

## OFFICE OF STATE EMPLOYMENT RELATIONS

### - DIVISION OF AFFIRMATIVE ACTION BULLETIN -

**Date:** June 4, 2014

**Locator No.:** OSER-0366-AA

**Subject:** Reasonable Accommodation Policies

This bulletin explains state policies about providing “reasonable accommodations” for persons with disabilities. The provision of reasonable accommodations ensures the State of Wisconsin’s compliance with the Americans with Disabilities Act (ADA) as amended in 2008. The ADA provides that “no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. 12112(a). The term “covered entity” means an employer, employment agency, labor organization, or joint labor-management committee. 42 U.S.C. 12111(2). For more information about the ADA, see *Appendix A – Disability Resources*.

The policies in this bulletin apply to all agencies as defined at s. 230.03(3), Wis. Stats.

Statutory regulations require the Office of the State of Employment Relations Division of Affirmative Action (OSER/DAA) to show how employees with disabilities are being accommodated. Federal and state laws do not require reasonable accommodation requests to be in writing. *The time limit for a response to an accommodation request begins when the employee makes the initial request, regardless of whether that request is in verbal or written form.*

This bulletin replaces AA-12; DAA-33 and AA-42. It includes two major sections and four appendices.

#### **I. GENERAL POLICIES**

This section discusses the concepts, definitions, criteria and agency staff roles regarding reasonable accommodations and disabilities. It also contains policies for each agency to follow when providing reasonable accommodations for persons with disabilities.

#### **II. GUIDELINES FOR PREPARING AGENCY REASONABLE ACCOMMODATIONS POLICIES AND PROCEDURES**

This section provides the guidelines (instructions) for developing policies and making reasonable accommodation decisions. Each state agency will have a written set of reasonable accommodations policies.

#### **III. APPENDICES**

This section contains four appendices:

- Appendix A = Disability Resources
- Appendix B = Disability Accommodation Request Form (*sample*)
- Appendix C = Available online only.....links to the following articles from the Wis.Stats.111.34(2)(c) subnotes:
  - “The Scope of Disability Law in Wisconsin” by Vergeront & Cochrane
  - “ADA and WFEA: Differing Disability Protections” by Backer & Mishlove
- Appendix D = Sample Reasonable Accommodations policy

## I. GENERAL POLICIES

### A. Concept (Reasonable Accommodation)

Both federal and state equal opportunity laws include the concept of “reasonable accommodation” as a key element in providing equal employment opportunity for persons with disabilities.

### B. Definitions

#### 1. Reasonable Accommodation

A reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified person with a disability to enjoy an equal employment opportunity. The purpose of reasonable accommodation is to enable employees to adequately undertake job-related responsibilities. Target Stores v. LIRC, 217 Wis. 2d 1, 576 N.W.2d 545 (Ct. App. 1998).

A reasonable accommodation may include, but is not limited to:

- modifying written examinations
- making facilities accessible
- adjusting work schedules
- restructuring jobs
- providing assistive devices or equipment
- providing readers or interpreters
- modifying work sites

#### 2. Undue Hardship *(From Job Accommodation Network [JAN] website)*

An employer is not required to make a reasonable accommodation if it would impose an “*undue hardship*” on the operation of the business.

An “*undue hardship*” is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. It includes any action that is:

- unduly costly
- extensive
- substantial
- disruptive
- or that would fundamentally alter the nature or operation of the business.

Whether a particular accommodation will impose an undue hardship will always be determined on a case-by-case basis. An accommodation that poses an undue hardship for one employer at a particular time may not pose an undue hardship for another employer, or even for the same employer at another time.

If a particular accommodation would impose an undue hardship, the employer will consider whether there are alternative accommodations that would not impose such hardship.

### 3. Disability

Federal and state definitions of “disability” differ somewhat, which impact the criteria by which reasonable accommodations are granted.

The **Federal** ADA (Americans with Disabilities Act) definition of disability is, with respect to an individual:

“A physical or mental impairment that substantially limits one or more major life activities of such individual;  
a record of such an impairment; or  
being regarded as having such an impairment.” 42 U.S.C. 12102(1).

The **State** WFEA (Wisconsin Fair Employment Act) definition of disability is:

“A physical or mental impairment that makes achievement unusually difficult or limits the capacity to work, or  
a record of such an impairment, or  
is perceived as having such an impairment. *S. 111.32(8), Wis. Stats.*”

### C. Criteria

The **federal** standard for evaluating the reasonableness of an accommodation is whether it allows a qualified employee to “perform the essential functions” of his/her job. 42 U.S.C. 12111(8). If an employee cannot perform essential functions, even with the accommodation(s), then the employee is not qualified for the job.

The **state** standard for evaluating the reasonableness of an accommodation is whether it allows an employee to “adequately undertake the job-related responsibilities of a particular job, membership or licensed activity.” S. 111.34(2)(a)(b)(c), Wis. Stats. If the employee cannot adequately undertake the job-related responsibilities, even with the accommodation(s), then the employee is not qualified for the job.

**When granting reasonable accommodations in the workplace, the state WFEA criterion takes precedence.**

### D. Agency Staff Roles in Reasonable Accommodation Process

#### 1. Employee:

- Makes reasonable accommodation request to supervisor.

#### 2. Supervisor:

- Handles the request, may solicit help of agency affirmative action officer, medical coordinator or human resources manager.
- May request for medical verification of employee’s situation to show how medical issue impairs his/her abilities at work. Before a supervisor, affirmative action officer, medical coordinator or any other staff can contact an employee’s medical personnel, s/he must receive a signed release statement from the employee allowing the medical contact to be made. (Medical verification is *not* mandatory in order to fulfill an employee’s reasonable accommodation request.)

#### 3. Affirmative Action Officer and/or Medical Coordinator:

- Facilitate provision of medical equipment or devices to be used for accommodation

- If necessary, assist supervisors and employees in accommodation decision-making processes
- Assist with management of employees' separate, confidential medical files

## **E. Policies for Providing Reasonable Accommodations**

1. Engage in Interactive Process, with several good faith efforts
2. Explore Alternative Employment Situations
3. Reporting
4. Monitoring
5. Equipment Transfers

### **1. Engage in Interactive Process, with several good faith efforts**

Employers are to discuss and try several accommodation options with the employee that will allow him/her to adequately undertake the job-related responsibilities. Many employees will already have ideas of accommodations that will help them perform their jobs. If one accommodation does not work as well as originally planned, the employee and the employer must keep the lines of communication open to think through the situation and try another. It may take several tries before a workable solution emerges.

Reasonable accommodation solutions must work for both the employee and the employer without undue hardship on the employer or other employees in the work unit.

The following are all examples of the types of accommodations that can be tried:

- Light duty
- Reassignment
- Hours reduction
- Demotion
- Alternate position search within the agency

Employers must document all the good faith efforts to reasonably accommodate the employee.

### **2. Explore Alternative Employment Situations**

If an individual who is an employee of an agency acquires a disability, and the agency is not able to make reasonable accommodations which allow the individual to continue in his or her current position, the agency must explore possibilities for placement in other positions within the agency. The movement to another position may be a transfer, a demotion, or change to part-time employment, and must be made in accordance with applicable collective bargaining agreements, *See*, Chapter 230 of the Wisconsin Statutes and the accompanying administrative rules.

“When an employee becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer the employee to a position which requires less arduous duties, if necessary demote the employee, place the employee on a part-time rate of pay or as a last resort, dismiss the employee from the service. The appointing authority may require the employee to submit a medical or physical examination to determine fitness to continue in service. The cost of such examination shall be paid by the employing agency. In no event shall these provisions affect pensions or other retirement benefits for which the employee may otherwise be eligible. S. 230.37(2), Wis. Stats.

Court decisions under the Wisconsin Fair Employment Act (WFEA) also indicate that there is some obligation to explore transfer possibilities.

Be sure to document the search for an alternative placement. In your documentation, state all the positions you considered and the reasons they were not considered appropriate. Offer all appropriate possibilities to the employee. Do not assume the employee will not take certain jobs. Consider positions in all agency offices and institutions in all geographical locations as possible alternative placements.

While no legal responsibility exists for alternative placement outside the employing agency, employees should be counseled regarding their rights to other positions in state employment. Agency affirmative action officers could be a resource for employees as they seek other opportunities.

### **3. Reporting**

Agencies will provide the DAA with information regarding their provision of reasonable accommodations for persons with disabilities. The policies and procedures for reporting accommodations are:

- Document all reasonable accommodation requests in writing. Even though federal and state laws don't require requests in writing, written documentation protects both the employee and the employer. This applies to employees and applicants who have received job offers.
- Make requests using the form provided by the DAA. Agencies may use modified forms, or may develop an addendum, with the approval of the DAA. Required elements for the form are listed in the "Guidelines for Preparing State Agency Reasonable Accommodation Policies and Procedures" which appear later in this bulletin.
- Submit copies of completed request forms to the DAA on an ongoing basis as accommodation requests are granted or denied. The employee's name must be deleted (blinded) from the forms submitted.
- The DAA will compile completed forms for monitoring and reporting purposes.

### **4. Monitoring**

Agencies will be monitored by the DAA for their provision of reasonable accommodations as part of their overall Equal Employment Opportunity (EEO) compliance. Monitoring will include:

- Reviewing compliance with all policies regarding provision of accommodations.
- Reviewing a sampling of the reasonable accommodation requests made during a particular time period to evaluate the reasonableness of accommodation decisions.

### **5. Equipment Transfers**

When a state agency purchases equipment for an employee as part of a reasonable accommodation and the employee later moves to a position in another state agency, agency representatives should come to a mutual agreement regarding the transfer of the equipment. In most cases the special equipment purchased should transfer with the employee. If, due to the cost of the equipment, the agency cannot afford to transfer title to the equipment without compensation from the receiving state agency, efforts will be made to reach agreement between the agencies concerning costs and fund transfers as quickly as possible. Until the issue of the equipment's title is resolved, the employee will retain use of the equipment in the new job—regardless of the fiscal accounting procedures and timetables involved in equipment transfers.

If funds appropriated under s. 20.865(1)(fn), (Ln), and (vn), Wis. Stats. represent 50% or more of the cost of purchasing equipment for a reasonable accommodation, the title to such equipment will be held by the Department of Administration (DOA). Equipment purchased under s. 20.865, Wis. Stats. will automatically be transferred with the employee, and if the employee leaves state

service, DOA becomes responsible for holding it for use by other employees with disabilities within state government.

**S. 20.865(1)(fn), Wis. Stats.** *Physically handicapped supplements.* The amounts in the schedule to pay the cost of acquiring services or acquiring, maintaining or renting special equipment to accommodate a physical disability of a state employee, who without which could not perform the responsibilities of the position to which he or she is appointed. Payment for service acquisition under this paragraph may not be made for a period of more than 3 months per employee.

**S. 20.865(1)(Ln), Wis. Stats.** *Physically handicapped supplements; program revenues.* From the appropriate program revenue and program revenue — service accounts, a sum sufficient to supplement the program revenue appropriations to state agencies to pay the cost of acquiring services or acquiring, maintaining or renting special equipment to accommodate a physical disability of a state employee, who without which could not perform the responsibilities of the position to which he or she is appointed. Payment for service acquisition under this paragraph may not be made for a period of more than 3 months per employee.

**S. 865(1)(vn), Wis. Stats.** *Physically handicapped supplements; segregated revenues.* From the appropriate segregated funds, a sum sufficient to supplement the appropriations to state agencies to pay the cost of acquiring services or acquiring, maintaining or renting special equipment to accommodate a physical disability of a state employee, who without which could not perform the responsibilities of the position to which he or she is appointed. Payment for service acquisition under this paragraph may not be made for a period of more than 3 months per employee.

## II. GUIDELINES FOR PREPARING AGENCY REASONABLE ACCOMMODATIONS POLICIES AND PROCEDURES

Each state agency shall have written policies and guidelines regarding reasonable accommodations for persons with disabilities. The policies and guidelines will include:

- A. General purpose statement
- B. Definitions
- C. Procedures to request accommodations
- D. A decision-making process for approving, modifying or denying requests
- E. An appeal process
- F. Legal reminder

### A. General Purpose Statement

Include a clear, concise statement of the purpose of the policy. The policy must be signed by the agency head.

An example is:

It is the policy of the [name of agency] to provide reasonable accommodations for qualified persons with disabilities who are employees or applicants for employment. This agency will adhere to all applicable federal and state laws, regulations, and guidelines with respect to providing reasonable accommodations as required to afford equal employment opportunity to qualified persons with disabilities. Reasonable accommodations will be provided in a timely and cost-effective manner. Employment opportunities shall not be denied because of the need to make reasonable accommodations to an individual's disability.

### B. Definitions

The following key definitions must be included:

#### 1. Reasonable Accommodation

A reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified person with a disability to enjoy an equal employment opportunity. The purpose of reasonable accommodation is to enable

employees to adequately undertake job-related responsibilities. Target Stores v. LIRC, 217 Wis. 2d 1, 576 N.W.2d 545 (Ct. App. 1998).

A reasonable accommodation may include, but is not limited to:

- modifying written examinations
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## **2. Undue Hardship** *(From JAN website)*

An employer is not required to make a reasonable accommodation if it would impose an “*undue hardship*” on the operation of the business.

An “*undue hardship*” is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. It includes any action that is:

- unduly costly
- extensive
- substantial
- disruptive
- or that would fundamentally alter the nature or operation of the business.

Whether a particular accommodation will impose an undue hardship will always be determined on a case-by-case basis. An accommodation that poses an undue hardship for one employer at a particular time may not pose an undue hardship for another employer, or even for the same employer at another time.

If a particular accommodation would impose an undue hardship, the employer will consider whether there are alternative accommodations that would not impose such hardship.

## **3. Disability**

Federal and state definitions of “disability” differ somewhat, and this discrepancy impacts the criteria by which reasonable accommodations are granted.

The **Federal** ADA (Americans with Disabilities Act) definition of disability is, with respect to an individual:

“A physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” 42 U.S.C. 12102(1).

The **State** WFEA (Wisconsin Fair Employment Act) definition of disability is:

“A physical or mental impairment that makes achievement unusually difficult or limits the capacity to work, or a record of such an impairment, or is perceived as having such an impairment. S. 111.32(8), Wis. Stats.

“Major life activities” include functions such as caring for one’s self, performing manual tasks, having proper internal bodily organ functions, walking, seeing, hearing, speaking, breathing, learning, and working.

**In Wisconsin, the state WFEA definition of “disability” takes precedence.**

Agencies may add clarifying language to these definitions, or may add additional definitions. Additions or clarifications must be approved by the DAA before enacting the policy.

NOTE: See *Appendix A (DISABILITY RESOURCES)* for a link to the JAN website for a list of disabilities. Courts have held that pregnancy is not a disability under the Wisconsin Fair Employment Act and the Americans with Disabilities Act.

### C. Procedures to Request Accommodations

1. The policy will describe how applicants for employment and current employees will be made aware of their rights regarding requesting accommodations.
2. The policy will detail how applicants for employment and current employees make reasonable accommodation requests.
3. The policy will describe how accommodation issues will be dealt with in the interview process. This section of the policy will include these principles:
  - a. All applicants who will be invited for interviews should be informed of the agency policy to provide reasonable accommodations for applicants and employees with disabilities. They should be informed that they can request accommodation for interviews and informed how to make the requests.
  - b. If applicants are asked questions regarding their ability to perform required job duties, all applicants should be asked the same questions. This question may be prefaced with a statement regarding the agencies' willingness to provide reasonable accommodations. *Note: Applicants may not be asked whether or not they have a disability.*
  - c. If an applicant indicates during the interview process that he or she has a disability, follow-up questions regarding possible accommodations may be pursued.
  - d. Qualified applicants cannot be denied employment solely on the basis of a need to provide a reasonable accommodation. However, if an applicant who receives a tentative job offer cannot reasonably be accommodated, the offer must be rescinded.
4. The policy will explain how to use the **Disability Accommodation Request Form**. All reasonable accommodation requests must be documented. Federal and state laws do not require requests in writing, however, written documentation protects both the employee and the employer. This applies to employees and applicants who have received job offers. Statutes require OSER DAA to monitor, evaluate and make recommendations to each agency to improve its progress in providing equal opportunity to its employees, applicants for employment and clients. S. 230.04(9)(c) and (9)(f), Wis. Stats. Reasonable Accommodation is a nationally accepted way of providing equal opportunity to persons with disabilities and is required by the federal ADA. ([Askjan.org/ERguide/ERGuide.pdf](http://Askjan.org/ERguide/ERGuide.pdf))

Requests are made using the Disability Accommodation Request Form. (See *Appendix B for sample form*). Agencies may use modified, individualized forms, or may develop an addendum, with the approval of the DAA. Modified forms must include the following elements:

- a. Employee or applicant name
- b. Work unit
- c. Date

- d. Job Title
- e. Description of disability
- f. Description of how disability impairs ability to perform assigned job duties
- g. Description of accommodation requested
- h. Decision regarding request
  - If “yes”, describe the accommodation approved
  - If “modified”, give reasons
  - If “denied”, give reasons
  - Include name and signature of the decision maker, and the date signed
  - The approximate cost of the accommodation provided

The information collected on the Disability Accommodation Request Form is regarded as a **confidential medical record**. The ADA requires medical records to be kept in a separate confidential medical file. The ADA allows the following exceptions to the confidentiality requirements:

- a. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.
- b. First aid and safety personnel may be informed, when appropriate, if the disability requires alternative actions in emergency situations.
- c. Government officials investigating compliance with nondiscrimination laws shall be provided relevant information on request.

*Any Disability Accommodation Request Forms which are currently in an employee's P-file should be removed and placed in a confidential medical file which complies with ADA requirements.*

#### **D. A Decision Making Process**

The policy will outline how decisions are made regarding whether or not to approve, modify or deny a reasonable accommodation request. The following elements must be included:

1. A listing of the following factors to be considered when determining the reasonableness of the accommodation requested:
  - Does the accommodation accomplish the desired result – allowing the individual to adequately undertake the job-related responsibilities?
  - Will the accommodation adversely affect the productivity or work environment of other employees and the work unit?
  - Is the applicant or employee otherwise qualified to perform the job functions?
2. A description of the role of the first-line supervisor in the decision making process. Under what circumstances can a first-line supervisor approve a request? Are there any dollar limits on approval at this level? A first-line supervisor will not be allowed to deny a request without further review.
3. A description of the role of other agency staff in the decision making process, particularly the role of the agency AA officer, if applicable the Medical Coordinator, and/or HR manager.
4. A description of how the employee or applicant will be involved in the process of determining the most appropriate accommodations. Employees will be given an opportunity to provide or arrange for their own accommodations, for example by using volunteer drivers or readers, or providing their own adaptive equipment. However, the procedures in these guidelines must be

followed (written request, approval, etc.) even if employees provide or arrange for their own accommodations to ensure documentation of the process and to alleviate accommodations from disrupting the workplace.

5. A description of the time limits for responses to requests. The decision making process should be as short as practical to minimize delays for the applicant or employee in carrying out his/her duties. The time limit for a response begins when the employee makes the initial request, regardless of whether that request is in verbal or written form.
6. A description of the conditions which make verification appropriate. In making accommodation decisions, the employer must determine the ability of the person to adequately undertake job-related responsibilities with reasonable accommodation. A request for verification of the employee's disability may be appropriate but is not required. The employee must bear the initial cost of verification. If the agency requests additional verification of the disability or the disability's impact on job requirements, the agency must bear the cost.

Factors to be considered if requesting verification:

- a. Is the employee known to have a disability?
  - b. Does the applicant or employee have an observable disability?
  - c. Does the request expand on an existing accommodation or previously provided accommodation for which verification was required? Example: an employee with a seizure disorder who needs a driver due to recurring seizures which had previously been under control.
  - d. Does the request appear inappropriate?
  - e. Does the agency require a medical coordinator to conduct the communications with the employee's medical personnel for verification?
  - f. Questions for medical personnel:
    - How will the disability impact an employee's ability to adequately undertake the job-related responsibilities?
    - What accommodation might assist the employee to adequately undertake the job-related responsibilities?
7. A description of the circumstances under which consideration of transfer of an employee to another position is appropriate. This is not a legal right for applicants. (*See* S. 230.37(2), Wis. Stats.).
  8. An outline of conditions under which a request will be made to the Department of Administration, (DOA), (if needed) to use state funds earmarked for accommodations.
    - a. Is the cost of the accommodation feasible within the budget of the agency? If not, can approval be obtained from DOA to use funds which are statutorily reserved for reasonable accommodations?
    - b. Are there other more cost-effective options which will allow the individual to "adequately undertake the job-related responsibilities" of the job?
    - c. As a general rule, agencies should purchase equipment only if it is determined that the use of the equipment is necessary in transaction of the official business of the agency. The equipment may not be of a personal nature (for example: eyeglasses, hearing aids, etc.) which the employee could reasonably be expected to provide. In determining whether the purchase of a device should be authorized, consideration should be given to how well the

employee could perform the job without the equipment and whether the principle benefit would be better job performance by the employee.

Each agency's internal financial division will work with DOA's financial division to access these earmarked state funds.

Devices may also be available from other sources. The State Division of Vocational Rehabilitation, (DVR), can provide funds or equipment in some instances. Community organizations and service clubs occasionally also sponsor the purchase of equipment, as do some foundations and insurance companies working with individuals disabled as a result of an on-the-job injury or personal injury.

9. A list of resources for technical assistance in identifying the most appropriate accommodations should be included, either in the body of the policy or an appendix.

With the employee's or applicant's permission, DVR counselors, school special education personnel, and other rehabilitation professionals may be consulted for help in determining the most appropriate accommodation.

10. A description of how periodic monitoring of the effectiveness of the accommodation by the employee and his/her supervisor will be accomplished.
11. A description of where the separate files regarding reasonable accommodations, along with any accompanying confidential medical information regarding an employee's disability, will be kept.

#### **E. An Appeal Process**

The policy must describe the procedure to follow if an employee disagrees with a decision regarding his/her request for a reasonable accommodation. Employees have the option to follow the usual discrimination complaint procedure (e.g., internal agency process; Equal Rights Division; or the Equal Employment Opportunity Commission).

NOTE: Agencies have the option of using existing complaint/grievance resolution processes for reasonable accommodation appeals. However, because of the technical nature of the decision-making, agencies may want to develop a separate procedure, or modifications of existing procedures. If agencies choose to use an existing process, this process should be referenced, with specific information regarding where the written procedure can be found.

1. The appeal process should provide for each person whose reasonable accommodation request is denied to be notified of appeal options. Time limits for each step of the process must be stated.
2. Agencies may want to consider input from outside their particular department (for example: OSER/DAA, or DWD/DVR) in the appeal process. To protect confidentiality the appellant's permission is required if persons from outside the agency are involved in the appeal process.

(Applicants do not have access to this internal procedure.)

## **F. Legal Reminder**

The following type of statement should appear at the end of the policy document as a reminder to all agency staff:

Failure to adhere to these reasonable accommodation policies and guidelines puts your agency at risk for disability claims and lawsuits.

## **III. APPENDICES**

This section contains four appendices:

1. Appendix A = Disability Resources
2. Appendix B = Disability Accommodation Request Form (*sample*)
3. Appendix C = Available online only.....links to the following articles:
  - Article: “Disability Law in Wisconsin Workplaces” (also known as “The Scope of Disability Law in Wisconsin”) from Wis.Stats.111.34 (subnotes)
  - Article: “ADA & WFEA: Differing Disability Protections” from Wis.Stats.111.34 (subnotes)
4. Appendix D = Sample Reasonable Accommodations policy

If you have questions regarding these issues, contact the Division of Affirmative Action at: (608) 266-5709; [OSERDAA@wi.gov](mailto:OSERDAA@wi.gov)

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Jeanette Johnson, Administrator  
Division of Affirmative Action

*Appendix A*

## **DISABILITY RESOURCES**

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### **Wisconsin**

- **Disability Rights Wisconsin (DRW)** <http://www.disabilityrightswi.org/>
- **ADA Wisconsin Partnerships** <http://www.adawipartnership.org/>
- **Stout Vocational Rehabilitation Institute** <http://www.uwstout.edu/svri/>
- **Aging and Disability Resource Centers (ACRC)** <http://www.dhs.wisconsin.gov/lcarea/adrc/>
- **Wisconsin Pathways to Independence** <http://www.dhs.wisconsin.gov/wipathways/>
- **Division of Vocational Rehabilitation Services** – Wisconsin Department of Workforce Development (DWD) [http://dwd.wisconsin.gov/dvr/resources\\_gen.htm](http://dwd.wisconsin.gov/dvr/resources_gen.htm)
- **Milwaukee County Office for Persons with Disabilities** <http://county.milwaukee.gov/OPD>
- **Governor’s Committee for People with Disabilities**  
<http://www.dhs.wisconsin.gov/disabilities/physical/gcpd.htm>

### **Regional**

- **Great Lakes ADA Center** <http://www.adagreatlakes.org/>

### **National**

- **JAN** – Job Accommodation Network <http://askjan.org/>
- **ODEP** – Office of Disability Employment Policy <http://www.dol.gov/odep/>
- **Disability.gov** <https://www.disability.gov/>
- **EARN** – Employee Assistance Resource Network <http://www.askearn.org/>
- **SHRM** – Society of Human Resource Managers Disability Employment Resources  
[http://www.shrm.org/hrdisciplines/Diversity/Articles/Pages/disability\\_072110.aspx](http://www.shrm.org/hrdisciplines/Diversity/Articles/Pages/disability_072110.aspx)
- **ADA** – Americans with Disabilities Act Home page – U.S. Department of Justice  
<http://www.ada.gov/>
- **EEOC** – Equal Employment Opportunity Commission  
<http://www.eeoc.gov/policy/docs/accommodation.html>  
<http://www.eeoc.gov/facts/performance-conduct.html>

## Appendix B : (found on OSER website under References: Forms)

State of Wisconsin  
 Office of State Employment Relations  
 Division of Affirmative Action  
 101 East Wilson Street, 4th Floor  
 Madison, WI 53703

**DISABILITY ACCOMMODATION REQUEST FORM**

Agency or UW System Unit:	Division (or other secondary unit):
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**SECTION I: Employee**

Name of Employee:	Job Title:
Signature:	Date of Request:
My disability is (e.g., visual impairment, arthritis, etc.):	
My disability impairs my ability to perform assigned job duties in the following way (attach additional pages if necessary):	
The reasonable accommodation I am requesting is: (attach additional pages if necessary):	

**SECTION II: Employer**

Accommodation Request is: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Modified	
If <i>modified</i> , describe modification and give rationale. If <i>denied</i> , give rationale. (Attach additional pages if necessary.)	
Name of person making decision:	Cost of Accommodation: <input type="checkbox"/> Estimate <input type="checkbox"/> Actual
Signature:	Date:

**DISTRIBUTION AFTER COMPLETION:**

Original - Employee    Copy - Agency Confidential File    Copy - OSER/DAA (with employee identification blinded)

OSER-DAA-10 (rev. 3/94)

*Appendix C*

“Disability Law in Wisconsin Workplaces”, (also known as “The Scope of Disability Law in Wisconsin” by Vergeront & Cochrane:

<http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=77&Issue=10&ArticleID=808>

“ADA and WFEA: Differing Disability Protections” by Backer & Mishlove:

<http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=77&Issue=10&ArticleID=621>

*Appendix D – Sample Reasonable Accommodations policy*

**General Purpose Statement**

It is the policy of the [name of agency] to provide reasonable accommodations for qualified persons with disabilities who are employees or applicants for employment. [Name of agency] will adhere to all applicable federal and state laws, regulations, and guidelines with respect to providing reasonable accommodations as required to afford equal employment opportunity to qualified persons with disabilities. Reasonable accommodations will be provided in a timely and cost-effective manner. Employment opportunities shall not be denied because of the need to make reasonable accommodations to an individual's disability.

**Definitions**

**Reasonable Accommodation**

A reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified person with a disability to enjoy an equal employment opportunity. The purpose of reasonable accommodation is to enable employees to adequately undertake job-related responsibilities. Target Stores v. LIRC, 217 Wis. 2d 1, 576 N.W.2d 545 (Ct. App. 1998).

A reasonable accommodation may include, but is not limited to:

- modifying written examinations
- making facilities accessible
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- restructuring jobs
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- providing readers or interpreters
- modifying work sites

The above list is from the EEOC's (Equal Employment Opportunity Commission) ADA (Americans with Disabilities Act) Technical Assistance Manual. For a complete discussion of "Reasonable Accommodations". *See*, 42 U.S.C. 12111 (9).

**Undue Hardship**

An "undue hardship" is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. It includes any action that is:

- unduly costly
- extensive
- substantial
- disruptive
- or that would fundamentally alter the nature or operation of the business.

The above list is from the EEOC's ADA Technical Assistance Manual. For a complete discussion of "Undue Hardship". *See*, 42 U.S.C. 12111 (10).

Whether a particular accommodation will impose an undue hardship will always be determined on a case-by-case basis. An accommodation that poses an undue hardship for one employer at a particular time may not pose an undue hardship for another employer, or even for the same employer at another time.

If a particular accommodation would impose an undue hardship, the employer will consider whether there are alternative accommodations that would not impose such hardship.

## **Disability**

Federal and state definitions of “disability” differ somewhat, which impact the criteria by which reasonable accommodations are granted.

The **Federal** ADA (Americans with Disabilities Act) definition of disability, with respect to an individual, is:

“A physical or mental impairment that substantially limits one or more major life activities of such individual, or a record of such an impairment, or being regarded as having such an impairment.”  
42 U.S.C. 12102 (1)

Major Life Activities:

(A) In general

For purposes of [subsection (1) of 42.U.S.C. 12102] major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of [subsection (1) of 42.U.S.C. 12102] a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. 42 U.S.C. 12102 (2)

The **State** WFEA (Wisconsin Fair Employment Act) definition of disability is:

“A physical or mental impairment that makes achievement unusually difficult or limits the capacity to work, or a record of such an impairment, or is perceived as having such an impairment”.  
Section 111.32(8), Wis. Stats.

***In Wisconsin, the WFEA definition of “disability” takes precedence.***

## **Procedures to Request Accommodations**

All current employees will be made aware of their right to request reasonable accommodation through receipt of a copy of the Reasonable Accommodation Procedure. The procedure is also posted on the intranet and bulletin boards and is available from the Human Resources office. Employees will also be advised of their right to request reasonable accommodations at the time of the biennial survey to allow employees to self-identify as persons with disabilities.

All applicants for employment will be informed of the agency's policy to provide reasonable accommodations for applicants with disabilities. Applicants may request accommodation for interviews by informing the agency when setting up the interview or contacting the agency's interview coordinator.

Current employees may initiate a request for an accommodation verbally by talking to their supervisor or AA Officer but then must complete the request in writing using the "Disability Accommodation Request Form" (OSER-DAA-10). Current employees may request the form from the AA Officer or the Human Resources office. The form is also located on the OSER website.

### **A Decision Making Process**

The following factors will be considered when determining the reasonableness of the accommodation requested:

- Does the accommodation accomplish the desired result – allowing the individual to adequately undertake the job-related responsibilities?
- Will the accommodation adversely affect the productivity or work environment of other employees and the work unit?
- Is the applicant or employee otherwise qualified to perform the job functions?

The supervisor will proceed with provision of reasonable accommodations when the accommodation can be provided within the unit's budget. While a supervisor can routinely provide accommodations, the supervisor cannot deny a request for reasonable accommodations without further review.

When the first-line supervisor cannot provide the reasonable accommodations requested, the written request for reasonable accommodations accompanied by the supervisor's recommendation is forwarded to the Human Resources Director. The Human Resources Director or designee will investigate the need and alternatives for meeting the need for reasonable accommodation. At a minimum, the employee requesting the accommodation and the employee's supervisor shall be consulted.

Employees may provide or arrange for their own accommodations. In addition, the employee or applicant's permission will be sought before other rehabilitation professionals are consulted for help in determining the most appropriate accommodation. In all cases, the form for requesting reasonable accommodations will be completed and a copy filed with the Human Resources Director.

The supervisor will act upon the request within [number of days] working days or refer it to the Human Resources Director. The Human Resources Director or designee will reach a determination as quickly as possible, but the decision-making time shall not exceed 30 working days from receipt of the request from the supervisor.

The decision to approve or disapprove a request for accommodation will be in writing. The "Disability Accommodation Request Form" will be used for communication of the decision.

The supervisor and/or Human Resources Director may request verification of the disability of the person requesting accommodation in order to assist with determination of the ability of the person to adequately undertake the job-related responsibilities of the job with reasonable accommodation. The employee must bear the initial cost of verification. If the agency requests additional verification of the disability or the disability's impact on job requirements, the agency must bear the cost.

The following are factors to be considered when deciding to request verification. The list is not intended to be all inclusive:

- Is the employee known to have a disability?
- Does the applicant or employee have an observable disability?
- Does the request expand on an existing accommodation or previously provided accommodation for which verification was required?
- Does the request appear inappropriate?
- Does the agency require a medical coordinator to conduct the communications with the employee's medical personnel for verification?
- Questions for medical personnel:
  - How will the disability impact an employee's ability to adequately undertake the job-related responsibilities?
  - What accommodation might assist the employee to adequately undertake the job-related responsibilities?

If it is determined that there are no reasonable accommodations available or appropriate for the employee, the Human Resources Director may look for an open position in the agency for a possible transfer. The employee must be qualified for the open position. This is not a legal right of an applicant. (*See S. 230.37(2), Wis. Stats.*).

The supervisor and/or the Human Resources Director will consider the following conditions for requesting state funds earmarked for accommodations from the Department of Administration:

- Is the cost of the accommodation feasible within the [name of agency]'s budget?
- If not, can approval be obtained from the Department of Administration to use funds that are statutorily reserved for reasonable accommodations? (Requests will be made to the Department of Administration to use state funds earmarked for accommodations only in cases of which the [name of agency] does not have available funds, and other possible sources such as the Department of Workforce Development (DWD), Division of Vocational Rehabilitation.
- Are there other more cost effective options that will allow the individual to adequately undertake the job-related responsibilities of the job?
- In general, the [name of agency] will purchase equipment only if it is determined that the use of the equipment is necessary in transaction of official business of the agency. The equipment may not be of a personal nature (eyeglasses, hearing aids, etc.) that the employee could reasonably be expected to provide.

The Human Resources Director will monitor the effectiveness of the accommodation. As necessary, interviews will be conducted with the employee and supervisor regarding the adequacy of the accommodation and to recommend any further adjustments that may be needed.

**Appeal Process**

If an employee disagrees with a decision regarding his/her request for reasonable accommodation, he/she may appeal that decision through use of [name of agency]'s internal discrimination complaint process. . Employees and applicants may also seek appeal through Wisconsin's Equal Rights Division of the Department of Workforce Development, or the federal Equal Employment Opportunity Commission.

Job applicants do not have access to [name of agency]'s internal complaint process.

**Legal Reminder**

Failure to adhere to these reasonable accommodation policies and guidelines puts the [name of agency] at risk for disability claims and lawsuits.