

Division:	Equal Opportunity	Effective Date:
		March 11, 2009
		Amended:
		July 31, 2018 July 20, 2017 May 10, 2011
Subject:	Procedures for Providing Reasonable Accommodation for Individuals with Disabilities	
References:	Title I of the Americans with Disabilities Act of 1990, (ADA); The Americans with Disabilities Act Amendments Act of 2008, (ADAAA)	
Purpose:	To provide procedures for receipt, consideration, and processing of requests for reasonable accommodation from employees and job applicants	

POLICY

The "Anti-Discrimination and Harassment Policy" ("Policy") effective October 1, 2005, and amended April 13, 2007, October 17, 2007, February 9, 2010, February 8, 2012, and March 1, 2015 is incorporated herein by reference.

BACKGROUND

Discrimination and harassment based on disability violate the County of Hawai'i's Anti-Discrimination and Harassment Policy effective October 1, 2005, as amended, and federal and state civil rights laws.

APPLICABILITY

The Reasonable Accommodation Procedures apply to all employees and job applicants.

DEFINITIONS

"Accommodation file" means a confidential and secure file which contains documentation of the accommodation process. This includes all documentation relating to the request for reasonable accommodation.

"Accommodation Resource Manager" (ARM) means the departmental designate who provides assistance, information, and support to decision makers and employees regarding reasonable accommodation, including processing requests for additional medical information when needed.¹

"ADA Coordinator" means the employee responsible for coordinating the County's efforts to comply with and carry out its responsibilities under the Americans with Disabilities Act. The ADA Coordinator's duties are assigned to the Equal Opportunity Officer/ADA Coordinator in the Department of Human Resources.

"Assistive technology" means any item, piece of equipment, or system whether acquired commercially, modified, or customized that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Forms of assistive technology include, but are not limited to, screen readers which allow persons who cannot see a visual display to either hear screen content or read the content in Braille, specialized one-handed keyboards which allow an individual to operate a computer with only one hand, and specialized audio amplifiers that allow persons with limited hearing to receive an enhanced audio signal (definition from The Assistive Technology Act of 1998).

"Auxiliary aids and services" means, but is not limited to:

- qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments; and
- acquisition or modification of equipment or devices and other similar services and actions.

"Decision maker" means the supervisor, manager, or other employee responsible for deciding whether a request for accommodation is reasonable and also for implementing it. This includes requests for accommodation for any aspect of the job application process, training, participation in a special event, performance of job duties, modifications to the workplace, and/or access to a benefit of employment.

"Direct threat" means 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.

"Disability" means, with respect to an individual:²

- a physical or mental impairment that substantially limits one or more of the major life activities of such individual (an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active);
- a record of such impairment; or
- being regarded as having such an impairment.³

Note: Some impairments virtually always constitute a disability including, but not limited to, epilepsy, diabetes, cancer, HIV infection, bipolar disorder, deafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, autism, obsessive compulsive disorder, cerebral palsy, multiple sclerosis, muscular dystrophy, etc.

"Essential functions" mean the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.⁴

"Expedited request" means a request for accommodation that must be processed quickly so the individual with a disability does not lose an opportunity to participate because the accommodation is delayed, for example, arranging for a sign language interpreter to sign during an employment interview for a job applicant who is deaf or arranging a meeting in an accessible room so an employee with a mobility impairment can attend.

"Extenuating circumstances" means factors that delay the processing of an accommodation request that could not have reasonably been anticipated or avoided in advance of the request for accommodation.

"Interactive process" means a good faith, flexible communication process between an individual requesting a reasonable accommodation and the decision maker to determine the appropriate accommodation. Although this process is described in terms of accommodations that enable the individual with a disability to perform the essential functions of the position held or desired, it is equally applicable to accommodations involving the job application process, training and special events, and to accommodations that enable the individual with a disability to enjoy equal benefits and privileges of employment. The interactive process requires a decision maker to use the following problem-solving approach:

- analyze the particular job involved and determine its purpose and essential functions;
- consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's impairment(s)

and how those limitations could be overcome with a reasonable accommodation;

- in consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness of each in enabling the individual to perform the essential functions of the position; and
- consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for the employee and the employer.⁵

"Major life activities" means:

- caring for oneself;
- performing manual tasks;
- seeing;
- hearing;
- eating;
- lifting;
- bending;
- twisting;
- speaking;
- breathing;
- learning;
- eliminating bodily waste;
- reading;
- concentrating;
- thinking;
- communicating;
- sleeping;

- interacting with others;
- working; and
- operation of major bodily functions such as functions of the immune system, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, reproductive functions, and normal cell growth.

This list is not exhaustive.

"Mobility devices" mean devices used by individuals with mobility impairments for the purposes of locomotion. Mobility devices may be powered by the individual or some other source.

"Qualified interpreter" means an interpreter who is able, both receptively and expressively, to interpret effectively, accurately, and impartially using any necessary specialized vocabulary.

"Priority placement" means referral and placement to a suitable job for which a County of Hawai'i employee meets the minimum qualification requirements after it is medically determined that the employee is not able to perform the essential functions of his/her regular position with or without a reasonable accommodation.

"Reasonable accommodation" means:

- modifications or adjustments to a job application process that enable an individual with a disability to be considered for the position such individual desires;
- modifications or adjustments to the work environment or to the manner or circumstances under which the position held or desired is customarily performed that enable an individual with a disability to perform the essential functions of the position; and
- modifications or adjustments that enable an individual with a disability who is employed to enjoy equal benefits and privileges of employment which are enjoyed by other similarly situated employees without disabilities.

A "Reasonable Accommodation" may be directly or indirectly related to the individual's disability. For example, a request for a sign language interpreter from an individual who is deaf directly relates to the individual's substantial limitation in hearing. A request for a change in lunch schedule from an individual who must take medication at a certain time to manage a medical condition like diabetes is indirectly related to the individual's impairment of the endocrine system.

"Reassignment" means the assignment of an employee with a disability who is no longer able to perform the essential functions of his/her regular position to another vacant position assigned to the same pay grade as the employee's regular position, the duties and responsibilities of which the employee is able to perform with or without a reasonable accommodation.

"Request for reasonable accommodation" means a statement by an individual or the individual's representative requesting a reasonable accommodation.⁶

"Substantially limits"⁷ means that the individual is:

- unable to perform a major life activity that the average person in the general population can perform; or
- restricted as to the condition, manner, or duration under which she or he 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.

"Undue hardship" means, with respect to the provision of an accommodation, a significant difficulty or expense incurred by the County should it implement the request for accommodation. Consider the following factors when analyzing "undue hardship":

- the nature and net cost of the accommodation;
- the overall financial resources of the facility or facilities involved; the number of employees at the facility; the effect on expenses and resources; and the number, type, and location of the facilities;
- the type of operations of the employer, including the composition, structure, and functions of the workforce, the geographic separateness, and administrative or fiscal relationship of the facility or facilities in question to the employer; and
- the impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

RESPONSIBILITIES

I. Department/Agencies

- A. Appoint an Accommodation Resource Manager (ARM).⁸
- B. Appoint decision makers who will be responsible for receiving and processing requests for reasonable accommodation during the job application process for all recruitments (open competitive and internal), training sessions, and special events hosted by the department/agency. Documentation shall be noted on the appropriate form: DHR EO 011, Documentation of Reasonable Accommodation for Job Application Process,⁹ or DHR EO 012, Documentation of Reasonable Accommodation for Training, Special Event, etc. Documentation of the accommodation and any supporting documentation required for the accommodation shall be secured in a confidential file and stored with the recruitment and/or event file.
- C. Include a statement in all internal recruitment notices which informs employees whom to call to request a reasonable accommodation for the job application process. (Please see Endnote No. 9.)
- D. Include a statement in all letters that invite job applicants to interview and/or participate in performance tests which informs job applicants of the name of the decision maker and the contact information for requesting a reasonable accommodation. (Please see Endnote No. 9.)
- E. Include a statement in all announcements of training classes and special events which informs employees and others who may attend the event whom to call to request a reasonable accommodation, use of assistive technology, and/or an auxiliary aid. (Please see Endnote No. 9.)
- F. Ensure personnel who will act as ARMs and decision makers become familiar with and follow these procedures.
- G. Ensure ARMs and decision makers attend training on Title I of the Americans with Disabilities Act, Reasonable Accommodation, and the Interactive Process offered by the Department of Human Resources.
- H. Engage in the interactive process, as necessary, with job applicants, employees, and participants in training classes or special events who request an accommodation based upon a medical condition.
- I. Conduct departmental job searches and identify suitable positions within their departments/agencies, engaging in the

interactive process, as necessary, with employees who, because of a disability, are unable to perform the essential functions of their regular positions.

- J. Refer employees with disabilities who cannot be reassigned to vacant positions within their own departments/agencies because they are unable to perform the essential functions of any position with or without a reasonable accommodation to the Department of Human Resources for priority placement.
- K. Document the provision or the denial of reasonable accommodation, as appropriate, using Form DHR EO 016, Documentation of Reasonable Accommodation for Employee; Form DHR EO 016A, Reasonable Accommodation Work Sheet; and Form DHR EO 016B, Reasonable Accommodation Checklist.
- L. Ensure confidentiality by storing documentation of accommodations and medical information in the accommodation file. If the individual for whom the request is being made is an employee, the accommodation file shall be secured and filed alongside the employee's medical file. If the individual for whom the request is being made is not an employee, the accommodation file shall be secured and stored with the recruitment file or with the event file, whichever the case may be.
- M. Ensure that the ARMs and/or decision makers designate other decision makers who, in their absence, will process requests for reasonable accommodations.
- N. Budget for accommodations which are expected or anticipated (e.g., a department/agency who has an employee that is deaf should annually budget for assistive technology and auxiliary aids and services, such as qualified interpreters).
- O. Deny accommodations only when any one or a combination of the following factors is present:
 - There is insufficient medical documentation to determine that the individual has a disability as defined in these procedures or that the individual needs a reasonable accommodation;
 - The requested accommodation would result in an undue hardship as defined in these procedures;

- The requested accommodation would require removal of an essential job function;
- The requested accommodation would lower a performance or production standard; and
- The requested accommodation would result in a direct threat to the individual who requested the accommodation or to others which cannot be eliminated or reduced by a reasonable accommodation.

II. Accommodation Resource Managers (ARMs)

- A. Be a resource within the department/agency on accommodation issues by providing information to employees upon request.
- B. Provide support to decision makers who process requests for accommodation.
- C. Assist decision makers with requests for accommodation that must be expedited.
- D. Process requests for medical information and/or functional limitations, which decision makers deem necessary to process accommodation requests.¹⁰ For all requests for medical information, ask the individual to first sign Form DHR EO 014, Authorization for Release of Medical Information, which shall accompany a Confidential Request for Medical information letter, Form DHR EO14A (employee) or Form DHR EO14B (job applicant). (Tips for Requesting Medical Information are provided in the enclosures to these procedures.)
- E. File documentation of accommodation and medical information in the accommodation file separate from the employee's personnel file. During the job application process, secure documentation of the accommodation and any supporting documentation required for the accommodation in a confidential file stored with the recruitment file.
- F. Assist the decision maker in providing a temporary accommodation when the accommodation can be provided easily without a significant risk of substantial harm to the employee or others, notwithstanding that the 15-day period for providing an accommodation may be suspended pending a request for medical information.

- G. Conduct department-wide job searches and engage in the interactive process, as necessary, with employees who are unable to perform the essential functions of their regular positions.
 - H. Refer those employees who, after a department-wide job search, are unable to perform the essential functions of any suitable vacant position with or without a reasonable accommodation to the Department of Human Resources for priority placement.
- III. Supervisors, Managers, and Other Employees Assigned to be Decision Makers
- A. Refrain from denying any employee's request for a change or adjustment at work for a reason related to a medical condition until they have determined that there is no accommodation obligation.
 - B. Process requests for accommodation immediately.
 - C. Engage in the interactive process and communicate regularly with the employee requesting accommodation until a reasonable accommodation is found or all options are exhausted.
 - D. Document all requests for accommodations, steps in the interactive process, etc. Maintain documentation pertaining to accommodation in a separate, confidential file, the *accommodation file*.
 - E. Confirm requests for accommodation whenever possible with the employee or job applicant after receiving an accommodation request from a third party, and document such confirmation.
 - F. Contact the ARM for assistance in requesting additional medical information or when other information is needed to process requests for accommodation.
 - G. Document the provision of a temporary accommodation as such, using Form DHR EO 015, Documentation of Temporary Accommodation. Ask the employee to sign Form DHR EO 015 and place the signed form in the accommodation file. Give a copy to the employee.

- H. Refer to and complete Form DHR EO 016B, "Reasonable Accommodation Checklist" in the enclosures of these procedures when considering accommodation requests.
- I. Immediately inform the ARM when, after engaging in the interactive process, it is not possible to accommodate an employee in his/her regular position; and refer the employee to the ARM for a department-wide job search.
- J. Refrain from discussing employees' medical conditions, disabilities, and accommodation requests with other employees; share information with other managers/supervisors in the department/agency on a need-to-know basis only.
- K. After implementing an accommodation, check with the employee from time to time to gauge the effectiveness of the accommodation; identify and resolve any problems, etc. Note and document these checks and place in the accommodation file.

IV. Employees

- A. Review these procedures. Sign Form DHR EO 009, Acknowledgment of Receipt of Procedures for Providing Reasonable Accommodation for Individuals with Disabilities, and return to their departmental designate.
- B. Follow instructions provided on notices of internal recruitments or in letters to attend interviews or participate in performance or other tests to request accommodations. Complete and submit Form DHR EO 010, Reasonable Accommodation Request for Job Application Process.
- C. Follow instructions provided on announcements of training and other special events to request accommodations.
- D. Cooperate and participate in the interactive process as necessary to assist decision makers who are considering their requests for reasonable accommodation.
- E. Immediately inform a decision maker when they do not wish to accept a specific offer of reasonable accommodation and explain why they believe the proposed accommodation would not be effective or desirable.
- F. Cooperate in providing appropriate documentation to the ARM when requested.

- G. Immediately inform their supervisors when they are experiencing difficulty with a reasonable accommodation and/or a reasonable accommodation is not working.
 - H. Immediately inform their supervisors, if appropriate, or the ARM if they experience harassment in the workplace because they requested or received an accommodation.
 - I. Request an accommodation, if needed. Complete and submit to decision maker (supervisor) Form DHR EO 013, Employee Request for Reasonable Accommodation.
- V. Department of Human Resources - Equal Opportunity Officer
- A. Ensure all departments and agencies receive copies of these procedures and have appointed ARMs.
 - B. Provide training on the Americans with Disabilities Act, reasonable accommodation, the interactive process, and these procedures.
 - C. Provide information and guidance to departments and agencies, ARMs, decision makers, employees, and other persons regarding these procedures, the Americans with Disabilities Act, and the Americans with Disabilities Amendments Act (ADAAA).
 - D. Review complaints alleging a violation of these procedures and follow procedures outlined in the Anti-Discrimination and Harassment Procedures.

PROCEDURES

1. Departments/agencies appoint an ARM.
2. Departments/agencies inform the Director of Human Resources of the ARM's appointment.
3. Departments/agencies appoint decision makers to process accommodation requests for job application procedures during Open Competitive Recruitments and Internal Recruitments, as needed.
4. Departments/agencies appoint decision makers to process accommodation requests for training sessions and special events, as needed.

NOTIFICATION

1. Departments/agencies distribute copies of these procedures (Pages 1-20) and the enclosures for "Departmental and Employee Use" (Forms DHR EO 009, DHR EO 010, and DHR EO 013); also notify employees of the departmental ARM.
2. Employees sign Form DHR EO 009, Acknowledgment of Receipt of Procedures for Providing Reasonable Accommodation for Individuals with Disabilities, and return it to their departmental designate.
3. Departments/agencies file the signed Form DHR EO 009 in the employee's personnel file.

REQUESTING ACCOMMODATIONS

1. JOB APPLICANTS – OPEN COMPETITIVE RECRUITMENTS
 - a) Follow instructions to request use of assistive technology, an auxiliary aid, or other reasonable accommodation, if needed, as provided on the Recruitment Announcement.
 - b) Complete and submit Form DHR EO 010, Reasonable Accommodation Request for Job Application Process, or provide sufficient information to enable the decision maker identified by the department/agency to complete Form DHR EO 010.
 - c) Provide medical documentation relative to the request for an accommodation, if requested to do so.
2. JOB APPLICANTS – INTERNAL RECRUITMENTS
 - a) Follow instructions to request use of assistive technology, an auxiliary aid, or other reasonable accommodation as provided on the Internal Recruitment Announcement.
 - b) Complete Form DHR EO 010, Reasonable Accommodation Request for Job Application Process, and submit it to the decision maker whose name is provided on the Internal Recruitment Announcement or provide sufficient information to enable the decision maker to complete Form DHR EO 010.
 - c) Provide medical documentation to support the request for an accommodation if requested to do so.

3. EMPLOYEES

- a) Follow instructions provided in announcements of training sessions or other special events to request use of assistive technology, an auxiliary aid, or other reasonable accommodation, if needed.
- b) To request an accommodation to perform job duties, access or modify the workplace, etc., inform the decision maker (supervisor) orally or by e-mail of the need for accommodation or complete Form DHR EO 013, Employee Request for Reasonable Accommodation, and submit to the decision maker. Employees who are unable to complete Form DHR EO 013 in writing shall provide sufficient information to the decision maker who will complete the form.

RECEIVING AND PROCESSING ACCOMMODATION REQUESTS – DEPARTMENTS/AGENCIES

1. Upon receipt of an accommodation request from a Job Applicant in an internal or open competitive recruitment, the decision makers identified to receive such requests shall complete Form DHR EO 011, Documentation of Reasonable Accommodation for the Job Application Process; engage in the interactive process, as necessary, then consider and process the requests as soon as possible, if reasonable; and inform job applicants of the status of their requests. Documentation of the accommodation and any supporting documentation required for the accommodation shall be secured in the accommodation file and stored with the recruitment file.
2. Upon receipt of requests for use of assistive technology, auxiliary aids, or other reasonable accommodations, if needed for training sessions or other special events, the decision makers shall complete Form DHR EO 012, Documentation of Reasonable Accommodation for Training, Special Event, etc.; consider and process the requests as soon as possible, if reasonable; and inform requestors of the status of their requests. Documentation of the accommodation and any supporting documentation required for the accommodation shall be secured and stored with the event file.
3. Upon receipt of an accommodation request from an employee, the decision maker shall engage in the interactive process and keep the employee who requested the

10. The ARM will notify the Department/Agency Head of the need for assistive technology. In the event the department/agency does not have monies available to fund the accommodation, the department/agency must seek out other sources of funding to pay for the accommodation.
11. When extenuating circumstances exist that will cause a delay in deciding on a reasonable accommodation request, the decision maker must notify the individual of the reason for the delay and the approximate date on which provision of the reasonable accommodation is expected.
12. If there is a delay in providing an approved accommodation, the decision maker shall notify the ARM. In such a circumstance, the decision maker shall determine if temporary measures may be implemented to assist the individual who requested the accommodation and consult with the ARM. For example, if the purchase of assistive technology to assist an individual with a visual impairment is delayed, the decision maker may assign employees to read documents and other materials to the individual with the visual impairment until the assistive technology is received. The decision maker shall note the provision of temporary accommodation on Form DHR EO 015, Documentation of Temporary Accommodation.
13. Form DHR EO 016A, Reasonable Accommodation Work Sheet is completed by the decision maker to document the process resulting in approval or denial of a request for reasonable accommodation. The completed original form shall be placed in the accommodation file with a copy to the Equal Opportunity Officer/ADA Coordinator.
14. The decision maker shall communicate the outcome of the reasonable accommodation request to the requestor (individual and/or individual's representative) by filling out Form DHR EO 016, Documentation of Reasonable Accommodation for Employee. The completed original form is provided to the requestor, a completed copy of the form shall be placed in the accommodation file and a copy is provided to the employee if she/he was not the requestor. The explanation for any denial shall be written in plain language, clearly stating the specific reasons for the denial, i.e., why the decision maker believes that the accommodation would not enable the individual to perform the essential duties of the position or why the accommodation would result in an undue hardship or pose a direct threat to the individual who requested the accommodation or others.

accommodation informed of the status of the request. If the need for the accommodation is obvious and the accommodation is readily achievable, it is not necessary to follow this step-by-step procedure. The accommodation should simply be provided.¹¹

4. Except for extenuating circumstances, if an agreement is reached on reasonable accommodation, the accommodation shall be provided within 15 business days from the date the request was received or sooner, if possible.
5. The decision maker, who needs additional information to process an accommodation request, may ask the ARM to conduct research, contact consultants at the Job Accommodation Network, or to assist with expediting an accommodation request.
6. When additional medical information is needed because the need for accommodation is not obvious or has not already been established, the decision maker shall inform the ARM. The ARM shall ask the individual to complete and return Form DHR EO 014, Authorization for Release of Medical Information.
7. Upon receipt of the completed Form DHR EO 014, Authorization for Release of Medical Information, the ARM shall request medical information from the individual's medical professional by submitting a Confidential Request for Medical Information Letter, Form DHR EO 14A (employee) or DHR EO 14B (job applicant) to the individual's medical professional. The ARM shall refer to the Guidelines Re: Writing a Request for Medical Information Letter and Tips for Requesting Medical Information provided in the enclosures to these procedures.
8. When additional medical information is needed to process an accommodation request, the 15-day period is suspended. If the ARM determines that medical information is not needed because the individual's disability is obvious or has already been established by a prior request for accommodation, the 15-day period will resume as soon as the ARM notifies the decision maker of this. When the ARM receives medical information that sufficiently supports the request for accommodation, the 15-day period shall resume.
9. When assistive technology, the cost of which cannot be covered in the department/agency's budget, is needed to facilitate a reasonable accommodation, the decision maker will notify the ARM.

APPEAL

1. If the request for accommodation is denied, an individual may file a complaint under the Anti-Discrimination and Harassment Procedure within the involved department. Individuals may also file a complaint with the Equal Opportunity Officer under the Anti-Discrimination and Harassment Procedure.
2. Individuals who are dissatisfied with the County's decision regarding a reasonable accommodation may also file complaints with the Hawai'i Civil Rights Commission and the U.S. Equal Employment Opportunity Commission. Individuals are responsible to contact those agencies for information regarding their criteria for filing complaints.

ENCLOSURES – FOR DEPARTMENTAL AND EMPLOYEE USE

1. DHR EO 009, Acknowledgment of Receipt of Procedures for Providing Reasonable Accommodations for Individuals with Disabilities
2. DHR EO 010, Reasonable Accommodation Request Form for Job Application Process
3. DHR EO 013, Employee Request for Reasonable Accommodation

ENCLOSURES – FOR DEPARTMENTAL USE

1. DHR EO 011, Documentation of Reasonable Accommodation for Job Application Process
2. Sample Statements Sheet
3. DHR EO 012, Documentation of Reasonable Accommodation for Training, Special Event, etc.
4. DHR EO 014, Authorization for Release of Medical Information
5. DHR EO 014A, Confidential Request for Medical Information – Employee
6. DHR EO 014B, Confidential Request for Medical Information – Job Applicant
7. Tips for Requesting Medical Information
8. DHR EO 015, Documentation of Temporary Accommodation
9. DHR EO 016, Documentation of Reasonable Accommodation for Employee
10. DHR EO 016A, Reasonable Accommodation Work Sheet
11. DHR EO 016B, Reasonable Accommodation Checklist

Endnotes

¹ Departments/Agencies may permit the ARM to also function as the decision maker when appropriate.

² When determining whether an individual's impairment rises to the level of disability under the ADA, the determination should be made without considering the benefits of any steps taken to mitigate or lessen the effects of the impairment, except for ordinary eyeglasses and contact lenses.

³ Individuals meet the requirements for being "regarded as" having a disability if they are discriminated against because of an actual or perceived impairment, whether or not the impairment limits or is perceived to limit a major life activity. An individual cannot be regarded as having an impairment if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of three months or less. Individuals only "regarded as" disabled are not entitled to reasonable accommodations.

⁴ A job function may be considered essential for any number of reasons, including, but not limited to, the following:

- the function may be essential because the reason the position exists is to perform the function, e.g., a bus driver's position exists to operate the bus;
- the function may be essential because of the limited number of employees available among whom the performance of the job function can be distributed;
- the function may be so highly specialized that the incumbent in the position is hired for his or her expertise or ability to perform the particular function; and
- sometimes, an essential function is performed infrequently but the consequence of not performing it would be severe. For example, firefighters do not routinely carry people out of burning buildings, but the consequence of a firefighter not being able to carry a person out of a burning building would be severe in that it could result in that person's death.

⁵ In many instances, the appropriate reasonable accommodation may be so obvious to the employer and the qualified individual with a disability that it may not be necessary to proceed by following this step-by-step procedure. For example, if an employee who uses a wheelchair requests her desk to be placed on blocks to elevate the top of the desk above the arms of the wheelchair and the decision maker complies, an appropriate accommodation has been requested, identified, and provided without the employee or employer engaging in the step-by-step interactive process.

⁶ The request does not have to be in writing nor does it have to use legal language. An employee who tells a supervisor that she/he is having difficulty performing a job function because of a medical condition has made a request for reasonable accommodation, and the supervisor must take the request for

accommodation seriously by considering it and engaging in the interactive process.

⁷ The ADA Amendments Act states that the term "substantially" should not be interpreted strictly. In addition, the question of whether a major life activity is substantially limited "should not demand extensive analysis."

⁸ The ARM's responsibilities relate to employment. We, therefore, suggest appointing the departmental human resources representative.

⁹ Forms and other documents mentioned in these procedures are provided as Enclosures for Employee Use and Enclosures for Departmental Use, as applicable, at the end of this document.

¹⁰ Requests for medical information are permissible **only** when a disability or the need for a reasonable accommodation is **not** obvious. Requests for medical information must be limited in scope to documentation that substantiates the disability or functional limitations, their impact on the individual's ability to work, and the need for accommodation. Whenever applicable, all requests for medical information shall include a copy of the Position Description which highlights the essential duties which the employee is expected to perform.

¹¹ If during a disciplinary procedure an employee discloses for the first time that a disability is the reason for the misconduct or poor performance under scrutiny and requests an accommodation, the supervisor may proceed to impose the appropriate discipline for the misconduct or poor performance. However, the supervisor has also now received notice that the employee may have a disability and may be entitled to reasonable accommodation. The supervisor must engage in the interactive process to determine if the employee has a disability and is entitled to a reasonable accommodation with respect to any future performance or conduct issues. For detailed guidance on this subject, please go to the website of the U.S. Equal Employment Opportunity Commission at www.eeoc.gov and see the publication, "The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities."