



Management Directive

Commonwealth of Pennsylvania

Governor's Office

Management Directive 205.25 Amended – Employment-Related Disability Accommodations

Date: July 9, 2024

A handwritten signature in black ink, appearing to be "Neil R. Weaver".

By Direction of: Neil R. Weaver, Secretary of Administration

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This directive establishes policy, responsibilities, and procedures for employment-related Disability Accommodations pursuant to the *Americans with Disabilities Act of 1990*, *Section 504 of the Rehabilitation Act of 1973*, the *Pennsylvania Human Relations Act*, and relevant Commonwealth policies. This amendment updates definitions, policy, responsibilities, and procedures, and establishes the role the Office of Administration, Equal Employment Opportunity Office in reviewing and processing requests for employment-related Disability Accommodations for Qualified Individuals with a Disability.

1. PURPOSE.

To establish policy, responsibilities, and procedures for employment-related Disability Accommodations pursuant to the provisions of the *Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101-12213 (ADA)*, *Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794*, and the *Pennsylvania Human Relations Act, 43 P.S. §§ 951-963 (PHRA)*, and relevant Commonwealth policies.

2. SCOPE.

This directive applies to all departments, offices, boards, commissions, and councils under the Governor's jurisdiction (hereinafter referred to as "agencies").

3. OBJECTIVE.

To ensure that employment-related Disability Accommodations for Qualified Individuals with a Disability are provided to applicants for Commonwealth employment and to Commonwealth employees in accordance with law and policy.

4. DEFINITIONS.

a. Direct Threat. A significant risk to the health or safety of the individual or others, which cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. A Direct Threat cannot be speculative. The determination of a Direct Threat must be based on an individualized assessment of an individual's present ability to safely perform the Essential Functions of the job. This assessment must rely on the most current medical or best available objective evidence, to determine the nature, duration, and severity of the risk. An employer must also consider whether reasonable modifications of policies, practices, or procedures will mitigate that risk.

b. Disability. With respect to an individual, means:

(1) a physical or mental impairment which substantially limits one or more of such an individual's major life activities;

(2) a record of having such an impairment; or

(3) being regarded as having such an impairment.

Such term does not include current, illegal use of a controlled substance, as defined in Section 102 of the *Controlled Substances Act, 21 U.S.C. § 802*.

c. Disability Accommodation. A reasonable adjustment to the hiring or application process, the job, or the work environment that enables a Qualified Individual with a Disability to perform the Essential Functions of a job and to participate in equal employment opportunities.

d. Discrimination. Unequal treatment of an individual based on membership in a class protected by law or Commonwealth policy.

e. Essential Functions. The necessary and fundamental duties of a position, not including the marginal functions of the position.

f. Qualified Individual with a Disability. An individual who, with or without reasonable accommodation, can perform the Essential Functions of the job that such individual holds or seeks to hold.

g. Retaliation. A materially adverse employment action or negative treatment of an individual because the individual engaged in activity protected by law or policy, which includes but is not limited to requesting or receiving an accommodation; filing an internal or external complaint of Discrimination or Retaliation; testifying, assisting, or participating in any proceeding, investigation, or hearing; or otherwise opposing Discrimination or Retaliation connected to the workplace.

h. Undue Hardship. An action, with respect to the provision of an accommodation, that would fundamentally alter the nature or operation of an agency, or that would be unduly costly, extensive, substantial, or disruptive.

5. POLICY.

- a. Agencies must comply with the *ADA*; *Section 504 of the Rehabilitation Act of 1973*; the *PHRA*; *Executive Order 2002-05, Disability-Related Policy*; *Executive Order 2016-04, Equal Employment Opportunity*; and all applicable laws and policies in responding to and providing Disability Accommodations for Qualified Individuals with a Disability, when requested and as appropriate.
- b. In accordance with the above-referenced laws and executive orders, the Commonwealth, as an equal opportunity employer, is committed to providing Disability Accommodations to Qualified Individuals with a Disability and equal employment opportunities for all individuals. In addition, the Commonwealth is committed to ensuring that job applications, examinations, interview procedures, training, job assignments, selection procedures, and promotion processes do not adversely affect or tend to adversely affect Qualified Individuals with a Disability.
- c. Requests for Disability Accommodations from applicants for Commonwealth employment and Commonwealth employees, who are Qualified Individuals with a Disability, are reviewed by the Office of Administration (OA), Equal Employment Opportunity Office (EEOO), Bureau of Equal Employment Opportunity Policy and Appeals (BEEOPA). The BEEOPA engages in the interactive process with the applicant or employee on behalf of the relevant agency. The OA's Bureau of Talent Acquisition (BTA) will, where appropriate, refer requests for Disability Accommodations from job applicants to the BEEOPA and will provide advice and guidance on requests for Disability Accommodations regarding civil service testing and related issues. Human Resource (HR) staff supporting the agency will provide advice and guidance on Disability Accommodations requests regarding the interview process, as necessary.
- d. Disability Accommodation requests may be granted unless the requested Disability Accommodation imposes an Undue Hardship on the agency or poses a Direct Threat to the employee or others. Whether a particular requested Disability Accommodation imposes an Undue Hardship on an agency or the Commonwealth or poses a Direct Threat is fact-specific and dependent upon the circumstances of the given situation. Disability Accommodations may include, but are not limited to, the following: scheduling modifications, job reassignments, lateral transfers, and exceptions to dress or grooming requirements, so long as such accommodations do not conflict with law, impose an Undue Hardship, pose a Direct Threat, or interfere with a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.
- e. The obligation to provide a Disability Accommodation is ongoing and may arise at any time, such as when there is a change in an individual's Disability, in the individual's need for accommodation, or in job responsibilities. An agency cannot deny an employment opportunity to a qualified applicant or employee solely because of the need to provide a Disability Accommodation unless there is a showing of Undue Hardship to the agency or Direct Threat to the employee or others.

- f. The BEEOPA shall review all requests for a Disability Accommodation from Qualified Individuals with a Disability and engage in the interactive process with the requesting employee or applicant. The BEEOPA shall consult with the relevant agency, which shall determine if the requested accommodation creates an Undue Hardship for the agency or poses a Direct Threat to the Qualified Individual with a Disability or others.
- g. Internal Equal Employment Opportunity (EEO) complaints from job applicants or Commonwealth employees alleging violations of applicable laws, this directive, or applicable Commonwealth policies may be filed in accordance with procedures outlined in *Management Directive 410.10 Amended, Internal EEO Complaint Investigations*.
- h. Retaliation against any Commonwealth employee or applicant for Commonwealth employment is expressly prohibited.

6. RESPONSIBILITIES.

- a. **Secretary of Administration** shall oversee the development, implementation, and administration of the Commonwealth's policies related to Disability Accommodations through the EEOO.
- b. **EEOO** shall:
 - (1) Through the BEEOPA, receive and process all Disability Accommodation requests submitted by applicants for Commonwealth employment and Commonwealth employees, and engage in the interactive process with the applicant or employee and the relevant agency, which will determine, what, if any, accommodation should be provided. The BEEOPA will communicate the agency's decision on the Disability Accommodation request to the applicant or employee, along with any steps necessary to implement the accommodation.
 - (2) Develop and disseminate internal Commonwealth policies and procedures on EEO matters, including but not limited to those related to Disability Accommodations and Disability Discrimination.
 - (3) Oversee the internal complaint process in accordance with *Management Directive 410.10 Amended, Internal EEO Complaint Investigations*, whereby applicants for Commonwealth employment and Commonwealth employees may file internal EEO complaints, including those alleging Disability Discrimination or Retaliation.
 - (4) Provide direction, technical assistance, information, and training on investigations of internal EEO complaints to Commonwealth staff involved in the ADA accommodation process.

c. BEEOPA shall:

- (1)** Review, analyze, and issue notifications of determinations regarding requests for Disability Accommodations. The BEEOPA shall receive, review, engage in the interactive process on behalf of agencies, provide technical assistance to assist agencies that are determining whether to approve, deny, or approve alternate accommodations to applicants for Commonwealth employment and Commonwealth employees. If BTA receives an accommodation request from a job applicant, related to civil service testing or related issues, BTA shall consult with BEEOPA, as necessary. If the request is from a Commonwealth employee or job applicant related to the interview process, the BEEOPA shall consult with the employing agency, including with the immediate supervisor/manager or other supervisors/managers in the employee's chain of command, as well as the HR staff supporting the agency, as necessary. The BEEOPA shall obtain approval from agency management prior to issuing a notification of determination approving or denying any Disability Accommodation requests.
- (2)** Consistent with the *ADA* and Commonwealth policy, for all Disability Accommodation requests, maintain employee medical information separate from the employee's Official Personnel Folder (OPF) to ensure confidentiality and ensure that all staff involved in handling Disability information are aware of its sensitive, confidential nature, and the prohibitions against unnecessary disclosure.
- (3)** Provide training, information, and technical assistance on EEO policies, including on the rights of employees and obligations of agencies to provide Disability Accommodations, as needed and when requested.
- (4)** Review, in coordination with OA's Deputy Secretary for HR and Management, whether Disability policy requirements are consistent within and across all applicable issuances and policies.
- (5)** Utilize EEOO's designated electronic case management system to document and process all Disability Accommodation requests.

d. OA, EEOO, Bureau of EEO Investigations (BEEOI) shall oversee the internal EEO complaint process whereby applicants for Commonwealth employment and Commonwealth employees may file a complaint alleging noncompliance with Disability-related employment policies in accordance with procedures outlined in *Management Directive 410.10 Amended, Internal EEO Complaint Investigations*.

e. BTA shall:

- (1)** Consult with the BEEOPA on all requests for Disability Accommodations from applicants for Commonwealth employment, as needed and where appropriate.
- (2)** Refer requests for Disability Accommodations from job applicants for Commonwealth employment to the BEEOPA, where appropriate.

- (3) Ensure that all requests for Disability Accommodations are treated in a confidential manner consistent with Commonwealth policy.

f. HR Staff Supporting the Agency shall:

- (1) Ensure that all requests for Disability Accommodations are referred to the BEEOPA in a timely fashion for review, treated in a confidential manner, and kept separate from a requesting employee's OPF consistent with Commonwealth policy.
- (2) Provide information related to the provisions of this directive, including the process for requesting Disability Accommodations to all Commonwealth employees and, upon request, to applicants for Commonwealth employment.
- (3) Assist the agencies which they support in determining whether to approve or deny requests for accommodation, as necessary.

g. Agency Managers and Supervisors shall:

- (1) Forward all requests for Disability Accommodations received from job applicants for Commonwealth employment and Commonwealth employees in a timely fashion, to the BEEOPA and, work closely with the BEEOPA in addressing those requests.
- (2) Ensure that the HR staff supporting the agency are aware that a request for a Disability Accommodation was forwarded to the BEEOPA.
- (3) Engage and collaborate with BEEOPA staff with respect to requests for Disability Accommodations from applicants for Commonwealth employment and Commonwealth employees.
- (4) In coordination with other agency leadership, as appropriate, decide whether a Disability Accommodation request may be granted or whether a different reasonable accommodation may be provided.
- (5) Coordinate with HR staff supporting the agency to develop and maintain updated position descriptions to include accurate and complete Essential Functions of the position.
- (6) Take the necessary and appropriate steps to implement approved Disability Accommodations.

7. PROCEDURES.

a. Disability Accommodation Requests.

- (1) All requests for Disability Accommodations should be submitted by email to the BEEOPA resource account, RA-OABEEO@pa.gov, or through Employee Self Service (ESS). The BEEOPA will request that any oral request be submitted in writing.

- (2) The BEEOPA shall receive and review the request, engage in the interactive process on behalf of the respective agencies, provide technical assistance to agencies that are determining whether to approve, deny, or approve alternate accommodations to applicants for Commonwealth employment and Commonwealth employees, and communicate the decision to the individual seeking a Disability Accommodation.
 - (a) If BTA receives an accommodation request from a job applicant, related to civil service testing or related issues, BTA shall consult with BEEOPA, as necessary.
 - (b) If the request is from a Commonwealth employee, or job applicant related to the interview process, the BEEOPA shall consult with the employing agency or HR staff supporting the agency.
 - (c) The BEEOPA shall obtain approval from agency management prior to issuing a notification of determination approving or denying any Disability Accommodation requests.
 - (d) The agency shall procure and implement any approved Disability Accommodation.
- (3) The Disability Accommodation request, and all information related to the request, shall be kept confidential, except as required by law and policy, and may be shared only on a need-to-know basis.

b. Identifying the need for a Disability Accommodation.

- (1) It is the obligation of the individual with a Disability to request an accommodation or to indicate that the individual has a Disability that is affecting the ability to perform the Essential Functions of the job.
- (2) The BEEOPA may request medical verification or documentation from an individual to support a request for a Disability Accommodation.

c. Decisions concerning a Disability Accommodation request.

- (1) Requests for Disability Accommodations should be processed as expeditiously as possible. After engaging in the interactive process with parties, and obtaining a determination from the agency, the BEEOPA will notify the applicant or employee requesting the accommodation of the decision regarding the accommodation request, including information about the accommodations, if any, being offered.
- (2) The individual requesting the accommodation has the right to refuse an accommodation. However, if the individual cannot perform the Essential Functions of the job with or without accommodation, the individual may be considered unqualified for the position.

This directive replaces, in its entirety, *Management Directive 205.25 Amended*, dated July 24, 2023.