

INSTRUCTION ON PROVIDING REASONABLE ACCOMMODATIONS FOR EMPLOYEES AND APPLICANTS WITH DISABILITIES

I. Purpose

This Instruction establishes the procedures for providing reasonable accommodations to qualified employees and applicants (hereinafter “employees”) with disabilities at the Department of Homeland Security (DHS).

II. Scope

This Instruction applies throughout DHS to all civilian employees.

III. References

- A. The Rehabilitation Act of 1973, Pub. L. 93-112, 29 USC 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).

IV. Definitions

A. **Essential Functions**: Job duties so fundamental to a position that the position requirements cannot be fulfilled without successful performance of these duties. A function is determined to be “essential” if, among other things: the position exists specifically to perform that 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 is done on a case-by-case basis giving consideration to the job as actually performed, and not based only on the components of a position description.

B. **Individual with a Disability**: An individual who has a physical or mental impairment that substantially limits one or more major life activities (an “actual disability”), or a record of a physical or mental impairment that substantially limits a major life activity (“record of”), or an actual or perceived impairment that is not both transitory and minor (“regarded as”).

C. **Interactive Process**: The process by which the individual requesting an accommodation and the decision-maker engage with each other about the request for accommodation, the process for determining whether an accommodation can be provided, and alternative accommodations.

D. **Major Life Activities**: Basic activities that the average person in the general population can perform with little or no difficulty, such as (but not limited to) caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E. **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.

F. **Reasonable Accommodation**: Any change or modification in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

G. **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. Reassignments are made only to vacant positions within the Department and to employees who are 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.

H. **Request for Reasonable Accommodation**: A verbal or written statement that an individual needs an adjustment or 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.

V. Responsibilities

A. The **Director, Equal Employment Opportunity (EEO) and Diversity Programs, Office for Civil Rights and Civil Liberties** reviews and approves procedures for processing requests for reasonable accommodations implemented by all DHS Operational and Support Components, develops a tracking system to monitor the responses to requests for reasonable accommodations Department-wide, coordinates with Components to ensure appropriate training is provided to supervisors and managers, and develops procedures for processing requests for reasonable accommodations 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** (CHCO) 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. CHCO also develops guidance for conducting 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.

VI. Content and Procedures

A. 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 504 of the Rehabilitation Act prohibits organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

B. 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.

C. 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 adjustment or 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.

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

E. Employees and managers engage in an interactive process to address and resolve requests for accommodations.

F. 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 would cause a direct threat to the individual him/herself or to others. 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.

G. 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. The material is also to be posted in a physical location accessible by employees who do not have access to the intranet, in a format useable by the employees.

VII. Questions

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



Tamara Kessler
Acting Officer, Office for Civil Rights and Civil
Liberties

3/13/13

Date