

## Reasonable Accommodation

U. S. INTERNATIONAL TRADE COMMISSION DIRECTIVE:  
WASHINGTON, DC 20436 DATE: 05/30/2016

**SUBJECT: Procedures and Guidelines on Reasonable Accommodation**

1. **PURPOSE.** This directive establishes general procedures to facilitate the provision of reasonable accommodation at the United States International Trade Commission (USITC or Commission), with respect to Commission employees and applicants for employment. This directive also establishes general guidelines for Commission supervisors and managers to achieve a common goal: namely, to ensure that to the maximum extent possible, employees and applicants with disabilities are provided with reasonable accommodations necessary to enable them to perform their jobs effectively and productively, in accordance with governing law.<sup>1</sup>

The procedures and guidelines set forth in this order are neither exhaustive nor exclusive. Instead, they serve to assure that individuals with disabilities understand in “plain language” how to request reasonable accommodation, and what to expect of the process generally. Further, these procedures and guidelines will help USITC managers and supervisors understand the basic framework under which they must act on behalf of the Commission in administering reasonable accommodation requests.

2. **AUTHORITIES.** The Rehabilitation Act of 1973 (Rehab Act); the Americans with Disabilities Act of 1990 (ADA); the Civil Rights Act of 1991; Executive Order (EO) 13164; the ADA Amendments Act of 2008 (ADAA); the Genetic Information Nondiscrimination Act of 2008 (GINA); EO 13548; and other relevant laws and regulations, including, but not limited to, EO 13583.

3. **SCOPE.** These procedures and guidelines apply to all USITC employees and applicants for employment.

4. **DEFINITIONS.** As used herein, the following terms:

Deciding Official: a supervisor or manager with authorization to determine whether to grant or deny a reasonable accommodation request. In the case of applicants for employment who request reasonable accommodation, the Deciding Official will ordinarily be the Director, HR.

Director, EEO: leads the USITC’s Office of Equal Employment Opportunity (or its successor office). The Director, EEO, in concert with the Director, HR, exercises general administrative

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<sup>1</sup> Disclaimer: this directive, and the procedures and guidelines set forth herein, do not create any right or benefit, substantive or procedural, enforceable at law by a party against the Commission, the United States, its Officers or employees, or any individual.

oversight of the reasonable accommodation process. The Director, EEO, is also responsible for coordinating the Commission's disability program and for providing general information concerning the program and disability issues to the Commission, its managers and employees.

Director, HR: leads the USITC's Office of Human Resources (or its successor office). In collaboration with the Director, EEO, the Director, HR, exercises general administrative oversight of the reasonable accommodation process. Further, any medical documentation required to consider a reasonable accommodation request will be maintained by the Office of Human Resources, separately from other employee-related files. All files and documentation related to requests for reasonable accommodation are to be handled as confidential matters, and stored securely, accordingly.

Disability: a physical or mental impairment that substantially limits one or more of a person's major life activities.

Disability Accommodation Coordinator: any individual designated by the Director, EEO, to assist with administering accommodation requests.

Essential Function: those job duties that are fundamental to the position that the person with a disability holds or has applied for. A function may be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform them.

Extenuating Circumstances: factors that could not have reasonably been anticipated or avoided in advance of processing the request for accommodation.

Individual with a Disability: a person who has a physical or mental impairment that substantially limits one or more of that person's major life activities, has a record of impairment, or is regarded as having such impairment.

Interactive Process: an informal and flexible collaboration between the employee and the employer to identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Major Life Activity: basic activity that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Qualified Individual with a Disability: an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Reasonable Accommodation: an adjustment or alteration in the work environment or work conditions, or in the job application process, that would enable a person with a disability to enjoy equal employment opportunities (e.g., to apply for a job, perform essential job duties, or enjoy equal benefits and privileges of employment, such as training, promotion, reassignment, and developmental assignments. There are three categories of reasonable accommodations:

- (1) modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (e.g., providing application forms in alternative formats like large print or Braille, etc.);
- (2) modifications or adjustments in the work environment or working conditions that enables a qualified individual with a disability to perform the essential functions of the job (e.g., sign language interpreters, job restructuring, modification of work schedules or place of work, extended leave, telecommuting, reassignment to a vacant position, etc.); and
- (3) modifications or adjustments that enables an employee with a disability to enjoy equal benefits and privileges of employment (e.g., removing physical barriers, computer software or hardware).

Reassignment: a form of reasonable accommodation that in some particularized circumstances, and absent undue hardship, must be provided to employees who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Note that the Commission is not required to create jobs for individuals. Rather, reassignment will only be considered if no other reasonable accommodation is available. Reassignments are only made to vacant, funded positions, provided the employee is qualified for the position considered for a reassignment (he/she may be noncompetitively reassigned to the job).

Request for Reasonable Accommodation: a statement, written or verbal, that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment, for a reason related to a medical condition. A request does not have to use any special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability.

Requestor: an employee or applicant with a disability, or an individual acting on an employee or applicant’s behalf who requests reasonable accommodation.

Undue Hardship: an accommodation requiring significant difficulty or expense when considered in light of factors such as the agency’s size, financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation requested, and its impact on the operations of the Agency. The Deciding Official makes this determination.

5. **POLICY.** The Commission has an ongoing obligation under the Rehabilitation Act of 1973, 29 U.S.C. § 794, to ensure that employees with physical and mental disabilities are provided with reasonable accommodations that will enable them to perform their essential job functions, unless doing so would impose undue hardship on USITC operations. Beyond our legal obligations, the USITC is committed to providing reasonable accommodation that will enable employees and applicants with disabilities the opportunity to contribute to the Commission's mission at the highest levels.

## 6. PROCEDURES AND GUIDELINES FOR REASONABLE ACCOMMODATION.

### A. **Making a Reasonable Accommodation Request.**

(1) Under most circumstances, USITC employees should communicate requests for reasonable accommodation to their immediate supervisor. Alternatively, employees may communicate a request for accommodation to the Director, EEO, or the Director, HR, or another supervisor or manager in his/her chain of command.

(2) If an employee has concerns about disclosing his or her disability to a first-line supervisor, the employee may send the request directly to a decision maker other than the supervisor, such as a second-line supervisor, or the Director, HR. Employees should understand, however, that it may become necessary to disclose that information to a first-line supervisor and other USITC officials involved in the decision to facilitate the provision of reasonable accommodation.

(3) Applicants for employment should request accommodation with the Director, HR. If an applicant requests accommodation with any other USITC employee involved in the application process (e.g., an individual identified in the appropriate vacancy announcement as a USITC point of contact, or the selecting official), that employee should forward the request to the Director, HR.

(4) An employee or applicant for employment may make a request for reasonable accommodation either orally or in writing (e.g., by memo, handwritten note, or e-mail). In some cases, employees and applicants may be asked to follow up an oral request with a written confirmation.

(5) In requesting reasonable accommodation, an employee or applicant for employment is not required to include any special words, such as "reasonable accommodation," "disability," "Rehabilitation Act," or the like.

(6) Either an employee or applicant may request a reasonable accommodation at any time, even if he/she has not previously disclosed the existence of a disability.

(7) In some cases, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an employee or applicant for employment (e.g., in the case of an employee's incapacity or hospitalization). Such a request shall be

communicated to one or the other of the same supervisors/managers to whom the employee or applicant would ordinarily be expected to make the request. In these circumstances, and to the extent possible, the individual affected should be contacted to confirm that he/she in fact seeks a reasonable accommodation (thereby providing him/her an opportunity to decline any accommodation).

**B. Responding to Reasonable Accommodation Requests.**

- (1) Whenever practicable, a supervisor should promptly send a written confirmation of a reasonable accommodation to the Requestor (e.g., by e-mail, facsimile, or letter). Such confirmation is not only a matter of courtesy, but verifies the Commission's receipt of the accommodation request. Written confirmation from a supervisor should usually follow when the accommodation request has been made verbally.
- (2) Through its supervisors and managers, the Commission must respond promptly to requests for reasonable accommodation. Thus, if a supervisor does not have authority to approve an accommodation request, he/she should immediately forward the request to their supervisor or a Deciding Official with such authority.
- (3) If a supervisor fails to respond to a request for accommodation within a reasonable time, an employee should contact a second-line supervisor or the Director, HR.
- (4) The Commission has an obligation to engage employees in the interactive process. At minimum, this requires the Deciding Official to promptly initiate a dialogue with the employee requesting reasonable accommodation, particularly when the individual's specific disability or limitation is unclear, where an effective accommodation is not obvious, and/or when the two are choosing between different possible reasonable accommodations.
- (5) In almost any interactive process, the Deciding Official's initial dialogue should include identifying him or herself as the person authorized to make the accommodation decision, and what can reasonably be expected to occur with processing the request for accommodation. Even in those cases where the disability, need for accommodation, and type of accommodation are clear, and extensive discussions are not otherwise warranted, the Deciding Official should initiate a dialogue with the Requestor to provide a reasonable opportunity for the exchange of relevant information.
- (6) During the interactive process, the Deciding Official should also consult with appropriate Commission resources for assistance. For example, where appropriate, the Director, EEO, may provide guidance to the Deciding Official in administering the accommodation request. The Deciding Official should also consult with other Commission officials as may be appropriate to make determinations on a reasonable accommodation request, including seeking legal advice from the Office of the General Counsel.

(7) With respect to Commission supervisors and managers, any information received in connection with a request for reasonable accommodation should be kept confidential, and divulged to other USITC officials only to the extent necessary, on a “need to know” basis. For example, the Office of Information Technology (OIT) will typically be consulted in connection with requests for procuring adaptive equipment for computers. In that circumstance, OIT has no need to know any information about the medical condition of the person seeking the accommodation. However, OIT may need to know the Requestor’s functional limitations, insofar as such limitations affect technology requirements.

(8) There are specific considerations in the interactive process when a Deciding Official responds to a request for reassignment, as follows:

(a) Reassignment will only be considered if no accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.

(b) In considering whether there are positions available for reassignment, the Director, EEO, will work with the Deciding Official, the Director, HR, and the individual requesting the accommodation to identify: (i) all vacant funded positions within USITC for which the employee may be qualified, with or without reasonable accommodation; and (ii) all positions which HR has reason to believe will become vacant and funded over the next 60 business days, and for which the employee may be qualified.

(c) From the available positions identified under (b), above, the agency will first focus on positions which are equivalent to the employee’s current job in terms of pay, status, and other relevant factors by conducting a USITC wide search. If there is no vacant equivalent position, USITC will consider vacant lower level positions for which the individual is qualified.

(9) A supervisor may not retaliate against an employee who has requested an accommodation.

**C. Requesting Medical Information During the Interactive Process.**

(1) USITC is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. In some cases the disability and need for accommodation will be obvious or otherwise already known to the Deciding Official. In these cases, further medical information should not be sought. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the Deciding Official, USITC may require the individual to provide medical documentation about the disability and his or her functional limitations.

(2) If the Deciding Official believes that medical information is necessary in order to evaluate a request for reasonable accommodation, he/she may consult with the Director, EEO, and the

Director, HR, for advice and assistance. Additionally, the Deciding Official should seek legal advice from the Office of the General Counsel in advance of seeking medical information from a Requestor.

(3) Medical documentation unrelated to the disability claimed will not be requested. Instead, subject to paragraph (2), above, the Deciding Official will seek medical information or documentation about the disability and/or functional limitations, in light of the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

(4) The Deciding Official may seek a review of the medical documentation by a physician chosen by USITC. The Deciding Official may also consider appropriate alternative steps, including, but not limited to, seeking a confidentiality waiver from the Requestor that will enable USITC (through its medical consultant) to contact the individual's medical provider directly for the deficient medical information; and/or offering the Requestor a medical exam by a contracted physician selected by USITC, at the Commission's expense.

(5) The Requestor has a responsibility to either respond to the Deciding Official's requests for appropriate medical documentation, or cooperate with the Commission in its efforts to obtain such documentation. Where a Requestor fails to either respond to or cooperate with the Commission in its reasonable attempts to establish the medical basis for an accommodation request, USITC's obligation to engage in the interactive process may cease, and may result in denial of the accommodation request.

**D. Confidentiality of Accommodation Requests, Including Medical Documentation.**

All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation, must be kept confidential. Such information shall be kept secured, in files separate from the individual's official personnel file. In addition, USITC officials who obtain or receive such information are strictly bound by these confidentiality requirements. However, such information may be disclosed to supervisors, managers, and other Commission officials involved in determining whether to grant the reasonable accommodation (including the Deciding Official). Beyond these officials, there are strict limits on those to whom the information may be provided.

**E. Time Frames for Processing Requests for Reasonable Accommodation.**

(1) The amount of time that it takes to respond to a request for reasonable accommodation will often depend on the nature of the accommodation, and other factors. However, Commission supervisors/managers who receive requests for accommodation should respond to them promptly. Such officials should not delay in requesting medical documentation or in discussing the requested accommodation with the employee, including possible alternative

accommodations. Expedited processing may be tailored to special circumstances, as appropriate (for example, to enable an individual to apply for a job or for a specific agency activity scheduled to occur shortly), as outlined in Section II.C.13 of the policy guidance on Executive Order 13164: Establishing Procedures to Facilitate the Processing of Reasonable Accommodations).

(2) As soon as the Deciding Official makes a determination whether to grant or deny a reasonable accommodation request, the decision should be promptly communicated to the Requestor in writing, with a copy to the Director, EEO. In cases of a decision to deny reasonable accommodation, or when another accommodation was offered other than that sought by the Requestor, the Deciding Official should provide a written explanation.

(3) Ordinarily, within seven (7) business days of receipt of the request for reasonable accommodation, or receipt of medical documentation in cases where medical documentation is required, the Deciding Official should issue a determination on reasonable accommodation to the Requestor.

(4) Particularly when the need for accommodation is obvious, and/or when there is no need to request additional supporting medical documentation, there may be instances when a Deciding Official may be able to grant a request for reasonable accommodation in less than the seven (7) business day guideline. Examples of accommodations that should usually be granted in less than seven business days may include:

(a) An employee with diabetes who sits in an open area asks for four breaks a day to test his/her blood sugar levels so that he/she may do these tests in private.

(b) An employee, who takes anti-depressants that make it hard for him/her to get up in time to get to the office at 9:00 a.m., requests to reschedule her start time to 10:00 a.m.

(c) A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he/she needs more time to prepare.

(5) Once a request for reasonable accommodation has been approved, the Deciding Official should immediately forward the approval and other necessary documentation to the appropriate Disability Accommodation Coordinator and/or other officials responsible for procurement of equipment, furniture, and services, etc.

(6) In the absence of Extenuating Circumstances, procurement of equipment, furniture, and services as reasonable accommodation should be on an expedited basis, but in accordance with Federal procurement guidelines. Whenever possible, the procurement request should be fulfilled within 15 business days after receipt by the Disability Accommodation Coordinator.

(7) Where Extenuating Circumstances arise with any procurement undertaking set forth in paragraph (6), above, the Deciding Official should promptly notify the Requestor in writing of the reason for the delay and the approximate date on which the provision of the reasonable accommodation is expected. Thereafter, the Deciding Official should keep the Requestor reasonably informed of any further developments.

(8) In the case of Extenuating Circumstances, the Deciding Official may consider whether temporary measures can be taken in lieu of providing reasonable accommodation. Such measures may include granting accommodation on a temporary basis, or temporarily authorizing measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function), provided that:

- (a) The temporary measures do not unreasonably interfere with USITC operations; and
- (b) The employee is clearly informed that the measures are being provided only on a temporary, interim basis, with a defined beginning and end date.

**F. Remedies for Denial of Reasonable Accommodation.**

(1) This Order does not create new rights for employees or applicants, and does not limit an employee or applicant's rights under the Rehabilitation Act. Any requirements governing the initiation of statutory, regulatory, and/or collective bargaining claims, including the time frames for initiating such claims, remain unchanged.

(2) USITC employees and applicants for employment may utilize any existing procedures to resolve a dispute over a denial of reasonable accommodation, including the following: seeking reconsideration by the Deciding Official, review by a second-line supervisor, or authorized and consensual alternative dispute resolution (ADR). However, use of such reconsideration, review, and/or ADR resources does not affect time limits for initiating statutory and/or collective bargaining claims. An individual's participation in such informal dispute resolution processes will neither satisfy nor delay the governing time restrictions.

(3) An individual who chooses to pursue any available remedies for denial of reasonable accommodation must fully comply with applicable procedures, including the following:

- (a) EEO Complaint Process - the employee or applicant seeking an accommodation must contact the USITC's Office of Equal Employment Opportunity within 45 days from the date of denial of accommodation.
- (b) Labor or Administrative Grievance - bargaining unit members must file a grievance in accordance with the provisions of the collective bargaining agreement. All others must comply with the requirements of the USITC's administrative grievance process.

(c) Merit Systems Protection Board (MSPB) - where the denial of an accommodation request results in an appealable adverse action, the individual must initiate an appeal within 30 days of such adverse action.

**G. Information Tracking and Reporting.**

The Director, EEO, will prepare and submit to the Equal Employment Opportunity Commission an annual report containing the following information:

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

By Order of the Chairman:

Meredith Broadbent

Chairman