



Virginia Department of Corrections

Human Resources

Operating Procedure 150.3

Reasonable Accommodations

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Content Owner:	Luke E. Black Assistant Director of Human Resources	<i>Signature Copy on File</i>	4/29/22
		Signature	Date
Reviewer:	Lucinda Childs-White Director of Human Resources	<i>Signature Copy on File</i>	4/29/22
		Signature	Date
Signatory:	Joseph W. Walters Deputy Director for Administration	<i>Signature Copy on File</i>	5/2/22
		Signature	Date

REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

The content owner reviewed this operating procedure in October 2023 and determined that no changes are needed.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

Table of Contents

DEFINITIONS	3
PURPOSE	5
PROCEDURE.....	5
I. Applicability and Responsibility	5
II. Interactive Process for Job Assistance	5
III. Supervisor Authority to Approve Accommodation	6
IV. Required Referral to the DOC Employee ADA Coordinator.....	8
V. DOC Employee ADA Coordinator Responsibility	9
VI. Employee Status Pending Review of Accommodation or Assistance Request.....	10
VII. DOC Employee ADA Appeal Procedure	10
VIII. Employee Work Performance and Evaluations.....	11
REFERENCES.....	11
ATTACHMENTS	11
FORM CITATIONS	11



DEFINITIONS

ADA Committee - The Department of Corrections *Americans with Disabilities Act* (ADA) Committee is chaired by the DOC Benefits Manager, who serves as the DOC Employee ADA Coordinator in the Office of Human Resources, and is responsible for reviewing employee requests for reasonable accommodations that exceed or are expected to exceed 90 calendar days. Committee members may include Human Resource Managers and other individuals who have technical knowledge of the Act, as selected by the Director of Human Resources.

Direct Threat - A significant risk of substantial harm to the health or safety of a person with a disability or to others that cannot be eliminated by reasonable accommodation.

Disability - An actual physical or mental impairment that substantially limits one or more major life activities; or a record of such impairment; or being regarded as having such an impairment.

Essential Job Functions - The basic and fundamental job duties of a position that an employee must be able to perform, with or without a reasonable accommodation, as determined by the supervisor of the position and the Human Resources Officer for the Organizational Unit. Essential job functions may include, but are not limited to, the knowledge, skills, abilities, education, and training noted in the *Employee Work Profile (EWP)*, physical and mental job requirements; expertise or skill needed to perform the job; and time required to perform a task or function. The term “essential job functions” does not include marginal functions of the position.

Facility - Any institution or Community Corrections facility

Health Care Provider - An individual whose primary duty is to provide health services in keeping with their respective levels of licensure, health care training, or experience.

Inmate - A person who is incarcerated in a Virginia Department of Corrections facility or who is Virginia Department of Corrections responsible to serve a state sentence.

Major Life Activities - Activities that an average person can perform with little or no difficulty; major life activities include caring for yourself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The operation of a major bodily function includes the operation of an individual organ within a body system.

Medical Certification - A note from the employee’s health care provider, based on the most current medical knowledge, describing the employee’s functional abilities and limitations in performing the essential functions of the job, and whether the employee meets DOC health and safety requirements; it is not a request or requirement for a diagnosis and employees and their attending health care provider should not be asked to provide medical information outside of the employee’s ability to work, not work, or perform essential job functions.

Organizational Unit - A DOC unit, such as a correctional facility, regional office, Probation & Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, and individual headquarters unit.

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit

Physical or Mental Impairment - Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organ, respiratory (including speech organs), cardiovascular, reproductive, immune, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Probationer/Parolee - A person who is on community supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, the Virginia Department of Corrections, or other release authority; this includes post release supervision and Community Corrections Alternative Programs.

Qualified Individual with a Disability - A person with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the position that person holds or desires to hold and who, with or without accommodation, can perform the essential job functions of the subject position.



Reasonable Accommodation - Any change in the work environment or the way work tasks are customarily performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of "reasonable accommodations":

- Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant 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 a qualified person with a disability to perform the essential functions of that position
- Modifications or adjustments that enable a person with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities

Security Employee - Any certified DOC Corrections Officer whose normal duties include immediate control, supervision, and custody of offenders confined in any state correctional facility, including Community Corrections facilities.

Short-term Impairment or Disability - Any temporary physical or mental impairment or disability, verified by a health care provider that limits a person's ability to perform normal job duties and responsibilities for an anticipated period of 90 calendar days or less.

Undue hardship - An accommodation that would be unduly costly, extensive, substantial, or disruptive; undue hardship refers not only to financial difficulty, but to accommodations that would fundamentally alter the nature or operation of the business or work performed by or at the unit or creates a direct threat to the health and safety of others. Undue hardship is an extremely high legal standard to establish for a state agency.

PURPOSE

In compliance with the *Americans with Disabilities Act of 1990*, 42 U.S.C. § 12101, et seq. (ADA), COV §51.5-1 et seq., *The Virginians with Disabilities Act*, and Executive Order Number One (2018), *Equal Opportunity*, this operating procedure provides guidance for Department of Corrections (DOC) employees to request accommodations and short term temporary adjustments to work assignments based on their medical, physical and/or mental conditions or impairments.

PROCEDURE

- I. Applicability and Responsibility
 - A. This operating procedure applies to current employees and applicants of the DOC and serves as a mechanism to process requests for reasonable accommodation for the known medical, physical and/or mental conditions or impairments of a qualified individual with a disability, either an applicant or an employee. (5-ACI-1C-07; 4-ACRS-7E-03; 4-APPFS-3E-03; 2-CO-1C-09-1; 1-CTA-1C-03-1)
 - B. Each Organizational Unit Head, in consultation with their Human Resource Officer (HRO), is responsible for making decisions that comply with *Americans with Disabilities Act* (ADA) regulations to address an employee's request for temporary work adjustments, assignments, or accommodations that last 90 calendar days or less.
 - C. Requests for accommodation to be made after returning from extended absences should be submitted in advance of when an employee returns to work and evaluated using the information provided in Attachment 1, *Return to Work Program*.
 - D. The DOC Employee ADA Coordinator and/or ADA Committee are responsible for decisions on all requests for reasonable accommodations expected to last more than 90 calendar days.
 - E. Organizational Unit Heads, or designees, and HROs are responsible for identifying situations where employee work adjustments, assignments, or accommodations are anticipated to exceed 90 calendar days and should notify the DOC Employee ADA Coordinator or designee as soon as possible.
 - F. All employees should be informed of the process for requesting reasonable accommodations related to a physical or mental impairment, as outlined in this operating procedure.
 - G. A health care provider may be required to certify the need for accommodations expected to be permanent or in excess of 90 calendar days in duration.
- II. Interactive Process for Job Assistance
 - A. In determining appropriate job assistance, applicants, employees, managers, and human resource staff must use the interactive process, which is an information-gathering approach that centers on the communication between an employer and the individual requesting reasonable accommodation.
 1. The interactive process is intended to be flexible and often involves obtaining relevant information from the requestor, their health care provider, a supervisor or manager, the Organizational Unit Head, the HRO, or DOC Employee ADA Coordinator.
 2. Information gathered during the interactive process will be used to make an informed decision about the following: whether the requestor is covered as an individual with a disability and, if so, what reasonable accommodation(s) will effectively eliminate the barrier identified by the requestor and permit an equal opportunity to apply for a job, perform a job, gain access to the workplace, or enjoy the benefits and privileges of employment available to employees with no known disability.
 3. The *Organization Unit Interactive Assessment* 150_F2 serves as a guide and should be used for documentation of the interactive process with the employee.
 4. Regular and timely communication during the interactive process is essential to compliance with the ADA and the success of the accommodation outcome.



- B. Applicants and employees must notify the DOC when accommodations or adjustments are needed concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a physical or mental impairment.
 - 1. Requests can be submitted verbally or in writing to the Organizational Unit Head or HRO.
 - 2. The Organizational Unit Head or HRO must document all verbal requests for accommodation in writing.
 - 3. Generally, after a request for accommodation has been made, the interactive process begins as soon as possible to determine what, if any, accommodation should be provided.
- C. If a supervisor or any manager in an employee's chain of command believes that a physical or mental impairment is causing a performance or conduct problem, they may ask the employee how to solve the problem and if the employee needs a reasonable accommodation.
- D. When a supervisor or any manager in an employee's chain of command receives a verbal or written request for accommodation, they must do each of the following:
 - 1. Document the request in writing.
 - 2. Consult with the employee to identify their exact limitations and discuss what type of accommodation would be effective.
 - 3. Contact the unit's HRO to assess the work related issue, the employee's need for assistance, and appropriate reasonable accommodations, if any.
- E. Where more than one accommodation would work, the DOC may choose the one that is less costly or that is easier to provide. Post and shift assignments are the prerogative of management.
- F. The employee must complete the *Employee Request for Job Assistance/Accommodation* 150_F1 if requesting job assistance or job accommodation that exceeds or is expected to exceed 90 calendar days.
- G. The employee may be required to submit medical certification for all accommodation requests if the impairment is not readily visible or known. The medical certification should describe the following:
 - 1. The extent or severity of the impairment.
 - 2. The specific limitations the impairment imposes upon the employee.
 - 3. The anticipated length of time before the employee can fully resume the responsibilities of their regular position.
- H. Employees should forward medical certifications directly to the local unit Human Resources Office in a confidential manner. The Organizational Unit Head and HRO should review medical certifications in considering the continuance of adjusted work assignments.
- I. The Organizational Unit Head or HRO, in consultation with the DOC Employee ADA Coordinator, may verify an employee's personal medical certification by sending the employee, at agency expense, to another health care provider for a second opinion regarding the short-term impairment.

III. Supervisor Authority to Approve Accommodation

- A. If the Organizational Unit Head determines the assistance can be easily provided with little or no disruption or expense, and the impact to the agency is insignificant, the assistance will be documented and provided without extensive intrusion into the employee's physical or mental impairment or medical history.

For example, a Fiscal Technician requests a calculator with oversized numbers. The Organizational Unit Head is in the process of purchasing calculators, and the calculator with the oversize numbers is the same price as the calculator with standard size numbers.

- B. The following are examples of cases when a supervisor may provide assistance or make an



accommodation without intrusion into an employee's physical or mental impairment or without prior Organizational Unit Head approval. Employees, security employees, or other employees who work inside the secure perimeter of a facility are not subject to these approvals, assistance, or accommodations. (See the *Security Employees* section below.) These situations are illustrative and not intended to be all inclusive.

1. Allowing an employee to take medication at prescribed times when the medication does not impair judgment, alter personality, or impede physical reactions.
 2. Allowing an employee to eat snacks and meals, as necessary, to maintain proper body functioning.
 3. Allowing an employee to go to the rest room as needed when departure from the unit is not disruptive.
 4. Allowing an employee to wear/use prosthetic devices to enhance physical functions.
 5. Allowing an employee to use their own computer monitor.
 6. Allowing an employee to use their own amplifying device for the telephone.
 7. Allowing an employee to use their own foot stool needed for circulation problems.
 8. Granting an employee a flex schedule for medical treatment if flex schedules are generally allowed in the work unit.
- C. The supervisor, with assistance from the HRO, must answer the following questions to determine if the request should be referred to the Organizational Unit Head. If the answer is YES to Question #1 and any of Questions #2 - 5, the supervisor cannot approve the assistance requested. This situation must be referred to the Organizational Unit Head and HRO for review.
1. Is the assistance requested necessary for the employee to satisfactorily perform their duties? and (any one of the below)
 2. Does the assistance requested include purchases not currently budgeted? or
 3. Will the assistance requested impact how other staff performs their job duties? or
 4. Will the assistance requested alter the manner in which the agency or unit does business? or
 5. Is the assistance that is requested disruptive?
- D. The following are examples of situations that must be reported to the Organizational Unit Head and HRO when assistance or an accommodation is requested. These situations are illustrative and not intended to be all inclusive.
1. A request that requires a financial expenditure.
 2. A request that alters the essential job functions.
 3. A request that impacts how other employees or units perform their job duties.
 4. A request not consistent with state, DOC, or unit policies, operating procedures, or practices.
 5. A request to telecommute, either part time or full time.
 6. The supervisor is unable to provide the assistance or accommodation that allows the employee to perform the essential functions of their job.
 7. When neither supervisor nor employee knows what options are available for the employee with a disability to satisfactorily perform the essential functions of the job.
- E. Security Employees - The following considerations apply for assistance or accommodation for security employees or other employees who work within a secured perimeter of a facility.
1. When assistance or accommodation is requested by security employees, the first priority must be public safety, which includes protection of the citizens of the Commonwealth, self, co-workers, and the security of inmates or probationers/parolees.

2. Any requests that preclude or tend to preclude the public safety priority will not be authorized.
3. The following are examples of assistance or accommodations that cannot be made inside a facility's secure perimeter, on a security post, or for positions responsible for direct inmate or probationer/parolee supervision.
 - a. Allowing the use of prescription or non-prescription drugs that may impair judgment or slow reflexes.
 - b. Allowing any prohibited items, including food items, inside the secure perimeter.
 - c. Allowing a Corrections Officer to leave a security post without notice or relief or on a schedule that hinders the ability to effectively manage security and inmate or probationer/parolee population.
 - d. Allowing any drugs or devices which may negatively impact visual and auditory perception.
 - e. Precluding a Corrections Officer from being available to stand all posts for more than 90 days.
 - f. Any accommodation that excludes inmate or probationer/parolee contact. This provision also applies to Probation and Parole employees.
 - g. Any exceptions to training and certification or re-certifications when waivers are not allowed by federal, state, local, or DOC rules and regulations.
 - h. Requiring the Corrections Officer to be excluded from physical altercations.
 - i. Any accommodation that limits or eliminates the performance of any essential job functions.
 - j. Allowing any device, equipment, or material, including medical, inside a secured perimeter that may be a security risk.

IV. Required Referral to the DOC Employee ADA Coordinator

- A. The Unit Head or HRO will refer requests for accommodation to the DOC Employee ADA Coordinator or designee when the employee's request for accommodation:
 1. Is not readily available.
 2. Cannot be provided in the employee's work unit.
 3. Requires considerable physical renovation, structural changes, or atypical schedule restructuring.
 4. Impacts how another employee performs their job.
 5. Requires a significant expenditure not currently budgeted.
 6. Changes the way the unit does business.
 7. Exceeds or is expected to exceed 90 calendar days.
 8. Any other case, at the discretion of the Organizational Unit Head, when there is significant agency or operational impact.
- B. Prior to a formal referral to the DOC Employee ADA Coordinator or designee, the Organizational Unit Head or the HRO must:
 1. Identify the essential functions of the employee's job.
 2. Obtain an *Authorization for Release of Information - Job Assistance/Accommodation* 150_F3 from the employee and request a medical evaluation of the employee's disability and limitations from a health care provider.
 3. Request the health care provider to state as specifically as possible the extent and duration of the disability.
 4. Provide the employee or their health care provider with a copy of the position description, *Employee Work Profile* (EWP) 145_F2 including the *Physical Demands Worksheet*, with essential job functions clearly delineated, see Operating Procedure 145.2, *Employee Performance Management*.
 5. Ask the employee's health care provider to address the following issues:



- a. Identify the essential job functions that the employee is able to perform.
 - b. Identify the essential job functions that the employee cannot perform.
 - c. If there are any essential functions the employee cannot perform, ask the health care provider if they can make any recommendation(s) that would allow the employee to perform the essential job functions.
- C. The employee must be given an opportunity to request an accommodation that would enable the employee to perform the essential functions of the job.
1. The Organizational Unit Head or designee must complete the *Request for Job Assistance/Accommodation - Organizational Unit Interactive Assessment* 150_F2 and attach the employee-completed *Employee Request for Job Assistance/Accommodation* 150_F1 and all related medical documentation.
 2. The HRO will request an *Authorization for Release of Information - Job Assistance/Accommodation* 150_F3 from the employee for authorization to contact the health care provider.
 3. The above documentation should be submitted to the DOC Employee ADA Coordinator or designee as soon as possible after the need for assistance has been identified or a request for assistance has been made.

V. DOC Employee ADA Coordinator Responsibility

- A. The DOC Employee ADA Coordinator and/or ADA Committee has the authority and responsibility to determine an employee's eligibility for protection under ADA and if practicable, to propose reasonable accommodations to perform essential functions of the job.
- B. A determination will be made concerning the employee's status as a "qualified individual with a disability" within the scope of the ADA.
- C. Employees from other organizational units and other agencies, especially the Department of Rehabilitative Services, may be invited to provide input regarding accommodations available to enable an employee to perform the essential functions of the job.
- D. The following requirements will be considered when making recommendations for accommodation:
1. The requesting employee must be otherwise qualified, i.e., meet the minimum knowledge, skills and abilities, training, education, and experience requirements as stated in the *Employee Work Profile* (EWP) 145_F2, see Operating Procedure 145.2, *Employee Performance Management*.
 2. The disability, as recognized by the ADA, must be known to the DOC.
 3. The reasonable accommodation must not pose an undue hardship on the operation of the facility or work unit. (5-ACI-1C-07; 4-ACRS-7E-03; 4-APPFS-3E-03; 2-CO-1C-09-1; 1-CTA-1C-03-1)
 4. Continued employment of an employee with a disability who is requesting accommodation must not pose a direct threat.
- E. Items considered to determine if an accommodation poses an undue hardship for the DOC, include (but are not limited to):
1. The cost to provide the accommodation.
 2. The financial resources of the DOC.
 3. The impact the accommodation will have on the organizational unit.
 4. Whether the accommodation poses a "direct threat that includes potential breach of security".
- F. A decision will normally be made within ten working days of receipt of all requested information.
1. If a decision cannot be made within ten working days, the DOC ADA Employee Coordinator or designee must contact the HRO at the facility or unit on the status of the referral.

2. The HRO must provide written notice of the status to the employee within three working days of the notification.

G. Prior to making a decision regarding an accommodation, if there are unclear issues about the requested accommodation, the DOC Employee ADA Coordinator or designee may discuss the proposed accommodation with the Organizational Unit Head, HRO, or both.

H. The DOC Employee ADA Coordinator or designee will provide written documentation to the Organizational Unit Head or designee and HRO regarding the employee's protection under ADA and any accommodation to be provided.

I. If it is determined that physical plant modifications are necessary, all building changes must be requested in accordance with the applicable DOC procedure and state guidelines governing construction and maintenance.

J. The decision of the DOC Employee ADA Coordinator and/or ADA Committee is binding on all parties upon delivery of the decision to the Organizational Unit Head.

1. Upon receipt of the decision, the Organizational Unit Head must immediately implement the accommodation consistent with the decision and guidance provided by the DOC Employee ADA Coordinator or designee.

2. If the accommodation is implemented and is not effective, the DOC Employee ADA Coordinator or designee should be notified immediately so the decision may be reassessed.

3. If additional medical information is provided or the organizational unit is adversely impacted following implementation of the accommodation, the DOC Employee ADA Coordinator or designee should be contacted immediately.

VI. Employee Status Pending Review of Accommodation or Assistance Request

A. Decisions regarding assisting or accommodating an employee will be made as quickly as possible, but when the employee is unable to perform essential functions of the job or continuance in the current position poses a threat to public safety or the safety of the employee or coworkers, a temporary accommodation may be made.

B. If the employee cannot perform essential functions of the job, they may be temporarily assigned the duties of a vacant position or assigned temporary duties outside the current job classification, consistent with their knowledge, skills, and abilities, pending a final decision regarding the appropriate accommodation.

C. If a vacant position or suitable duties are not available, the employee will be allowed to use accrued sick, family and personal (if applicable), annual, or compensatory leave or, if eligible, may apply for disability benefits. If no leave balances are available, the employee will be approved for *Unconditional Leave without Pay* pending a final decision regarding accommodation.

VII. DOC Employee ADA Appeal Procedure

A. Employee may file an appeal of the DOC Employee ADA Coordinator and/or ADA committee decision regarding the initial Reasonable Accommodation request. The appeals can be based on the following reasons:

1. Initial accommodation request was denied, inaccurate, or unjustified.

2. Initial accommodation decision is not (or no longer) effective.

3. Work unit is not complying with accommodation decision.

4. Employee has not received timely decision regarding the accommodation request.

B. Employee should follow the DOC Employee ADA Appeal Process using the *Employee ADA Appeal* instructions in Attachment 2, *DOC Employee ADA Appeal Process*.



- C. All appeals must be filed within ten calendar days from the initial decision from the Employee ADA Coordinator or ADA Committee.

VIII. Employee Work Performance and Evaluations

- A. Supervisors may not give employees with disabilities "special treatment."
1. Employees with disabilities should not be evaluated on a lower standard or a higher standard, nor disciplined less severely or more severely than other employees.
 2. Special treatment is not equal employment opportunity.
- B. Supervisors should hold employees with disabilities to the same standards of performance as other similarly situated employees without disabilities, for performing the essential job functions, with or without accommodation. If an accommodation is required to perform the essential functions, the employee should not be evaluated on their performance without the accommodation.
- C. Supervisors should also hold employees with disabilities to the same standards of performance for marginal job functions, unless the disability affects the employee's ability to perform these marginal functions. If an employee with the disability cannot perform some marginal functions of the job due to the disability, the supervisor may give the employee other marginal functions, not listed in the current *Employee Work Profile*, that the employee can perform.
- D. If disciplinary action is required, it should be implemented consistent with consequences provided for other employees without disabilities who have committed similar offenses. If mitigating circumstances are considered for other employees, they must be considered for employees with disabilities.

REFERENCES

Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.
COV §51.5-1 et seq., *the Virginians with Disabilities Act*
Executive Order Number One (2018), *Equal Opportunity*
Operating Procedure 145.2, *Employee Performance Management*

ATTACHMENTS

Attachment 1, *Return To Work Program*
Attachment 2, *DOC Employee ADA Appeal Process*

FORM CITATIONS

Employee Work Profile (EWP) 145_F2
Employee Request for Job Assistance/Accommodation 150_F1
Request for Job Assistance/Accommodation - Organizational Unit Interactive Assessment 150_F2
Authorization for Release of Information - Job Assistance/Accommodation 150_F3
Employee ADA Appeal 150_F4

