

REASONABLE ACCOMMODATIONS POLICY MANUAL

I. INTRODUCTION

PURPOSE

This *GUIDE FOR IMPLEMENTING REASONABLE ACCOMMODATIONS* is intended to give County departments the information and resources needed to make equitable, uniform, and timely decisions that will ensure reasonable accommodations are provided to applicants for County jobs and employees with disabilities. Reasonable accommodation has been commonly defined as a logical adjustment made to a job and/or the work environment which enables a qualified person with a disability to perform the essential duties of his/her position. It applies to any adjustments made which allow a person with a disability to take part in any and all aspects of the employment process.

OBJECTIVES

After reading this guide, the reader should understand:

1. The existing laws, regulations and policies governing reasonable accommodations;
2. The methods and procedures for implementing reasonable accommodations;
3. The appeal process established to review complaints based on the denial of accommodations; and
4. The location of information and resources available within Contra Costa for dealing with reasonable accommodation issues.

SUMMARY OF BASIC RESPONSIBILITIES

1. The County is required by law to consider and provide reasonable accommodations to job applicants and employees who have disabilities in all phases of the employment process.
2. The County is responsible for ensuring that an internal procedure is established for processing accommodation requests on a timely basis and for informing their employees about the procedures.
3. County Departments and line management are responsible for assisting employees with disabilities with the development and implementation of reasonable accommodation requests.
4. The County's ADA Coordinator(s) assigned to the Risk Management Division of the County Administrator's Office, and the County's Affirmative Action Officer are responsible for providing technical assistance to County departments regarding reasonable accommodations and evaluating complaints based on the denial of accommodations. Although referred to as the ADA Coordinator(s), they also provide technical assistance for the California Fair Employment and Housing Act on employment related disability aspects.

II. REASONABLE ACCOMMODATIONS - WHAT IS IT?

WHO QUALIFIES FOR REASONABLE ACCOMMODATIONS?

A qualified person with a disability (defined below), who meets the minimum qualifications and possesses the experience or training required for the position, is eligible to be considered for reasonable accommodation(s).

A. PERSON WITH A DISABILITY

State and Federal definitions differ:

1. Under the Federal ADA (*Americans with Disabilities Act*), a person with a disability is anyone who:

Has a physical or mental impairment that “substantially” limits a major life activity, has a record of such impairment, or is regarded as having such impairment.

2. Under the California Fair Employment Housing Act (FEHA), the definition of a person with a disability is broader. The County applies the FEHA definition when handling accommodation requests. The limitation on a life activity need not be “substantial” and limitations shall be determined without respect to any mitigating measures. Also, “working” is a major life activity whether the actual or perceived working limitation implicates a single job or a broad class of jobs. Major life activities shall be broadly construed and shall include physical, mental, social activities, and working.

The definition also includes a physical or mental impairment or medical condition encompassing but not limited to: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness or specific learning disabilities.

3. Has a record or history of such an impairment or condition:

Has a record or history of such an impairment or condition means a history of a mental or physical impairment or medical condition that limits one or more major life activities.

4. Is regarded as having such an impairment or condition:

Is regarded as having such an impairment or condition means (1) having a

physical or mental impairment or condition that does not limit a major life activity but is treated by an employer as a limitation; (2) having a physical or mental impairment or condition that limits major life activities only as a result of the attitudes of others toward such impairments or condition; or (3) not having an impairment or condition but is being treated by an employer as having an impairment or condition. [Note: Under this definition, a person has no impairment or condition that needs accommodation.]

The determination of whether an individual has a disability under the FEHA definition must be made without regard to any mitigating factors, such as eye glasses, prosthesis or medication. This is a major difference with the Americans with Disabilities Act, where mitigating factors must be considered in determining whether an individual is covered by the Act.

QUALIFIED PERSON WITH A DISABILITY

A qualified person with a disability is anyone with a disability who possesses the requisite skill, experience, education and other job-related requirements of the employment position held or desired, and who, with or without reasonable accommodations, can perform the essential functions of the position.

B. DIRECT THREAT

In addition, to be considered a qualified person with a disability, a person must not pose a direct threat to the health or safety of himself or herself or others when performing the essential functions of the job. Direct threat means a significant risk of substantial and imminent harm, which cannot be eliminated or reduced to an acceptable level by reasonable accommodations. A threat that is remote or theoretical is not sufficient to conclude that a person is not a qualified person with a disability. The assessment of whether or not a person poses a direct threat must be made on a case-by-case basis considering the following factors:

1. The duration of the risk;
2. The nature and severity of the potential harm;
3. The likelihood that the potential harm will occur; and
4. The imminence of the potential harm.

C. TYPES OF ACCOMMODATION REQUESTS

There are six basic types of accommodation requests to which a department must respond:

1. Requests for accommodation in the civil service examination or interviewing process. This allows a candidate or an employee with a disability seeking transfer or promotion to compete with non-disabled candidates or employees as equally as possible;

2. Requests for accommodation to allow a person with a disability to perform the essential duties of the job to which he/she was newly hired;
3. Requests for accommodation to allow an existing employee with a disability to continue to perform the essential duties of his/her position, or to be reassigned or transferred to another vacant funded position;
4. Requests for accommodation to allow an employee with a disability to participate in training activities available to non-disabled employees for job improvement and self development; and
5. Requests for accommodation to allow an employee to have equal access to services and privileges afforded to non-disabled employees (i.e. lunchrooms, meeting rooms, bathrooms, work sponsored events)
6. Requests to take a leave of absence to receive treatment in order to eventually return to work.

III. WHAT ARE THE ESSENTIAL FUNCTIONS OF A JOB?

Essential Functions are:

Those job duties fundamental to the position that the individual holds or seeks so that she/he cannot do the job without performing them. They do not include marginal functions of the position. A job function may be considered essential for any of the following reasons:

1. Whether the reason the position exists is to specifically perform that function.
2. The number of other employees available to perform the function or among whom the performance of the function can be distributed; and
3. The degree of expertise or skill required to perform the function, and whether the function is specialized and the individual is hired based on his/her ability to perform it.
4. Other factors to be considered include:
 - a. The actual work experience of present or past employees in the job;
 - b. The time spent performing a function;
 - c. The consequences of not requiring that an employee perform a function;
 - d. The terms of collective bargaining agreements
 - e. Written job descriptions;
 - f. The employer's judgment as to which functions are essential.

IV. REASONABLE ACCOMMODATIONS IN APPLYING FOR COUNTY POSITIONS

A candidate for a County position or a County employee seeking a transfer or promotion may request a reasonable accommodation orally or in writing from any employee with whom the candidate has contact in connection with the application process. The Human Resources Department or Personnel division of a department is responsible for training staff that is involved in the initial application process to recognize requests for reasonable accommodations and to handle them appropriately. Departments should also ensure that all staff having contact with applicants know how to recognize and handle requests for accommodation. The request should be forwarded to the appropriate person as soon as possible but no later than five business days from the request for accommodation from applicants or a County employee. Requests will be handled by the appropriate Department Staff responsible for the recruitment and/or selection process.

When the candidate's disability is not obvious or known or when additional medical clarification is needed; appropriate documentation of the disability, limitations, and the needed accommodation will be sought from the candidate. The necessary documentation will be obtained from the appropriate type of medical professional, learning specialist, or rehabilitation professional. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions; there may be a need to expedite a request for an accommodation in order to ensure that an applicant with a disability has an equal opportunity to be considered for a job. Therefore, the Human Resources and/or appropriate Department staff needs to move as quickly as possible to make a decision and, if appropriate, provide an accommodation.

In the event the Human Resources Department or other appropriate departmental staff believes that accommodation(s) cannot be provided or has questions as to the technical aspects of the accommodation, the written request shall be referred to the County ADA Coordinator(s). The County ADA Coordinator(s) will review the written request and determine if accommodation(s) can be provided, and if so, what accommodation(s) shall be provided. The ADA Coordinator(s) is assigned to the Risk Management division of the County Administrator's office.

The Human Resources Department or appropriate departmental staff will retain all requests for accommodation(s) and document the action taken within 10 business days of the request. A copy shall be provided to the County ADA Coordinator and the Affirmative Action Officer.

If the applicant's or employee's request for accommodation is denied, he or she will be notified of the decision in writing. The denial will include an explanation of the reason for the denial and information as to how he or she may appeal this decision to the Director of Human Resources.

A. TYPES OF ACCOMMODATIONS

Reasonable accommodations may include, but should not be limited to, the following:

MAKING TEST SITES ACCESSIBLE

Examinations must be administered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible rest rooms, etc.) steps should be taken to remove those barriers. If this is not feasible, arrangements for use of an alternate testing facility, which is accessible, should be made.

MAKING WRITTEN TEST ACCOMMODATIONS

Although many persons with disabilities can demonstrate their knowledge and ability through regular testing procedures, the modification of some examination instruments may be necessary to enable those with certain disabling conditions to achieve test results commensurate with their capabilities. The objective is to eliminate any artificial barriers which may prevent these competitors from demonstrating their capabilities in the examination process. An evaluation of examination procedures may include any or all of the following:

Test Administration methods – In some instances, modification of the manner in which a test is administered may be necessary. The following types of accommodations are examples:

- Scheduling persons with disabilities as individuals or in small groups.
- Allowing competitors with disabilities additional time to complete the test.
- Using proctors that are trained to administer tests to persons with disabilities.
- Providing readers or written tests in Braille or large print for the visually impaired.
- Providing markers for persons with limited use of their arms.
- Providing sign language interpreters for persons with hearing impairments.
- Using an appropriate testing device to determine a candidate's skills.

Test Content –Examinations may not screen out or tend to screen out persons with disabilities, unless the examination methodology and content is shown to be job related.

If a test has a disproportionate impact on candidates with disabilities, then the County must consider modification of the testing method or test content to eliminate any disproportionate effects that are not job related. This could require a validation study to evaluate the job relatedness of an examination.

PROCEDURES FOR RESPONDING TO REQUESTS FOR ACCOMMODATION FROM APPLICANTS.

- A. When a qualified disabled applicant or a current employee requests an accommodation for any part of the application process, the Human Resources Department staff shall ask the applicant or employee what type of accommodation(s) he or she needs, and when appropriate, confer with the applicant or employee about other possible types of accommodations. When the candidate's disability is not obvious or known, or when additional medical clarification is needed; appropriate documentation of the disability, limitations and the needed accommodation will be sought from the candidate. The necessary documentation will be obtained from the appropriate type of medical professional, learning specialist or rehabilitation professional. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for an accommodation in order to ensure that an applicant with a disability has an equal opportunity to be considered for a job. Therefore, the Human Resources and/or appropriate Department staff needs to move as quickly as possible to make a decision and, if appropriate, provide an accommodation.
- B. In the event the Human Resources Department or other appropriate departmental staff believes that accommodation(s) cannot be provided or has questions as to the technical aspects of the accommodation, the written request shall be referred to the County ADA Coordinator(s). The County ADA Coordinator(s) will review the written request and determine if accommodation(s) can be provided, and if so, what accommodation(s) shall be provided. The ADA Coordinator(s) is assigned to the Risk Management division of the County Administrator's office.
- C. The Human Resources Department or appropriate departmental staff will retain all requests for accommodation(s) and document the action taken within 10 business days of the request. A copy shall be provided to the County ADA Coordinator and the Affirmative Action Officer.
- D. If the applicant's or employee's request for accommodation is denied, he or she will receive a written explanation of the reason for the denial. Information as to how he or she may appeal this decision to the Director of Human Resources will also be included with the denial notice.

REASONABLE ACCOMMODATIONS ON THE JOB

Where staff is uncertain of an applicant's eligibility for an accommodation or there is a question as to the type of accommodation needed, the County ADA Coordinator(s) should be consulted. **Routine ergonomic evaluations and workstation modifications are typically not a part of the accommodation process.**

EMPLOYEE REQUESTS

County employees with disabilities may seek reasonable accommodation(s). A family member, health care practitioner, a representative acting on behalf of the employee may also request an accommodation. Under the law, an employee's request for accommodation does not have to be in writing. Once an employee makes known their need for accommodation by talking with a supervisor, manager, or personnel staff, the department cannot ignore the request. Once the need for accommodation is known, however, the department can require the employee to cooperate by outlining the specific request and the facts supporting the request. Medical documentation may also be required when the disability is not obvious or known. The request should clearly indicate the following:

- This is a request for an accommodation (the specific word accommodation does not need to be used),
- The specific functional limitation which requires the accommodation. (Medical documentation may be required),
- The type of accommodation needed, including specific suggestions for work site modification, specific duties which can be restructured to facilitate employment, or assistive devices, etc.; and
- An explanation of how the accommodation will allow the employee to perform the essential functions of the position.

Once the request is made, it must be forwarded, within 5 business days, to the department head or person designated to receive such requests. A copy of each request will also be immediately forwarded to the County's ADA Coordinator(s) for purpose of review and record keeping.

EMPLOYER AWARE OF A DISABILITY

Generally, it is the responsibility of the employee to request an accommodation. However, if an employee has a known disability or it is apparent that the employee is having difficulty performing the essential functions of a position because of a disability, the employer should ask whether an accommodation is necessary.

The ADA Coordinator(s) or the County's Workers' Compensation Personnel may also make the employer aware of an accommodation that is needed by an employee.

V. THE INTERACTIVE PROCESS

The next step is for the parties to begin the interactive process to determine what, if any, accommodation can be provided.

This initial discussion should happen as soon as possible, but no later than 10 business days after the demand for a reasonable accommodation is made. If there is a need for a delay in holding the meeting, all parties will be advised in writing of the reason for the delay and when the meeting will take place. The County's ADA Coordinator(s), the employee's supervisor, and other appropriate staff from the department will attend the meeting.

During this meeting, the participants will discuss all relevant information regarding the accommodation needed, the essential functions of the current assignment, the functional limitations, medical restrictions, the reasonable accommodation options available to mitigate the employee's limitations, and the employee's preferred accommodation will be discussed.

The other factors to be reviewed will include:

- Whether the requested accommodation will enable the employee to perform the essential functions of his/her current job.
- Determining if providing the requested accommodation will result in undue hardship. In reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of operations.
- If medical documentation is adequate to establish that the individual has a qualifying disability, or if it is necessary and possible to obtain adequate documentation to provide an accommodation.

The agreements reached during the meeting will be confirmed in writing within 10 business days of the meeting by the department and presented to all parties attending the meeting. The written documentation will include a timetable for making a decision on the employee's accommodation request and, if appropriate, for implementing the accommodation.

Decisions regarding accommodating an employee's current position will be completed in 30 business days of the initial request unless extenuating circumstances cause a delay. Extenuating circumstances may include the need to obtain medical clarification, purchase of equipment, employee's health condition, availability of the parties, etc. Such delays

will “freeze” the 30 day period until the delay is resolved. The employee and/or the department will be notified in writing of the reason for the delay and the anticipated time frame in which the issue(s) will be resolved.

At any time in the interactive process, the employee may elect to have a representative from their union or another type of representative assist him/her in the interactive process. Employees are to be advised of this right at the initiation of the interactive process.

If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to evaluate a request for an accommodation, the Department/County ADA Coordinator(s) may ask for further information.

- The individual seeking the accommodation will be told why the information that has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the accommodation request.
- The individual seeking accommodation may then ask the appropriate health care provider or other appropriate professional (e.g., learning disability specialist, psychologist) to provide the missing information.
- Alternatively, the individual requesting the accommodation may agree that she/he will sign a limited release, and that the Department ADA Coordinator or County ADA Coordinator(s) may thereafter submit a list of specific questions to the health care professional or may otherwise contact the individual’s doctor.
- If not satisfied with the report of the employee's physician, the department shall refer the employee's physician's report to a physician designated by the County for review. This physician may also examine the employee to determine whether the employee can perform the essential functions of the job with or without reasonable accommodation(s). Outside specialists may be required to assist the designated County physician in making this assessment. If the designated physician determines the employee can perform the essential functions of the job with or without reasonable accommodation(s), the physician will so inform the department in writing and report to the department what, if any, accommodation(s) is required or recommended. Referrals to County designated physicians will be at the County’s expense.

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means all medical information, including information about functional limitations and reasonable accommodation needs. All documents must be kept in locked files separate from the individual’s personnel file. It also means that any employee who obtains or receives such information is strictly bound by these confidentiality requirements.

VI. MODIFYING AN EMPLOYEE'S CURRENT POSITIONS

Changes in the work environment may be needed to allow a person with a disability to perform his/her job duties. They may include:

- Adjusting work schedules.
- Altering the way a task is accomplished.
- Providing assistive devices. These must be work related and not of a personal nature. The department is not required to assist employees with their personal care such as feeding, hygiene, or assistance in the restroom. However, they are required to provide all reasonable equipment and removal of architectural barriers. In some instances, the purchase of equipment may be coordinated with the workers' compensation program.
- Leave of Absence may be required to allow an employee to seek treatment and eventually return to work. Medical documentation will be necessary to substantiate the length of the leave.

VII. REASSIGNMENT, TRANSFERS AND PLACEMENT IN A LOWER CLASSIFICATION

- Removing an employee from his current position and placing them in another position will only be considered if no reasonable accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.
- In considering whether there are positions available for reassignment, transfer or a lower classification, the Departmental ADA Coordinator and/or the County ADA Coordinator(s) will review: (1) all vacant funded positions within the employees current department to determine if the employee meets the qualifications and can perform the essential functions with or without reasonable accommodation; and (2) all positions which the Department has reason to believe will become vacant and are funded over the next 60 business days and for which the employee is qualified. The Department will first focus on positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If this process does not yield a position, the search will extend to open, vacant positions in all other County departments. Promotional opportunities for an employee are excluded from this process. The ADA Coordinator(s) will review other departmental openings and it will be determined if the employee meets the minimum qualifications and can perform the essential functions with or without an accommodation. If there is no vacant equivalent position that is suitable, other vacant lower level positions for which the individual is qualified will be considered. The employee does not have to compete for the reassignments, lateral

transfers, or transfers to lower classifications. There is a direct appointment without the need for an exam

- Temporary, permanent/intermittent, and permanent part time employees will only be placed in positions with the same status.
- All offers of reassignment, transfer and transfer to a lower classification will be confirmed in writing to the employee
- If an employee limits a job search by location, salary, shift, a departmental preference, the ability to accommodate may be limited or not possible.

Prior to any position being filled by any of the County departments, positions will be reviewed by the County ADA Coordinator(s) who will determine whether there is qualified individual with a disability who meets the minimum qualification of the position and who can perform the essential functions of the position with or without an accommodation.

The employee must serve a new trial work period if he/she is placed in another position regardless of whether or not they remain in their department or are transferred to another department. The trial period will be formalized in an Accommodation Agreement and applies to all reassignments, transfers or transfers to a lower classification. The trial work period is equivalent to the probationary period for the class. An employee may choose not to accept an assignment that is determined to be a reasonable accommodation by the employer. However, the employer's obligation to provide a reasonable accommodation may have been fulfilled. If an employee fails the trial period, an assessment will be made as to reason for the failure and whether there is any further obligation to provide an accommodation.

VIII. REASONABLE ACCOMMODATIONS FOR EMPLOYEE TRAINING AND EMPLOYER SPONSORED SERVICES

Employees with disabilities have the right to equal access of employer sponsored training or other events that are provided. In providing or sponsoring training or other events, County departments must do the following:

1. Inform employees on all notices that accommodation(s) will be provided for training or other events, as appropriate, with reasonable advance notification of need;
2. Include TTY number (telecommunications device for a person with hearing impairment), phone numbers and/or the phone number of the California Relay Service on training notices so that deaf and hearing-impaired employees can access more information;
3. Insure that facilities used are accessible to persons with disabilities and that appropriate assistive devices are provided such as interpreters or assistive listening devices.

IX. DENIAL OF ACCOMMODATIONS

State and Federal laws and regulations require the County to make reasonable accommodations to the known physical and/or mental limitations of an otherwise qualified applicant or employee with a disability, unless the department can demonstrate that the accommodation would impose an undue hardship or it is not possible to provide an accommodation for the reasons listed below. These determinations must be made on a case-by-case basis.

There are several modifications or adjustments that are not considered forms of reasonable accommodation. An employer does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodations, is not a “qualified” individual with a disability within the meaning of the law. Nor is an employer required to lower production standards—whether qualitative or quantitative—that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodations to enable an employee with a disability to meet the production standard.

If it is not possible to accommodate an employee in their current position, a search will be made for an appropriate reassignment. If this search does not yield an appropriate position after 60 days, the County will have met their obligation under the ADA/FEHA.

X. ACCOMMODATION APPEALS

Before any denial of an accommodation request is made it must first be reviewed by one of the County ADA Coordinators.

A. ACCOMMODATIONS IN THE EXAMINATION PROCESS

If an applicant’s or employee’s request for an accommodation in the examination or interviewing process is denied, the candidate shall receive a written explanation of the reason for the denial and information as to how to appeal the denial to the Director of Human Resources.

B. ACCOMMODATIONS FOR EMPLOYEES

All denials of requests for accommodations shall be in writing and sent to the parties involved within 10 business days of the final decision being made. The reasons the accommodation was not granted will be outlined. The employee can appeal the decision through the County's Affirmative Action Officer. The employee can file a discrimination complaint in accordance with the County's discrimination policy.

XI. REPORTING REQUIREMENTS

All requests for accommodations must be documented on the "Accommodation Request Form for Employers". Either the department or employee will complete this form. Each request must be forwarded in writing within 5 business days of the request to the department head or person designated by the department head to receive such requests. A copy of each request will also be forwarded to the County's ADA Coordinator(s) within 5 days of the receipt for purposes of follow up and record keeping.

In order to address architectural barriers related to employees, the Access Request and Complaint Form, must be completed by the department or employee and a copy sent to the ADA Coordinator(s).

All parties will receive written documentation of the interactive process as it proceeds including any delays incurred. All denials of accommodation will be provided to the parties within 10 days of the final decision. All denials of accommodation requests must be first be reviewed by one of the ADA Coordinators.