may provide documentation from a physician, rehabilitation counselor, psychologist or other qualified professional responsible for the assessment of the specific disability. After this paperwork is received and evaluated, the test may be administered with the appropriate accommodation.

Documentation of the Testing Process

It is highly desirable that the agency document implemented test accommodations including the candidate's personal information, date and time of the test, test code, and actual accommodation. The related cost of the accommodation can also be computed and noted, which can include the salary of the employee who corresponded with the applicant and administered the test.

Documentation of Denial of Accommodations for the Testing Process

If it is determined that an appropriate accommodation cannot be made for the examination, the agency should document such and have supporting evidence for the decision not to provide an accommodation. Documentation may include data from a test expert regarding the effects of the accommodation on the psychometric properties of the test, the lack of equally valid selection devices, and/or undue hardship evidence. Should it appear that an appropriate accommodation would not be provided, it is recommended that the agency ADA Coordinator be consulted and included in the process.

Confidentiality

With all documentation and conversations surrounding the reasonable accommodation process, precautions must be taken to ensure confidentiality. Information regarding one's disability must only be disclosed on a strict "need to know" basis, with the minimal amount of information necessary.

RESOURCES

All reasonable accommodations need to be considered on a case-by-case basis. The individual with the disability is the best resource to use when deciding what accommodations would be given. Additional information on the ADA and reasonable testing accommodations can be found on line at www.eeoc.gov. If questions arise, contact the agency ADA Coordinator or Human Resources Director.

Every attempt is made to keep this information updated. For additional information, refer to the *State Personnel Board Rules and Director's Administrative Procedures*, the Colorado State Employee's Handbook, or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

**TECHNICAL ASSISTANCE
DHR APPROVAL FOR PUBLICATION**

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