

**STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789**

NGOH-HRZ

01 March 2021

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: HRO Policy # 21-012, Reasonable Accommodations

1. **References.** See Enclosure 6.

2. **Applicability.** This policy applies to all Title 5 (T5) National Guard Employees and Title 32 (T32) Dual Status Technicians of the Ohio National Guard.

3. **Purpose.** Establishes procedures for a Reasonable Accommodations Program within the Ohio National Guard and ensures compliance with statutory and regulatory requirements. The policy provides information on reasonable accommodations to qualified employees or applicants for employment with disabilities. The Rehabilitation Act of 1973, as amended, requires the employer to consider ways to alter, restructure, or change the manner of doing a job in order to allow a qualified person with a disability to perform the essential functions of a particular job, to be considered for a position he or she desires, or to enjoy equal employment opportunities.

4. **Reasonable Accommodation.** The Ohio National Guard (ONG) is committed to ensuring requests for reasonable accommodation are handled in an effective and expeditious manner. It is the obligation of ONG to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause undue hardship to the ONG. Examples of reasonable accommodations include modifying job duties; restructuring work sites; providing flexible work schedules or work sites; and providing accessible technology or other workplace adaptive equipment. The ONG has the following objectives:

a. To enable the individual employee to perform the essential functions of the position, or to gain access to the workplace.

b. To enable an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job.

c. To allow an employee with a disability an opportunity to enjoy equal benefits and privileges of employment that are enjoyed by other similarly situated employees without disabilities.

5. **Responsibilities.**

a. Employee/Applicant/Designated Representative.

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(1) Initiate the reasonable accommodation request by utilizing ONG Form 791a "Reasonable Accommodation Request".

(2) Provide documentation as necessary to assist the Human Resource Office (HRO) in making a determination.

(3) Notify supervisor/HRO of any change in condition requiring reasonable accommodations.

b. Supervisor/Supervisory Chain.

(1) Complete ONG Form 791b "Supervisor Review of Reasonable Accommodation Request".

(2) Conduct a thorough review of the individual's essential functions and make a reasonable accommodation recommendation.

(3) Implement approved reasonable accommodations.

(4) Implement reasonable accommodations that are available to all employees.

c. HRO.

(1) Process ONG Form 791a "Employee Request" and ONG Form 791b "Supervisor Review of Reasonable Accommodation Request." Fill in "Date Received" and update the Reasonable Accommodation Data Tracker.

(2) Contact applicant or employee to begin reasonable accommodation request. If a third party requests the reasonable accommodation then confirm the request with the employee/applicant.

(3) Consult with employee's supervisory chain to gather relevant information necessary to respond to a reasonable accommodation request.

(4) Request medical documentation to determine eligibility for a reasonable accommodation.

(5) Determine if the individual's impairment is a "disability" under the Rehabilitation Act.

(6) Complete HRO decision memorandums to approve, modify, or deny a reasonable accommodation. Send completed memorandums to the supervisor, employee, and/or applicant.

(7) Capture the details of the reasonable accommodation request in the Reasonable Accommodation Data Tracker for future analysis.

6. Requests for Medical Information. If a requestor's disability and/or need for accommodation is not obvious or already known, the agency is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires reasonable accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by the agency where the disability and/or need for accommodation are not obvious or already known.

a. Only the HRO may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health care professional. Even if the HRO requires medical documentation to process a request, the HRO does not necessarily have to request medical documentation from a health care provider; in many instances, the requestor may be able to provide sufficient information that can substantiate the existence of a "disability" and/or need for a reasonable accommodation. If an individual has already submitted medical documentation in connection with a previous request for accommodation, then the individual should immediately inform the HRO of this fact. The HRO will then determine whether it requires additional medical information to process the current request.

b. The HRO will explain what additional information it needs if the initial information provided by the health care professional, or volunteered by the requestor, is insufficient to enable the HRO to determine whether the individual has a "disability" and/or that an accommodation is needed. If necessary, the individual should then ask their health care provider or other appropriate professional to provide the missing information. The HRO may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. The HRO may ask the individual requesting accommodation to sign a limited release permitting the HRO to contact the provider for additional information if sufficient medical information is not provided by the individual.

c. The HRO may have the medical information reviewed by a doctor of the agency's choosing at the agency's expense. In determining whether documentation is necessary to support a request for reasonable accommodation and whether an applicant or employee has a disability within the meaning of the Rehabilitation Act, the HRO will be guided by principles set forth in the Americans with Disabilities Act Amendments Act of 2008 (ADAA). Specifically, the ADAA directs that the definition of "disability" be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis. Notwithstanding, the HRO may require medical information in order to design an appropriate and effective accommodation.

d. A supervisor who believes that an employee may no longer need a reasonable accommodation should contact the HRO. The HRO will decide if there is a reason to contact the employee to discuss whether he/she has a continuing need for reasonable accommodation.

7. Confidentiality. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all

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medical information that the agency obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. This includes the fact that an accommodation was requested or approved and information about functional limitations. It also means that any agency employee who obtains or receives such information is strictly bound by these confidentiality requirements.

a. The HRO may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, the HRO will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the HRO will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability. EXAMPLE: The G6 generally will be consulted in connection with requests for assistive technology for computers. While the G6 needs to know the employee's functional limitations, it typically has no need to know the employee's specific disability.

b. Other disclosures of medical information are permitted in addition to the disclosures of information needed to process a request for accommodation as follows:

(1) Supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation.

(2) HRO may inform first aid and safety personnel, when appropriate, if the disability might require emergency treatment or assistance in evacuation. HRO may disclose information to government officials when necessary to investigate the agency's compliance with the Rehabilitation Act.

(3) The HRO may provide medical information of Employees to the military chain of command when the Employee is also a member of the Ohio Air or Army National Guard.

8. Dual-Status Military Technicians. Military Technicians, also known as Dual Status Technicians, may make reasonable accommodation requests, however, they must meet all applicable requirements for continued military service. The Ohio National Guard will use any information available to adjudicate a military technician's ability to maintain military membership.

8. Challenging Denied Requests for Reasonable Accommodation.

a. Eligible Bargaining Unit Employees will use the negotiated grievance procedure published in the collective bargaining agreement in effect at the time of the denied request.

b. Eligible Non-Bargaining Unit Employees will use the administrative grievance plan.

c. All eligible employees may use the Equal Employment Office complaint process.

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9. The point of contact for this policy is MAJ Daryl Scott, Federal Employee Branch Manager, at daryl.g.scott.mil@mail.mil or (614) 336-7121/DSN 346-7121.

FOR THE ADJUTANT GENERAL:



JOSEPH F. LOGAN, Col, ANG
Director for Human Resources

8 Encls

1. Request Form
2. Supervisor Review Form
3. Service Animal Addendum
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DISTRIBUTION:

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Enclosure 1 – Reasonable Accommodation Request Form – ONG Form 791a

Request for Reasonable Accommodation/Personal Assistance Services	
Date of Request: _____	Date Received (HRO Only): _____
Applicant or Employee Information	
Name: _____	
Phone Number: _____	
Email Address: _____	
Office of Employee/Workcenter: _____	
Accommodation Requested (be as specific as possible regarding the equipment, services, work space, or working arrangements) :	

Reason for the Request (If the accommodation is time-sensitive then indicate the time-sensitive nature and explain why) :	

<small>Privacy Act Statement: The Rehabilitation Act of 1973, 29 U.S.C section 791, and Executive Order 13164 authorize collection of this information. The primary use of this information is to consider, decide, and implement requests for reasonable accommodation and personal assistance services. Additional disclosures of the information may be: To medical personnel to meet a bona fide medical emergency; to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding; to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.</small>	

ONG Form 791a

Enclosure 2 – Supervisor Review Form – ONG Form 791b

Supervisor's Review of Request for Reasonable Accommodation/Personal Assistance Services									
Date of Review: _____		Date Received (HRO Only): _____							
Name of Requesting Employee or Applicant: _____									
Job Title (include PD#, PP-OCC-GRD, if known) : _____									
Supervisor's Phone Number: _____									
Supervisor's Email Address: _____									
Describe the disability and functional limitations (if known) : _____									
Describe the requested accommodation and purpose for the request (if known) : _____									
List essential functions of the position and indicate whether the employee can perform the function with the requested accommodation:									
<input type="checkbox"/>	Bending	<input type="checkbox"/>	Hearing	<input type="checkbox"/>	Reaching	<input type="checkbox"/>	Speaking	<input type="checkbox"/>	Other (Describe)
<input type="checkbox"/>	Breathing	<input type="checkbox"/>	Interacting With Others	<input type="checkbox"/>	Reading	<input type="checkbox"/>	Standing	<input type="checkbox"/>	
<input type="checkbox"/>	Caring For Self	<input type="checkbox"/>	Learning	<input type="checkbox"/>	Seeing	<input type="checkbox"/>	Thinking	<input type="checkbox"/>	
<input type="checkbox"/>	Concentrating	<input type="checkbox"/>	Lifting	<input type="checkbox"/>	Sitting	<input type="checkbox"/>	Walking	<input type="checkbox"/>	
<input type="checkbox"/>	Eating	<input type="checkbox"/>	Performing Manual Tasks	<input type="checkbox"/>	Sleeping	<input type="checkbox"/>	Working	<input type="checkbox"/>	
<u>Essential Function</u>			<u>Can the employee perform the function with the requested accommodation?</u>						
1. _____	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> N/A*						
2. _____	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> N/A*						
3. _____	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> N/A*						
4. _____	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> N/A*						
*Accommodation not necessary to perform this function. Attach additional pages if necessary.									
Was medical information provided? If yes, who provided the information and who reviewed the medical information? _____									
Describe steps taken to evaluate the effectiveness and feasibility of the requested accommodation. _____									
Signature (Supervisor)				Date					
Print Name (Supervisor)									

ONG Form 791b

Enclosure 3 – Service Animal Addendum

1. It is the policy of the Ohio National Guard to adhere to the Americans with Disabilities Act (ADA) regarding all eligible employees. The Act allows individuals with disabilities the right to bring Service Animals (SA) onto public premises. Installations, armories, bases, and other facilities under control of the ONG shall comply with this Federal mandate regarding SA.
2. A disability is defined as a physical or mental impairment which substantially limits one or more of an individual's "major life activities" such as walking, talking, seeing, hearing, learning, etc.
3. Service Animals are animals individually trained to work or perform specific tasks directly related to the individual's disability to help mitigate or alleviate the disability. Service Animals are working animals and exclude the following: pets; comfort or emotional support animals, whose mere presence helps people with mental illness feel better; and therapy animals, which provide affection and physical comfort to people in often-stressful situations, such as hospitals. These excluded groups are not SA because they do not perform specific tasks related to an individual's disability.
4. Specific tasks performed by SA may include, but are not limited to: guiding people who are blind; alerting people who are deaf; retrieving objects for people with mobility impairments; providing physical support for people with balance/stability issues; protecting people suffering from a seizure; reminding people with psychiatric illness to take medication; calming people with post-traumatic stress disorder during an anxiety attack; interrupting impulsive/destructive behavior of people with neurological disabilities; and alerting people to the presence of allergens.
5. Currently, only dogs and miniature horses are considered SA. Other animal species, whether domestic, wild, or trained, do not qualify as SA.

Reasonable Accommodation Procedure

Employees must first request a reasonable accommodation for an individual with disabilities before attempting to bring SA to the workplace. Title I of the ADA does not automatically allow employees to bring a SA to work. They shall submit requests through their supervisors to the Human Resource Office. A workplace reasonable accommodation is a change or adjustment in a work area that makes it possible for an otherwise qualified employee with a disability to perform the duties or tasks required, provided that the reasonable accommodation does not place undue hardship, including financial or extenuating circumstances, upon the Agency. Excluding any hardship, attempts will be made to grant the requested reasonable accommodation. If the reasonable accommodation is not possible, employees requesting reasonable accommodations and management will work together to create mutually acceptable accommodations.

Service Animal Identification

Federal Law under the ADA does not require that SA be certified, and supervisors may not insist on seeing certification documents or tags. They are allowed to ask owners/handlers if

the animal is a SA and what specific task the SA performs but not about the nature or extent of the individual's disability. Although it is not a Federal legal requirement for SA to wear special vests, harnesses, collars, or tags, some SA owners/handlers prefer to have their animals assessed and trained, so that SA may be identified by wearing particular gear.

Some owners/handlers feel more comfortable once their service animals are trained because they are able to provide identification papers/cards upon request. Service animals may be professionally trained or trained by their owners.

Service Animal Owner Responsibilities

1. It is the responsibility of the SA owner to ensure minimal disruption in the work area by the following:

a. The SA shall be properly trained to provide specific assistance to individuals with disabilities.

b. The SA must be harnessed, leashed, or tethered under control unless these devices interfere with their work, or the individual's disability prevents using these devices. If so, the SA must be under control through voice, signal, or other effective methods.

c. The SA shall be properly cleaned and groomed to minimize pest infestation and odors.

d. Owners have sole responsibility to provide care for SA including breaks, water, food, and comfortable bedding. Hydration and feeding should be accomplished out of the work area to minimize hygienic issues.

e. All efforts should be made to have SA urinate and defecate away from areas frequented by the public then cleaned up immediately.

f. If the SA is a canine, it shall have all current vaccinations and be licensed with the appropriate city/county Animal Control Department. A miniature horse SA must also meet all local licensing requirements, if any.

Service Animal Behavior

1. The SA shall not distract or obstruct other SA in the performance of their duties.

2. Service Animals which are disruptive, including those not trained as housebroken, excessively barking, growling, or displaying other aggressive behavior, may be excluded from the work area.

Ohio National Guard Visitors with Service Animals

Ohio National Guard visitors with SA shall be treated similarly as outlined above, except that they shall not request a RA.

Supervisor Considerations Regarding Service Animals

1. To address concerns of coworkers and workplace visitors who may have fear or allergy issues, employers should consider taking the following actions:

- a. Allow employees in question to work in different areas of the building and establish different travel paths.
- b. Utilize alternatives to in person communication such as telephone, fax, email, teleconferencing, or videoconferencing.
- c. Grant flexible scheduling for employees in question.
- d. Plan so that employees/visitors in question do not use common areas at the same time.
- e. Ask the employee with the SA if he/she is able to use temporary accommodations to replace tasks performed by SA during meetings attended by employees/visitors in question.
- f. Use portable air purifiers and/or High Efficiency Particulate Air (HEPA) filters; provided by the employee or the agency.
- g. Ask the employee with the SA if he/she is willing to regularly use dander care products on it.
- h. Ask the employee/visitor who is allergic to the SA if wearing an allergen mask would be beneficial.
- i. Have the work area (including shelves, carpets, cubicle walls, and window treatments) regularly dusted, vacuumed, and cleaned.

Fraudulent Representation

Any person who knowingly and fraudulently represents himself as an individual with disabilities who requires a SA to be present in the workplace is in violation of Federal Law and subject to fine and/or imprisonment.

Enclosure 4 – Personal Assistance Services (PAS)

1. Personal Assistance Services (PAS) is the employment of an individual to provide services to assist a disabled employee with daily living activities so the disabled employee can perform their essential work functions. The process for requesting PAS, the process for determining whether such services are required, and the agencies right to deny such requests when provision of the services would pose an undue hardship, are the same as for reasonable accommodation process.
2. The Ohio National Guard is only required to provide PAS if:
 - a. An individual is a T5 employee of the Ohio National Guard;
 - b. An individual has a targeted disability;
 - c. An individual requires the services because of his or her targeted disability;
 - d. An individual will be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any required reasonable accommodations have been provided; and
 - e. Providing PAS will not impose an undue hardship on the Ohio National Guard.
3. Personal assistance services will be provided by a PAS provider. The Ohio National Guard may require PAS providers to perform services to more than one individual, and PAS providers may perform tasks unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide PAS in a timely manner.
4. If the Ohio National Guard is utilizing a PAS provider who will be assigned to a single individual, and if that individual prefers a particular provider (e.g. because the provider has worked with the individual in the past), the Ohio National Guard will give primary consideration to the employee's choice to the extent permitted by law. The Ohio National Guard may employ PAS providers as an employee of the agency or through a personal services contract.
5. The Ohio National Guard is prohibited from taking adverse actions against job applicants or employees based on their need for, or perceived need for PAS.

Enclosure 5 – Frequently Asked Questions

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and became effective January 1, 2009. Because this law made several significant changes, including changes to the definition of the term "disability," the Equal Employment Opportunity Commission (EEOC) will evaluate the implementation and utilization of federal agency reasonable accommodation programs.

Executive Order 13164 requires federal agencies to establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. This guidance provides background information on the requirements of the Rehabilitation Act of 1973, and sets forth instructions for implementing each of the procedural requirements of the Executive Order.

- Who is covered by the Executive Order?

The Order applies to executive branch agencies and their employees and applicants for employment. It does not apply to employers or employees in the private sector.

- What is reasonable accommodation?

Reasonable accommodation is a change in the work environment or in the application process that would enable a person with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations: (1) changes to a job application process to permit people with disabilities to be considered for jobs; (2) changes to enable people with disabilities to perform the essential functions of a job; and (3) changes to give people with disabilities equal access to the benefits and privileges of employment.

- What are the legal requirements that govern an agency's obligation to provide reasonable accommodation?

Agencies must provide reasonable accommodation to qualified employees or applicants with disabilities unless the accommodation would create an undue hardship on the operation of the agency. A person with a disability is qualified for a job if s/he can perform the essential functions of that job with or without the reasonable accommodation.

For more guidance on the legal standards governing reasonable accommodation, agencies should consult the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, on the web at www.eeoc.gov.

- Why is reasonable accommodation important?

While many people with disabilities can apply for and perform jobs without the need for reasonable accommodation, workplace barriers may keep others from entering the work force and still others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are to be done). Reasonable

accommodation removes workplace barriers for people with disabilities. It also allows agencies to expand their pool of qualified workers.

- Why are reasonable accommodation procedures important?

If a person with a disability needs a reasonable accommodation in order to do, or to apply for, his or her job, it is essential that federal agencies handle the request in a prompt, fair, and efficient manner. Establishing procedures in advance will ensure that individuals with disabilities understand how to approach the system and know what to expect. Procedures will also help agency managers understand what is expected of them.

- What are the general standards for reasonable accommodation procedures?

While each agency will design its own procedures, all procedures must meet the following general standards:

- The procedures must be flexible.
- The procedures must be written in plain language.
- The procedures must be designed to expand employment opportunities for people with disabilities.
- The procedures must enable an agency to meet its obligations under the Rehabilitation Act.

- How can a person with a disability start the reasonable accommodation process?

A person with a disability may start the process by making an oral or written request for a reasonable accommodation. Agencies must consider an individual's request if it is made to any of the following: his/her supervisor; a supervisor or manager in his/her immediate chain of command; the Equal Employment Opportunity (EEO) office; any other office designated by the agency; or, in connection with the application process, any agency employee with whom the applicant has contact. An agency may not require people with disabilities to use particular words in their requests; nor may it wait to begin processing a request until a written form is submitted.

- Which agency employees should be involved in considering an individual's request for reasonable accommodation?

Agency procedures should authorize first-line supervisors to consider and approve requests for reasonable accommodation wherever possible. Agencies may also designate particular offices to oversee the reasonable accommodation process and/or to provide assistance and information to all agency employees involved in the process.

- Are there specific steps that all agencies must follow?

No. Each agency should design procedures that work best for its work force. All agency procedures should, however, require that agency decision makers talk to the individual requesting the accommodation where the person's specific disability or limitation is unclear; where an effective accommodation is not obvious; or where the parties are choosing

between different possible reasonable accommodations.

- What is the time period for processing requests?

Because the amount of time it takes to respond to a request for reasonable accommodation will often depend on the nature of the accommodation, the guidance will not set specific time lines. Time limits should however, be as short as reasonably possible. Where an employee needs an immediate accommodation -- for example, an applicant needs a modification to the application process in order to apply for a job -- the agency's procedures should also provide for expedited processing of the request.

- What if an agency can't meet its time periods?

Sometimes there may be factors that an agency could not have anticipated or avoided that will delay the consideration or provision of a reasonable accommodation. In such circumstances, the agency must notify the individual of the reason for the delay and consider whether there are temporary measures that may be taken to assist the person with a disability until a decision on the requested accommodation can be made.

- When may an agency ask for medical information in connection with a request for reasonable accommodation?

An agency is entitled to know that an individual has a covered disability that requires a reasonable accommodation. Therefore, the agency may ask for information about the disability, the activities it limits, and the need for accommodation -- but only if the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the agency to make these determinations. An agency may not otherwise ask for medical information based on a person's request for a reasonable accommodation.

- Must an agency keep medical information confidential?

Yes. The information may be disclosed to those involved in determining whether to grant the reasonable accommodation. Beyond those agency decision makers, however, there are strict limitations on those to whom the information may be provided.

- What if a request for reasonable accommodation is denied?

If an agency denies a request for reasonable accommodation, it must inform the individual in writing of the denial and the specific reasons for it. The agency should also notify the individual that s/he has a right to file an EEO complaint and to engage in any informal dispute resolution procedures the agency makes available for this purpose.

- What if the individual wants to challenge a denial of reasonable accommodation?

The Executive Order encourages agencies to use voluntary, informal dispute resolution processes to resolve disagreements resulting from the reasonable accommodation process. These informal processes must be in addition to, and may not modify or replace, the EEO complaint process.

- Can the individual file an EEO complaint under the Rehabilitation Act?

The Executive Order does not create new rights for Executive branch employees or applicants. However, nothing in the Executive Order limits an individual's rights under the Rehabilitation Act. Where an individual believes that a denial of a reasonable accommodation, or an aspect of the reasonable accommodation process, has resulted in a violation of the Rehabilitation Act, therefore, s/he may file an EEO complaint through the process set forth in EEOC regulations at 29 C.F.R. Part 1614. The individual must initiate the EEO complaint process within 45 days of the date of the challenged action, whether or not s/he is engaged in an informal dispute resolution process at the same time.

- Does the Executive Order impose reporting or recordkeeping requirements?

The Executive Order requires each agency to submit its procedures, and any modifications it later makes to those procedures, to the EEOC. The Order also requires each agency to track information that will enable the agency to evaluate its own performance in considering and granting requests for reasonable accommodation. The Order does not, however, impose any specific recordkeeping requirements.

- May an employer ask an individual for documentation when the individual requests reasonable accommodation?

Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations. The employer is entitled to know that the individual has a covered disability for which the individual needs a reasonable accommodation.

Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the

employer to submit a list of specific questions to the health care or vocational professional. As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in documentation from the employee's treating physician that confirms that the hospitalization was related to the multiple sclerosis and provides information on how long an absence may be required from work.

If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation. On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

- Are there situations in which an employer cannot ask for documentation in response to a request for reasonable accommodation?

Yes. An employer cannot ask for documentation when:

- (1) Both the disability and the need for reasonable accommodation are obvious, or
- (2) The individual previously provided the employer with sufficient information to substantiate the ADA and needs for the reasonable accommodation requested.

Enclosure 6 – References

General References:

Americans with Disabilities Act of 1990 (ADA)

Americans with Disabilities Act Amendments Act of 2008 (ADAA); 25 September 2008

Rehabilitative Act of 1973, Section 504

Public Law 114-328, 23 December 2016, “National Defense Authorization Act 2017”

Public Law 114-92, section 1053, 25 November 2015, “The National Defense Authorization Act for 2016”

29 U.S.C. §791; “Employment of Individuals with Disabilities”

32 U.S.C. §709; “Technicians: Employment, Use, Status”

Executive Order (EO) 13164; Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, 26 July 2000

Army Directive 2013-01, “Guidance of the Acquisition and Use of Service Dogs by Soldiers.”; dtd 18 January 2013

AFI 36-205; Affirmative Employment Program, Special Emphasis Program, and Reasonable Accommodation Policy; dtd 01 December 2016

U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Revised Americans with Disabilities (ADA) Requirements 2010, “Service Animals,” July 2010.

U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “Commonly Asked Questions about Service Animals in Places of Business,” 14 July 2008.

References for Medical Documentation:

Requesting medical documentation for reasons other than accommodation

An agency may ask for information that may be connected to a disability if it is job-related and consistent with business necessity. *Slavin v. U.S. Postal Service*, 107 LRP 31475, EEOC No. 0120061503 (EEOC OFO 2007).

If an employer has a reasonable belief that a worker poses a direct threat due to a medical condition or that she is unable to perform her essential job functions due to a medical condition, the employer's disability-related job inquiries are permissible as job-related and consistent with business necessity. *Norton v. Department of Veterans Affairs*, 106 LRP 11224, EEOC No. 01A51018 (EEOC OFO 2006).

The agency did not subject a city carrier to discrimination based on his disabilities (left arm and hand partially immobile due to stroke, hearing impairment, seizure) when it asked him to undergo a fitness-for-duty examination. The exam was job-related and consistent with business necessity because agency management had a reasonable belief that the carrier could not perform the essential functions of his position safely as evidenced in part by his difficulty driving with just his right hand while reaching across his body to deliver mail, the manner in which he operated his turn signal in his agency vehicle, and his safety violations. *Buster D. v. U.S. Postal Service*, 117 LRP 28209, EEOC No. 0120151128 (EEOC OFO 2017).

The agency acted legitimately when it sent the complainant for a fitness-for-duty examination after a manager observed him exhibiting unusual behavior and becoming agitated when speaking with her about incidents in the workplace. Other employees had also identified the complainant as a cause of problems in the workplace. *Watson v. U.S. Postal Service*, 113 LRP 30415, EEOC No. 0120121195 (EEOC OFO 2013).

The agency's order for the complainant to undergo a fitness-for-duty examination was job-related and consistent with business necessity. Management had a reasonable belief that he posed a direct threat to safety based on its observation of an exacerbation of his bipolar disorder when he made several "disturbing" statements. *Sanders v. U.S. Postal Service*, 113 LRP 17004, EEOC No. 0120130214 (EEOC OFO 2013).

The Department of Veterans Affairs did not discriminate when it required a motor vehicle operator to get medical clearance to drive. His position required a commercial driver's license. At his physical examination, he did not meet the medical criteria for the license due to his blood sugar levels and blood pressure. The requested clearance was job-related and consistent with business necessity. *Clark v. Department of Veterans Affairs*, 109 LRP 49317, EEOC No. 0120070620 (EEOC OFO 2009).

The agency did not discriminate by simultaneously issuing the complainant a performance review and a counseling statement, or by requesting medical documentation for a fitness-for-duty exam. Where a supervisor has a reasonable belief that an employee's sporadic attendance and increased medical restrictions due to a medical condition are impairing her ability to perform the essential functions of her job, the scheduling of a fitness-for-duty exam may be found to be job-related and consistent with business necessity. *Clark v. Department*

of Defense, 109 LRP 38798, EEOC No. 0120073283 (EEOC OFO 2009).

The agency did not subject the complainant to disability discrimination when it requested return-to-work certification after he experienced atrial fibrillation. Based on information previously received from the complainant's doctor and a review of his medical documentation by other doctors, the agency had a reasonable belief that his ability to perform the essential functions of his job could be impaired, and that its request to return-to-work certification was job related and consistent with business necessity. *Slavin v. U.S. Postal Service*, 107 LRP 31475, EEOC No. 0120061503 (EEOC OFO 2007).

Hadley: Although the complainant's supervisors were following the agency's Employee Labor Manual and standard operating procedure when they requested more detailed medical information after the employee presented a note from his physician for a one-day absence indicating that, among other things, he had been seen for depression, the inquiry violated the ADA because the supervisors admitted they did not believe the depression interfered with the complainant's performance. *Hadley Guide to Federal Sector Equal Employment Law and Practice: Clearance to Return to Work*, citing *Bernal v. U.S. Postal Service*, 108 LRP 37141, EEOC No. 0720080038 (EEOC OFO 2008).

The agency violated the Rehabilitation Act when a supervisor asked the complainant what medications he was taking in response to the complainant's statement that medications were making him sleepy. *Uchtmann v. Department of Agriculture, Agricultural Marketing Service*, 113 LRP 11238, EEOC No. 0120110532 (EEOC OFO 2013).

The agency violated the Rehabilitation Act when it refused to allow the complainant to return to work without further medical documentation, even though he was found fit for duty by a physician. *Grayson v. U.S. Postal Service*, 109 LRP 3856, EEOC No. 0720080044 (EEOC OFO 2009).

The supervisor unlawfully contacted the complainant's physician's office without permission and inquired whether he could take physical therapy at a VA medical center. This was improper because the contact was likely to elicit information about a disability. The EEOC also found some evidence that the supervisor posed as a workers' compensation representative in an effort to get information about the complainant. *Torres v. Department of Veterans Affairs*, 108 LRP 7782, EEOC No. 0120061190 (EEOC OFO 2008).

The complainant, who had spina bifida, failed to show the agency's request for medical documentation was improper. Her revelations that she had bowel and bladder incontinence due to her disability, and also that she had an infection, led the agency to legitimately request information in order to insure she didn't pose an infectious risk to the patients in the medical/surgical/ICU area where she worked. *Norton v. Department of Veterans Affairs*, 106 LRP 11224, EEOC No. 01A51018 (EEOC OFO 2006).

The agency didn't violate the Rehabilitation Act when it called the complainant's doctor and ordered the complainant to undergo fitness-for-duty exams based on his erratic behavior, his expression of "bad thoughts" about other employees, and his attempted suicide. The agency's actions were job-related and consistent with business necessity. *Cimo v. Department of Defense, Army & Air Force Exchange Service*, 105 LRP 42492, EEOC No. 01A52441 (EEOC OFO 2005).

When an employee makes contradictory claims regarding whether he is fit to perform the duties of his job, an agency may order a job-related fitness-for-duty exam without violating the Rehabilitation Act. *Sullivan v. Department of the Interior*, 108 LRP 7735, EEOC No. 0120060885 (EEOC OFO 2008).

The complainant was not subjected to disability discrimination when the agency required her to submit medical documentation in support of her requests for leave. An agency generally may not request documentation that an employee has a disability each time she requests leave, but it may request documentation to show that requested leave is for a disability-related reason. *Fresh v. Department of Justice, Federal Bureau of Investigation*, 108 LRP 4393, EEOC No. 0120064076 (EEOC OFO 2008).

In *Hilton v. U.S. Postal Service*, 101 FEOR 3048, EEOC No. 01971239 (EEOC 2001), the EEOC found the agency improperly used the complainant's return from maternity leave as an excuse to request medical information concerning the complainant's seizure disorder, which was completely unrelated to the reason for her leave. She was removed based on her refusal to release the medical information.

The agency violated the Rehabilitation Act when a management official asked the complainant to explain her medical condition at a staff meeting and when, upon the complainant's release from the hospital, he asked her to provide a doctor's note stating she was not homicidal or suicidal. *Chambliss v. Social Security Administration*, 103 LRP 11296, EEOC No. 01A21179 (EEOC OFO 2003).

Failure to provide documentation

If an individual's disability or need for reasonable accommodation is not obvious, and the individual refuses to provide the reasonable documentation requested by the employer, then the individual is not entitled to reasonable accommodation. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act.

When a complainant fails to provide necessary medical information in support of a reasonable accommodation request, the EEOC often looks at it as a failure of the complainant to engage in the interactive process, something that is fatal to the complaint. *Akbar v. U.S. Postal Service*, 111 LRP 42494, EEOC No. 0120081202 (EEOC OFO 2011). *Hadley Guide to Federal Sector Equal Employment Law and Practice: Reasonable Medical Documentation*.

A store worker for the Defense Commissary Agency was not denied reasonable accommodation for his degenerative foot condition because it was not obvious and he did not provide sufficient medical documentation in support of his request for a change in jobs, despite repeated attempts by agency officials to obtain the necessary medical information. *Felton Z. v. Department of Defense, Defense Commissary Agency*, 117 LRP 7208, EEOC Nos. 0120150590, 0120161958 (EEOC OFO 2017).

The agency did not subject the complainant to disability discrimination when it issued him a notice of termination after he failed to submit adequate medical documentation concerning his ability to return to work after being out for a substantial period of time for psychiatric

treatment. The agency was not required to contact the complainant's psychiatrist or schedule him for an exam with a contract psychiatrist after he failed to submit medical documentation required by established agency policy. *Delgado v. U.S. Postal Service*, 103 LRP 25343, EEOC No. 01A00055 (EEOC 2003).

The agency could not be held liable for a failure to accommodate because the complainant refused to permit the agency to obtain the necessary documentation to determine the need for the specific accommodation the complainant requested. *Ross v. Department of the Treasury*, 101 FEOR 3080, EEOC No. 01982708 (EEOC 2001).

The agency was unaware of the complainant's medical diagnosis when it terminated him for failing to provide a medical release indicating it was safe for him to return to work after he experienced heart problems. There was no evidence the agency knew of the complainant's diagnosis because he failed to provide the documentation requested by the agency. Absent knowledge of the claimed disability, the agency had no obligation to provide reasonable accommodation. *Lavery v. Department of Veterans Affairs*, 103 LRP 8261, EEOC No. 01A14788 (EEOC OFO 2003).

The complainant was not subjected to unlawful discrimination when she was not allowed to immediately return to work following her hospitalization for an epileptic seizure. Her return to work was legitimately delayed by inadequate documentation and the agency's legitimate request for a fitness-for-duty examination. *Rogan v. U.S. Postal Service*, 103 LRP 45687, EEOC No. 01A13388 (EEOC 2003).

Enclosure 7 – Definitions

Designated Management Official. The person who has authority to decide whether the Department will provide a requested accommodation. The Designated Management Official who grants a request for an accommodation shall also be referred to as the “decision maker.” This is the Human Resources Officer.

Dual Status/Military Technician. Positions in the National Guard Technician Program which require military membership in the National Guard as a condition of technician employment are in the excepted service under the provisions of 32 USC 709. This status means they are “excepted” from the rules that govern civil service employees in the areas of tenure and competitive requirements for appointments. Employment as a NG military technician does not result in “competitive” civil service status. Loss of military membership causes termination of technician employment.

Essential Job Functions. The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be “essential” if, among other things, the position exists specifically to perform that function, there is a limited number of other employees who could perform the function if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

Invisible (Hidden) disabilities. These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Major Life Activities. A major life activity is an activity of fundamental significance to most people in daily life and not simply something important to a particular individual. A major life activity includes obvious functions, such as hearing, seeing, walking, speaking, caring for self, performing manual tasks, and breathing.

Mental Impairment. Any mental or psychological disorder, such as mental retardation, organic, brain syndrome, emotional or mental illness, and specific learning disabilities.

T5 National Guard Employee. Positions in the National Guard which do not require military membership in the National Guard as a condition of employment are T5 National Guard Employees. This status means the rules that govern civil service employees in the areas of tenure and competitive requirements for appointments are in force and may result in “competitive” civil service status. Most T5 National Guard Employees are in the Excepted Services and do not acquire “competitive” civil service status.

Person with a Disability. An individual has a physical or mental impairment that substantially limits one or more of the person’s major life activities; has a record of such impairment or is regarded as having such impairment. Based on court decision, examples of major life activities include caring for yourself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Physical Impairment. Any physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more systems such as: neurological, musculoskeletal,

special sense organs, cardiovascular, reproductive, digestive, respirator, genitor-urinary, hemic and lymphatic, skin and endocrine system.

Reasonable Accommodation. The Rehabilitation Act of 1973 requires federal agencies to provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities.

Targeted Disabilities. Targeted disabilities are deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine.

Undue Hardship. The significant difficulty or expense incurred, should the Department provide a particular accommodation. Agencies do not have to provide reasonable accommodations that would impose an undue hardship on the operation of the agency.

Enclosure 8 – Request Workflow

