



Operating Procedure

| | |
|--|--|
| Effective Date April 1, 2015 | Number 101.5 150.3 |
| Amended 3/10/16 | Operating Level Department |
| Supersedes Operating Procedure 101.5 (1/1/12), Memorandum HR 2007-07 | |
| Authority COV §51.5-1 et seq. | |
| Subject REASONABLE ACCOMMODATIONS | |
| ACA/PREA Standards 4-4054; 4-ACRS-7E-03; 4-APPFS-3E-03; 2-CO-1C-09-1; 1-CTA-1C-03-1 | |
| Incarcerated Offender Access Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | FOIA Exempt Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Attachments Yes <input checked="" type="checkbox"/> 1 No <input type="checkbox"/> |
| Office of Primary Responsibility Human Resources Director | |

I. PURPOSE

In compliance with the Americans with Disabilities Act (ADA) and The Virginians with Disabilities Act, this operating procedure provides guidance for Department of Corrections employees to request accommodations and short term temporary adjustments to work assignments based on their medical/physical condition.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

Activities of Daily Living (ADL) - Any individual activity including basic self-care, performing manual tasks, walking, talking, hearing, seeing, breathing, learning, and working, etc. and including major bodily functions (non-exhaustive list).

ADA Committee - The DOC *Americans with Disabilities Act* Committee that 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 Human Resources Director.

Disability - An actual impairment that substantially limits one or more of the major activities of daily living (ADL) of an individual; 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 Resource 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.

Facility - Any Community Corrections facility or institution

Health Care Provider - A health care professional licensed to practice in the Commonwealth or state where an employee resides and competent to medically certify physical or psychological/psychiatric conditions. Appropriate professionals include, but are not limited to, physicians, physician assistants, psychiatrists, psychologists, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

Offender - An inmate, probationer, parolee, post release supervisee, or other person placed under the supervision or investigation of the Department of Corrections.

Organizational Unit - A DOC operating unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections

Construction Unit, Agribusiness Unit, or other separate operational 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, etc.; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physician Certificate - A note from the employee's doctor describing the employee's ability to work or not work, or to provide determination as to which essential job functions the employee can or cannot perform; it is not a request or requirement for a diagnosis and employees and their attending physician should not be asked to provide medical information outside of the employee's ability to work, not work, or perform essential job functions.

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 done 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.

Substantially Limited - Unable to perform a major life activity that the average person in the general population can perform; or significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity considering the following factors: the nature and severity of the impairment; the duration or expected duration of the impairment; and the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

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.

IV. PROCEDURE

A. Applicability and Responsibility

1. This operating procedure applies to current employees and applicants of the Department of Corrections and serves as a mechanism to process requests for reasonable accommodation to the known physical and/or mental impairments of a qualified individual with a disability, either an

applicant or an employee. (4-4054, 4-ACRS-7E-03; 4-APPFS-3E-03; 2-CO-1C-09-1; 1-CTA-1C-03-1)

2. Each Organizational Unit Head is responsible for making decisions to address employee's requests for temporary work adjustments, assignments, or accommodations that last 90 calendar days or less. Requests made after returning from extended absences should be evaluated using the information provided in Attachment 1, *Return to Work Program*.
3. The DOC ADA Committee is responsible for decisions on all other requests for reasonable accommodation.
4. Organizational Unit Heads or designees, and Human Resource Officers are responsible for identifying situations where employee work adjustments, assignments, or accommodations are anticipated to exceed 90 calendar days and are required to notify the ADA Committee as soon as possible.
5. All employees should be informed of the process for requesting reasonable accommodations related to a medical condition, as outlined in this operating procedure.
6. A health care provider must certify the need for accommodations expected to be permanent or in excess of 90 calendar days in duration.

B. Job Assistance

1. An employee suffering from a short-term impairment that limits the abilities to perform the duties and responsibilities of their regular position who wishes to continue employment shall submit a request in writing to the Organizational Unit Head for adjusted work assignments. The request should be made in advance of when the employee returns to work. The employee shall also submit physician certificate that describes:
 - a. The extent or severity of the short-term impairment
 - b. The specific limitations the short-term impairment imposes upon the employee
 - c. The anticipated length of time before the employee can fully resume the responsibilities of his regular position
 - d. If a specific adjustment is requested, medical documentation must be provided which confirms the request is medically necessary. Please note that post and shift assignments are the prerogative of management.
2. The Organizational Unit Head or designee may verify an employee's personal physician certificate by sending the employee, at agency expense, to another physician for a second opinion regarding the short-term impairment.
3. An employee whose work assignments are adjusted shall submit a physician certificate at least every 30 calendar days to the Organizational Unit Head or designee describing:
 - a. The employee's need to continue adjusted work assignments
 - b. A projected date for the employee to resume regular position's duties
4. The Organizational Unit Head or designee should review physician certificates in considering the continuance of adjusted work assignments.
5. If an employee requests assistance or accommodation, or the supervisor reasonably suspects assistance is needed in order for the employee to satisfactorily perform the normally assigned job duties, the supervisor should immediately request input from the employee if appropriate, and assistance from the unit's Human Resource Officer to assess the work related issue, the employee's need for assistance, and the cost of the assistance identified or requested.
6. The employee must complete an [Employee Request for Job Assistance/Accommodation](#) 101_F3 if the employee is requesting job assistance or job accommodation that exceeds or is expected to exceed 90 calendar days.

C. Supervisor Authority to Approve Accommodation

1. If assistance can be easily provided with little or no disruption or expense, and the impact to the agency is insignificant, the assistance shall be 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.
2. There is no need to explore whether the request is related to a disability.

D. The following are examples of cases when a supervisor may provide assistance or make an accommodation without intrusion into an employee's medical condition 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 Section G., 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

E. The supervisor, with assistance from the Human Resource Officer, shall 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 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?

F. The following are examples of situations that must be reported to the Organizational Unit Head and Human Resource Officer 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, division, or facility policies, practices, or operating procedures
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
- G. Assistance or accommodation for security employees or other employees who work within a secured perimeter of a correctional facility - These situations are illustrative and not intended to be all inclusive.
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 offenders.
 2. Any requests that preclude or tend to preclude the public safety priority shall 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 offender 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 an officer to leave a security post without notice or relief or on a schedule that hinders the ability to effectively manage security and offender population
 - d. Allowing any drugs or devices which may negatively impact visual and auditory perception
 - e. Precluding an officer from being available to stand all posts
 - f. Any accommodation that excludes offender 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 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
- H. ADA Committee Referral Required - The Unit Head or designee shall refer requests for accommodation to the ADA Committee 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
- I. How to Make a Referral to the ADA Committee - Prior to a formal request being made to the ADA Committee, the Organizational Unit Head or designee and the Human Resource Officer shall:
1. Identify the essential functions of the employee's job
 2. Obtain a release of medical information from the employee and request a medical evaluation from the health care provider of the employee's disability and limitations

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 physician with a copy of the position description (employee work profile) with essential job functions clearly delineated
 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 the employee cannot perform any of the essential functions, ask the physician if they can make any recommendation(s) that would allow the employee to perform the essential job functions.
- J. The employee must be given an opportunity to express their request for an accommodation that would enable the employee to perform the essential functions of the job.
1. The Organizational Unit Head or designee shall complete an organizational unit assessment and complete the [Request for Job Assistance/Accommodation - Organizational Unit Assessment](#) 101_F4 and attach all medical documentation. Any accommodations considered by the unit shall be documented.
 2. The Human Resource Officer shall request an [Authorization for Release of Information – Job Assistance/Accommodation](#) 101_F5 from the employee for authorization to contact the physician.
 3. The above information should be submitted to the ADA Committee as soon as possible after the need for assistance has been identified or a request for assistance has been made.
- K. ADA Committee Responsibility - The Committee has the final 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.
1. The Committee will make a determination of the employee's status as a "qualified individual with a disability" within the scope of the ADA.
 2. The Committee may invite employees from other operating divisions and other agencies, especially the Department of Rehabilitative Services, to provide input regarding accommodations available to enable an employee to perform the essential functions of the job.
 3. The Committee will consider the following requirements when making recommendations for accommodation:
 - a. The disabled employee requesting accommodation 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
 - b. The disability, as recognized by the ADA, must be known to the DOC
 - c. The reasonable accommodation must not pose an undue hardship on the operation of the facility or work unit
 - d. Continued employment of an employee with a disability who is requesting accommodation must not pose a significant risk of substantial harm to the employee or others
 4. The Committee will determine if an accommodation poses an undue hardship for the DOC, considering:
 - a. The cost to provide the accommodation
 - b. The financial resources of the DOC
 - c. The impact the accommodation will have on the organizational unit
 - d. Whether the accommodation poses a "direct threat that includes potential breach of security"
 5. The Committee will normally make a decision within ten working days of receipt of all requested information. If a decision cannot be made within ten working days, a Committee member must contact the Human Resource Officer at the facility or unit on the status of the referral. The Human

Resource Officer of the facility or unit, within three working days of notice by the Committee, must provide written notice to the employee of the status of the referral.

6. Prior to making a final decision regarding an accommodation, if there are unclear issues about the requested accommodation, a member of the Committee may discuss the proposed accommodation with the Organizational Unit Head or designee or the Human Resource Officer, or both.
7. The Committee will provide written documentation to the Organizational Unit Head or designee and Human Resource Officer regarding the employee's protection under ADA and/or the accommodation to be provided.
8. If the Committee determines that physical plant modifications are necessary, all building changes must be requested in accordance with the applicable Department of Corrections procedure governing construction and maintenance and state guidelines.

L. Compliance with the Committee Decision - The Committee's decision is binding on all parties upon delivery of the decision to the Organizational Unit Head.

1. Upon receipt of the Committee's decision, the Organizational Unit Head must immediately implement the accommodation consistent with the Committee's decision.
2. If the accommodation is implemented and is not effective, the Committee 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 Committee should be contacted immediately.

M. Employee Status Pending Review of Accommodation or Assistance Request

1. 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.
2. 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.
3. 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.

N. Employee Work Performance and Evaluations - Supervisors may not give employees with disabilities "special treatment." Disabled employees should not be evaluated on a lower standard or a higher standard, nor disciplined less severely or more severely than other employees. Special treatment is not equal employment opportunity.

1. 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 accommodation is required to perform the essential functions, the employee should not be evaluated on their performance without the accommodation.
2. 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.
3. 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.

V. REFERENCES

DHRM Policy 4.57, *Virginia Sickness and Disability Program*

Americans with Disabilities Act 1990

VI. FORM CITATIONS

[Employee Request for Job Assistance/Accommodation](#) 101_F3

[Request for Job Assistance/Accommodation - Organizational Unit Assessment](#) 101_F4

[Authorization for Release of Information – Job Assistance/Accommodation](#) 101_F5

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

Signature Copy on File

2/24/15

N. H. Scott, Deputy Director of Administration

Date