

# PROVIDING REASONABLE ACCOMMODATIONS FOR EMPLOYEES AND APPLICANTS WITH DISABILITIES AND PERSONAL ASSISTANCE SERVICES FOR EMPLOYEES WITH TARGETED DISABILITIES

---

## I. Purpose

This Instruction establishes the procedures for providing reasonable accommodations to qualified employees and applicants with disabilities, and personal assistance services to employees with targeted disabilities, at the Department of Homeland Security (DHS).

## II. Scope

This Instruction applies throughout DHS and sets forth the minimum requirements for Component procedures.

## III. References

- A. The Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. § 701, *et seq.*
- B. The Americans with Disabilities Act Amendments Act of 2008 (effective January 1, 2009).
- C. Directive No. 19003, “Delegation to the Officer for Civil Rights and Civil Liberties for Matters Involving Civil Rights and Civil Liberties Including Equal Employment Opportunity and Workplace Diversity” (October 26, 2012).
- D. Directive No. 259-01, “Providing Reasonable Accommodations for Employees and Applicants with Disabilities.”
- E. Equal Employment Opportunity Commission Management Directive 715, “Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act” (October 1, 2003).
- F. Equal Employment Opportunity Commission, “EEOC Policy Guidance on Executive Order 13164: Establishing Procedures To Facilitate The Provision of Reasonable Accommodation,” No. 915.003, (October 20, 2000).

G. Instruction No. 259-01-002, “Procedures for Conducting a Department-wide search for a Reassignment as a Reasonable Accommodation of Last Resort”

H. Equal Employment Opportunity Commission Final Rule, “Affirmative Action for Individuals With Disabilities in Federal Employment,” amending 29 C.F.R. § 1614.203 (2017).

## IV. Definitions

A. **Essential Function**: A job duty so fundamental to a position that the position requirements cannot be fulfilled without successful performance of the duty. A function is determined to be “essential” if, among other things: the position exists specifically to perform the function; there are a limited number of other employees who could perform the function; or the function is specialized, and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic position description.

B. **Extenuating Circumstances**: Factors that could not reasonably have been anticipated or avoided or are beyond the agency’s ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. In such circumstances DHS will notify the requestor of the reason for the delay and anticipated delivery of solution. Factors can include situations in which equipment is on back-order or the vendor typically used by an agency has unexpectedly gone out of business. In addition, an agency will not be expected to adhere to its usual time frames if an individual's health professional fails to provide needed documentation.

C. **Direct Threat**: A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment, that considers: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm.

D. **Disability**: With respect to an individual, means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment that is not both transitory and minor.

E. **Interactive Process**: The process by which the individual requesting an accommodation and the deciding official engage with each other, as well as with the Disability or Reasonable Accommodation Program Manager, as needed, about the request for accommodation, the precise limitations resulting from the disability, the

process for determining whether an accommodation can be provided, and whether there are alternative accommodations.

F. **Major Bodily Functions**: These functions include, functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

G. **Major Life Activities**: Include, but not limited to activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions.

H. **Personal Assistance Services**: Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as reasonable accommodation, including, for example, assistance with putting on or removing clothing, eating, and using the restroom.

I. **Personal Assistance Service Provider**: An employee or independent contractor whose primary job functions include providing personal assistance services.

J. **Qualified Individual**: An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

K. **Reasonable Accommodation**: Any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities. Accommodations are considered "reasonable" if they do not create an undue hardship or a direct threat." A reasonable accommodation may be granted on an interim basis until a granted permanent accommodation is provided.

L. **Reassignment**: A form of reasonable accommodation that, absent undue hardship, may be provided as a last resort to employees (not to applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. A reassignment is made only to a vacant position within the Department and to an employee who is qualified for the new position. If the employee is qualified for the position, s/he is reassigned to the job and does not have to compete for it.

M. **Request for Reasonable Accommodation**: A verbal or written statement that an individual needs a change in working conditions or requirements, in the application process, or in relation to a benefit or privilege of employment for a reason related to a disability. A request for a reasonable accommodation does not have to include any special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” A family member, health professional, or other representative may request an accommodation on behalf of a DHS employee or applicant.

N. **Targeted Disabilities**: A subset of conditions that are considered disabilities under the Rehabilitation Act and for which qualified individuals with certain disabilities (i.e., such as blindness, deafness, paralysis, convulsive disorders, and mental illnesses, among others) have faced significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. See the Office of Personnel Management’s [Standard Form 256](#) for a complete list of targeted disabilities.

O. **Undue Hardship**: Undue hardship means that an employer would incur significant difficulty or expense in providing a certain reasonable accommodation. Determination of undue hardship is always made on a case-by-case basis, considering such factors as the nature and net costs of the accommodation, the overall financial resources of DHS, and the impact of the accommodation on the operation of the agency, including the impact on DHS’s ability to conduct business. The DHS must consider the resources of the agency as a whole, not simply the budget of a specific office, when determining whether an accommodation imposes significant cost.

## V. Responsibilities

A. The **Director, Equal Employment Opportunity (EEO) and Diversity, Office for Civil Rights and Civil Liberties** collects Component procedures and upon request, conducts reviews prior to submission to the Equal Employment Opportunity Commission (EEOC), of procedures including all associated forms, for processing requests for reasonable accommodation and Personal Assistance Services (PAS) implemented by all DHS Operational and Support Components; develops a Department-wide tracking system to monitor requests for reasonable accommodation and PAS; coordinates with Components to ensure appropriate training is provided to supervisors, managers, and hiring officials; and develops procedures for processing requests for reasonable accommodation from Support Component employees (except the Federal Law Enforcement Training Center (FLETC) and the Office of Inspector General (OIG)).

B. The **Chief Human Capital Officer** ensures that a reasonable accommodation statement is included in job opportunity announcements, as applicable, and that the

unions are provided an opportunity for collective bargaining, and oversees the administration of the Department-wide procedures for conducting a search for a reassignment as a reasonable accommodation of last resort.

C. The **Heads of the Operational Components and FLETC and OIG** develop standard operating procedures for processing requests for reasonable accommodations and for the provision of PAS; ensure their Component utilizes the DHS Accessibility Compliance Management System (ACMS) or a system to monitor, track, and ensure compliance with DHS and EEO standard reporting requirements; and ensure their Component timely submits all new or revised procedures, including associated forms, to the Equal Employment Opportunity Commission (EEOC) for approval, as required by Executive Order 13164. Component must simultaneously submit all new or revised procedures and forms to the Office for Civil Rights and Civil Liberties.

## VI. Content and Procedures

### A. Content

1. Section 501 of the Rehabilitation Act requires affirmative action and nondiscrimination on the basis of disability in employment by Federal agencies of the Executive Branch. Section 508 requires Federal information and communication technology to be accessible to people with disabilities, including employees and members of the public.
2. DHS provides equal employment opportunities to all employees, including qualified individuals with disabilities. DHS, as a model employer, is committed to providing reasonable accommodations for qualified individuals with disabilities during the hiring and application process, and for qualified employees with disabilities to perform the essential functions of their jobs and to enjoy the benefits and privileges of employment. DHS also provides PAS to employees who, because of a targeted disability, require such assistance in order to be at work or participate in work-related travel, unless to do so imposes an undue hardship on DHS.
3. The following are examples of reasonable accommodations that may be provided on a case-by-case basis, as appropriate: modification of existing facilities so that they are readily accessible and usable by employees with disabilities; acquisition or modification of equipment or devices; job restructuring; part-time or modified work schedules; appropriate modification of examinations, training materials, or policies; provision of qualified readers or interpreters; and, as a last resort, reassignment to a vacant position within DHS.

4. The following are examples of PAS that may be provided on a case-by-case basis as needed: assistance with eating, drinking, using the restroom and dressing. PAS does not include medical services, such as administering shots or monitoring blood pressure, and does not have to be provided by someone with medical training or qualifications.

5. Any applicant or employee who believes that s/he requires a reasonable accommodation because of a disability, or any employee who believes that s/he requires a PAS because of a targeted disability, may request an accommodation or PAS pursuant to procedures to be established by the Component.

6. Employees and deciding officials must engage in an interactive process to address and respond to requests for reasonable accommodations and for PAS, including the Reasonable Accommodation Program Manager, as needed.

7. DHS provides a qualified individual with a disability a reasonable accommodation unless to do so would require altering the essential functions of the position, would pose an undue hardship on DHS, or if the employee posed a direct threat to him/herself or to others which a reasonable accommodation would not eliminate or reduce to an acceptable level. Employees are entitled to an "effective" accommodation (an accommodation that enables them to perform the essential functions of the job), but not necessarily the accommodation of their choice.

8. This Instruction is to be posted on the DHS public website in a place easily noticeable by applicants, and in a conspicuous place on the DHS intranet for employees. The material is also to be posted in a physical location accessible to employees who do not have access to the intranet, in a format accessible by the employees.

## **B. Procedures**

1. All DHS Operational and Support Components shall establish reasonable accommodation and PAS procedures that are easy to understand and that, at a minimum, include the following:

2. Guidance stating that requests for reasonable accommodation and/or PAS may be made at any time, orally or in writing, and an employee need not have a particular accommodation in mind before making a request, and that requests may be made to a supervisor or manager in the individual's chain of command, the office designated to oversee the reasonable accommodation process, or any employee connected with the application process.

3. Any forms required by the Component in connection with a reasonable accommodation request and/or PAS request. Forms should be provided in alternate formats that are accessible to individuals with disabilities.
4. A description of the Component's process for determining whether to provide a reasonable accommodation and/or PAS, along with contact information for the office(s) responsible for the reasonable accommodation process.
5. Guidance for supervisors on how to recognize and process requests for reasonable accommodations and PAS, and on how to fund them.
6. A requirement that Decision-makers, such as supervisors and managers, communicate early in the interactive process, and periodically throughout the process, with individuals who have requested a reasonable accommodation or PAS.
7. An explanation of the circumstances under which an agency may require that an individual who requests a reasonable accommodation or PAS provide medical documentation if the disability and/or the need for accommodation is not obvious or otherwise already known to the agency, including, at a minimum, the following provisions:
  - a. Medical documentation may be requested that is sufficient to explain the nature of the individual's disability, his or her need for reasonable accommodation (or PAS), and how the requested accommodation (or PAS), if any, will assist the individual when applying for a job, performing the essential functions of a job, or enjoying the benefits and privileges of the workplace;
  - b. Supplemental medical information may be requested when the information initially submitted by the requester is insufficient for the purposes described in subsection (a);
  - c. The Component has a right to have medical information reviewed by a medical expert of the agency's choosing, at the agency's expense;
  - d. The Component is obligated to keep medical information confidential, in accordance with applicable laws and regulations, with limited circumstances under which such information may be disclosed to those with a demonstrated need to know, including the following:
    - 1) Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);

- 2) First aid and safety personnel may be informed if the individual with a disability requires emergency medical treatment;
- 3) Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- 4) The information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and
- 5) Agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests.

Where medical information is disclosed to any of the foregoing officials, the agency must inform those individuals about the confidentiality requirements.

- e. Component procedures must also clearly communicate and explain when it concludes medical information is necessary to process an accommodation request, who is authorized to receive medical to determine sufficiency of the documentation, and who is responsible for assessing whether the medical substantiates that the requestor is a qualified individual with a disability.

8. The Component must designate the maximum amount of time, not to exceed thirty (30) business days, absent extenuating circumstances, to either provide a reasonable accommodation or deny the request. Procedures must explain that the time limit begins to run when the accommodation is first requested. The following information must also be explained and included in the procedures:

- a. Delays attributable to the failure of a requester's health professional to provide needed medical documentation in a timely manner are not counted toward the Component's established timeframe.
- b. When a particular reasonable accommodation can be provided in less than the maximum amount of time permitted by the Component, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

c. Provision for expedited processing of requests for reasonable accommodation that are needed sooner than the maximum allowable timeframe permitted must be made.

d. When all the facts and circumstances known to the Component make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the Component shall provide an interim accommodation that allows the individual to perform the essential functions of his or her job. A Component may be required to provide an interim accommodation if the employee has an obvious disability and there are delays such as a wait for medical documentation, equipment, or administrative processing delays that are no fault of the employee. Each Component shall establish its own process for assessing the need for, providing and documenting interim accommodations.

e. The Component informs applicants and employees how to obtain current status of the processing of their request for reasonable accommodation.

f. The Component explains that, where there is a delay in either processing a request or providing a reasonable accommodation, the agency must notify the individual in writing of the reason for the delay, including any relevant extenuating circumstances.

9. The Component must provide written notice (in an accessible format when necessary) when a reasonable accommodation is denied, including reason(s) for the denial and an explanation of the individual's rights, and instructions on filing complaints pursuant to 29 C.F.R. § 1614.106, and encourages Alternative Dispute Resolution to obtain prompt reconsideration.

10. Component procedures must explain that reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation; and must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position.

a. Each Component must establish procedures to diligently conduct an internal search for vacant positions at the same or lower grade for which an employee who cannot be otherwise accommodated qualifies. If the internal search uncovers a position for which the employee qualifies, he/she must be noncompetitively placed in the position. The Component does not need to create a new position for

the employee. The Component is not required to assist the employee in qualifying for any vacant position.

b. Only after the Component has taken all reasonable steps to accommodate the employee in his/her current position and has conducted a diligent search but could not identify a vacant position can the Component request a department-wide search for a vacant position for which the employee qualifies pursuant to Instruction No. 259-01-002, "Procedures for Conducting a Department-wide search for a Reassignment as a Reasonable Accommodation of Last Resort"

11. Components must establish a firewall between the EEO Director and the Reasonable Accommodation Program Manager to avoid a conflict of interest. If the Reasonable accommodation program resides within the EEO office, the firewall is a procedure preventing the EEO Director from involvement in the day-to-day functions of the reasonable accommodation program.

12. The Component must provide information on how to access additional information regarding reasonable accommodation and PAS, including, at a minimum, EEOC's guidance and technical assistance documents.

13. The Component must explain that requests for reasonable accommodation and PAS are not denied solely for reasons of cost, and that individuals with disabilities are not excluded from employment due to the anticipated cost. Any official authorized to grant or deny requests knows how to arrange for funding and/or resources, including the use of centralized funds used by a Component. All resources available to DHS, excluding those designated by statute for a specific purpose that does not include reasonable accommodation or PAS, shall be considered.

14. The Component must explain that requests for PAS – which allow employees to participate in the workplace, in addition to professional services required as a reasonable accommodation – during work hours and job-related travel will be approved if:

a. The employee requires such services because of a targeted disability.

b. Provision of such services would, together with any reasonable accommodations required under the standards, enable the employee to perform the essential functions of his or her position.

c. Provision of such services would not impose undue hardship on DHS.

For more information and guidance regarding PAS, please see Appendix A.

## VII. Questions

Address any questions or concerns regarding this Instruction to the Director, EEO and Diversity, Office for Civil Rights and Civil Liberties.



---

Katherine Culliton-Gonzalez  
Officer, Office for Civil Rights and Civil Liberties

March 23, 2021

---

Date

## **Personal Assistance Service**

The Department of Homeland Security will provide Personal Assistance Services (PAS) to an individual who needs them because of a targeted disability as an affirmative action obligation; if the employee requires such assistance in order to fully participate in the workplace, including an alternate work space (e.g., while teleworking), or to participate in work-related travel. PAS are services that help individuals who, because of a targeted disability, require assistance to perform basic activities of daily living.

PAS differ from services that help an individual to perform job-related tasks, such as sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. Those services are required as reasonable accommodations, if the individual needs them because of a disability and providing them does not impose undue hardship on the agency. An agency's obligation to provide reasonable accommodations is unaffected by the new regulations.

Components must provide PAS, in addition to reasonable accommodations if needed, to certain employees who have targeted disabilities unless doing so would impose an undue hardship on the agency. PAS will be provided to an individual if:

1. the individual is an employee of the agency;
2. the individual has a targeted disability;
3. the individual requires the services because of his or her targeted disability;
4. the individual will be able to perform the essential functions of the job, without posing a direct threat to the safety of themselves or others, once PAS and any required reasonable accommodations, have been provided; and
5. providing PAS will not impose undue hardship on DHS.

Not everyone with a targeted disability will be entitled to PAS; only those individuals with a targeted disability who request, and require, assistance with activities of daily living may receive PAS. Examples of medical conditions that are more likely to result in the need for PAS are missing limbs or paralysis due to spinal cord injury.

The Component will process requests for PAS as an affirmative action obligation in the same manner as it processes reasonable accommodation requests. Accordingly, the process for requesting PAS, the process for determining whether such services are required, and the agency's right to deny such requests when the provision of the services would pose an undue hardship, are the same as for reasonable accommodations.

### **PAS Resources**

1. *Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act*, <https://www.eeoc.gov/federal/directives/personal-assistance-services.cfm>
2. *Questions and Answers: The EEOC's Final Rule on Affirmative Action for People with Disabilities in Federal Employment*, <https://www.eeoc.gov/laws/regulations/qanda-ada-disabilities-final-rule.cfm>
3. *Accommodation and Compliance: Personal Assistance Services (PAS) in the Workplace*, <https://askjan.org/topics/persassist.cfm>
4. *U.S. Department of Labor Office of Disability Employment Policy's Personal Assistance Services in the Workplace*, <https://www.dol.gov/odep/topics/PersonalAssistanceServices.htm>
5. *Federal Exchange on Employment and Disability (FEED) PAS Roundtable Meeting Recap*, <http://www.askearn.org/topics/federal-state-government-employment/federal-government-employment/section-501/federal-exchange-employment-disability-feed/federal-exchange-on-employment-disability-feed-meeting-pas-round-table-july-20th-2017/>
6. *Independent Living Research Utilization Resources on Personal Assistance Services*, <http://www.ilru.org/resources-personal-assistance-services>
7. Federal Travel Regulation Part 301-13 – Travel of an Employee with Special Needs; Authority: 5 U.S.C. 5707, <https://www.gsa.gov/policy-regulations/regulations/federal-travel-regulation-ftr?asset=107374>
8. 5 CFR 315.711 - Readers, interpreters, and personal assistants serving under Schedule A appointments, <https://www.gpo.gov/fdsys/pkg/CFR-2011-title5-vol1/pdf/CFR-2011-title5-vol1-sec315-711.pdf>
9. 5 U.S.C. 3102 Employment of Personal Assistants for Employees with Disabilities, including Blind and Deaf Employees, <https://www.ecfr.gov/cgi-bin/text->

[idx?SID=ac66a396a32abdb30458dc23ce1b3dce&mc=true&node=se5.1.315\\_1711&rqn=div8](#)