

DEPARTMENT OF THE ARMY
Nashville District, Corps of Engineers
P.O. Box 1070
Nashville, Tennessee 37202

CELRN-EO

Regulation
No. 690-1-49

28 April 2006

Civilian Personnel
PROCEDURES TO FACILITATE THE PROVISION OF
REASONABLE ACCOMMODATION

1. Purpose. This regulation prescribes procedures for requesting and providing reasonable accommodation in the Nashville District.
2. Applicability. Applicable to Nashville District employees and job applicants.
3. References.
 - a. The Rehabilitation Act of 1973, as amended, protects qualified employees and applicants with disabilities in the executive branch of the federal government from employment discrimination based on disability. 29 United States Code (U.S.C.) 791. In 1992, the substantive employment standards of the Americans with Disabilities Act, 42 U.S.C. Section 12111, et seq., were made applicable to the federal government through Section 501 of the Rehabilitation Act.
 - b. Executive Order 13164, issued on 26 July 2000, requires federal agencies to develop written procedures for providing reasonable accommodation.
 - c. 29 Code of Federal Regulations (C.F.R.) Section 1630 provides regulations for implementing the provisions of the Americans with Disabilities Act.
 - d. Privacy Act of 1974, 5 U.S.C. Section 552a.

4. Policy.

a. Nashville District's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973. Under the law, federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship on the operations of the agency.

b. As the District recognizes the importance of equipping all employees with the tools necessary for productivity and mission accomplishment, these procedures will have no bearing on management's discretion to make workplace adjustments for individuals whose medical impairments do not meet the definition of "disability" under Section 501 of the Rehabilitation Act. In such circumstances, management shall clearly express in writing to the requesting individual that the workplace adjustment is **not** being made under the reasonable accommodation procedures, and that the provision of such adjustment in no way signifies that the District considers the individual to be a person with a disability.

5. Definitions of Key Terms. See Appendix A for a list of terms applicable to these procedures.

6. Requesting Accommodation. A request for accommodation is a statement that an individual needs an adjustment or a change at work or in the application process for a reason related to a medical condition. The request may be made at any time during the application process or during the period of employment. An individual does not have to use the words "reasonable accommodation," or cite the Rehabilitation Act to initiate such a request. (Examples: "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm receiving;" or "I need six weeks of leave for surgery.") Requests for accommodations by employees or applicants may be made orally or in writing. A family member, friend, health professional, or other representative may also request a reasonable accommodation on behalf of an individual with a disability.

a. Employees may submit requests for accommodation to their immediate supervisor, anyone within their supervisory chain of command, or the Individuals with Disabilities Program (IWDP) Manager. Requests from applicants will be handled by the Human Resources Specialist responsible for the recruitment and/or selection process. The "Confirmation of Request for Reasonable Accommodation" form (Attachment 1), is the preferred format for a written request submitted by an employee. District officials will also use the "Confirmation of Request for Reasonable Accommodation" form to document an individual's oral request for accommodation in order to avoid an undue delay which would constitute a violation of the Rehabilitation Act. Processing will begin immediately upon receipt of the request, regardless of the manner in which the request is presented. A copy of "Confirmation of Request for Reasonable Accommodation" form (or other written request) should be forwarded to the IWDP Manager, ATTN: CELRN-EO, as soon as possible, normally no more than two business days after the request is received. The IWDP Manager will provide a copy of the request to Office of Counsel (OC) for legal advice in appropriate situations. (NOTE: Once an individual has requested and been granted an accommodation that is likely to be needed on a repeated basis, there is no requirement to submit a written request each time the accommodation is needed.)

b. The immediate supervisor has the authority to approve most requests; however, some requests (examples of which are shown below) should be coordinated with and, in some instances, handled by other designated officials.

- Requests for District Office accessible parking will be reviewed and subject to the approval of the District Office Facility Manager.
- Requests for adaptive equipment, including information technology and communications equipment, should be coordinated with the IWDP Manager, who will be responsible for coordinating with other District officials and/or securing equipment from the Department of Defense Computer/Electronic Accommodations Program (CAP).

- Requests for a reader, sign language interpreter, or other staff assistance to enable employees to perform their job functions, or to participate in training, should be handled by the IWDP Manager, in coordination with the Civilian Personnel Advisory Center (CPAC).
- Requests for reassignment to another job will be processed by the CPAC, who will coordinate the request with the IWDP Manager. (Reassignment will be considered if no other accommodation is effective, or if all other accommodations impose an undue hardship.)

c. When the recipient of a request does not have approval authority, the request shall be referred to the appropriate decision maker as soon as practicable, usually within two business days after the request is received. The immediate supervisor will be responsible to follow through and make any necessary arrangements to ensure that approved accommodations are provided within the applicable time limits.

7. Interactive Process. Once a request is received by the decision maker, s/he will: (a) acknowledge the request in writing; (b) explain to the individual that s/he will be making the decision on the request; and (c) describe what will happen in the processing of the request. The decision maker must communicate with the individual where the specific limitation, problem, or barrier is unclear; where the effective accommodation is not obvious; or when choosing among different possible accommodations. In determining appropriate reasonable accommodations, this process should identify the precise limitations resulting from the disability and the potential reasonable accommodations that could overcome the limitations. Decision makers should fully participate in this "interactive process," as failure to do so in appropriate circumstances could result in providing an ineffective accommodation, or improperly denying reasonable accommodation. Decision makers are encouraged to consult with the IWDP Manager as a resource in identifying effective accommodations.

8. Medical Documentation.

a. District officials and supervisors may not request medical information in support of every accommodation request,

but rather may require reasonable information/documentation where the disability and/or need for accommodation is not obvious or otherwise known. When this standard is met, the District may only seek that documentation which is reasonably necessary to establish that the requester is an individual with a disability and needs the accommodation requested. Requested information may include: the past, present, and expected future nature, severity and duration of the impairment (e.g., functional limitations, symptoms, side effects of any treatments, etc.); the activities the impairment limits; the extent of the limitations; and why the individual requires reasonable accommodation or the particular reasonable accommodation requested, and how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

b. If the information submitted in response to the District's initial request for medical documentation does not clearly explain the nature of the disability or the need for reasonable accommodation, the District may request reasonable supplemental documentation. The deciding official should explain to the requesting individual why the documentation is insufficient and what information is needed. The official can allow the individual an opportunity to provide the information, or may alternatively ask the individual to sign a limited release and then either submit a list of specific questions to the individual's health care professional or have the District's own physician contact the individual's health care provider. If this does not result in sufficient information, the District may require the requester to go to a health care provider of the District's choice at the District's expense.

c. All requests for medical documentation shall be coordinated with the IWDP Manager and OC in order to assure the need and appropriateness of such requests. The District has the right to have medical information reviewed by a medical expert of its choosing at its expense. Failure by the individual to provide appropriate documentation or to cooperate in efforts to obtain such documentation may result in delay or outright denial of the reasonable accommodation.

9. Confidentiality Requirements Regarding Medical Information Obtained in the Reasonable Accommodation Process.

a. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential, including the fact that a person is an individual with a disability and the fact that a person has requested or is receiving a reasonable accommodation. This means that all medical information, including information about functional limitations and reasonable accommodation needs, that the District obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's official personnel file. It also means that any District employee who obtains or receives any medical information, regardless of whether the information was provided voluntarily or in response to a disability-related question, is strictly bound by these confidentiality requirements. (Example: An individual requests and receives a special lumbar-support chair as a reasonable accommodation. The other employees in the office ask their supervisor why their coworker is receiving "special treatment." The supervisor would violate the Rehabilitation Act if s/he revealed that the coworker received the chair as a reasonable accommodation.)

b. The following are limited exceptions to the confidentiality requirement. (NOTE: Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.)

- Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations;
- First aid and safety personnel may be told *if* the disability might require emergency treatment;
- Government officials may be given information necessary to investigate the District's compliance with the Rehabilitation Act;
- Information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and

- District EEO officials may be given information to maintain records and evaluate and report on the District's performance in processing reasonable accommodation requests.

c. The IWDP Manager will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R 1611.

10. Reassignment.

a. Employees do not have an absolute entitlement to reassignment as an accommodation. Rather, reassignment is the accommodation of last resort, i.e., unless the employee voluntarily agrees, the District cannot resort to reassignment unless the employee cannot be accommodated in his or her current position. An individual with a disability will not be required to accept a reassignment if there is an accommodation that would allow the individual to remain in his or her current job and does not pose an undue hardship. Reassignment must be considered as an accommodation prior to terminating an individual with a disability who cannot be accommodated in his or her current position. Reassignment should be considered even if not specifically requested, if the employee cannot be accommodated in his or her position.

b. If reassignment is considered as an accommodation, the decision maker will clearly communicate with the employee and consult with the CPAC to develop search parameters, e.g., grade level, type of position, geographical location, and scope and duration of the vacancy search. If a position is found for which the employee is qualified (with or without reasonable accommodation), the CPAC will extend an offer and process the reassignment if the employee accepts. If no vacancy is identified, the decision maker will deny the request for accommodation as explained in paragraph 12 below. If a vacancy is identified and the employee rejects the offer, the employee will not be considered a qualified individual with a disability.

11. Time Limits.

a. The District will process requests and provide (i.e., deliver) accommodations, where they are appropriate, in as short a time frame as reasonably possible. Expedited processing will be provided in appropriate cases, e.g., accommodation needed to apply for a job or to participate in a specific agency activity that is scheduled to occur shortly. Absent extenuating circumstances, the District should strive to reach decisions on other requests within 15 business days of the decision maker's receipt of the request. (NOTE: The concept of "extenuating circumstances" is very limited, including factors outside the District's control, e.g., awaiting needed medical information from an individual's health care provider or waiting for equipment that is on back order.)

b. In order to comply with time limits to the extent possible, all decision makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodations when the decision maker is unavailable. Decision makers should ensure that individuals know who has been designated as back-up.

c. Time limits will be frozen when awaiting requested medical information. The time will begin to run again upon the District's receipt of the medical information, even if it is submitted after the District's specified deadline. Decision makers will notify individuals of the reason for all other delays in responding to requests or providing reasonable accommodations, and of the date on which the process is expected to be completed. The IWDP Manager will oversee adherence to these time frames.

d. In the event of delay, the decision maker should confer with the individual and consider providing temporary measures. (Example: Where an employee requests a schedule change as an accommodation due to the side effects of medication, the decision maker may grant the accommodation on a temporary, provisional basis while considering the request, e.g., obtaining medical documentation and determining whether or not the employee is an individual with a disability who needs the accommodation requested.)

12. Denials.

a. Decision makers are encouraged to consult with OC and the IWDP Manager for review of decisions to deny requests for reasonable accommodation. As soon as it's determined that a request for reasonable accommodation will be denied, the decision maker must complete the form, "Denial of Reasonable Accommodation Request" (Attachment 2), and provide it to the individual who requested the accommodation. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. Where the decision maker has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons the decision maker believes that the chosen accommodation will be effective. The notice should also inform the individual that s/he has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board (MSPB) and union grievance procedures. In addition, the notice will explain procedures available for informal dispute resolution.

b. When applicable, the overall resources and options available to the Department of the Army, not just those of the Nashville District, must be considered in determining whether a requested accommodation poses an "undue hardship." Therefore, decision makers must obtain a review from OC, CPAC, and the IWDP Manager before denying accommodation requests based on cost and operational difficulty.

13. Request to Reconsider Denial of Accommodation Request. The reconsideration process provides for reconsideration by the original decision maker and a second level of consideration by a District official who was not involved in the original decision. The individual may present additional information in support of the request. The District should respond to the request for reconsideration within 15 business days.

14. Information Tracking and Reporting.

a. The decision maker should complete the "Reasonable Accommodation Information Reporting Form" (Attachment 3), and

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submit it to the IWDP Manager within 10 business days of the decision. Copies of all information received during the processing of the request should be attached to the form.

b. The IWDP Manager will maintain these records for the duration of the employee's tenure with the Nashville District. Information used to track the District's performance with regard to reasonable accommodation will be retained for at least three years.

15. Questions about these procedures should be directed to David W. Claussen, IWDP Manager, at (615) 736-2634, or david.w.claussen@lrn02.usace.army.mil.


STEVEN J. ROEMHILDT, P.E.
LTC, EN
Commanding

Attachments

Appendix A DEFINITIONS

Reasonable accommodation - Any change 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.

Individual with a disability - A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

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; or 2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major life activity - A function that the average person in the general population can perform with little or no difficulty. Major life activities include activities such as caring for oneself, seeing, hearing, walking, breathing, speaking, learning, sitting, standing, lifting, reaching, and working.

Qualified individual with a disability - An individual with a disability is qualified if (1) s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) s/he can perform the essential functions of the position, with or without reasonable accommodation, without endangering the health or safety of the individual or others.

Essential functions - Those job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can 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 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.

Individuals with Disabilities Program (IWDP) Manager - The person responsible for providing guidance and assistance to management, employees, and applicants in processing requests for accommodation and assistive devices. Also tracks, maintains records, and reports on reasonable accommodation requests. (The IWDP Manager has no approval or denial authority.)

Decision Maker/Deciding Official - The person who makes the decision to grant or deny requests for reasonable accommodation.

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Reassignment - Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not 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 and to employees who are qualified for the new position. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it.

Undue hardship - If a specific type of reasonable accommodation causes significant difficulty or expense, the District does not have to provide that particular accommodation. Management will make the determination whether an accommodation would create an undue hardship on the agency on a case-by case basis. When making that determination, managers will consider factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency. ("Agency" here refers to Department of the Army.)

Extenuating circumstances - Factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. These can include situations in which equipment must be back-ordered or the vendor typically used has unexpectedly gone out of business.

PRIVACY ACT STATEMENT

TITLE: Confirmation of Request for Reasonable Accommodation.

AUTHORITY: The Nashville District is authorized to ask for this information under Section 501 of the Rehabilitation Act, 29 U.S.C. 791; and Executive Order 13164, dated July 26, 2000.

PRINCIPAL PURPOSE: To facilitate the processing and provision of requests for reasonable accommodation by individuals with disabilities, and to record and track such requests.

ROUTINES USES: These records and information in these records may be used to disclose information: to appropriate federal, state, or local agencies when relevant to civil, criminal, or regulatory investigations or prosecutions; when necessary to adjudicate a claim for benefits or to comply with a law governing the reporting of communicable diseases; to a federal agency in connection with a decision in hiring, retention, or the granting of a security clearance; to a federal agency or court, or to a party in litigation before a court or in an administrative proceeding when the government is a party to the proceeding; and to a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

EFFECTS OF NONDISCLOSURE: Furnishing the requested information and documentation is voluntary; however, failure to fully complete this form or provide necessary information may result in either the delay of the needed accommodation or the outright denial. An employer is not required to provide an accommodation if it is unaware of the need.

Denial of Reasonable Accommodation Request

1. Name of individual requesting reasonable accommodation:

2. Type(s) of reasonable accommodation requested:

3. Request for reasonable accommodation denied because: (May check more than one box.)

- Accommodation Ineffective
- Accommodation Would Cause Undue Hardship
- Medical Documentation Inadequate
- Accommodation Would Require Removal of an Essential Function
- Accommodation Would Require Lowering of Performance or Production Standard
- Other (Please identify) _____

4. Detailed reason(s) for the denial of reasonable accommodation (Must be specific, e.g., *why* accommodation is ineffective or causes undue hardship): (Use additional sheets if necessary.)

5. If the individual proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.

6. If an individual wishes to request reconsideration of this decision, s/he may take the following steps:

- First, ask the decision maker to reconsider the decision. [Additional information may be presented to support this request.]
- If the decision maker does not reverse the denial, the individual may ask the division or office chief in the decision maker's supervisory chain to do so.

7. If an individual wishes to file an equal employment opportunity (EEO) complaint, or pursue Merit Systems Protection Board (MSPB) and union grievance procedures, s/he must take the following steps:

- For an EEO complaint pursuant to 29 C.F.R. 1614, contact an EEO counselor in the EEO Office within *45 days from the date of this notice of denial of reasonable accommodation*; or
- Initiate an appeal to the MSPB within *30 days of an appealable adverse action* as defined in 5 C.F.R. 1201.3; or
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.

Name of Deciding Official

Signature of Deciding Official/Date

Date reasonable accommodation denied _____

ATCH 2

Reasonable Accommodation Information Reporting Form
(to be completed by the manager or other official who processed the accommodation request)

Name of Individual requesting reasonable accommodation: _____

Office of Requesting Individual: _____

1. Reasonable accommodation: (check one)

Approved

Denied (If denied, attach copy of the written denial letter/memo that was sent to individual.)

2. Date reasonable accommodation requested: _____

Who received request? _____

3. Date reasonable accommodation request referred to decision maker (i.e., supervisor, division/office chief, Human Resources Specialist): _____

Name and title of decision maker: _____

4. Date reasonable accommodation approved or denied: _____

5. Date reasonable accommodation provided: _____

6. If time frames outlined in the Reasonable Accommodation Procedures were not met, please explain why.

7. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office): _____

8. Reasonable accommodation needed for: (check one)

Application Process

Performing Job Functions or Accessing the Work Environment

Accessing a Benefit or Privilege of Employment (e.g., attending a training program or social event)

9. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, removal of architectural barrier):

10. Type(s) of reasonable accommodation provided (If different from what was requested):

11. Was medical information required to process this request? If yes, explain why.

12. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodation (e.g., Job Accommodation Network, disability organization, Individuals with Disabilities Program Manager)

13. Comments:

Submitted by: _____ Phone: _____

Attach copies of all documents obtained or developed in processing this request.

ATCH 3