

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject:

Disability-Related Employment Policy

Number:

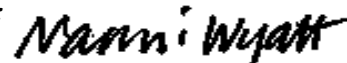
205.25 Amended

Date:

February 13, 2009

By Direction of:

Naomi Wyatt, Secretary of Administration

**Contact Agency:**

Governor's Office of Administration, Equal Employment Opportunity, 717-783-1130

The Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the Pennsylvania Human Relations Act make it unlawful to discriminate in employment against qualified individuals with disabilities. Marginal dots have been excluded due to major changes.

- 1. PURPOSE.** To provide policy, responsibilities, and procedures for implementing the Governor's initiatives on employing persons with disabilities and employment-related provisions of the *Americans With Disabilities Act of 1990 (ADA)* (42 U.S.C. §§ 12101-12213), *Section 504 of the Rehabilitation Act of 1973* (29 U.S.C. § 794), and the *Pennsylvania Human Relations Act* (43 P.S. §§ 951-963).
- 2. SCOPE.** This directive applies to all agencies under the Governor's jurisdiction. This directive is intended to address issues regarding disability-related employment laws and policies; it does not create new legal obligations. Questions concerning specific agency obligations should be directed to agency Human Resource Offices and/or Equal Opportunity Offices.
- 3. OBJECTIVES.**
 - a.** Provide the broad scope of coverage required by the ADA and ensure equal employment opportunities for qualified applicants and employees with disabilities in all agencies under the Governor's jurisdiction.
 - b.** Ensure that the use of job applications, examinations, interviewing procedures, training, job assignments, selection, and promotion processes do not adversely affect or tend to adversely affect qualified individuals with disabilities.

- c. Achieve compliance with the *ADA, Section 504 of the Rehabilitation Act of 1973, Disability Provisions of the Pennsylvania Human Relations Act, Executive Order 2002-5, Disability-Related Policy, Executive Order 2003-10, Equal Employment Opportunity*, and as required by law and court decisions.

4. DEFINITIONS.

- a. **Conditional job offer.** An offer of employment that is contingent upon the satisfactory result of a post-offer medical examination or any other job-related inquiry.
- b. **Direct threat.** A significant risk of substantial harm to the health or safety of the individual or to others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based upon a valid medical analysis and/or other objective factual evidence regarding the individual's present ability to perform the essential functions of the job.
- c. **Disability (with respect to an individual).**
 - (1) A physical or mental impairment that substantially limits one or more major life activities of an individual;
 - (a) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures except ordinary eyeglasses or contact lenses;
 - (b) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
 - (2) A record of such an impairment; or
 - (3) Being regarded as having such an impairment.
 - (a) An individual meets the requirement of "regarded as" having an impairment, if the individual establishes that he/she has been subjected to an employment action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
 - (b) Paragraph 3(a) shall not apply to impairments that are transitory and minor.
- d. **Essential functions of a position.** The necessary and fundamental job duties of the position. The term essential function does not include the marginal functions of the position.

- e. Exceptions to the definition of disability.** The terms disability and qualified individual with a disability exclude individuals currently engaging in the illegal use of drugs; psychoactive substance use disorders resulting from current illegal use of drugs; transvestism; transsexualism; pedophilia; exhibitionism; voyeurism; gender identity disorders not resulting from physical impairments; other sexual disorders; compulsive gambling; kleptomania; or pyromania. Additional protections may be provided under other civil rights laws or executive orders.
- f. Job-related Disability.** Any disability that substantially interferes with the ability to perform the essential job functions of the position that a person with a disability applies for, holds, or held.
- g. Major life activity.** Any basic function that the average person in the general population can perform with little or no difficulty.
- (1) Such activities include, but are not limited to, caring for oneself, performing manual tasks, walking, sitting, eating, sleeping, standing, lifting, bending, seeing, hearing, speaking, breathing, learning, concentrating, thinking, communicating, and working.
- (2) A major life activity also includes the operation of a major bodily function, including but not limited to, immune system, normal cell growth, digestive, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- h. Modified Work Schedule.** An agency and the Governor's Office of Administration approved work schedule that permits an employee to work a schedule different from the standard 7.5 or 8.0 hours per day. (See 7.c.(3)(b)(1)).
- i. Physical or mental impairment.**
- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (3) Alcoholism, successfully rehabilitated drug addiction, or drug addiction where use is occurring legally.
- j. Qualified individual with a disability.** An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position the individual holds or seeks, and who, with or without a reasonable accommodation, can perform the essential functions of the position.

k. Reasonable accommodation.

- (1) Modifications or adjustments to a job application process that enable qualified applicants with disabilities to be considered for the position desired.
- (2) Modifications or an adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.
- (3) Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

l. Substantially limiting.

- (1) Unable to perform a major life activity that the average person in the general population can perform; or
- (2) Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major life activity.

m. Transitory impairment. An impairment with an actual or expected duration of 6 months or less.

n. Undue hardship (with respect to the provision of an accommodation). An accommodation that is unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operation of the employing agency.

5. POLICY.

- a. Executive *Order 2002-5* establishes the Commonwealth's basic policy for the implementation of *Title I* of the *ADA*, *Section 504* of the *Rehabilitation Act of 1973*, and the disability provisions of the *Pennsylvania Human Relations Act*. Executive *Order 2003-10, Equal Employment Opportunity*, establishes the Commonwealth's basic policy for Equal Employment Opportunity relating to Commonwealth employment.
- b. It is Commonwealth policy to comply with employment-related provisions of the aforementioned acts and executive orders. These provisions make it unlawful to:
 - (1) Discriminate against a qualified employee or applicant for employment on the basis of disability in regard to job application procedures, hiring, advancement, discipline, discharge, compensation, job training, or other terms, conditions, and benefits of employment.

- (2) Fail to provide a reasonable accommodation to a qualified employee or applicant for employment with a disability, unless providing the reasonable accommodation would result in an undue hardship to the employing agency or the Commonwealth, or if the requestor would pose a direct threat to himself, herself, or to others.
 - (3) Exclude or otherwise deny equal jobs or benefits to a qualified employee or applicant for employment because that employee or applicant for employment has a relationship or association with a person with a disability.
- c. Retaliation against persons who have filed charges, testified, assisted, or participated in any proceeding, investigation, or hearing concerning disability-related employment issues is expressly prohibited.

6. RESPONSIBILITIES.

- a. **The Secretary of Administration** shall direct the development, implementation, and administration of the Commonwealth's Disability-Related Employment Policy through the Governor's Office of Administration, Bureau of Equal Employment Opportunity.
- b. **The Governor's Office of Administration, Bureau of Equal Employment Opportunity** shall:
- (1) Develop and disseminate internal Commonwealth procedures for administering the disability-related employment policy.
 - (2) Review requests for reasonable accommodation that have a significant impact on the Commonwealth's human resource system as outlined in Section 7.c.(3)(b)(1-7) of this directive.
 - (3) Provide training, information, and technical assistance on disability-related employment policies to agency Disability Services Coordinators and agency staff who provide disability policy support.
 - (4) Develop and distribute information to agencies that may be used for training managers and supervisors on their roles and responsibilities concerning disability-related employment policies.
 - (5) Oversee the rewording of all class specifications, as necessary, to meet disability policy requirements.
 - (6) Oversee the internal complaint process whereby applicants and employees may file a complaint alleging noncompliance with disability-related employment policies in accordance with procedures outlined in *Management Directive 410.10, Guidelines for Investigating and Resolving Internal Discrimination Complaints*.
 - (7) Review employees' appeals of denied requests for accommodations; determine appropriate disposition and provide direction to agencies as warranted.

- (8) Serve as coordinator between agencies and other program areas where accommodation requests require approval as established in 7.c. (3)(b) of this directive.
- c. **The Governor's Policy Office** shall coordinate the implementation of the Commonwealth's disability-related policies and assess the effectiveness of those policies.
- d. **The Office of General Counsel** shall provide legal advice and assistance to agency Chief Counsels. Legal issues relating to disability laws and how they relate to Commonwealth employment will be reviewed in the first instance by agency legal counsel. Assistance from the Chief Counsel in the Governor's Office of Administration is available when appropriate.
- e. **Agencies** shall:

 - (1) Designate a Disability Services Coordinator for disability-related employment issues who has human resource and equal employment opportunity knowledge.
 - (2) Designate field facilitators consistent with the size and the need of the agency.
 - (3) Establish a disability policy work team, if desired, to provide support and assistance to the Disability Services Coordinator in carrying out responsibilities. This work team will include the Disability Services Coordinator and may include the Equal Employment Officer, Human Resource Director, Labor Relations Coordinator, SEAP Coordinator, a representative of the agency legal office, budget and procurement staff, facilities management, employees with disabilities, and other staff at the discretion of the agency.
 - (4) Require that all provisions of disability-related employment laws and this directive are complied with and incorporated into human resource policies and training programs.
 - (5) Require that all job application forms and medical examinations unique to the agency or any of its subdivisions be in full compliance with disability-related employment laws and Commonwealth policy.
 - (6) Consistent with the ADA, maintain employee medical information separate from the Official Personnel Folder to ensure confidentiality and ensure that all staff involved in handling disability information are aware of its sensitive, confidential nature, and the prohibitions against unnecessary disclosure.
 - (7) Ensure that applicants and current employees are not limited, segregated, or classified in such a way that adversely affects the opportunities or status of the employee or applicant because of his or her disability.
 - (8) Consider and, where appropriate, approve or deny requests for accommodations from applicants and employees with disabilities.

- (9)** Establish an internal process by which employees may request reconsideration of denied requests for accommodations, which shall include designation of an individual (other than the Disability Services Coordinator) to whom requests for reconsideration may be submitted in accordance with Section 7. d.
- (10)** Provide information to all employees and, upon request, to job applicants regarding the provisions of this directive, including the process for requesting an accommodation and reconsideration of a denial of a request for an accommodation.
- (11)** Implement and verify compliance with any Bureau of Equal Employment Opportunity recommendations resulting from processing of a disability accommodation appeal.
- (12)** Post prominently in an accessible format, notices describing the provisions of disability-related employment laws: 1) Pennsylvania Human Relations Commission "Employment Provisions", and 2) Equal Employment Opportunity Commission "Equal Employment Opportunity is the LAW".
- (13)** Develop and provide education and technical assistance for current and newly hired or promoted managers and supervisors regarding their disability-related employment responsibilities.
- (14)** Ensure that the agency does not enter into contracts or other arrangements which have the effect of subjecting job applicants or employees to discrimination on the basis of a disability.
- (15)** Ensure that facilities or sites used for employee training, conferences, or interviews are accessible to employees or applicants with disabilities.
- (16)** Develop and maintain updated job descriptions with essential job functions of the position listed in an attachment.
- (17)** Inform the Governor's Office of Administration, Bureau of Classification and Compensation, Classification and Pay Division, if current class specifications do not reflect functions considered essential by the agency.
- (18)** Ensure that an applicant's or employee's ability to perform essential job functions, with or without accommodation, is the basis for personnel decisions.
- (19)** Ensure that employees who are qualified individuals with a disability have access to and use of electronic equipment and information technology that is comparable to that of applicants and employees who are not individuals with disabilities.

f. Agency Disability Services Coordinators shall:

- (1)** Analyze and make determinations regarding disability-related requests for accommodation and approve or deny these requests consistent with Section 7.c. of this directive regarding reasonable accommodations.
- (2)** Involve the Governor's Office of Administration, Bureau of Equal Employment Opportunity; agency offices of human resources, equal employment opportunity, labor relations, SEAP, office services, fiscal staff, and other resources in the process of considering requests for accommodations, as appropriate.
- (3)** Where approving an accommodation request would require development of a modified work schedule, or would conflict with the terms of a collective bargaining agreement or memorandum of understanding, discuss the modified work schedule or potential conflict with the agency labor relations staff, and with that staff, attempt to obtain tentative agreement on the modified work schedule or a waiver of the relevant contract/memorandum terms from the union representative pending submittal and approval by the Governor's Office of Administration, Bureau of Equal Employment Opportunity as referenced in Section 7.c.(3)(b).
- (4)** Where an agency approved accommodation would result in issues itemized in Section 7.c.(3) of this directive regarding decisions concerning an accommodation request, submit requests for accommodation for review and approval to the Governor's Office of Administration, Bureau of Equal Employment Opportunity.
- (5)** Provide advice and assistance to agencies regarding accommodation requests.
- (6)** Maintain contact with appropriate staff in the Department of General Services and the Governor's Office of Administration, Bureau of Equal Employment Opportunity for consultation on building access and requests for reasonable accommodation for applicants or employees.
- (7)** If desired by the agency, coordinate and chair an agency disability policy work team.
- (8)** Maintain appropriate records and internal controls to respond to requests for information from the Governor's Office of Administration, Bureau of Equal Employment Opportunity.
- (9)** Forward to the Governor's Office of Administration, Bureau of Equal Employment Opportunity, a copy of all agency approved requests for reasonable accommodations costing \$1,500.00 or more, or for which the agency needs to request additional funding.

g. Agency Managers and Supervisors shall:

- (1) Ensure that individual interview practices and selection processes are completed in accordance with this directive and the provisions of disability-related employment laws.
- (2) Forward all requests for accommodation from applicants and current employees to the agency Disabilities Services Coordinator and where necessary, work closely with the agency Disability Services Coordinator to resolve those requests.
- (3) Ensure that all positions have up-to-date job descriptions which include an attachment identifying the essential job functions of the position.

h. The Secretary of General Services shall be responsible for ensuring compliance with *Title II of the Americans With Disabilities Act (42 U.S.C.A. §§ 12101–12117)* relating to Commonwealth buildings and facilities and contract compliance.

7. PROCEDURES.

a. Hiring and Selection Process.

- (1) **Pre-employment inquiries** about the existence of disabilities in the form of employment applications, interviews, tests, or pre-employment medical examinations prior to making a job offer are prohibited.

- (2) **Job Postings and Notices.**

- (a) Agencies shall list essential functions of the position in job postings and notices or shall indicate on these documents that a list of essential job functions is available upon request.
- (b) Agencies shall provide a list of the essential functions to all individuals interviewing for a position.
- (c) Agencies must make recruitment notices and job postings accessible to individuals with disabilities. Job postings and recruitment notices should be placed in locations accessible to individuals with disabilities. Modifications such as printing information in large print or other accessible formats should be utilized, where appropriate.
- (d) All recruitment and job postings will include a text telephone (TTY) number, the relay service number, or such comparable accommodation. Agencies should provide reasonable access to online job posting websites.
- (e) Agencies shall include on job postings and interview notices, a statement advising applicants who need an accommodation to request such accommodation in advance of the interview.

- (3) **Employment Applications.**

- (a) Employment applications will not be used to make any pre-employment inquiries about a disability or the nature or severity of a disability. Each agency shall ensure that agency employment applications do not include questions relating to impairments or disabilities, use of prescription drugs, treatment for drug addiction and alcoholism, or workers' compensation insurance use.
- (b) If requested and appropriate, applicants with disabilities shall be provided reasonable accommodation(s) to complete employment applications.

(4) Testing and Examinations.

- (a) Employment testing and examinations must neither adversely affect, nor tend to adversely affect qualified applicants or a class of applicants solely on the basis of disability, unless the disability is job-related and excluding the individual is consistent with business necessity.
- (b) Employment tests and examinations must assess only a person's job skills, aptitudes, or abilities to perform job related functions.
- (c) The testing of applicants for Commonwealth positions, except physical agility tests, is generally the responsibility of the State Civil Service Commission and the Governor's Office of Administration, Bureau of State Employment.
- (d) The State Civil Service Commission is responsible for:
 - 1** Notifying Civil Service job applicants who are scheduled for employment or promotion tests that accommodations to participate in the testing process may be requested.
 - 2** For conducting an administrative review of testing accommodations that are denied.

(e) Physical Agility Tests.

- 1** Because physical agility tests are not considered to be medical examinations, agencies may, prior to making an offer of employment or a conditional offer of employment, administer physical agility tests to applicants to determine whether they can perform the essential job functions for a specific position, so long as all applicants for the position are tested regardless of disability.
- 2** Agencies must provide reasonable accommodation, if requested, to enable applicants with disabilities to participate in physical agility tests.
- 3** Agencies may require a job candidate to submit medical clearance to participate in a physical agility test to assure that the test will not harm the candidate.

4 If such agility tests adversely affect or tend to adversely affect applicants with a disability, the agency must be prepared to show that the tests are related to the job and consistent with business necessity.

(5) Job interviews. Applicants must be interviewed in accordance with State Civil Service Commission or Governor's Office of Administration, Bureau of State Employment rules and procedures and in accordance with the following provisions:

(a) Job interviews may not adversely affect or tend to adversely affect applicants on the basis of a disability.

(b) If requested, agencies must provide reasonable accommodations to enable applicants with disabilities to participate in the job interview.

(c) Interviewers may not ask questions relating to:

1 The nature and severity of a disability;

2 The condition causing a disability;

3 The prognosis or expectation regarding the condition or disability;
or,

4 Whether the individual will need treatment or leave because of a disability.

(d) Interviewers may ask all applicants questions directly related to their ability to perform the essential functions of the job, and may ask all applicants to describe how they will perform specific functions of the job, with or without an accommodation.

(e) Interviewers may ask applicants whether they need reasonable accommodation, and what type of accommodation might be needed under the following conditions:

1 When the interviewer reasonably believes the applicant will need an accommodation because of a known disability.

2 When the interviewer reasonably believes the applicant will need a reasonable accommodation because of a disability the applicant has voluntarily disclosed.

3 When an applicant has voluntarily disclosed that they need an accommodation to perform job functions.

(6) Medical Examinations and Health-Related Questions.

- (a) Agencies may make a conditional job offer and after such an offer is made, may conduct a medical examination or ask health-related questions, provided that all candidates receiving a conditional job offer in the same job class are required to take the same examination or respond to the same inquiries.
- (b) Agencies may not ask employees to voluntarily disclose that they have a disability, except in the context of identifying an employee's need for an accommodation or emergency preparedness planning.

(7) Background Inquiries.

- (a) Agencies must conduct identification, employment, and education verification checks as required by *Management Directive 515.15, Identification, Employment, and Education Verification Checks*.
- (b) Previous employers may be asked about the job functions and tasks performed by the applicant, how well job functions were performed, the attendance record, and any other job-related issue that does not pertain to a disability. Information related to a disability that may not be solicited in an interview, job application, or examination may not be solicited from a job reference.
- (c) Information related to an employee's known disability may not be given to prospective employers who solicit the agency for a job reference for that employee.

b. Job Analysis.

- (1) Each agency should periodically analyze current positions to identify the essential functions of the position. All job descriptions should include essential functions in an attachment and are to be regularly updated.
- (2) Agencies should use the following guidelines for identifying essential functions:
 - (a) The primary requirement is whether employees in the position are actually required to perform the function. After it has been determined that a person holding the job does perform a function, it is necessary to determine whether removing that function would fundamentally change the job.
 - (b) Reasons that functions could be considered essential include, but are not limited to:
 - 1** The position exists to perform the function. If the function were removed from the position, there would be no need for the position.

- 2** There are a limited number of other employees available to perform the function or among whom the function can be distributed. Staffing levels or heavy work flow during peak periods may make performance of each function essential and limit an employer's flexibility to reassign a particular function.
 - 3** A function is highly specialized and requires special expertise or ability. If the employee did not perform the function, there would be no one else to do so.
 - 4** The amount of time spent performing the function. If an employee spends a significant amount of time performing a certain task it is likely that task would be essential to the job.
 - 5** The consequences of not requiring a person to perform a function. Sometimes an infrequently performed function is essential because there would be serious consequences if it were not performed.
 - 6** The terms of a collective bargaining agreement might list duties to be performed in particular jobs.
 - 7** The work experience of people who have performed a job in the past and work experience of people who currently perform similar jobs can be used as a basis for determining essential functions.
 - 8** The nature of the work operation and the employer's organizational structure.
- (3)** Each agency will review class specifications that are exclusive to that agency. In reviewing these class specifications, the agency is to ensure that the specifications reflect essential functions of the job and do not violate this directive. In addition, the agency must ensure that the minimum experience and training requirements accurately represent the requirements to perform the essential functions of the class.
- (a)** The Governor's Office of Administration, Bureau of Classification and Compensation, Classification and Pay Division, should be notified of any class specifications not in compliance with this directive.
 - (b)** The Governor's Office of Administration, Bureau of Classification and Compensation, Classification and Pay Division will work with agencies to update class specifications, as necessary.

c. Reasonable Accommodation.

(1) The following provisions apply to the Commonwealth as an employer:

- (a)** Upon request, an agency must provide a reasonable accommodation for the known physical or mental limitations of a qualified applicant or employee with a disability unless providing the accommodation would result in an undue hardship to the agency, or if no accommodation exists that would either eliminate or significantly reduce the risk of a direct threat.
- (b)** The obligation to provide a reasonable accommodation applies to all aspects of employment. This duty is ongoing and may arise at any time, such as when there is a change in a person's disability, in their need for accommodation, or in their job responsibilities.
- (c)** The accommodation provided by the agency must be effective and enable the requestor to perform the essential functions of the job.
- (d)** An agency cannot deny an employment opportunity to a qualified applicant or employee solely because of the need to provide reasonable accommodation.
- (e)** All requests for accommodations should be submitted to the agency Disability Services Coordinator on the Commonwealth standard Request For Accommodation Form (See Enclosure 1).
- (f)** All requests for accommodations will be reviewed by the agency Disability Services Coordinator.
- (g)** The accommodation request, and all information related to the request, will be kept as confidential as possible.

(2) Identifying the need for an accommodation.

- (a)** Unless the disability is apparent, it is the obligation of an individual with a disability to request a reasonable accommodation or to indicate that he or she has a disability that is affecting his or her ability to perform the essential functions of the job.
- (b)** An agency is not required to provide an accommodation for an individual who:
 - 1** is not otherwise qualified for a position;
 - 2** is not an individual with a disability as defined by law;
 - 3** meets the definition of disability solely on the basis of being "regarded as having a disability" under section 4.c.(3); or,
 - 4** requests an accommodation based on his or her association with an individual with a disability.

- (c) Unless the disability is apparent, agencies may request medical verification or documentation from an employee to support a request for a reasonable accommodation.
- (d) When a need for reasonable accommodation is identified, the Disability Services Coordinator should explore, in conjunction with the applicant or employee, types of reasonable accommodations that would enable the individual to perform the essential functions of the position.

(3) Decisions concerning an accommodation request.

- (a) Requests for reasonable accommodation may be denied if the requestor is not a qualified individual with a disability, if the accommodation would create an undue hardship for the agency, or if an accommodation would not significantly reduce the risk of a direct threat.
- (b) Prior to implementation by the agency, accommodations that would result in the following require approval by the Governor's Office of Administration, Bureau of Equal Employment Opportunity (after consultation with appropriate program areas):
 - 1** Modification of employee work schedule.
 - 2** Arrangements that physically separate the employee with a disability from the customary or assigned workplace.
 - 3** Complement increases or the employment of staff to support the accommodation.
 - 4** Modifications of job duties which have a significant impact on the classification and level of the position.
 - 5** Modifications that have *Fair Labor Standards Act* implications.
 - 6** A conflict with the terms of collective bargaining agreements or memoranda of understanding.
 - 7** All agency approved requests for reasonable accommodations costing \$1,500.00 or more, or for which an agency will need to request additional funding.
- (c) If the cost of an accommodation would impose an undue hardship on the agency, the individual with a disability must be given the option of providing the accommodation or paying that portion of the cost which would constitute an undue hardship.
- (d) Requests for accommodation should be processed as expeditiously as possible. The applicant or employee should be notified in writing of the disposition of a request for reasonable accommodation.

1 Where requests for accommodations are denied, such notification shall apprise the applicant or employee of the right to file a request for reconsideration within the timeframe indicated in Section 7.d.

(e) A qualified individual with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential functions of the job with or without accommodation, he or she may be considered to be unqualified.

d. Request for Reconsideration. Where the Disability Services Coordinator denies a request for reasonable accommodation, the applicant or employee may file a request for reconsideration with the individual designated by the agency to carry out such function. The request for reconsideration must be filed in writing, within 20 days of notification of the denial.

(1) The designated individual shall review the request and other appropriate information as expeditiously as possible and notify the applicant or employee in writing of the disposition.

(2) Where requests for reconsideration are denied, such notification shall apprise the applicant or employee of the right to file an appeal within the timeframe indicated in Section 7.e.

e. Appeals. An individual who is not satisfied with an agency's decision concerning a request for reconsideration may file an appeal with the Governor's Office of Administration, Bureau of Equal Employment Opportunity. The appeal must be filed in writing within 20 days of notification of the agency's determination.

f. Record Keeping and Reporting Requirements. Agency Disability Services Coordinators shall maintain records on all activities occurring in the agency concerning disability-related employment issues, including:

(1) Reasonable accommodations requested, provided, or denied for agency employees or applicants, including matters submitted to the Governor's Office of Administration, Bureau of Equal Employment Opportunity for assistance or approval.

(2) Results of any agency self-evaluation regarding disability-related employment provisions.

(3) A list of members serving on the agency disability policy work team, if one is established.

(4) Training, technical assistance, and advice provided to agency managers and supervisors regarding disability-related employment provisions, including reasonable accommodation requests.

(5) The Disabilities Services Coordinator must submit quarterly reports regarding requests for accommodations to the Governor's Office of Administration, Bureau of Equal Employment Opportunity.

g. Complaints.

- (1) Complaints from job applicants or Commonwealth employees alleging violations of employment provisions of disability-related laws or this directive may be filed with the agency Equal Employment Opportunity Officer in accordance with procedures outlined in *Management Directive 410.10, Guidelines for Investigating and Resolving Internal Discrimination Complaints*.
- (2) The agency representative responsible for reviewing accommodation requests should not also be responsible for investigating complaints alleging discrimination based on disability.
- (3) Retaliation against persons who have filed charges, testified, assisted, or participated in any proceeding, investigation, or hearing concerning disability-related employment issues is expressly prohibited.
- (4) Complaints regarding the denial of an accommodation to participate in an employment or promotion examination should be filed with the State Civil Service Commission or the Governor's Office of Administration, Bureau of State Employment, as appropriate.

h. Enforcement.

- (1) The Governor's Office of Administration, Bureau of Equal Employment Opportunity may review agency records or activities involving disability-related employment issues.
- (2) External enforcement may occur and complaints regarding violations of disability-related laws may be filed with and processed through federal agencies such as the Equal Employment Opportunity Commission, the United States Department of Justice, or state entities such as the Pennsylvania Human Relations Commission in accordance with applicable federal or state acts or regulations.

Enclosure 1 - Request for Accommodation Form

This directive replaces, in its entirety, *Management Directive 205.25, Disability-Related Employment Policy* dated June 19, 2002.

CONFIDENTIAL

REQUEST FOR ACCOMMODATION FORM

CONFIDENTIAL

This form may be completed by job applicants or employees requesting an accommodation. Job applicants/employees should submit the completed form to the interviewer/supervisor. (For all items, attach additional pages, if necessary.)

1. REQUESTOR'S NAME (PRINT)	2. EMPLOYEE ID NUMBER
3. HOME MAILING ADDRESS	4. OFFICE/WORK ADDRESS
5. WORK TELEPHONE NUMBER (INCLUDE AREA CODE)	6. HOME AND/OR CELL PHONE NUMBER (INCLUDE AREA CODE) HOME: CELL:
7. JOB/POSITION TITLE	8. DATE OF REQUEST FOR ACCOMMODATION

Please answer the following questions. The information you provide will be treated confidentially and will be handled on a need-to-know basis.

1. What are the functions of the position which would be or are affected by your disability?

2. Describe the type of accommodation which will enable you to perform the essential functions of the position.

3. Do you have documentation to support your disability? YES ___ NO ___ If YES, please attach documentation.

REQUESTOR'S SIGNATURE	DATE
SUPERVISOR'S/INTERVIEWER'S SIGNATURE	DATE
SUPERVISOR'S/INTERVIEWER'S COMMENTS:	

Upon completion, the supervisor/interviewer should process this form in accordance with agency procedures.

For information or assistance regarding accommodation requests please contact the agency Disability Services Coordinator. All requests for accommodation will be reviewed in accordance with *Management Directive 205.25*.

Unless the disability is apparent, agencies may request medical verification or documentation from an employee to support a request for reasonable accommodation using the Health Care Provider Questionnaire available through the Disability Services Coordinator.

ACTIONS TAKEN/DETERMINATION MADE/DATES:

DATE OF DECISION:

DATE EMPLOYEE/APPLICANT NOTIFIED OF DECISION: