



# Reasonable Accommodation

SMALL AGENCY LIAISON MEETING

DECEMBER 2018

HALEY THOMPSON, DES EMPLOYEE AND LABOR RELATIONS MANAGER

# What is a Reasonable Accommodation?

- ▶ A “reasonable accommodation” is any modification or adjustment to a job, the job application process, or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process, perform the essential functions of the job, or enjoy the benefits and privileges of employment. Examples of “reasonable accommodations” include: making existing facilities readily accessible to and usable by employees with disabilities; restructuring a job; modifying work schedules; acquiring or modifying equipment; and reassigning a current employee to a vacant position for which the individual is qualified.
- ▶ [https://www.ada.gov/hiv/ada\\_q&a\\_aids.htm](https://www.ada.gov/hiv/ada_q&a_aids.htm)

# What governs the RA process?

- ▶ Americans with Disabilities Act

<https://www.eeoc.gov/eeoc/history/ada25th/index.cfm>

- ▶ Washington Law Against Discrimination

<https://www.hum.wa.gov/Employment/>

- ▶ Agency Policy

<http://apps.leg.wa.gov/WAC/default.aspx?cite=357-26-020>

# Categories of RA :

1. Modifications or adjustments to a job application process that enable a qualified individual to be considered for the position
2. **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 a qualified individual with a disability to perform the essential functions of the position**
3. Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment that are enjoyed by its other similarly situated employees without disabilities

# How do I know that an employee needs RA?

- ▶ The employee or their representative must let the employer know that they need an adjustment or change at work for a reason related to a medical condition. They do not need to use the phrase “reasonable accommodation.”
- ▶ Examples of RA requests include:
  - ▶ “I am having trouble getting to work on time because of my medical treatments.”
  - ▶ “I need time off for a back surgery.”
  - ▶ “My wheelchair doesn’t fit under my desk.”
- ▶ NOT an RA request: My chair is uncomfortable (unless it is followed by “because of my sciatica” or other medical reason)

# My employee asked for an accommodation. Now what?

- ▶ Engage in an informal process to clarify their needs. Ask clarifying questions regarding their request, not their medical condition.
- ▶ Use templates we have available to get specifics from the employee and confirmation from a medical provider, if necessary. This not necessary and should not be requested if the disability is obvious (e.g. employee in a wheelchair).
- ▶ The information the employer can request is limited to what is relevant to the request; establishing that the employee has a disability and that disability necessitates an R.A. Again, the templates are helpful for this reason!

# What are some examples of accommodations?

- ▶ Job Restructuring: changing marginal job functions that they are unable to perform because of disability or altering when or how a function, essential or marginal, is performed
- ▶ Leave: Allowing the employee to use paid or unpaid leave to obtain treatment, recuperate, attend appointments, etc. May be concurrent with FMLA.
- ▶ Modified or part-time schedule: Adjusting arrival or departure times, allowing additional or longer breaks, allowing a reduction in work hours. You are not obligated to make a full-time position part time. An analysis should be done based on the need for the position.
- ▶ Reassignment: If the employee cannot perform the essential functions of their job, a reassignment to a vacant position can be considered. Promotions are not given through R.A.
- ▶ How long does the accommodation stay in place? As long as the disability exists.

# Undue Hardship

- ▶ An employer is not obligated to provide an accommodation if it presents an undue hardship. The case for undue hardship must be made through thorough analysis specific to the position. The threshold for undue hardship is high for state employers, because the state as a whole is considered the employer, so resources are tremendous.
- ▶ Examples of undue hardship: The employee wants to work at night but they are in a customer facing position and need to provide assistance to customers during the day. This is an undue hardship because of the significant disruption to business.
- ▶ Be cautious and don't make assumptions. Work with your HR Consultant and/or AAG before rejecting an RA proposal

# Disability Separation

- ▶ What is a disability separation?

A disability separation is an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee's position or class with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action. (WAC 357-46-160)

- ▶ How do I know if the employee should be disability separated?

If you have exhausted the RA process and there is not a way to continue employment for the individual, consult with HR and/or your assigned AG before moving to disability separate

- ▶ Note: Disability Separation does not provide or guarantee the employee any benefits. They need to apply for those separately.

# Pregnancy Disability

- ▶ The Pregnancy Accommodations Law passed in 2017 requires an employer to provide a pregnant employee with the following accommodations **without requiring any medical certification:**
- ▶ Providing frequent, longer, or flexible restroom breaks;
- ▶ Modifying a no food or drink policy;
- ▶ Providing seating or allowing the employee to sit more frequently; and
- ▶ Limiting lifting to 17 pounds or less.

If an employee is asking to be transferred to a different position or for a change in their work schedule, job assignment, additional equipment, etc. the employer can then request medical certification through the reasonable accommodation process.

# Things to remember:

- ▶ You're not alone- work with your HR Consultant and/or AAG
- ▶ Engage in the process
- ▶ Treat each request individually
- ▶ Be fair
- ▶ Document your responses to the request and the accommodation given
- ▶ Don't disclose the RA to other staff. Emphasize your policy of assisting employees. The employee can disclose if they choose.

# Resources:

- ▶ [EEOC](#)

<https://www.eeoc.gov/policy/docs/accommodation.html>

- ▶ [WA Human Rights Commission](#)

[https://www.hum.wa.gov/media/dynamic/files/159\\_disbselfassess%20updated.pdf](https://www.hum.wa.gov/media/dynamic/files/159_disbselfassess%20updated.pdf)

- ▶ [Job Accommodation Network \(JAN\)](#)

<https://askjan.org/>

- ▶ And don't forget your friendly local HR Consultant!