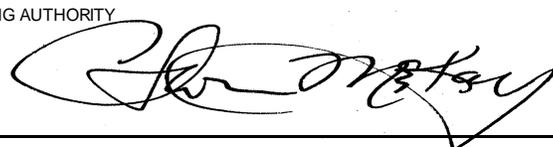


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|  Corrections and Community Supervision DIRECTIVE | TITLE | | NO. 2607 |
| | Reasonable Accommodations for Employees and Applicants with Disabilities and/or Pregnancy-Related Conditions | | DATE 07/08/2021 |
| SUPERSEDES DIR #2607 Dtd. 10/26/20 | DISTRIBUTION A | PAGES PAGE 1 OF 12 | DATE LAST REVISED |
| REFERENCES (Include but are not limited to) See Section II | APPROVING AUTHORITY  | | |

I. POLICY STATEMENT: The New York State Department of Corrections and Community Supervision (DOCCS) is committed to ensuring equal employment opportunity for persons with disabilities and/or pregnancy-related conditions. It is the policy of DOCCS to provide reasonable accommodation to a qualified employee or applicant with a disability and/or pregnancy-related condition to enable such person to perform the essential functions of the position for which they are applying or in which they are employed; and to a qualified applicant with a disability and/or pregnancy-related condition, to enable such person to engage in the application and hiring process.

This policy is based on the New York State Human Rights Law, Sections 503/504 of the Federal Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (ADA), and all applicable Executive Orders and Memoranda.

The policy applies to all employment practices and actions. It includes, but is not limited to, recruitment, the job application process, examination and testing, hiring, training, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, and promotions.

II. REFERENCES

- Federal Rehabilitation Act of 1973
- Americans with Disabilities Act
- New York State Human Rights Law
- General Information Bulletin No. 2103, "Reasonable Accommodation Appeals Review Committee"
- ACA Expected Practices:
 - 5-ACI-1C-07, 5-ACI-2F-03
 - 2-CO-1C-09-1, 2-CO-2B-04
 - 4-APPFS-3E-03
 - 2-1020
 - 2-CI-6C-4
 - 1-ABC-1C-04-1, 1-ABC-2F-02
- "Equal Employment Opportunity in New York State Rights and Responsibilities, A Handbook for Employees of New York State Agencies," published by the Governor's Office of Employee Relations (GOER)
- Directive #2602, "Employee Discrimination Complaints"
- Procedures for Implementing Reasonable Accommodation for Applicants and Employees with Disabilities and Pregnancy-Related Conditions in New York State Agencies

III. EMPLOYEE ACCESS TO INFORMATION ON REASONABLE ACCOMMODATION:

Information on reasonable accommodation is included in the “Equal Employment Opportunity in New York State, Rights and Responsibilities, A Handbook for Employees of New York State Agencies.” Information on the Agency’s internal discrimination complaint procedure, along with information on an employee’s right to file a complaint under the Human Rights Law, Sections 503/504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act for alleged discriminatory acts, is included in Directive #2602, “Employee Discrimination Complaints.”

Additional guidance and information can be found in the [“Procedures for Implementing Reasonable Accommodation for Applicants and Employees with Disabilities and Pregnancy-Related Conditions in New York State Agencies.”](#) **Please note that this link is being provided for informational purposes. To request and process reasonable accommodations, use DOCCS forms linked to this directive.**

IV. CONFIDENTIALITY REQUIREMENTS: State and Federal laws mandate very strict limitations on the use of any medical information obtained through the reasonable accommodation process. These limitations also apply to such information obtained from medical examinations or inquiries of employees or applicants.

All medical information must be treated as confidential medical records. Reasonable Accommodation records must be kept in a secure location, separate from personnel files, and a specific person or persons must be designated to have access to the records. Supervisors and managers are not entitled to copies of medical records or specific medical information and need only be informed about necessary restrictions on the work or duties of the employee and necessary accommodations. First aid and safety personnel may be informed, when appropriate, if the disability may require emergency treatment, or if any specific procedures are needed in case of fire or other evacuations.

V. DEFINITIONS: The following definitions are based on the New York State Human Rights Law (NYSHRL). Unlike the protection of federal statutes, which is limited to those impairments which “substantially limit one or more major life activities,” NYSHRL protects all individuals with physical, mental, or medical impairments that either impede normal bodily function or are demonstrable by medically accepted diagnostic technique. The broader State law coverage and definition of disability must be applied when making a determination as to whether an individual is a person with a disability. Additionally, NYSHRL requires employers to provide a reasonable accommodation to individuals with pregnancy-related conditions.

A. Person with a Disability: Any person who has a “physical, mental, or medical impairment,” who, upon provision of reasonable accommodation if needed, is able to perform in a reasonable manner the activities involved in the job or occupation sought or held.

“Person with a disability” also includes a person who has a record or history of impairment even if they do not currently have an impairment. Similarly, persons who have a condition regarded by others as an impairment, or who are incorrectly perceived as having an impairment, are also protected from discrimination. However, only actual impairments need to be reasonably accommodated.

- B. Person with a Pregnancy-Related Condition: Any person who has a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function, or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, where such condition, after the provision of a reasonable accommodation, does not prevent such person from performing, in a reasonable manner, the activities involved in the job or occupation sought or held.
- C. Physical, Mental, or Medical Impairment: Any impairment “resulting from anatomical, physiological, genetic, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.”
- D. Reasonable Performance: Reasonable performance is not perfect performance or performance unaffected by the disability, but job performance which reasonably meets the employer’s needs to achieve its business goals. Ability to reasonably perform the “activities involved in the job or occupation” is the ability, with or without accommodation, to satisfactorily perform the essential functions of the job.

Satisfactory performance is the minimum acceptable performance of the essential functions of the job as established by the employer. The employer’s judgement regarding what the minimum acceptable performance is will prevail, as long as standards for performance are applied equally to all employees in the same position.

- E. Essential Job Functions: Essential job functions are those fundamental to the position; a function is essential if non-performance would fundamentally change the job or occupation for which the position exists. Factors indicating essential functions include, but are not limited to: the employer’s judgement as to which functions are essential (pre-existing written job description, or clearly specified tasks and standards); how often the function is actually performed by other similar employees in the position; how many other employees are available to whom the function could be reallocated by job restructuring; the direct and specific consequences to the employer’s business if the function is not performed by the particular employee with a disability; the terms of a collective bargaining agreement; and other relevant evidence.
- F. Qualified Person with a Disability: A person with a disability who, as defined above, can reasonably perform the activities involved in the job and who satisfies the requisite skill, experience, education, and other job-related requirements of the position which the individual holds or desires.
- G. Reasonable Accommodation: Reasonable accommodation refers to the modifications or adjustments to a job application process which enables a qualified individual with a disability to be considered for the position sought, and to modifications or adjustments to the work environment or the manner or circumstances under which a job is performed which permit an employee to perform their job in a reasonable manner.
- An accommodation is reasonable if it removes or mitigates the barriers to performance caused by the individual’s impairment and does not cause undue hardship to the employer.

Reasonable accommodations may include, but are not limited to: making facilities more readily accessible to individuals with disabilities; acquisition or modification of equipment; job restructuring; modified work schedules; adjustments to work schedule for treatment or recovery; reassignment to an available, vacant position for which the employee is qualified; adjustment of examinations, training materials, or policies; and providing readers or interpreters or providing high or low assistive technology, such as voice recognition software. Generally, the provisions of personal items or provisions for personal care needs, such as hearing aids or wheelchairs, are not the responsibility of the employer. While pregnancy-related conditions are treated as temporary disabilities for purposes of applying existing regulations under the Human Rights Law, pregnancy-related conditions need not meet any definition of disability to trigger an employer's obligation to accommodate under the law.

- H. Undue Hardship: Accommodations that pose an "undue hardship" on the employer will not be required. An undue hardship is any significant difficulty or expense to the employer. Before granting a reasonable accommodation, the Designee for Reasonable Accommodation (DRA) must consider whether the accommodation may have a direct impact on the terms of a collective bargaining agreement.

VI. APPLICATION PROCESS:

ADA Coordinator: The ADA Coordinator is the individual identified by the Agency Head to coordinate Agency compliance with federal and state legal provisions protecting people with disabilities. The ADA Coordinator provides guidance to staff appointed as a DRA. The ADA Coordinator should seek guidance from the Director of Labor Relations, the Director of Personnel, the Office of Counsel liaison, and may also consult with the Department of Civil Service's Office of Diversity and Inclusion Management (ODIM). The ADA Coordinator is located within the DOCCS Office of Diversity and Inclusion (ODI). The ADA Coordinator is supervised by the ODI Director and may be reached at (518) 485-5806.

Designee for Reasonable Accommodations (DRA): The DRA is responsible for handling reasonable accommodation requests submitted by employees, applicants, and other personnel; and is responsible for communicating with the requestor and program areas regarding the reasonable accommodation, as appropriate.

- At correctional facilities, the Deputy Superintendent for Administrative Services is the appointed DRA for each facility.
- For Community Supervision, the Bureau Chief is the appointed DRA for each area office/regional location.
- Central Office employees may submit their request for reasonable accommodation to the Office of Diversity and Inclusion via mail or email at:
DiversityManagement@doccs.ny.gov.

The DRA should seek guidance from the ADA Coordinator. The DRA is responsible for maintaining records regarding the number of accommodations requested and the outcome of reasonable accommodation requests. Requests for reasonable accommodation may be made orally or in writing; however, an oral request must be reduced to writing on [Form #2607A](#), "Application to Request Reasonable Accommodation for Employee with Disabilities." Forms are available through links in this directive, from the DRA, or from the Office of Diversity and Inclusion. Applicants, employees, and other personnel are encouraged to make copies of the completed form for their records.

To request an accommodation, an individual need not mention the Human Rights Law, the ADA, or use the phrase “reasonable accommodation.” Rather, the individual need only let the employer know that they need an adjustment or change in applying for a position or at work for a reason related to a medical condition.

The accommodation process should not be adversarial in nature. On the contrary, a meaningful dialogue between the employee and employer and/or the unions should be the practice. The DRA must obtain the consent of the employee prior to sharing any confidential information with unions regarding the employee's disability or pregnancy-related condition.

- A. Who May Request a Reasonable Accommodation: Employees or applicants with disabilities may request a reasonable accommodation at any time, regardless of title, salary grade, bargaining unit, employment status (permanent, contingent, temporary, or provisional) or jurisdictional classification (exempt, non-competitive, competitive, or labor class).

The need for an accommodation may be brought to the attention of the Agency in any of the following situations:

- Job applicant may request an accommodation for a civil service examination and/or an interview
- A new employee who self-identifies as having a disability may request an accommodation to perform the job
- An employee returning to work after experiencing an illness or injury may request an accommodation
- A current employee with a disability whose medical condition has changed may request an accommodation for the first time or a change in accommodation

1. Applicants: The Agency will provide a reasonable accommodation during the application process to applicants with disabilities who request such accommodation. Reasonable accommodation requests may be received by the employee's supervisor, the Office of Diversity Inclusion, Agency personnel and/or the DRA. If received by Agency personnel, the request should be immediately forwarded to the appropriate DRA.

If an applicant with a disability is subsequently hired by the Agency and a reasonable accommodation is requested to perform the essential functions of the position, every attempt will be made by the DRA to have the approved accommodation in place prior to the first day of work. If this is not possible, the DRA will consult with the new employee when they first report to work.

2. Current Employees: Current employees may request an accommodation through their first-line supervisor or the DRA. If an employee makes a request through the supervisor, the supervisor may handle and even approve the request, **but only after consultation with and approval by the DRA**. However, since certain determinations may require a more complex analysis, or may involve Agency expenditures, the supervisor shall forward the request to the DRA for handling where so directed.

- B. Processing a Request for Reasonable Accommodation

1. [Form #2607A](#), “Application to Request Reasonable Accommodation for Employees with Disabilities.” This form serves as an initial application form and must be fully completed.

If the individual is unable to complete, sign, and date the application, the DRA, an employee's supervisor, or whoever is assisting the individual to complete the form can provide assistance.

2. Form #2607B, "Initial Response to Request for an Accommodation." This form, once completed, either provides confirmation to the individual that the requested accommodation has been approved, or advises the individual that the request is undergoing further review. It must be signed and dated by the DRA and a copy provided to the employee, with the original retained for record keeping purposes. Any reasonable accommodation may have potential legal implications. For questions, difficult issues, or those that require technical assistance, the DRA should contact the ADA Coordinator, who must always work closely with the Counsel's Office liaison to ensure that potential legal issues are identified and addressed in a timely manner.

The following steps should be adhered to:

- If the application has been submitted directly to the DRA, they must consult with the employee's supervisor before granting an accommodation, to ensure that it is operationally feasible.
 - If the reasonable accommodation proposed to be provided may have a direct impact on the terms of a collective bargaining agreement, prior to granting the accommodation, the DRA must confer with the ADA Coordinator, who in turn shall contact the Bureau of Labor Relations to resolve any conflict with collectively bargained rights of other employees.
 - If the reasonable accommodation proposed to be provided may require more than a *de minimis* expenditure, the DRA must confer with the ADA Coordinator, who in turn must confer with the Agency's administration and/or fiscal office(s).
3. Form #2607C, "Notification of Need for Additional Information." This form is used to provide an update to the applicant/employee or to request additional information/supporting documentation, which is necessary prior to making a determination on the request. **No later than two weeks** after providing a completed Form #2607B to the employee, the DRA must provide Form #2607C to the individual who has requested the reasonable accommodation, specifying the additional information or documentation that is required to continue with the review and assessment process. The applicant/employee must promptly provide the additional information or documentation by the date established on this form or notify the DRA that additional time is required.

The additional information must truly be necessary to complete the process, and includes, but is not limited to, information regarding the specific functional limitations of the individual, medical documentation, photographs, and/or information regarding specific type or types of accommodations that might be effective.

- a. Considerations before Requesting Additional Information or Medical Documentation
 - (1) The DRA must consider whether or not it is appropriate to request medical information; if the DRA is unsure, they should confer with the ADA Coordinator.

- (2) If an applicant or employee requests an accommodation and the need for an accommodation is not obvious, or if an Agency does not believe that an accommodation is needed, the Agency may request documentation or require a medical examination to identify the individual's functional limitations to support the request.
- (3) Since a reasonable accommodation must take into consideration the specific abilities and functional limitations of a particular applicant or employee with a disability, and the specific functional requirements of a particular job, the focus should be on identifying the abilities and limitations of an individual, not on the diagnosis and prognosis of a physical or mental condition.

b. Requesting Medical Information/Documentation

- (1) The Agency may require that the applicant/employee with the disability provide reasonable documentation substantiating the need for an accommodation. The Agency may require only documentation necessary to establish that the individual has a qualified disability, and that the disability and/or pregnancy-related condition necessitates a reasonable accommodation. Accordingly, the documentation should identify the specific functional limitations imposed by the physical or mental disability, and the precise job limitations imposed by the disability and/or pregnancy-related condition.
- (2) The Agency has the right to require – and applicants/employees have the right to supply – the documentation about the disability and functional limitations from a physician or other medical professional, psychologist, social worker, rehabilitation counselor, occupational or physical therapist, independent living specialist, or other professional with knowledge of the employee's disability and/or pregnancy-related condition.
- (3) If the DRA determines that the medical documentation provided is inadequate to support the request or has reason to doubt its veracity, the DRA should explain to the individual why the documentation is inadequate and provide the employee with an opportunity to submit additional documentation supporting the request.
- (4) In a situation where the disability and/or the need for accommodation is not obvious, and the Agency finds that, based on its criteria, the need for an accommodation or the exact functional limitations are still not clearly established, the Agency may require the employee to submit to a medical examination by the Employee Health Services of the Department of Civil Service or an appropriate medical professional designated by the Agency. The Agency, as employer, will pay any costs associated with the visit.
- (5) If the employee's disability or need for reasonable accommodation is not obvious, and they fail to submit documentation meeting Agency criteria or refuse to submit to a medical examination required by the Agency, and such information or documentation is necessary to complete the reasonable accommodation process, then the Agency may deny the requested accommodation.

- (6) Any medical documentation submitted may be used **only** to evaluate the employee's request for accommodation. An Agency may not use documentation obtained during this process or the refusal to submit to the medical examination as a basis for taking any adverse personnel action.
 - (7) While a medical professional may provide technical assistance in how to accommodate a particular individual in a specific situation, the Agency will make the final decision on what is or is not a reasonable accommodation.
 - (8) If additional medical documentation is being requested, the employee will be asked to inform their doctor of the pending application for an accommodation, and have the doctor send medical documentation, indicating the limitations that the employee's disability would place on job performance. A copy of the "duties description" or other document describing the duties associated with the relevant title is often helpful and should be attached to Form 2607C for consideration by the medical professional.
 - (9) A date by which the information should be sent is to be noted on the form. The DRA shall also indicate a date by which the decision will be made, where no further information is being requested. Form #2607C may be used whenever necessary during the interactive process, as needed, in order to obtain all necessary information and to inform the employee of progress in the review process.
 - (10) The DRA will sign and date the form, and the employee will be provided with a copy of Form #2607C, with the original filed for recordkeeping purposes.
4. Form #2607D, "Notification of Agency Determination"
- a. Overview of Process

Once the DRA completes the review process, the applicant/employee must be notified of the agency's determination and provided information regarding potential remedies should the individual be dissatisfied with the determination. **Within three weeks** of either receipt of [Form #2607A](#) or the receipt of the final additional information required to properly review and assess the request, the DRA must provide the applicant/employee with Form 2607D or Form 2607E, "Application to Request Reasonable Accommodation of Disability," as applicable.

If an accommodation is granted, they must sign the form, indicate whether they accept or reject the reasonable accommodation, retain a copy, and return the original to the DRA for filing.

If the employee accepts the accommodation, a letter from the DRA confirming the decision shall be sent to the employee **within the next week**.

If the employee does not accept the offered accommodation (which may differ from the accommodation requested), the form shall be returned to the DRA and filed. The employee is then free to pursue the various options outlined in the notification of rights as provided on Form #2607E.

b. Final Review

- (1) The final review process will take place once adequate information and/or documentation has been provided. During the final review, the DRA must determine whether or not there is an accommodation that would enable the individual to perform the essential functions of their job in a reasonable manner or to enjoy equal benefits and privileges of employment.
- (2) The DRA will assess all relevant documentation and consult with the employee and/or supervisor and arrange for a job analysis, if required. The DRA may find it necessary to discuss with the treating professional the limitations that are imposed upon the individual by virtue of their impairment, but *only* when necessary and appropriate. The DRA should consult with the ADA Coordinator whenever necessary.

Written authorization must be obtained from the employee prior to any discussions with third parties.

- (3) The DRA should consult with the Agency's Fiscal Officer to determine whether a reasonable accommodation will have a fiscal impact on the Agency. In addition, when appropriate to the review, the DRA should also consult with the ADA Coordinator, who will consult with the Director of Personnel, Director of Labor Relations, and/or Office of Counsel. Following review of the documentation, the DRA must determine whether or not granting the accommodation(s) requested, or an alternate reasonable accommodation, would cause undue hardship. Some factors to consider include:
 - The nature and cost of the accommodation
 - The type and location of the facility/area office
 - The effect of the accommodation on other employees
 - Operational impact on the Agency
 - The terms of any relevant collective bargaining agreement(s)

c. Alternative Accommodation: If more than one alternative is identified as an effective accommodation, the Agency may choose the accommodation that best meets its needs.

d. Consultation with Employee

- (1) An employee consultation *may* be conducted before approval of a reasonable accommodation but *must always* be conducted before there is a denial of a request for reasonable accommodation or an offer of an alternative accommodation.
- (2) Where more than one possible reasonable accommodation exists, the Agency should consider the employee's preference, however, the Agency has the discretion to choose among various effective reasonable accommodations.

e. Agency Will Provide the Reasonable Accommodation as Requested

If, based on the information provided by the employee, the agency is able to provide the employee with the requested reasonable accommodation, the DRA will so note in Form 2607D. Before the employee is notified of the approval of the accommodation, the DRA should first notify the employee's supervisor. A reasonable accommodation may be provided for a limited duration, such as where an unusual or even novel reasonable accommodation is being provided, and the Agency needs the opportunity to assess whether or not the accommodation is working well, and whether or not it is operationally disruptive or otherwise causes an undue hardship. If this is the case, the DRA must specify a date upon which the reasonable accommodation will be reevaluated.

- (1) The employee's supervisor will be instructed to discuss implementation of this accommodation with the employee. If the employee has any questions, they may contact the DRA.

f. Agency Will Offer an Alternative Accommodation

- (1) If the Agency determines that it will offer an accommodation different from the one requested, the supervisor should be consulted about the proposed accommodation before the employee is advised of the offer. Form #2607D shall be completed and sent to the employee, to inform the employee of the Agency's determination.
- (2) If the employee does not accept the offered accommodation, Form #2607D should be returned to the DRA, with the employee's signature, denoting that they reject the accommodation that has been offered.

g. Agency Is Unable to Provide a Reasonable Accommodation

- (1) If, based on the information provided, the Agency is unable to provide a reasonable accommodation, the DRA will so note Form #2607E. A reason for the denial must be given to the employee. In all cases, the DRA **must** consult with the ADA Coordinator before an accommodation is denied.
- (2) The employee will also be given information on additional alternatives, which include filing an appeal with the Department of Civil Service Office of Diversity and Inclusion Management's Reasonable Accommodation Appeals Review Committee (ARC) or filing a discrimination complaint if the employee believes that the Agency's denial of the accommodation was unlawful.
- (3) The employee may elect to accept the Agency's decision and end the process; to file an internal discrimination complaint under the State's Equal Employment Opportunity Policy, as set forth in the Handbook of Rights and Responsibilities for NYS Agency Employees; or to pursue various other remedies, as set forth on Form #2607E.
- (4) If pursuing an outside complaint, the employee should consult with the appropriate antidiscrimination Agency regarding the time limitations for initiating an action.

h. Appeal of Agency Denial or Modification of Reasonable Accommodation

An individual who receives a denial or a modification of a Reasonable Accommodation request, that the individual rejects, has the right to file an appeal. An appeal of the Agency's final determination must be filed within 15 calendar days from the date of denial or modification of a reasonable accommodation. The requestor must complete and submit the [Form 2607F](#), "Request to Appeal a Reasonable Accommodation Determination," along with all available relevant documentation to the Department of Civil Service Reasonable Accommodation ARC, via email to ARC@cs.ny.gov or mail it to:

**Department of Civil Service
Empire State Plaza
Swan Street Building – Core 1
Albany, NY 12239
Attn: ODIM – ARC**

If the ARC determines that there is need for additional information or documentation from the requestor in order to complete its preliminary review, the ARC will advise the requestor of the need.

No request for an appeal will be considered if the accommodation has not gone through the complete reasonable accommodation process, including issuance of the final determination by the Agency. However, reasonable accommodation requests that have not received a final determination from the accommodating Agency within the timeframes specified in Section VI-B-4-a of this directive may be subject to review and/or appeal.

Upon receipt of an appeal, the ARC will acknowledge receipt of the request to both the requestor and the accommodating Agency's DRA/ADA Coordinator.

Upon receipt of the acknowledgement, the accommodating Agency will have **seven days to provide the ARC** with a copy of the Reasonable Accommodation file, including any medical documentation received by the agency in support of the request, as well as any additional supporting documentation, such as any correspondence, file notes of phone conversations, etc., in support of the Agency denial or modification.

Documentation should be sent to the ARC electronically via email to: ARC@cs.ny.gov.

Upon receipt of the required documentation from the Agency, the ARC will have 21 days to complete its review and issue a written determination. Agencies are required to respond in a timely fashion to any inquiries and/or requests for additional information that the ARC determines is necessary in order to complete their review and issue a determination. ARC determinations will either uphold the Agency's original decision or it will render an independent determination consistent with applicable policies and statutes, which the accommodating Agency will be required to implement. All determinations will be provided, in writing, to both the requestor and the DRA at the accommodating Agency.

VII. MAINTENANCE OF RECORDS AND DATA COLLECTION: To the extent that any applicable laws, Executive Order or Memoranda, rules, regulations, or policies require the maintenance of records regarding requests for accommodation, it shall be the DRA's responsibility to maintain such records. The DRA will retain all reasonable accommodation documentation for **a minimum of three years** after the final resolution of the request or termination of any accommodation provided.