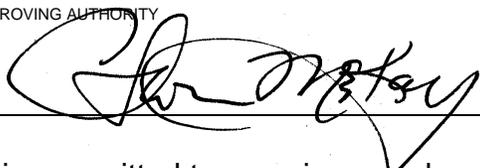


 Corrections and Community Supervision DIRECTIVE	TITLE Reasonable Accommodations for Employees and Applicants with Disabilities		NO. 2607
			DATE 4/30/2015
SUPERSEDES DIR #2607 Dtd. 6/28/2013	DISTRIBUTION A	PAGES PAGE 1 OF 8	DATE LAST REVISED
REFERENCES (Include but are not limited to) Federal Rehabilitation Act of 1973, New York State Human Rights Law, Americans with Disabilities Act	APPROVING AUTHORITY 		

- I. POLICY STATEMENT:** The State of New York is committed to assuring equal employment opportunity for persons with disabilities. To this end, it is the State's policy to provide reasonable accommodation to a qualified person with a disability to enable such person to perform the essential functions of the State government position for which he or she is applying or to which he or she is employed.

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. EMPLOYEE ACCESS TO INFORMATION ON REASONABLE ACCOMMODATION

Information on reasonable accommodation is included in New York State's Employee Handbook, titled "Equal Employment Opportunity in New York State, Rights and Responsibilities" ("Employee Handbook"). 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 also included in the Employee Handbook.

Additional guidance and information can be found in the "Procedures for Implementing Reasonable Accommodation for Applicants and Employees with Disabilities in New York State Agencies," which is published by the Governor's Office of Employee Relations (GOER). [NYSPIRA](#) Please note that this link is being provided for informational purposes, the implementation forms that are linked to this directive have been tailored for DOCCS.

- III. 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. 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.

IV. DEFINITIONS: The following definitions are based on the New York State Human Rights Law (“NYHRL”). NYHRL protects all individuals with physical, mental, or medical impairments that either impede normal bodily function or are demonstrable by medically accepted diagnostic technique.

- 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 to occupation sought or held. This includes a person who has a record or history of impairment. Only actual impairments may be considered for reasonable accommodation.
- B. 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.”
- C. 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.
- D. 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.
- E. 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.
- F. 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; providing readers or interpreters or providing high or low assistive technology, such as voice recognition software.

- G. Undue Hardship: An undue hardship is any significant difficulty or expense to the employer. Relevant factors to consider in determining undue hardship include, but are not limited to: the overall size of the business, program or enterprise with respect to the number of employees, number and type of facilities, and size of budget; the type of operation which the business, program or enterprise is engaged in, including the composition and structure of the work force; and the nature and cost of the accommodation needed.
- H. Designee for Reasonable Accommodations (DRA): The DRA is the individual identified by the Agency Head to coordinate Agency compliance obligations arising from the New York State Human Rights Law, Sections 503/504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act.

V. APPLICATION PROCESS

- A. Introduction: 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 Employees with Disabilities." These forms are available as linked in this directive and through the Office of Diversity Management. Applicants, employees, and other personnel are encouraged to make copies of the completed form for their records.

Before granting a reasonable accommodation, the Designee for Reasonable Accommodation (DRA) will consider whether the accommodation may have a direct impact on the terms of a collective bargaining agreement. The Agency designee should seek guidance from the Director of Labor Relations, if available, or from the Agency's Director of Personnel, or Office of Counsel. These individuals may consult with the Governor's Office of Employee Relations (GOER) as needed.

- B. Who May Request a Reasonable Accommodation: Employees or applicants with disabilities may request a reasonable accommodation, regardless of title, salary grade, bargaining unit, employment status (permanent, contingent, temporary, or provisional) or jurisdictional classification (exempt, non-competitive, competitive, or labor class).
 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 Agency personnel and/or the Agency's 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 Agency's DRA to have the approved accommodation in place prior to the first day of work. If this is not possible, the Agency DRA will consult with the new employee when he or she first reports to work.
 2. Current Employees: Current employees may request an accommodation through their first-line supervisor or the Agency's DRA. If an employee makes his or her 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.

C. Processing a Request for Reasonable Accommodation

1. "Application to Request Reasonable Accommodation for Employees with Disabilities", [Form #2607A](#): This form serves as an initial application form and asks for basic information needed to consider and act upon the request, such as the name of the applicant/employee, title information, office or unit' work location (for current State employees)' and contact information, along with a description of the reasonable accommodation being requested and the reason for the accommodation.

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.

"Initial Response to Request for an Accommodation," [Form #2607B](#): 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 Agency's DRA and a copy provided to the employee, with the original retained for record keeping purposes.

The following steps should be adhered to:

- If the application has been submitted directly to the Agency's DRA, he or she 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 Agency's DRA must confer with the Agency's labor relations representative 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 Agency's administration and/or fiscal office(s).
2. Status Update/"Notification of Need for Additional Information," [Form #2607C](#): This form is used to provide an update to the applicant/employee or to request additional information/supporting documentation, which is necessary before a decision regarding a reasonable accommodation can be made. **No later than two weeks** after providing a completed [Form #2607B](#) to the employee, the DRA must provide this form 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.

Such 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, and/or information regarding specific type or types of accommodations that might be effective.

- a. Considerations before Requesting Additional Medical Information or Documentation:
- (1) The DRA must consider whether or not it is appropriate to request medical information.
 - (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) If the DRA is unsure as to whether or not it is appropriate to request such medical documentation, he or she should confer with Agency counsel for guidance.
- b. Requesting Medical Information/Documentation
- (1) The Agency may require only that documentation necessary to establish that the individual has a qualified disability, and that the disability 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.
 - (2) An employer 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.
 - (3) In a situation where the disability and/or the need for accommodation is not obvious, and an 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.
 - (4) If the employee's disability or need for reasonable accommodation is not obvious, and he or she fails to submit documentation meeting Agency criteria or refuses 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.
 - (5) 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.

- (6) The Agency will make the final decision on what is or is not a reasonable accommodation.
 - (7) If additional medical documentation is being requested, the employee is asked to inform his or her 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 to the Office of Diversity Management.
 - (8) A date by which the information should be sent is to be noted on the form. The Agency's 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.
 - (9) The Agency's DRA signs and dates the form, and the employee is provided with a copy of [Form #2607C](#), with the original filed for recordkeeping purposes.
3. "Notification of Agency Determination," [Form #2607D](#)
- a. Overview of Process

[Form #2607D](#) is to be completed once the DRA completes the review process, but must be provided to the employee **within three weeks** of either receipt of [Form #2607A](#) or the receipt of final additional information required to properly review and assess the request.

If the employee accepts the accommodation, a letter from the Agency head (or designee) confirming this decision is 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 Agency's DRA and filed. The employee is then free to pursue the various options outlined in the notification of rights provided as part of [Form #2607D](#).
 - b. Final Review
 - (1) The DRA will assess all relevant documentation and consult with the employee and/or supervisor, arrange for a job analysis, and consult with relevant State agencies or community-based organizations providing services to persons with disabilities.

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

 - (2) 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 Agency's Director of Personnel, Director of Labor Relations officer, and/or Office of Counsel.

- 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. However, whenever possible, the Agency should certainly take into consideration the employee's preferences.
- 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
 - (1) Before the employee is notified of the approval of the accommodation, the DRA should first notify the employee's supervisor.
 - (2) 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, 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.
 - (3) The employee's supervisor is instructed to discuss implementation of this accommodation with the employee. If the employee has any questions, he or she may contact the Agency's 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 #2067D](#) 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 #2067D](#) should be returned to the DRA, with the employee's signature, denoting that he or she rejects 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 in the latter portion of [Form #2607D](#). A reason for the denial must be given to the employee. The employee is also given information on additional alternatives which include the filing of a discrimination complaint if the employee feels that the Agency's denial of the accommodation was unlawful.

- (2) 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 New York State Agency Employees; or to pursue various other remedies, as set forth in "Remedies Relating to Dissatisfaction with Agency's Reasonable Accommodation Determination," [Form #2607E](#).
 - (3) If pursuing an outside complaint, the employee should consult with the appropriate antidiscrimination Agency regarding the time limitations for initiating an action. Although these time limitations vary, the time for filing a complaint pursuant to all the alternatives begins to run at the time of the Agency's first denial of the accommodation request.
- D. Maintenance of Records and Data Collection: To the extent that any applicable laws, Executive Orders 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.