

**Accommodation Policy  
for the  
Federal Election Commission  
(Reviewed annually by the EEOC)**

## **Purpose**

This policy is designed to describe the procedures to be followed when an accommodation is requested by an applicant to, or employee of, the Federal Election Commission. The policy has been formulated based on guidance from the Equal Employment Opportunity Commission (EEOC) and has been vetted through that agency, as it has primary authority for interpreting and enforcing the application of Sections 501 and 505 of the Rehabilitation Act of 1973.

## **I. Introduction**

It is the policy of the Federal Election Commission (FEC or Commission or Agency) to provide equal employment opportunity to all employees and applicants for employment. In carrying out its goal to be a model employer of persons with disabilities, the Commission promotes full access, consideration, integration, promotion, and retention of persons with disabilities across the broad range of its workforce. The Commission is committed to providing “reasonable” accommodation to employees and applicants (“requesting individuals”) with disabilities, consistent with all applicable laws, Executive Orders, regulations and EEOC guidelines. **Managers and supervisors must actively participate in achieving these goals.** This document describes the Agency’s Accommodation Program requirements, processes, and procedures to guide the FEC workforce and applicants about how to make a request for accommodation and about how FEC managers are to respond to requests for accommodation.

## **II. Authorities**

### **A. Section 501 of the Rehabilitation Act of 1973, as amended,**

1. Protects Federal sector employees with disabilities against discrimination.
2. Requires Federal employers to provide reasonable accommodation(s) to persons with disabilities where needed.
3. Prohibits employers from making improper disability-related inquiries or requiring improper medical examinations.
4. Requires that employers keep the medical information of all employees confidential.
5. Requires that employers comply with anti-harassment standards.
6. Prohibits retaliation by employers.
7. Requires federal agencies to provide Personal Assistance Services (PAS) to individuals who need them due to certain disabilities (effective January 3, 2018)<sup>1</sup>.

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<sup>1</sup> On January 3, 2017, the EEOC amended the regulations implementing Section 501 of the Rehabilitation act of 1973 (Section 501).

- B. Executive Order 13164 dated July 26, 2000, “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation,” requires all Federal agencies to establish written procedures for handling employee requests for accommodation due to a health issue.
- C. The Americans with Disabilities Act of 1990 (ADA) amended Section 501 of the Rehabilitation Act by applying the employment nondiscrimination standards of the ADA (Title I) to Federal government employees and applicants for employment. It also stated that it is the obligation of the Federal government to be the “model employer of individuals with disabilities.” The ADA Amendments Act of 2008 (ADAAA) was signed by the President on September 25, 2008, and became effective as of January 1, 2009. The ADAAA, as amended,
  - 1. Emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis.
  - 2. Emphasizes that the primary object of attention should not be on the definition of disability but rather on whether the individual can be accommodated absent undue hardship.
- D. The Commission will make available to job applicants & employees a copy of its Accommodation Program procedures in written and accessible formats to meet any individual’s need, including braille, large print, etc.

### III. Definitions

- A. **Accommodation (i.e., “Reasonable Accommodation”)**: a change, modification, or adjustment to a job in the workplace, or in the way things are customarily done that enables an individual with a qualifying disability to enjoy equal employment opportunities.
  - 1. Accommodations are available: a) for the application process; b) to enable an individual with a disability to better perform essential job functions; c) to provide equal **benefits and privileges** of employment.
  - 2. An effective accommodation is one that allows equal opportunity for the employee or applicant with a disability to be considered for positions and enjoy the benefits and privileges that are available to employees without disabilities.
  - 3. In general, an accommodation is “reasonable” if it seems, on its face, feasible or plausible. To be reasonable, an accommodation must also be effective in meeting the needs of the individual.
- B. **Disability Program Manager (DPM)**: an employee designated by the Staff Director that has primary responsibility for administering, coordinating, and monitoring the agency’s accommodation program. The DPM serves as the agency’s primary liaison with supervisors, managers, applicants, and employees regarding the requesting

individual's accommodation request.

- C. **Disabilities:** 1. “**physical or mental impairments**” that “**substantially limit**” one or more of an individual's “**major life activities**”; 2. when an individual has a record of such impairment; or 3. when an individual is “regarded as” having such an impairment.
- D. **Interactive Process:** the process of requesting and receiving information. Generally, the agency Disability Program Manager (DPM) will schedule an Interactive Process (IP) meeting after having been contacted by an employee who requests accommodation. In the initial meeting with the requesting employee, the DPM and employee engage in an informal discussion to clarify the employee's needs and to identify an appropriate accommodation. The DPM may request reasonable supporting documentation when the disability or need for accommodation is not obvious. Once the accommodation needs (i.e., the functional limitations of the employee) and an appropriate accommodation have been clarified, the DPM schedules an IP meeting with the employee asking for accommodation and the employee's supervisor so that the parties can engage in transparent and open discussion about what the employee is requesting and the impact (if any) on the work environment where the employee and supervisor work.
- E. **Substantially limits:** this phrase describes a situation when an individual is (or has been) substantially limited in performing a major life activity as compared to most people in the general population. The term “substantially limits” should be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADAAA. The law no longer requires that impairment to “severely” or “significantly” restrict a major life activity. While an individualized assessment is still required, comparison to most people in the general population usually should not demand scientific or medical evidence. Please note:
1. With the exception of “ordinary eyeglasses or contact lenses,” **the use of mitigating measures** (e.g., medications, assistive technology, etc.) should be disregarded when making the assessment.
  2. Impairments that are episodic or in remission may be disabilities if substantially limiting when active.
  3. Only one major life activity needs to be substantially limited.
  4. There is no durational minimum.
- F. **Major life activities: examples of these** are described in **two non-exhaustive lists** both in the ADAAA and the EEOC regulations. The first list consists of those activities that were previously recognized by the EEOC and most courts. The second list includes new categories that will make it easier for individuals with many different types of impairments to establish disability. The impairments listed below

include both physical disabilities as well as severe intellectual disabilities.<sup>2</sup>

1. The first list includes: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.
2. The second list includes: functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel and bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive. This list also includes operations of an individual organ within a body system, such as the operation of kidney, liver, or pancreas.
3. Impairments that should easily be found to be disabilities include deafness, blindness, mobility impairments requiring the use of a wheelchair, intellectual disability (mental retardation), partially or completely missing limbs, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, and muscular dystrophy. Other mental impairments include major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder and schizophrenia.

**F. Qualified individual:** an individual with a one or more disabilities (as described above) who:

1. meets the basic skill, education, training, and other job-related requirements; and
2. is able to perform the essential (or fundamental) functions of a position with or without a reasonable accommodation.

(note: this term refers to job performance and not the disability)

**G. Essential Functions:** the fundamental job duties of the position that the individual with the disability holds or seeks. The term “essential functions” does not include marginal functions of the position. A job function may be considered essential for any of several reasons, including but not limited to the following:

1. The duties are so fundamental that removing the function would fundamentally change the job.
2. The job is highly specialized.
3. The position exists specifically to perform that function.
4. The function is specialized, and the person is hired based on his or her specific ability to perform the function; or
5. There are only a limited number of employees who can perform the function.

**H. Undue hardship:** an individualized assessment of current circumstances that shows that a specific accommodation request is “unreasonable” that is, granting it for the

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<sup>2</sup> However, the ADAAA emphasizes that “the primary object of attention should not be on the definition of disability but rather on whether the individual can be accommodated absent undue hardship” and not on the issue of whether the requesting employee is or is not determined to be a “qualified individual.”

employee would cause significant difficulty or expense on the entire agency. In general, federal agencies do not often assert that the cost of a requested accommodation imposes an undue hardship as the analysis is based on the entire financial resources available to the agency. Each accommodation request is evaluated individually and on its own merits, including whether there is any potential “undue hardship” impact if the accommodation request is approved. Other considerations in the analysis include the impact of the accommodation on the overall operation of the agency, safety, security, and the structure and composition of the affected workforce.

**I. Health care professional:** a person who has completed a course of study, is licensed to practice in a field of health care and is trained to diagnose, assess, and make recommendations for the accommodation of a particular disability or disabilities under consideration.

**J. Personal Assistance Services (PAS):** On January 3, 2017, the Equal Employment Opportunity Commission (EEOC) amended the regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), the law that prohibits the federal government from discriminating in employment based on disability and requires it to engage in affirmative action for people with disabilities.

As part of the FEC’s obligation to engage in affirmative employment, federal agencies are required by the new regulations to provide Personal Assistance Services (PAS) to individuals who, because of certain disabilities, require assistance to perform basic activities of daily living (e.g. eating, using the restroom).

The process for requesting personal assistance services, the process for determining whether such services are required, and the agency’s right to deny such requests when provision of such services would pose an undue hardship are the same as for reasonable accommodation.

#### **IV. Requests for Reasonable Accommodation in General**

##### **A. What is a “Reasonable” Accommodation (RA)?**

(See Section III. Definitions, A. above). Generally, the process starts when an individual with a disability requests an accommodation.

1. The process may also start if a supervisor or manager observes that an employee appears to be experiencing difficulties (i.e., frequent absences, or an employee appearing unwell or pre-occupied, for example), and the supervisor asks the employee how he/she is doing and then informs them about the agency’s Accommodation Program. As a general rule in the accommodation process, management is encouraged to be cognizant about certain observable behaviors that may indicate health problems and remind employees about the agency’s accommodation program. An accommodation request is a request for some change in the workplace or in the way things are

done due to a medical condition.

2. Employees may make accommodation requests to management and/or may contact the Agency's DPM directly, who then (after conferring with the requesting employee) will begin the Interactive Process (IP) with management.
3. An employee does not need to have identified or to have a particular accommodation in mind to make an accommodation request.
4. Requests for accommodation can be made orally or in writing. (The FEC, however, does not use an intake form or other written document to begin the accommodation process.)
5. The process begins when the initial contact is made and usually at the FEC this is when either the employee or the supervisor contacts the DPM. When an employee makes the initial contact to request or discuss requesting an accommodation to the supervisor, the supervisor should immediately contact the DPM who has the responsibility for ensuring that the accommodation processes are followed appropriately.
6. In the IP process when an employee's request is being considered, **management** determines whether the request is reasonable and may determine that an alternative accommodation is reasonable.

"Reasonable" accommodations may include, but are not limited to:

1. Making facilities readily accessible to and usable by persons with disabilities
2. Job restructuring
3. Part-time or modified work schedules
4. An increased number of telework days up to full time telework.
5. Acquiring or modifying equipment or devices such as Telecommunication Device for the Deaf (TDD)
6. Adjusting or modifying examinations by changing tests, training materials or policies
7. Providing ongoing accommodations or those needed on a repeated basis.  
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8. Reassignments to a suitable, vacant position, and other similar actions.

## **B. What are the Agency Requirements?**

When an employee or job applicant initiates a request for accommodation, Agency management will either refer the employee or job applicant to the DPM, contact the DPM personally, or both.

The FEC's Accommodation Program is located in the agency's Equal

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<sup>3</sup> Please note that individuals requiring sign-language interpreting or communication access real-time translation (CART) services need only give notice to the appropriate individual or office in order to obtain the accommodation. In situations where the agency has need to engage these individuals, the employee's supervisor will coordinate with the EEO Office or other relevant agency unit to ensure the appropriate accommodation is provided.

Employment Opportunity (EEO) Office and the DPM position may be reached by contacting Kevin Salley at (202) 694-1228. Once the DPM has spoken to the requesting individual (e.g., the employee, the applicant, or management official), a meeting will be scheduled to allow those involved to engage in the “interactive process” (IP) to discuss all aspects of the requested accommodation. Generally, it is known before the conclusion of the IP meeting if the requested accommodation will be approved or denied, or if an alternative accommodation has been approved. The DPM informs all in attendance at the IP meeting that a written summary of the discussion and a detailed description of the approved accommodation will be prepared. The written summary will be distributed to IP meeting attendees as soon as possible after the meeting, for verification that details of the discussion have been recorded accurately. When the requested accommodation (or an effective alternative) has been approved, the summary will describe the parameters of the accommodation plan in detail including the time period, if appropriate, for the duration of the plan. If the requested accommodation (or a part of the requested accommodation) has been denied, the written summary will also include the requesting employee’s appeal rights.

At some point in this process, the DPM may request medical documentation from the requesting individual to confirm the existence of the disability (particularly when the employee’s health issue or disability is not obvious) and to learn the anticipated period of time that the accommodation is expected to be needed. The DPM evaluates the medical documentation and shares verbally (in very general terms) only information that may be relevant in assisting management with making informed decisions about the requested accommodation. In order to protect the employee’s privacy, no medical documentation or statement from a medical provider is shared with management. IP meetings focus on the employee’s functional limitations and how the requested accommodation provides an effective remedy. In addition to the agency-wide Accommodation Program training that the EEO Office provides to managers and employees periodically, the IP meetings are also an opportunity for the DPM to discuss the requirements of the statutes and regulations of the ADAAA and to provide the EEOC guidance and technical assistance information located at 29 CFR § 1614.203.

During the interactive process, the DPM will determine if the requesting employee is an “individual with a disability” and work with agency management to assist with their determination of whether the requesting employee is a “qualified individual”—that is, able to perform the essential functions of the position with or without reasonable accommodation. (See Footnote 2.) Employee requests for accommodation shall be approved unless management presents a convincing argument that to approve the requested accommodation would create “an undue hardship on the entire agency”. The interactive process is a fluid process and may continue after the accommodation plan becomes effective, for example, when or if either the employee or management would like to discuss modifications to the plan.

When Commission management has provided an effective accommodation, the reasonable accommodation obligation is satisfied.

“Reasonable” accommodation will be provided to all requesting individuals with disabilities, including part-time, full-time, and “probationary” employees and applicants for employment unless providing such an accommodation will place an undue hardship on the agency. In providing an accommodation to an individual with a disability, management considers the work-related needs of all employees.

Managers and supervisors are not required to eliminate essential functions of a position. Similarly, managers and supervisors are not required to lower production standards—whether qualitative or quantitative—that are applied uniformly to all employees. However, management may be required to provide a reasonable accommodation to enable an employee with a disability to meet the production standards.

Personal items, such as a wheelchair, eyeglasses or a hearing aid needed by the individual for daily activities both on and off the job, are not the responsibility of the agency.

### C. What are the Time Limits?

Typically, accommodation requests received in the EEO Office are responded to within two (2) workdays of receipt. *Notification of whether an accommodation request shall be granted or denied will occur within a maximum of twenty (20) workdays, absent extenuating circumstances (i.e., “factors that could not reasonably have been anticipated or avoided in advance of the requested accommodation”). A situation in which an effective accommodation can be provided in less than the maximum time frame but is not, may be considered failure to provide an accommodation in a prompt manner and could result in a violation of the Rehabilitation Act. The time limit begins to run when the accommodation request is first made to a supervisor or management official, whether in person orally or in writing.* The IP meetings are scheduled as soon as the parties (employee, supervisor/deciding official and DPM) are available to meet (usually within a day or two). If supporting medical documentation is indicated and pending, the IP meetings (and other processes, if any) go forward on good faith that the medical information will confirm the health issue and support the requested accommodation. The accommodation process is not delayed for pending medical information.

On occasion when, the requested accommodation involves an ergonomic evaluation of a workstation and/or recommended items for purchase, it is not always possible to meet the twenty (20) workday deadline.



When the requested accommodation is not immediately available, other interim arrangements are always explored, and one option, for example, could be to approve greater work schedule flexibilities for the employee until the workstation items are received and installed. In situations like these, the agency will provide the employee with an interim accommodation that allows the employee to perform some or all of the essential functions of their job (absent undue hardship to the agency). Finally, this policy requires that every effort is made to provide the accommodation as expeditiously as possible. Whether the requested accommodation is immediately available, or is expected to be delayed, the requesting employee will always be kept informed about the status of the accommodation request including any extenuating circumstances that justify the delay when there is one.

**Expedited processing** is available for accommodation requests in situations where the requested accommodation is needed sooner than the maximum allowable number of workdays. However, as most, if not all accommodation requests at the FEC are regularly responded to within a day or two, requests for “expedited processing” are very rare.

## **V. Roles and Responsibilities**

### **A. Staff Director**

The Staff Director of the FEC has agency-wide responsibility for implementing and administering the accommodation policy and other legal requirements set forth in this document. Specifically, the Staff Director is responsible for delegating authority to the EEO Director to maintain centralized control over the administration of this Policy to ensure that employee requests for accommodation are processed timely and appropriately. Additionally, the EEO Director’s responsibilities include overseeing that tracking records and other data collection is managed properly in order to satisfy the reporting requirements to the EEOC. The DPM, while technically appointed by the Staff Director, reports directly to the EEO Director, and has primary responsibility for providing assistance and guidance to management to ensure compliance with the requirements of this Policy, the ADAAA and other related authorities described in Section II of this document.

### **B. EEO Director**

The FEC EEO Director is responsible for assuring that the Agency fulfills the obligations set forth in this document by establishing and monitoring an effective process for addressing employee requests for accommodation due to a health issue. Ideally (to avoid possible conflicts of interest) a firewall exists between the accommodation program and the Director position.

Accordingly, the DPM is assigned the responsibility of coordinating and monitoring most aspects of the accommodation program. This responsibility includes developing and conducting training as well as tracking employee requests for accommodation. In consultation with the EEO Director, the DPM may prepare related agency policies and procedures, consulting with the EEOC for guidance and approval. When appropriate, the EEO Director will support communications to management regarding the obligations of the Agency in the accommodation process.

### C. Office of Human Resources

The FEC's Office of Human Resources (OHR) is responsible for accepting requests for accommodation made by applicants for employment. OHR shall forward all applicant requests for accommodation to the DPM for immediate processing.

### D. Disability Program Manager (DPM)

The DPM is designated by the Staff Director and has primary responsibility for administering, coordinating, and monitoring the Agency's accommodation program. Although the DPM serves as the agency's *primary* liaison with supervisors, managers, applicants, and employees regarding the provision of accommodation, **the DPM position is neutral in the accommodation interactive process.** The DPM works with requesting applicants, employees and relevant supervisors and managers in seeking sufficient information about the functional limitations of the disability and the essential functions of the position. This process is to determine the feasibility of the request and, on occasion when a requested accommodation has been deemed to create an undue hardship on the Agency, to determine whether an alternative accommodation is possible. The DPM may consult with the EEO Director and/or the EEOC to seek guidance on the requirements of the law and whether alternatives are available. The DPM is also responsible for ensuring that sensitive and confidential employee health and medically related information that comes to light in the accommodation process is collected, secured, and maintained exclusively in the agency's EEO office in separate files which never becomes a part of an employee's personnel records. (See 42 USC § 12112 (d) (3) (B), (4) (C); 29 CFR § 1630.14(c) (1).) The DPM will not share medical documentation with supervisors, managers or others in the accommodation process unless asked by the requesting employee to do so but will facilitate an information exchange between the employee and management that allows the latter to make an informed decision regarding an accommodation request (explained further in Section VI, E). The DPM is responsible for maintaining, tracking, and providing statistical information to the EEO Director, the EEOC or other lawful requester regarding employee requests for accommodation and the agency's response to such accommodation requests.

## **E. Managers and Supervisors (including Selecting Officials)**

FEC managers and supervisors are responsible for providing accommodation to employees or job applicants with disabilities unless it can be shown the accommodation would impose an undue hardship on the Commission. Managers and supervisors should refer any request for accommodation that they receive to the DPM for processing; however, they retain the responsibility of deciding whether an accommodation will be granted. Regardless of whether an employee request for accommodation due to a health issue is ultimately approved, or an alternate accommodation is approved, or the request is denied, the employee will be informed who, specifically, is the Deciding Official in the process. This person could be any supervisor in the employee's chain of command (i.e., the immediate or second level supervisor or the Director of the Office in which the employee works). Managers and supervisors should consult with the DPM to seek guidance on the requirements of the law.<sup>4</sup>

## **F. Individual Requesting Accommodation**

The employee may initiate a request for accommodation orally, in writing or via any other mode of communication to their supervisor, any supervisor or manager in their chain of command or to the DPM. A job applicant requiring accommodation in the application process must make a request orally, in writing or via any other mode of communication to HR (who then refers the request to the DPM) or directly to the DPM. The employee or applicant's request should include a description of an accommodation that would allow equal participation in the FEC workforce or application process.

Any FEC employee with a health issue who would like to make a request to management for accommodation may make that request directly to the DPM, the immediate supervisor, any supervisor in the chain of command or directly to the EEO Director. Once the DPM receives the accommodation request, generally, the DPM will schedule a meeting with the requesting employee. The purpose of the meeting is to engage in an informal discussion to clarify the employee's health needs and functional limitations and to identify an appropriate accommodation. Following this meeting, the DPM schedules an IP meeting with the employee's supervisor so that the parties can engage in transparent and open discussion about what the employee is requesting and the impact (if any) on the workplace in which both work.

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<sup>4</sup> Accommodation decisions will be handled on a case-by-case basis across supervisory chains. To expedite the process and to protect the privacy and confidentiality of the employee's health and medical condition, it is recommended that the IP meetings be limited to the direct (1<sup>st</sup> Level) supervisor, the employee and the DPM. Decision making will begin with the direct supervisor but may also involve other higher-level officials in the same supervisory chain (as appropriate), to ensure that the proper action is taken regarding an accommodation request.

## **VI. Accommodation Request Process**

### **A. Making a Request**

#### **Employees**

Employees who wish to request an accommodation shall initiate a request by making the request orally, in writing or by any other means of communication. The request may be made to a first- or second-line supervisor, any other supervisor in the individual's chain of command or directly to the DPM. Employee accommodation requests do not have to be in writing; they do not have to use the "magic words" reasonable or accommodation; and the request may come from a third party (e.g., an employee's family member or doctor). In making the request, the employee does not even need to have identified a specific accommodation to request. In the course of discussing the health issue and what might be helpful to the employee, an appropriate accommodation will likely be identified.

#### **Applicant for employment**

Requests for accommodation made by an applicant may be made orally, in writing or by any other means of communication to HR or the DPM. The request should identify the accommodation needed, if known. Although an applicant with a disability may request an accommodation at any time during the application process, the applicant should, to the greatest extent possible, make the request as soon as he/she is aware of a barrier in the process. When the HR office receives a request for accommodation from an applicant for employment, it shall be immediately forwarded to the DPM for processing. After evaluating the accommodation request, the DPM will make a recommendation to an appropriate deciding official in the Office of Human Resources chain of command (that is, to an HR Supervisor, HR Director, or Deputy Staff Director for Management & Administration).

#### **Third Party Request**

A family member, health care professional or other representative may also initiate requests for accommodation. Before acting on a third-party request, the DPM will consult with the employee or applicant for employment to confirm that the employee or applicant wishes the request to be acted upon.

### **B. Expedited processing**

Certain requests require expedited processing, for example, to enable an applicant to apply for a job or to participate in a specific Commission activity that is scheduled to occur shortly. In those instances, the supervisor or DPM will strive to expedite the processing of the request before the deadline or activity.

### **C. Interactive Communication Process**

1. When an employee has requested accommodation (as previously described), the DPM will attempt to confer first with the employee to clarify the employee's need and then with both the employee and Agency management in an IP meeting as soon as possible, usually within one or two working days of receiving the request.
2. The purpose of the IP meeting is to determine what, if any, accommodation should be provided. This process is necessary to clarify the requesting individual's needs, the impact of the disability on the employee's job performance, and to identify an effective accommodation that would assist the employee to perform the essential job functions.
3. If an applicant makes a request for accommodation to either HR or the selecting official, the request should be immediately referred to the DPM. The DPM, with the assistance of the selecting official, shall begin the review of the requested accommodation and initiate the interactive process with the requesting applicant.
4. Questions to be asked during the initial interactive process can include, but are not limited to the following:
  - Will the accommodation be effective, that is, give the person the opportunity to function, participate, or compete on an equal basis?
  - Is the accommodation necessary to perform the duties of the position?
  - What effect will the accommodation have on the agency's operations and on the employee's performance?
  - Are there other accommodations that would accomplish the same purpose?
5. The interactive process and interactive communication are a priority throughout the consideration of an employee's request for accommodation. The DPM, employee and the manager must actively exchange information in order to reach a resolution within the appropriate timeframes. However, the supervisor and/or manager are not provided with copies of the requesting individual's medical documentation (when medical documentation has been provided by the employee to the DPM) or to be advised of the nature of the disability. Rather, supervisors and managers need only to be advised verbally of the requesting individual's functional limitations, in general terms, to enable them to make informed decisions. Normally, the requested accommodation (or an effective alternative accommodation), shall be provided to the requesting employee within twenty (20) workdays absent extenuating circumstances.
  - a. Extenuating circumstances are factors that could not be reasonably anticipated or avoided, for example, equipment that is on back order,

the company has gone out of business, or medical documentation has been delayed by the Health Care Provider.

**D. Medical documentation**

1. When an employee or applicant requests an accommodation, the individual may be asked to provide medical documentation that confirms the individual's health issue and that supports the requested accommodation. The medical information must be sufficient to explain the nature of the individual's disability and the functional limitations, his or her need for accommodation and how the requested accommodation will assist the individual to apply for a position, perform the essential functions of a position, or enjoy the benefits and privileges of the workplace. When appropriate, the expected duration (i.e., period of time) of the need for accommodation should be included in the medical documentation. Additionally, the Agency has the right to request supplemental medical information if the initial submission was insufficient. Moreover, the Agency also has the right, at the Agency's discretion, to have the submitted medical information reviewed by the Agency's Medical Consultant, at the Agency's expense.
2. The Agency will not request medical documentation when "the need for accommodation is obvious" (the disability is obvious) nor when the individual has already provided the Agency with sufficient information to document the existence of the disability and the individual's functional limitations.
3. When requested, the medical information assists the DPM and Agency management with making informed decisions in the development and approval of an appropriate accommodation plan. The suggestions and recommendations from the Health Care Providers are helpful to the process of developing an appropriate accommodation plan in response to the employee's request in addition to providing confirmation of the employee's disability.
4. The documents provided by the requesting individual that contain their medical information are secured and maintained by the DPM according to the provisions of the Federal laws and regulations governing confidentiality and are not shared with agency management; rather, the DPM shares [verbally] only enough of the individual's medical information with the management deciding official(s) so that they can make informed decisions when considering the employee's accommodation request. This verbal information is only shared with those management officials (usually the immediate supervisor, and possibly the Office Director) who have a need to know about any work restrictions.
6. The Agency will consider the requesting individual's failure or inability to submit the requested medical documentation in determining whether to approve the request. The DPM is responsible for explaining to the requesting individual

that the medical information is needed to verify the existence of an ADA disability (i.e., qualifying disabling condition) and the need for a reasonable accommodation. When an individual's disability is not obvious and he/she refuses to provide the requested documentation, the requesting individual is not entitled to reasonable accommodation.<sup>5</sup> Failure to provide sufficient documentation or to cooperate in efforts to obtain reasonable documentation may result in a denial of the request.

7. If the employee or applicant provided insufficient documentation to substantiate the existence of a disability and the need for accommodation, the Agency may request that the employee or applicant undergo a job-related medical examination at Agency expense. Failure to comply with the Commission's request that the employee or applicant undergo a medical examination at Agency expense may result in the denial of the accommodation request.

#### **E. Confidentiality Requirements Regarding Employee Medical Information in the Accommodation Process**

Under the Rehabilitation Act, medical information obtained in connection with the accommodation process must be kept confidential. This means that all medical information, including information about functional limitations and accommodation needs, obtained by the Agency in connection with a request for accommodation, must be kept in files separated from the individual's Official Personnel File. It also means that any FEC employee who directly or indirectly receives such information is strictly bound by these confidentiality requirements. Confidentiality applies to all aspects of the accommodation process. At the FEC, all employee medical and health-related information that is received by the DPM or that is presented in the IP meetings is not to be discussed outside of the IP meetings and is also to be secured in the confidential files located in the EEO Office.

**Personal medical documentation provided in response to a request by the DPM is not shared with Agency management. The process requires Agency management to have enough information about the employee's health issues to be able to make informed decisions about the accommodation that is to be approved for the employee. This is accomplished in conversation between the DPM and Agency management without sharing the employee's medical documents.**

**Further, when Agency management is made aware of any aspect of a requesting employee's health and/or medical information (i.e., including when the employee shares health information in the Interactive Process meeting discussions, or in conversations between the employee and Agency management), that information must remain confidential; Agency**

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<sup>5</sup> "Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act"  
"Requesting Reasonable Accommodation, No.6"; "<https://www.eeoc.gov/policy/docs/accommodation.html#requesting>"

**management may not mention or refer to this information (either orally or in writing) in future communications to or about the employee, in accordance with the laws that protect confidential employee health and/or medical information.<sup>6</sup>**

**The DPM maintains custody of all medical records obtained or created while processing employee requests for accommodation. All records will be maintained and disclosed in accordance with the Rehabilitation and Privacy Acts.**

## **F. Approval Process of Requests for Accommodation**

The employee's immediate supervisor, in consultation with the DPM (and possibly the next level supervisor at management's discretion), is responsible for approving accommodation requests and determining whether the request results in an undue hardship.

Agency managers and senior leadership (again, in consultation with the DPM) are encouraged to approve accommodation requests that will not result in an undue hardship as defined in these procedures. Examples of typical requests for accommodation where "undue hardship" is not an issue include:

- Where no cost is involved; and,
- Where the supervisor and the employee agree as to the accommodation (e.g., rearrangement of office furniture, approval of a schedule change, etc.).

When a supervisor or selecting official recommends approval of an accommodation and the approved accommodation involves cost (e.g., the procurement of an assistive device or item of furniture), the management official shall contact the DPM. The DPM will often work collaboratively with individuals in other offices in the accommodation process, like the Admin Services Division, the Office of the Chief Financial Officer, the Office of the Chief Information Officer and sometimes staff in the affected office in the determination of how an appropriate accommodation can be provided.

Whether the employee's accommodation is approved or denied, the employee must be and is notified in writing of the decision. If approved, the notice contains a description of the parameters of the accommodation to be provided. If denied, the notice advises the employee of the denial, the identity of the person who made the decision to deny, the reason(s) for the denial and provides information about the appeal rights and the option for engaging in the EEO Complaints process.

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<sup>6</sup> In an ADA violation of confidentiality case, the motive for making the disclosure is not relevant; ..... "Supervisor violated the ADA by disclosing complainant's medical condition to coworkers even though supervisor's intent was to explain to coworkers why complainant might act the way he did." *Campbell v Postmaster General*, EEOC Appeal No. 0120073829 (2010)



The Agency's accommodation records reflect when an employee's accommodation request has been received, when it has been either approved or denied, and by whom, and if an alternate accommodation has been provided, when and by whom. All of these records are maintained in the EEO Office by the DPM.

#### **G. Funding for Employee Requests for Accommodation**

Since Fiscal Year 2013, centralized funding for Agency employee requests for accommodation has been overseen by the DPM and the EEO Director with assistance from the Office of the Chief Financial Officer (OCFO). Centralized funding for employee requests for accommodation ensures consistency of the process throughout the Agency and consistency in the accommodations that are provided to requesting individuals. The DPM will, with the collaboration and oversight of the EEO Director, administer this aspect of the Agency's accommodation program.

#### **H. Interim Measures**

When a delay occurs or is anticipated during the interactive and evaluation process, the employee's supervisor or the selecting official must explore, in consultation with the DPM and the individual with a disability, whether temporary measures can be taken to assist the employee. These measures should be taken while waiting, for example, for necessary adaptive equipment or other necessary measures. Addressing an interim accommodation is often discussed in the interactive process when a delay is expected and has the additional benefit of keeping the employee informed about the delay and when the Agency expects to provide the requested accommodation.

#### **I. Confidentiality**

Information about an employee's accommodation must be kept strictly confidential. For example, when an accommodation has been established for an individual with a disability that results in some flexibility outside of established guidelines (use of leave, telework, flexible schedule, etc.), supervisors and/or managers may not discuss these arrangements with other staff. The exceptions to that general rule are that information may be disclosed as follows:

- to supervisors and managers for necessary work restrictions or who may, or whose work may, be affected by the employee's accommodations.
- to individuals involved in making decisions about reasonable accommodations
- where necessary for emergency treatment
- to officials investigating compliance with the Rehabilitation Act
- for workers compensation and insurance claims.

The DPM ensures the confidentiality of the accommodation process. It is important that any other individuals that become involved in the review of an accommodation request (for the specific reasons noted above) not be involved in processing any EEO complaint related to the request.

## **J. Reassignment**

The Agency must consider reassignment for a non-probationary employee if it determines that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current position.

Reassignment is the “accommodation of last resort.” An employee must be considered for reassignment to a vacant position if such a position exists for which the employee is qualified, and not just afforded permission to compete for the position. The Agency must reassign the employee to such a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position.

Managers and supervisors, and other relevant employees, must be informed about how to search for available vacancies when considering reassignment as a reasonable accommodation. 29 CFR § 1614.203(d) (3)(i)(C).

The Agency will consider providing reassignment to a vacant position as a reasonable accommodation, when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. The position should be equal to the employee’s current position in terms of pay, status, etc., or as close as possible to being equal. Vacant means that the position is available or will become available within a reasonable time. The position need not be a promotion, nor is the Agency required to create a position. Additionally, the employee must be qualified for the new position (but does not have to be among the best qualified), and if qualified, must be reassigned to the position.

In the absence of a position at the same grade or level, an offer of reassignment to a vacant position, for which the individual is qualified, at the highest available grade or level below the employee’s current grade or level is required. The availability of such a position does not affect the employee’s entitlement, if any, to disability retirement.

**Please note that a reassignment that would violate a collectively bargained seniority system is generally not considered to be reasonable.**

## **K. Tracking System for Employee Requests for Accommodation**

The Agency is required to track employee requests for accommodation. Agency procedures require accommodation records to be kept so that the agency may use them to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and to make such records available to the Equal Employment Opportunity Commission (EEOC or Commission) at the Commission's request. The DPM maintains a system of records to track the processing of each employee request for accommodation, from initial contact to the establishment of an accommodation plan or other result. Additionally, the Agency Tracking System includes the identity of each Deciding Official for each accommodation request.

Applicants and employees may contact the DPM at any time (see above Section IV.B for the DPM's contact information) to obtain tracking information about the status of their accommodation request.

The DPM maintains all reasonable accommodation case files and related documents to include the requesting employees' medical information if provided during the process. The confidential maintenance of the medical information received is in compliance with applicable laws and regulations. As previously stated, supporting documentation, specifically relating to medical information, must not become part of an Official Personnel File.

The tracking system will contain the following data:

1. The number of accommodations, by type, that were requested in the application process and whether those requests were granted or denied.
2. The jobs (occupational series, grade level, and Agency component) for which reasonable accommodations were requested.
3. The types of accommodations that were requested for each of those jobs.
4. The number of accommodations, by type, for each job, that were approved, and the number of accommodations, by type, that were denied.
5. The number of accommodations, by type, that related to the benefit or privileges of employment, and whether those requests were granted or denied.
6. The reasons for denial of requests for accommodation
7. The identity of the deciding official for each request for accommodation
8. The amount of time taken to process each request for accommodation; and,
9. The sources of technical assistance that have been consulted in trying to identify possible accommodations.

#### **L. Denial of Request for Accommodation (Please see Section V. E. above.)**

A denial of a request for accommodation from an applicant or employee must be provided to the individual in writing **at the time of the denial** and specifically explain the reason(s) the request was denied. Some examples of reasons for denied requests include (but are not limited to):

- That the medical documentation is inadequate to establish that the individual has a disability or needs accommodation
- Why the requested accommodation would not be effective; or,
- Why the accommodation would pose an undue hardship.
- In the written denial notice (just as it is in a written approval notice), the requesting employee is informed who, specifically, is the Deciding Official in the process. A Deciding Official could be any supervisor in the employee's chain of command (i.e., the immediate or second level supervisor or the Director of the Office in which the employee works).

**All denials of requests for accommodation must include information regarding appeal rights.**

All materials related to an employee's accommodation request, including a copy of the accommodation request and response, and any related documents, must remain on file in the DPM's records of accommodation requests for the duration of the requestor's employment.

#### **M. Appeal Rights**

When an employee who has requested and been denied a request for reasonable accommodation at the FEC, the employee is entitled to appeal the denial. Bargaining unit employees have the option of using the negotiated Grievance Procedures (Article 27) in the Agency's Labor Management Agreement and non-bargaining unit employees have the option of using the Administrative Grievance Procedures, in FEC Personnel Instruction 771.1

In addition, employees may also contact the Agency's Alternate Dispute Resolution (ADR) Office for assistance in addressing issues via the resources offered by the Conflict Coaching program. Any employee or applicant may file an EEO complaint with the FEC's EEO Office if he or she is not satisfied with the accommodation decision or if the accommodation is not implemented. The contact must be made to the EEO Office within 45 days of when he/she becomes aware of the accommodation decision or the failure to implement the accommodation decision.

Voluntary, informal dispute resolution is encouraged to allow the parties to

resolve disagreements and to obtain prompt reconsideration of denials. Please see the EEO Office's brochure entitled "Complaint or Dispute Resolution Options for FEC Employees" for detailed information about appeal options for both bargaining unit and non-bargaining unit employees.

#### **N. Resources**

- a. [www.eeoc.gov](http://www.eeoc.gov)
- b. Management Directive 715 (October 1, 2003)
- c. The Americans with Disabilities Act of 1990 (ADA)
- d. The ADA Amendments Act of 2008 (ADAAA)
- e. The Rehabilitation Act (Section 501 applies the employment nondiscrimination standards of the ADA (Title I) to Federal government employees.)
- f. Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (October 17, 2002)
- g. EEOC Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000)
- h. Executive Order 13164 Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodations (July 26, 2000)
- i. EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000)
- j. Job Accommodation Network (JAN) – [askjan.org](http://askjan.org)
- k. Computer/Electronics Accommodation Program (CAP) - <http://www.cap.mil/>