



Department of Adult Correction
Policy and Procedure

Policy Name: Americans with Disabilities (ADA)
Policy Number: DAC-HR-200-02
Division: Administration
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I. PURPOSE

The purpose of this policy is to provide guidance to North Carolina Department of Adult Correction (DAC) employees on the process for requesting reasonable accommodations in accordance with the Americans with Disabilities Act (ADA).

II. APPLICABILITY

This policy applies to all DAC employees and applicants for employment.

III. DEFINITIONS

A. Americans with Disabilities Act of 1990

The ADA, was signed into law on July 26, 1990, to be effective two years from that date. The Americans with Disabilities Amendments Act of 2008 (ADAAA) amended portions of ADA and became effective January 1, 2009. These acts require employers to provide reasonable accommodations to qualified individuals with disabilities unless the accommodation would impose an undue hardship for the employer.

B. Applicant

A person who applies for employment with DAC. This includes individuals:

1. Not employed by DAC or North Carolina State government;
2. Employed by North Carolina State government, but not employed by DAC; and
3. Employed by DAC but applying for another position within the Department.

C. Basic Training

Any course(s) of instruction required by the Criminal Justice Education and Training Standards Commission for certification.

D. Direct Threat

A significant risk of substantial harm to the health or safety of an individual or others that cannot be eliminated by reasonable accommodation.

E. Disability

The term “disability” means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more major life activities of such individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

F. Division/Section ADA Coordinator

Serves as the point of contact for employees within their Division or Section regarding accommodation requests.

G. DAC ADA Compliance Officer

A position located within the DAC Central Human Resources (HR) Employee Relations (ER) Office designated to oversee and advise on the reasonable accommodation program for the Department.

H. Employee

A person employed by DAC regardless of employment type, including full-time or part-time permanent employees, probationary employees, time-limited employees, and temporary employees. For the purpose of this policy, this does not include individuals employed by DAC applying for another position within the Department as these individuals would be considered applicants.

I. Essential Job Functions

Essential job functions (EJFs) are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.

J. Interactive Process

A collaborative effort between the employee and a DAC representative to discuss the need for a reasonable accommodation as well as identify effective reasonable accommodation solutions.

K. Major Life Activities

Include but are not limited to functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

L. Marginal Job Functions

Duties that are not critical to the position; the position would exist without these duties.

M. Mental Impairment

Any mental or psychological disorder, including, but not limited to, an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

N. Physical Impairment

Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, hemic and lymphatic, skin, and endocrine or the operation of a major bodily function.

O. Qualified Individual with a Disability

An individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job.

NOTE: Generally, only long-term conditions are covered by the ADA.

Example: An individual may break an arm; this is a short-term condition. However, should the bone not heal properly, a long-term condition may develop.

P. Reasonable Accommodation

Any modification or adjustment to a job or the workplace that will enable a qualified applicant or employee with a disability to perform EJs of the position without creating an undue hardship on the employer's business.

Q. Substantially Limits

The extent to which the impairment limits an individual's ability to perform a major life activity as compared to most people in the general population.

R. Temporary Job Assignment Modification

A modification of EJs on a temporary basis. Temporary modifications are considered for medical conditions with an expected duration of less than six months.

S. Undue Hardship

An action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation in relation to the size, financial resources, and nature of the employer's business.

IV. POLICY

A. It is the policy of DAC to:

1. Consider requests for and provide reasonable accommodation(s) to employees and qualified applicants consistent with the procedures delineated in this policy;
2. Prohibit discrimination against employees and qualified applicants on the basis of a disability; and
3. Protect individuals from discrimination, coercion, intimidation, threats, or interference when filing an ADA complaint or testifying about alleged ADA violations.

B. Title I of the ADA prohibits discrimination in all employment practices including:

1. Application procedures;
2. Training;
3. Compensation;
4. Hiring;
5. Promotion;
6. Other terms, conditions and privileges of employment;
7. Evaluation;
8. Dismissal;
9. Disciplinary action; and
10. Medical examinations.

C. Reasonable Accommodation

1. The ADA requires reasonable accommodation to:
 - a) Ensure equal opportunity;
 - b) Enable a qualified individual with a disability to perform the essential functions of a job; and
 - c) Enable an employee with a disability to enjoy equal benefits and privileges of employment.
2. The obligation to provide a reasonable accommodation applies to all aspects of employment, is ongoing, and may arise any time that an individual's disability or job changes.
3. An accommodation may be made for an employee who, due to a physical or mental condition, has become unable to perform the EJs of their current position. In considering an individual's disability and an accommodation, the manager must ensure the accommodation would not pose an undue hardship to DAC or fundamentally change the essential functions of a job.
4. This process does not cover requests that would pose an undue hardship or fundamentally change the essential functions of a job.

5. Personal use items such as glasses or hearing aids are not considered reasonable accommodations and are not required to be provided by the Department unless those items are specifically designed or required to meet job related needs.
6. Reasonable accommodations may include, but are not limited to:
 - a) Making existing facilities used by employees readily accessible to and usable by an individual with a disability;
 - b) Restructuring a job, i.e., reassigning marginal job functions to another position. After reassignment of marginal job functions, however, the position must maintain the original classification level;
 - c) Modifying work schedules;
 - d) Acquiring or modifying equipment;
 - e) Appropriately modifying examinations, training or other programs;
 - f) Permitting use of accrued paid leave or unpaid leave for necessary treatment;
 - g) Allowing an employee to provide equipment or devices that an employer is not required to provide; or
 - h) Reassignment to a vacant position within DAC for which they are qualified if the person becomes disabled and is unable to perform the EJFs of the original position.
 - i. An employee who has never adequately performed the essential functions, with or without reasonable accommodation, will not be considered qualified and therefore not entitled to reassignment to a new position.
 - ii. In cases of reassignment, the position does not necessarily have to be at the same level and there is no requirement to lower quality or quantity standards to make an accommodation. However, reassignment through the ADA process is not designed to provide promotional opportunities.
7. Managers or supervisors may inquire of an employee whether a reasonable accommodation is needed when it becomes apparent due to job performance or other means that the individual is unable to perform the EJFs without an accommodation.
8. If the individual indicates that they do need a reasonable accommodation to perform the EJFs, the manager or supervisor shall then advise the individual of the procedures for requesting a reasonable accommodation as described in Section VI.A.

D. Undue Hardship

Whether an accommodation will impose an undue hardship for the employer is determined on a case-by-case basis by the DAC ADA Compliance Officer. The factors to be considered may include, but are not limited to:

1. The nature and cost of the accommodation in relation to the size, financial resources, number of employees, nature and structure of the operation; and
2. The impact of the accommodation on the operation of the work location that is making the accommodation.

E. Direct Threat

1. DAC may require that individuals not pose a "direct threat" to the health or safety of themselves or others. Individuals cannot be denied an employment opportunity merely because of a slightly increased risk; there must be a "significant risk of substantial harm."
2. An assessment of "direct threat" must be based on valid medical analyses and/or other objective information, not on speculation, and shall be made by management in consultation with the DAC ADA Compliance Officer on a case-by-case basis. Furthermore, an assessment that a limitation constitutes a "direct threat" must apply to all employees regardless of a disability. In determining whether an individual would pose a direct threat, the factors to be considered include:
 - a) Duration of the risk;
 - b) Nature and severity of the potential harm;
 - c) Likelihood that the potential harm will occur; and
 - d) Imminence of the potential harm.
3. If it is determined that an individual would pose a direct threat because of a disability, the agency must then try to eliminate or reduce the risk to an acceptable level with reasonable accommodation.
4. If a proposed accommodation is rejected because it would pose an undue hardship on DAC or that the individual would pose a direct threat to the health and/or safety of themselves or others, information such as a cost analysis, medical information, etc. will be necessary to justify the rejection.
5. In either case, the Department has the burden of proving that either the disability poses a direct threat to the health and/or safety of the individual or others and such risk cannot be reduced or eliminated by an accommodation or that the requested accommodation poses an undue hardship to DAC.

F. Requests for Reasonable Accommodation – Recruitment and Selection

1. Pre-Recruitment

Position descriptions should be reviewed when a vacancy occurs or is anticipated (i.e., a current employee will be retiring in 60 days, etc.), but prior to recruitment for that vacant position, to ensure the position description accurately reflects the job duties and responsibilities. This review will also ensure that the EJs are accurately reflected in the job posting.

2. Recruitment

- a) Refer to the [DAC-HR-100-01 Merit Based Recruitment and Selection](#) policy for specific instructions related to advertising positions. It is recommended that as much detailed information as possible related to the EJs of the position being advertised be included

in the job posting.

- b) The posting may also include a brief description of the work environment if the environment is unusual, but such a description is not required. For example, the position is assigned to the mental health section of a prison, where rotating shifts, weekend, or holiday work schedules are required.
- c) Jobs requiring certification as a Criminal Justice Officer shall be indicated in the posting.

3. Interviewing

- a) During the interview process, the applicant shall be provided a list of the EJFs for the position they seek. In addition, if the position for which they are applying requires certification by the Criminal Justice Education and Training Standards Commission, the applicant shall be provided the EJFs required to complete Basic Training.
- b) The applicant shall closely review the EJFs list and sign the Applicant/Employee Verification Statement (Phase I) form, acknowledging they have reviewed the list and have the ability to perform the EJFs, with or without an accommodation. They do not have to indicate the need for an accommodation at this point in the process. This requirement applies whether the applicant is external to DAC or is a current employee seeking another position within the Department.
- c) Those responsible for interviewing applicants for employment shall not inquire about disabilities nor require applicants to undergo pre-employment medical examinations or drug tests until after a conditional offer of employment has been extended.

4. Selection

- a) Individuals shall be selected based upon job-related criteria unrelated to the existence or potential for a disability. However, following the interviews and after the applicants have been ranked based upon training, experience, credentials, and interview results, but prior to extending a conditional offer of employment, the hiring manager may ask an applicant to demonstrate performance of a particular job function to ensure that the applicant has the ability to complete the task consistent with the requirements of the EJFs, i.e., time frames, etc.
- b) Requests to demonstrate performance of a particular job function shall be made on a case-by-case basis and may be made regardless of whether the individual is external to DAC or is a current employee seeking another position within the Department. The hiring manager will consult with the DAC ADA Compliance Officer before making the request.

5. Conditional offers for individuals entering a position requiring certification by the Criminal Justice Education and Training Standards Commission:

- a) Following a conditional offer of employment, individuals shall be provided a copy of the EJFs required to successfully complete Basic Training and the EJFs for the position for

which the conditional offer of employment was made and directed to declare if an accommodation is or is not required to perform the functions.

- b) After review of the EJs, the selected applicant will sign the Applicant/Employee Verification Statement (Phase II) form. Requests for accommodation will not hinder the employment process, but rather provide DAC with an opportunity to ensure a more inclusive environment where all employees can readily and efficiently reach their full potential at work.
- c) Individuals shall be required to undergo a physical examination and psychological screening prior to beginning work. If there are indications from a mental health professional that a new hire is unable to successfully perform or is not suitable for the position, the matter is referred to the DAC ADA Compliance Officer for review. The DAC ADA Compliance Officer will engage in the interactive process to determine if an effective accommodation is possible. If it is determined that there are no reasonable accommodations or means of reducing a direct threat, then the DAC ADA Compliance Officer will consult with DAC General Counsel's Office (GCO) for further review and advice.

V. ROLES AND RESPONSIBILITIES

A. Division Heads or Designee(s)

Designate an ADA Coordinator(s) for their Division or Section.

B. ADA Coordinators

- 1. Ensure their Division or Section is in compliance with this policy, the North Carolina Office of State Human Resources (OSHR) [Reasonable Accommodation policy](#), and federal ADA requirements, including but not limited to maintaining a confidential ADA file separate from the personnel file.
- 2. Serve as the point of contact for employees within their Division or Section regarding accommodation requests. Engage in informal interactive processes to assist employees with paperwork or obtaining supporting documentation.
- 3. Serve as a liaison between their Division or Section and the DAC ADA Compliance Officer

C. DAC ADA Compliance Officer

- 1. Reviews requested accommodations and approves or denies the request consistent with this policy, the OSHR [Reasonable Accommodation policy](#), and federal ADA requirements.
- 2. Serves as a liaison between DAC Central HR and the ADA Coordinator(s).
- 3. Works with management, the ADA Coordinator, and the individual requesting a reasonable accommodation to ensure that an appropriate accommodation is provided that effectively meets the individual's disability-related needs and enables the otherwise qualified individual

to perform the EJs of the position.

D. DAC General Counsel's Office

Provides legal services and advice to DAC Central HR, management, and employees regarding issues related to ADA.

VI. PROCEDURES

A. Requests for Reasonable Accommodations

1. Requests for reasonable accommodations shall be initiated using the Request for Reasonable Accommodation form by the employee and submitted to their supervisor.
2. The supervisor shall acknowledge in writing receipt of the request for reasonable accommodation and advise the employee additional information may be necessary.
3. The supervisor shall forward the request to their Division or Section's ADA Coordinator for processing.
4. The ADA Coordinator will review the request and consult with the employee and management to determine if temporary modifications are appropriate, based on the information presented.
5. In determining if the individual possesses a disability recognized under the ADA, additional medical information may be necessary. Generally, medical information shall be requested from the provider who is treating the individual's condition.
6. If the employee does not authorize the release of their medical records on the Request for Reasonable Accommodation form, they are responsible for submitting medical documentation of their functional limitations to support their request for accommodation. The employee can obtain copies of their position specific EJs from their ADA Coordinator.
7. If the employee does authorize the release of their medical records on the Request for Reasonable Accommodation form, the ADA Coordinator will submit the ADA Initial Letter and a list of EJs to the employee's healthcare provider to obtain medical documentation to help the DAC ADA Compliance Officer assess their request for accommodation.
8. Once all relevant information related to the request for accommodation has been collected, the ADA Coordinator shall submit the request package through the employee's chain of command to the DAC ADA Compliance Officer for final review and decision.

B. Reviewing Requests for Reasonable Accommodation

1. The following requirements shall be satisfied before there is an obligation to make a reasonable accommodation:

- a) The individual requesting the accommodation must be otherwise qualified, i.e., meet the minimum education and experience requirements as stated in the job specification;
 - b) The medical condition must satisfy the definition of a disability as recognized by the ADA, and must be known to the Department;
 - c) The reasonable accommodation must not impose an undue hardship on the operation of the Department; and
 - d) The employment of the individual with the reasonable accommodation must not pose a significant risk of substantial harm to themselves or others.
2. Once it has been determined that the individual possesses a disability as recognized under ADA, the DAC ADA Compliance Officer shall consider the individual's request for reasonable accommodation. This consideration may include:
 - i. Additional consultation with management, individual requesting an accommodation or the healthcare provider; or
 - ii. Conducting research to determine the cost of the accommodation, availability of other positions for the current employee, or alternate accommodations.

C. Temporary Job Assignment Modifications

1. During the interim period between the initial request and final decision, management may approve a temporary job assignment modification/work adjustment for an employee. These types of modifications are provided based on the staffing and operational needs of the Division or facility and are not intended as long-term accommodations. Temporary assignments may be reevaluated after 30 days to ensure continued compliance with the operational and staffing needs of the Division or facility.
2. Employees with pregnancy-related impairments (i.e., pregnancy-related sciatica, gestational diabetes, preeclampsia, etc.) may be covered by the ADA and warrant temporary job assignment modifications.
3. Management may determine the most effective temporary job assignment modification is placing the employee on an approved leave of absence to use available leave credits or leave without pay.

D. Notification of Final Decision

1. Employees shall be advised in writing of a final decision to the request for an accommodation within 30 calendar days after all information necessary for review has been received by the manager and forwarded to the DAC ADA Compliance Officer.
2. Upon the final decision of the DAC ADA Compliance Officer, the individual shall be notified by the supervisor of the decision in writing and advised accordingly.

E. Appeals

An individual alleging unlawful discrimination, harassment, or retaliation may file a complaint following the process outline in the OSHR [Employee Grievance policy](#) located in the State

Human Resources Manual.

F. Requests for Reasonable Accommodation(s) – Basic Training

1. All requests related to mandatory Criminal Justice Education and Training Standards Commission Basic Training requirements shall be initiated using the Request for Reasonable Accommodation for Mandatory Criminal Justice Training form.
2. This form shall be forwarded to the DAC ADA Compliance Officer for consideration in consultation with the appropriate training, medical, or other applicable DAC staff.

G. Notification of Final Decision

1. Employees shall be advised in writing of a final decision to the request for an accommodation within 30 calendar days after all information necessary for review has been received by the manager and forwarded to the DAC ADA Compliance Officer.
2. Upon the final decision of the DAC ADA Compliance Officer, the individual shall be notified by the supervisor of the decision in writing and advised accordingly.

H. Appeals

An individual alleging unlawful discrimination, harassment, or retaliation may file a complaint following the process outline in the OSHR [Employee Grievance policy](#) located in the State Human Resources Manual.