



# Management Directive

## Commonwealth of Pennsylvania

### Governor's Office

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## Management Directive 205.25 Amended – Employment-Related Disability Accommodations

Date: July 24, 2023

A handwritten signature in black ink, appearing to be "N. Weaver".

By Direction of: Neil R. Weaver, Secretary of Administration

Contact Agency: Office of Administration  
Equal Employment Opportunity Office  
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**This directive establishes policy, responsibilities, and procedures for employment-related Disability Accommodations pursuant to the *Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Pennsylvania Human Relations Act, and relevant Commonwealth policies. This amendment updates definitions, policy, responsibilities, and procedures, and establishes the role the Office of Administration, Equal Employment Opportunity Office in reviewing and processing requests for employment-related Disability Accommodations for Qualified Individuals With Disabilities.***

### 1. PURPOSE.

To establish policy, responsibilities, and procedures for employment-related Disability accommodations pursuant to the provisions of the *Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101-12213 (ADA), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963 (PHRA), and relevant Commonwealth policies.*

### 2. SCOPE.

This directive applies to all departments, offices, boards, commissions, and councils under the Governor's jurisdiction (hereinafter referred to as "agencies").

### 3. OBJECTIVE.

To ensure that employment-related Disability Accommodations for Qualified Individuals With A Disability are provided to applicants for Commonwealth employment and to Commonwealth employees where appropriate in accordance with law and policy.

#### 4. DEFINITIONS.

- a. **Disability.** With respect to an individual, means:
- (1) a physical or mental impairment which substantially limits one or more of such an individual's major life activities;
  - (2) a record of having such an impairment; or
  - (3) being regarded as having such an impairment.
- Such term does not include current, illegal use of a controlled substance, as defined in Section 102 of the *Controlled Substances Act*, 21 U.S.C. § 802.
- b. **Disability Accommodation.** A reasonable adjustment to the hiring or application process, the job, or the work environment that enables a Qualified Individual With A Disability to perform the Essential Functions of a job and to participate in equal employment opportunities.
- c. **Discrimination.** Unequal treatment of an individual based on membership in a class protected by law or Commonwealth policy.
- d. **Essential Functions.** The necessary and fundamental duties of a position, not including the marginal functions of the position.
- e. **Qualified Individual With A Disability.** An individual who, with or without reasonable accommodation, can perform the Essential Functions of the job that such individual holds or seeks to hold.
- f. **Retaliation.** A materially adverse employment action or negative treatment of an individual because the individual engaged in activity protected by law or policy, which includes but is not limited to requesting or receiving an accommodation, filing an internal or external complaint of Discrimination or Retaliation, testifying, assisting, or participating in any proceeding, investigation, or hearing or otherwise opposing Discrimination or Retaliation connected to the workplace.
- g. **Undue Hardship.** An action, with respect to the provision of an accommodation, that would fundamentally alter the nature or operation of an agency, or that would be unduly costly, extensive, substantial, or disruptive.

#### 5. POLICY.

- a. Agencies must comply with the *ADA*; *Section 504 of the Rehabilitation Act of 1973*; the *PHRA*; *Executive Order 2002-05, Disability-Related Policy*; *Executive Order 2016-04, Equal Employment Opportunity*; and all applicable laws and policies in responding to and providing Disability Accommodations for Qualified Individuals With A Disability when requested and where appropriate.
- b. In accordance with the above-referenced laws and executive orders, the Commonwealth, as an equal opportunity employer, is committed to providing Disability Accommodations to Qualified Individuals With A Disability and equal employment opportunities. In addition, the Commonwealth is committed to ensuring that job applications, examinations, interview procedures, training,

job assignments, selection procedures, and promotion processes do not adversely affect or tend to adversely affect Qualified Individuals With A Disability.

- c.** Requests for Disability Accommodations from applicants for Commonwealth employment and Commonwealth employees who are Qualified Individuals With A Disability are reviewed by the Office of Administration (OA), Equal Employment Opportunity Office (EEOO), Bureau of Equal Employment Opportunity Policy and Appeals (BEEOPA). The BEEOPA must engage in the interactive process with the employee or applicant. The OA's Bureau of Talent Acquisition (BTA) will, where appropriate, refer requests for Disability Accommodations from job applicants to OA, BEEOPA and will provide advice and guidance on requests for Disability Accommodations with regard to civil service testing and related issues.
- d.** Disability Accommodation requests may be granted unless the requested accommodation imposes an Undue Hardship on the agency. Whether a particular requested Disability Accommodation imposes an Undue Hardship on an agency or the Commonwealth is fact-specific and dependent upon the circumstances of the given situation. Disability Accommodations may include, but are not limited to, the following: scheduling modifications, job reassignments, lateral transfers, and exceptions to dress or grooming requirements, so long as such accommodations do not conflict with law, impose an Undue Hardship, or interfere with a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.
- e.** The obligation to provide a Disability Accommodation is ongoing and may arise at any time, such as when there is a change in an individual's Disability, in the individual's need for accommodation, or in job responsibilities. An agency cannot deny an employment opportunity to a qualified applicant or employee solely because of the need to provide a Disability Accommodation unless there is a showing of Undue Hardship to the agency.
- f.** OA, EEOO, BEEOPA shall review all requests for a Disability Accommodation from Qualified Individuals With A Disability and engage in the interactive process with the requesting employee or applicant. The BEEOPA shall consult with the employing agency to determine if the requested accommodation creates an Undue Hardship to the agency.
- g.** Internal Equal Employment Opportunity (EEO) complaints from job applicants or Commonwealth employees alleging violations of applicable laws, this directive, or applicable Commonwealth policies may be filed in accordance with procedures outlined in *Management Directive 410.10 Amended, Internal EEO Complaint Investigations*.
- h.** Retaliation against any Commonwealth employee or applicant for Commonwealth employment is expressly prohibited.

**6. RESPONSIBILITIES.**

- a. Secretary of Administration** shall direct the development, implementation, and administration of the Commonwealth's policies related to Disability Accommodations through OA, EEOO.
- b. OA, EEOO** shall:
- (1)** Through BEEOPA, receive and process all Disability Accommodation requests submitted by applicants for Commonwealth employment and Commonwealth employees and determine, after communication with the employee or applicant and consultation with the agency, what, if any, accommodation should be provided, and communicate that decision to the applicant or employee, and to the agency, along with any steps the agency must take to provide an accommodation.
  - (2)** Develop and disseminate internal Commonwealth policies and procedures on EEO matters, including but not limited to those related to Disability Accommodations and Disability Discrimination.
  - (3)** Oversee the internal complaint process in accordance with *Management Directive 410.10 Amended, Internal EEO Complaint Investigations* whereby applicants for Commonwealth employment and Commonwealth employees may file internal EEO complaints, including those alleging Disability Discrimination or Retaliation.
  - (4)** Provide direction, technical assistance, information, and training on investigations of internal EEO complaints to Commonwealth staff involved in the ADA accommodation process.
- c. OA, EEOO, BEEOPA** shall:
- (1)** Review, analyze, and make determinations regarding requests for Disability Accommodations. BEEOPA shall receive, review, engage in the interactive process, and determine whether or not to approve Disability Accommodation requests from applicants for Commonwealth employment and Commonwealth employees. If the request is from a job applicant, BEEOPA shall consult with OA, BTA. If the request is from a Commonwealth employee, BEEOPA shall consult with the employing agency, including with the employee's immediate supervisor, if necessary, as well as the Human Resource (HR) staff supporting the agency, as necessary.
  - (2)** Consistent with the ADA and Commonwealth policy, for all Disability Accommodation requests, maintain employee medical information separate from the employee's Official Personnel Folder (OPF) 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.
  - (3)** In coordination with OA, EEOO, provide training, information, and technical assistance on EEO policies, including on the rights of employees and obligations of agencies to provide Disability Accommodations, as needed and when requested.

- (4) Review, in coordination with OA's Deputy Secretary for HR and Management as necessary, whether Disability policy requirements are consistent within and across all applicable issuances and policies.
  - (5) Utilize OA, EEOO's designated electronic case management system to document and process all Disability Accommodation requests.
- d. **OA, EEOO, Bureau of EEO Investigations (BEEOI)** shall oversee the internal EEO complaint process whereby applicants for Commonwealth employment and Commonwealth employees may file a complaint alleging noncompliance with Disability-related employment policies in accordance with procedures outlined in *Management Directive 410.10 Amended, Internal EEO Complaint Investigations*.
- e. **OA, BTA** shall:
- (1) Consult with the BEEOPA on all requests for Disability Accommodations from applicants for Commonwealth employment, as needed and where appropriate.
  - (2) Refer requests for Disability Accommodations from job applicants for Commonwealth employment to BEEOPA, where appropriate.
  - (3) Ensure that all requests for Disability Accommodations are treated in a confidential manner consistent with Commonwealth policy.
- f. **HR Staff Supporting the Agency** shall:
- (1) Ensure that all requests for Disability Accommodations are referred to OA, BEEOPA in a timely fashion for review, treated in a confidential manner, and kept separate from a requesting employee's OPF consistent with Commonwealth policy.
  - (2) Provide information related to the provisions of this directive, including the process for requesting Disability Accommodations to all Commonwealth employees and, upon request, to applicants for Commonwealth employment.
- g. **Agency Managers and Supervisors** shall:
- (1) Forward all requests for Disability Accommodations from job applicants for Commonwealth employment and Commonwealth employees in a timely fashion, to OA, BEEOPA and, where necessary, work closely with that Bureau in addressing those requests.
  - (2) Ensure that the HR staff supporting the agency are aware that a request for a Disability Accommodation was forwarded to OA, BEEOPA.
  - (3) Coordinate with HR staff supporting the agency to develop and maintain updated position descriptions to include accurate and complete Essential Functions of the position.

## **7. PROCEDURES.**

### **a. Disability Accommodation Requests.**

- (1)** All requests for Disability Accommodations should be submitted by email to the OA, BEEOPA resource account: RA-OABEEO@pa.gov or through Employee Self Service (ESS). BEEOPA will request that any oral request be submitted in writing.
- (2)** OA, BEEOPA shall receive and review the request, engage in the interactive process, consult with the appropriate agency, and determine whether to grant a Disability Accommodation request. If the request is from an applicant for Commonwealth employment, BEEOPA shall consult with OA, BTA. If the request is from a Commonwealth employee, BEEOPA shall consult with the employing agency. All Disability Accommodation requests will be reviewed by OA, BEEOPA and discussed with the agency to reach a determination on whether to grant an accommodation request.
- (3)** The agency shall implement any approved Disability Accommodation.
- (4)** The Disability Accommodation request, and all information related to the request, shall be kept confidential, except as required by law and policy, and may be shared only on a need-to-know basis.

### **b. Identifying the need for a Disability Accommodation.**

- (1)** It is the obligation of the individual with a Disability to request an accommodation or to indicate that the individual has a Disability that is affecting the ability to perform the Essential Functions of the job.
- (2)** OA, BEEOPA may request medical verification or documentation from an individual to support a request for a Disability Accommodation.

### **c. Decisions concerning a Disability Accommodation request.**

- (1)** Requests for Disability Accommodations should be processed as expeditiously as possible. After consulting with the agency and engaging in the interactive process, OA, BEEOPA will notify the agency of the decision regarding the accommodation request and will thereafter provide notification of the accommodation, if any, being offered to the employee or applicant who requested the Disability Accommodation.
- (2)** The individual requesting the accommodation has the right to refuse an accommodation that differs from the original accommodation requested. However, if the individual cannot perform the Essential Functions of the job with or without accommodation, the individual may be considered unqualified for the position.

**This Directive replaces, in its entirety, *Management Directive 205.25 Amended*, dated February 13, 2009.**