

**Chapter: At-Will Employment and Equal Employment Opportunity**  
**Title: Americans with Disabilities Act (ADA)**

**Effective Date: 12/1/11**  
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**New**

ACA Standard(s): 4-JCF-6D-07

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(a) **Policy.**

- (1) Pursuant to the Americans with Disabilities Act (ADA), no qualified individual with a disability shall be subjected to unlawful discrimination in selection, promotion, discharge, compensation, training or other terms or conditions of employment on the basis of having a disability or record of a past disability. The law and this policy also prohibit treating an individual as disabled through stereotyping or assumptions about physical or mental conditions, real or perceived.
- (2) The agency will make reasonable accommodation to known physical or mental limitations of a qualified employee having a disability, which would enable the individual to perform the essential functions of their desired or current position, as long as the accommodation can be provided without undue hardship to the Texas Youth Commission (TYC) and the physical or mental condition does not pose a direct threat to health or safety.
- (3) Persons who wish to be accommodated under this policy must inform the local human resource administrator (HRA) of their disability and the functional limitations for which the accommodation is requested. Requests for an accommodation are voluntary.
- (4) Each request for accommodation will be addressed on a case-by-case basis. Requests for accommodation will be addressed by the chief local administrator (CLA), who may work in consultation with a workplace accommodation committee (the committee).

(b) **Definitions.**

For definitions of certain terms used in this policy, see the PRS Glossary.

(c) **Procedures.**

(1) **Notification of an Accommodation Request-Employee Obligations.**

- (A) An employee seeking accommodation of a disability must notify his/her supervisor or the local HRA.
- (B) The employee will be provided the Request for Accommodation of a Disability form, HR-047. The employee must return the completed form to the HRA or designee.
- (C) The employee is expected to cooperate fully in the process of determining appropriate accommodations, which may include providing medical information.

(2) **Response to Notification of a Request.**

An employee's accommodation request to the supervisor or HRA may be verbal, in writing, or through any other means of communication. Although employees should make accommodation requests as clearly as possible, supervisors must be mindful that an accommodation request need not mention the ADA or use the phrase "reasonable accommodation". A relative, friend, health care provider, or other representative may request a reasonable adjustment or other provision on behalf of an employee. Upon receiving notice of a request for accommodation of a disability, the supervisor must contact the local HRA. If the accommodation request is from an employee in training at the Pre-Service Training Academy, the request must be referred to the local HRA of the hiring facility.

- (A) Upon receipt of notice of a request for accommodation, the HRA ensures that form HR-047 is completed.

- (B) The local HRA will notify the CLA of the accommodation request, and the HRA will work with the CLA to gather information necessary for assessing the request.
  - (C) If the CLA, in consultation with the local HRA, determines that the employee's requested accommodation is reasonable, feasible, effective, and does not impose an undue hardship or present a direct threat to safety, the CLA may take the necessary steps to implement the request. The accommodation to be provided must be documented on the Disposition of Employee Request for Accommodation of a Disability form, HR-046.
  - (D) The discretionary authority of the CLA to approve and implement accommodations without consultation with the committee may be exercised only when the accommodation clearly imposes no more than minimal financial or operational burdens, and does not extend to reassignment, significant job restructuring, the grant of a part-time work schedule, or any accommodation that would result in a waiver of any essential job duty.
- (3) **The Committee Process.**
- (A) If the accommodation requested by the employee is not clearly reasonable and effective, or if guidance is desired on any aspect of the requested accommodation, the CLA will promptly forward a copy of the request for accommodation, and all other relevant information, to the committee. The CLA, in consultation with the committee and the HRA, will determine whether an accommodation will be provided.
  - (B) In the course of addressing an accommodation request (or the need for accommodation of a known disability), the local HRA may request appropriate medical information to determine the scope of the employee's physical or mental limitations, and/or to determine the need for or effectiveness of potential accommodations.
    - (i) The employee submits to the medical provider a Physician's Certification Statement form, HR-045, and attached job description, and returns the completed form to the HRA.
    - (ii) The medical provider describes the nature, severity, and duration of the employee's limitation(s), identifies any limitations on the performance of job duties, and may suggest possible adjustments or provisions.
  - (C) The employee or his/her representative is responsible for providing appropriate medical information. Unresponsiveness or failure on the part of the employee to provide appropriate medical information for the process will result in a decision made based only on the information possessed by the CLA at the time of the decision.
  - (D) Medical information should not be requested if both a disability and the need for accommodation are open and obvious, or if the employee has already provided medical information establishing both disability and need for accommodation. In addition, requests for medical information may not be made regarding physical or mental conditions unrelated to the condition(s) affecting job duties.
  - (E) The CLA and the committee will consider all relevant facts and circumstances on a case-by-case basis, including but not limited to whether the employee's condition is a disability, the essential duties of the job, and the reasonableness and effectiveness of potential accommodations.
  - (F) During the process of addressing a request for accommodation of a disability, the CLA or his/her designee will conduct one or more informal accommodation discussions/communications with the employee or his/her representative, as described below in (4) below.
  - (G) If the CLA, in consultation with the committee, determines that the employee's requested accommodation is not reasonable and effective, but other accommodations would be reasonable and effective, the alternative reasonable accommodation(s) can be offered and

implemented. Reasonable accommodations may include reassignment or excusing the performance of non-essential job duties, but the performance of essential job duties (with or without accommodation) will not be waived.

- (H) If the CLA decides to grant the accommodation(s) requested, or if agreement is reached to provide other accommodations, the agreement is documented using form HR-046.
- (I) If the CLA, in consultation with the committee, determines that an employee's request for accommodation(s) will be denied, and an agreement cannot be reached on alternative accommodations, or a determination is made that no accommodations will be provided, the CLA informs the employee of the determination in writing using form HR-046. The written notification includes:
  - (i) why the accommodation requested by the employee is being denied; and
  - (ii) other accommodation(s), if any, offered by the CLA; and
  - (iii) the employee's right to appeal the determination through the employee grievance system. See PRS.35.03.

(4) **Communications to Address Accommodation Requests.**

In the process of determining whether accommodations will be provided, the CLA, or his/her designee, will typically engage in informal communications with the employee or the employee's representative. Such informal communication may be in person, by telephone, or through mail or e-mail, and may take place before or after referral of the request to the committee, or both. All communication must be documented and should note the information provided or requested.

- (A) This communication process should be a good faith exploration by both employee and employer of the accommodation requested, the identification of other potential accommodations, and assessment of the effectiveness of potential accommodations. Consideration will be given to the preferences of the employee, but the CLA (in consultation with the committee) will make the final decision as to the accommodation(s), if any, to be provided.
- (B) A goal of the accommodation process is to enable an employee to perform all job duties, and therefore reasonable accommodations may be provided in order to enable an employee to perform both marginal and essential job duties. In no event will accommodations be provided which waive the performance of essential job duties (with or without accommodation).
- (C) The employee/representative is responsible for participating in the accommodation interactive process. Failure on the part of the employee to participate or provide necessary information for the process will result in a decision made based upon information possessed by the CLA at the time of the decision.

(5) **Processing Timelines.**

The processing of a request for accommodation should be completed as promptly as possible, with a goal, absent extenuating circumstances, to complete the process within 30 working days or less of the date the request is received.

(6) **Accommodations.**

Reasonable accommodation can be any change which would enable an employee to perform the essential functions of his/her position. The accommodations requested by the employee are to be given consideration, but the requested accommodation is not given controlling weight, and other accommodations may be extended if it is determined that other accommodations would be reasonable and effective. The accommodations that may be provided may include, but are not limited to, the following alternatives:

**(A) Job restructuring or modification.**

- (i) involves restructuring a job by reallocating or redistributing marginal job functions, or altering when or how an essential function is performed; and
- (ii) does not require a supervisor to relieve or waive an essential function of the employee's regular position, hire new employees or reassign existing employees to perform the essential functions of the regular position, or create a new position.

**(B) Accessibility.**

Accommodation may include steps to make the facility or work area readily accessible to and usable by an individual with a disability.

**(C) Part-time or Modified Work Schedules.**

The following factors should be considered when a request for modified work schedule has been made:

- (i) feasibility of the use of a temporary worker on an interim basis;
- (ii) duration of the adjusted work hours;
- (iii) duration of the vacancy of the applicant's or employee's regular position;
- (iv) evaluation of the position's requirements and of the applicant's/employee's skills; and
- (v) whether granting the modified work schedule will cause an undue burden in terms of cost and effect on other employees.

**(D) Use of Non-FMLA Medical Leave (NFM leave) or FMLA leave.**

In some situations, granting NFM leave or FMLA leave may be an appropriate accommodation in order for the employee to recover or obtain treatments. Refer to PRS.28.09 and PRS.28.10.

**(E) Obtain or Modify Equipment, Devices, or Materials.**

Acquisition, modification, or adjustment of equipment; use of written materials or interpreters and other similar accommodations may be made for employees with disabilities.

**(F) Reassignment to a vacant position.**

- (i) Reassignment to a vacant position may be granted only in consultation with the committee. A current employee may be reassigned to a vacant position of equal or lower pay and status, or to such a position that will become vacant within a reasonable period of time, only if:
  - (I) the employee cannot perform the essential functions of his/ her existing job, with or without a reasonable accommodation; and
  - (II) the employee is able to perform the essential functions of the vacant position, with or without accommodation; and the employee is otherwise qualified for the position.
- (ii) In the event reassignment is provided as an accommodation, the rate of pay following reassignment will be that of the vacant position to which the employee is reassigned.
- (iii) The ADA does not require the agency to:
  - (I) create a new position;
  - (II) offer a promotion as an accommodation; or
  - (III) reassign an employee to a position for which he/she is not qualified; or

(IV) move an employee out of a position in order to create an opening for an individual with a disability.

(iv) Reassignment to a different job as a form of accommodation is not available to applicants, or new employees in training who are unable to perform the essential job duties.

(d) **Confidentiality.**

- (1) Medical information, including requests for accommodation, must be kept confidential and disclosed to others, including the employee's supervisors, on a "need-to-know" basis only.
  - (2) Information from all medical examinations and inquiries, and all other information and documents that would identify a person as having a disability, must be kept apart from the primary personnel files as a separate, confidential medical record available only under the limited conditions specified in the ADA.
  - (3) If other employees ask questions about why the employee is getting "special treatment", a supervisor may not respond in a manner that would identify the person as having a disability or disclose confidential medical information. The supervisor may respond that policy is to assist employees who encounter difficulties, and explain that the action is for legitimate business reasons which cannot be disclosed because of a concern for privacy.
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