

**FAIRFAX COUNTY
OFFICE OF HUMAN RIGHTS AND EQUITY PROGRAMS**

**Policies and Procedures
Memorandum No. 39-04**

Dated: October 4, 2017

Approved By: Kenneth Saunders 
Director, Office of Human Rights & Equity Programs

Title: POLICY AND PROCEDURE FOR THE REASONABLE ACCOMMODATION
PROCESS IN EMPLOYMENT

1. PURPOSE

To establish the Fairfax County Government policy and procedure for responding to reasonable accommodation requests to qualified employees and applicants with disabilities.

2. POLICY

It is the policy of Fairfax County Government to support and comply with the Americans with Disabilities Act of 1990, as amended in 2008.

This directive applies to current employees and applicants for employment with Fairfax County Government. It establishes the definitions of key terms, the “how to” steps to process reasonable accommodation requests, and designates the responsibilities for agency officials in implementing and managing the county’s reasonable accommodation process.

3. DEFINITIONS

A. Disability

According to the Americans with Disabilities Act, as amended, with respect to an individual, a disability means:

- A physical or mental medical condition which substantially limits a person’s major life activities;
- A person who has a record of such an impairment; and
- A person being regarded as having such an impairment.

B. Qualified Applicant or Employee with a Disability

Is an individual with a disability who, with or without reasonable accommodation, can perform the “essential functions” of the position in question without endangering the health or safety of the individual or others and satisfies the requisite skill, experience, education, and other job-related requirements of a position.

C. Essential Functions

Are primary job duties that are fundamental to a position and that an employee or applicant must be able to perform, with or without “reasonable accommodation”.

D. Reasonable Accommodation

Is any adjustment to job duties or to the work environment that assists a qualified individual with a disability in performing the essential functions of his or her position; or a modification of or adjustment to the job application process that enables a qualified applicant with a disability to be considered for the position sought.

Reasonable accommodations may include, but are not limited to:

- (1) Making facilities readily accessible to, and usable by, individuals with disabilities;
- (2) Job restructuring;
- (3) Allowing a part-time or modified work schedule;
- (4) Obtaining or modifying equipment or devices;
- (5) Appropriately adjusting or modifying examinations and training materials;
- (6) Providing readers, interpreters, and other auxiliary aids;
- (7) Ensuring that all contracts for the use of external facilities reflect the obligation that such facilities are accessible to qualified individuals with disabilities; and
- (8) Reassignment to another position.

E. Undue Hardship

An action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature of operation of the county’s business.

F. Alternative Dispute Resolution and the Grievance Process

If a reasonable accommodation request has been denied, individuals may avail themselves of the alternative dispute resolution process or file a formal complaint of discrimination under the Fairfax County Grievance Procedures (Chapter 17, Personnel Regulations) or Applicant Appeal of Discriminatory Practices (Chapter 7, Personnel Regulations). These requests should be directed to the Equity Programs Division, Office of Human Rights and Equity Programs.

G. Funding for Reasonable Accommodations

Funding for accommodation requests totaling \$1,000.00 or less are typically budgeted for and funded by the employee's department. The Office of Human Rights and Equity Programs will consider funding or supplementing accommodations in excess of \$1,000.00 for existing employees, and all costs incurred when providing accommodations for applicants.

H. Employee Medical Records

As used in this memorandum, means any documents or materials relating to an accommodation request must be maintained confidentially, as outlined in Chapter 14 of the Fairfax County Personnel Regulations.

4. PROCEDURE FOR REQUESTING A REASONABLE ACCOMMODATION

Requestor's Responsibilities:

- A. An employee** may make an initial request for a reasonable accommodation, either verbally or in writing, to his/her immediate supervisor or any employee in his/her supervisory chain if the immediate supervisor is unavailable.
- B. An applicant** may make an initial request for a reasonable accommodation either verbally or in writing to the department staff supervising the application process or the Department of Human Resources (HR) Director. The HR Director or their designee shall make a decision on whether to grant the accommodation for the interviewing process.
- C.** To enable the county to keep accurate records regarding reasonable accommodation requests, employees and applicants must follow up a verbal request by completing section I of the county's ADA Reasonable Accommodation Request form (Attachment) and section II for applicants only. Although a written document is required for recordkeeping purposes, the written document is not required to begin processing the request itself. Forms should be available from department supervisors and HR managers, and ADA Representatives. In all cases, the requestor may contact the Equity Programs Division, Office of Human Rights and Equity Programs for copies of the Request form or further information.
- D.** The failure to provide appropriate documentation or to cooperate in the department's efforts to obtain documentation to support the request can result in a denial of the reasonable accommodation request.

Department's Responsibilities:

- A.** Departments may receive a verbal or written request for reasonable accommodations from employees or applicants. Departments should engage in an interactive process with the individual requesting the accommodation, as appropriate. The interactive process is a collaborative and open discussion between the employee/applicant and the supervisor regarding the process for reasonable accommodations and potential accommodations. When more than one reasonable accommodation exists, the department should give primary consideration to the employee or applicant's preference in determining what accommodation they will provide. However, the department has the discretion to choose among various appropriate reasonable accommodations that would enable the individual to perform the essential functions of the job.

To enable the county to keep accurate records regarding reasonable accommodation requests, supervisors, HR managers, and Departmental ADA Representatives have the responsibility of making available the county's ADA Reasonable Accommodation Request form (Attachment 1) and explaining the procedure to the employee/applicant as outlined below. In all cases, employees or applicants may contact the Equity Programs Division, Office of Human Rights and Equity Programs, their departmental ADA Representative or their HR Manager for further information. First line supervisors or managers will be responsible for completing Section III, which describes the department impact on operations and other employees.

Most accommodations require minimal funding and would rarely qualify as undue financial hardships to the county. In order to minimize departmental concerns regarding costs incurred, funding responsibility is shared between the department and the Office of Human Rights and Equity Programs (OHREP). Funding for accommodation requests with a total cost of \$1,000.00 or less will be budgeted for and funded by the employee's department. OHREP will consider funding or supplementing accommodations in excess of \$1,000.00 for existing employees, and, cover all costs incurred when providing accommodations for applicants. DHR and the Equity Programs Division, Office of Human Rights and Equity Programs (OHREP) staff are available for consultation regarding alternative accommodation options when cost may be prohibitive. Department staff are encouraged to consult with DHR or OHREP prior to denying an accommodation request based on cost alone.

- B.** The department shall manage the entire accommodation request process for its employees and respective applicants. Responsibilities include but are not limited to the following:
- Review position descriptions to ensure they are up-to-date, accurately describe the position being performed, and carefully distinguish between essential and non-essential functions;

- Ensure supervisors, managers, HR Staff and the ADA Representative remain current in their knowledge of the ADA policies and procedures;
 - Facilitate employees obtaining relevant information and access to necessary forms;
 - Conduct collaborative dialog with the employee or applicant regarding the reasonable accommodation process and potential accommodations;
 - Document and track the reasonable accommodation, review and approval actions, and costs associated with implementing accommodations;
 - Consult with the Equity Programs Division, Office of Human Rights and Equity Programs, as necessary;
 - Coordinate payment for the cost of the accommodation with the OHREP, when applicable. The OHREP assumes costs for accommodation of job applicants and will consider funding or supplementing costs in excess of \$1,000.00 for existing employees. Complete and submit Attachment #2 to the OHREP's Director to initiate the funding process;
 - Retain required data on accommodation requests for required reporting to the Office of Human Rights and Equity Programs on the department's Diversity Plan;
 - Ensure handling of all medical records associated with the accommodation request are processed and managed consistent with requirements outlined in Chapter 14 of the Personnel Regulations;
 - Monitor the effectiveness of the accommodation, if granted.
- C.** If the employee or applicant has an obvious disability or previously documented medical condition that qualifies him/her as an individual with a disability and the accommodation request is related to the known disability, the accommodation request shall be considered immediately without the need for further medical documentation. However, this does not restrict the department from obtaining medical documentation to determine the status of the condition when a reasonable accommodation is renewed or changed.
- D.** If the employee or applicant does not have an obvious disability or previously documented medical condition that qualifies him/her as an individual with a disability, he/she may be required to provide sufficient documentation of his/her medical condition to the department. The department may only seek documentation which is reasonably necessary to establish the employee/applicant is an individual with a disability and needs the accommodation request. All medical documentation obtained regarding the request process shall be kept confidential and separate from the employees personnel file. Please contact OHREP to ascertain the Agency limitations on requesting medical information.
- E.** Requests will be granted or denied expeditiously unless there are extenuating circumstances. In the event of a delay, the responding supervisor or manager should confer with the individual and consider providing temporary measures.

- F.** As soon as a decision is made to either approve, deny, or modify a request for an accommodation by the department director, that decision shall be documented in Section IV of the ADA Reasonable Accommodation Request form and immediately communicated to the supervisor who shall inform the employee of the decision.
- G.** The failure to provide appropriate documentation or to cooperate in the department's efforts to obtain documentation to support the request can result in a denial of the reasonable accommodation request.
- H.** The employee's supervisor shall monitor the effectiveness of the accommodation, if granted.
- I.** Medical records associated with all phases of the accommodation review and approval process must be kept confidential, maintained in secured files, and physically separate from personnel files. Disclosure of the records is limited to the employee or applicant to whom they apply, individuals authorized by the employee or applicant to whom they apply, individuals authorized by the employee or applicant to view his or her medical records, and by the courts. Access by county staff is limited to a need-to-know basis. Transmitting employee medical records must be done using a method that reasonably avoids disclosure to unauthorized individuals.

Any questions relating to this policy and procedure should be directed to the Equity Programs Division, Office of Human Rights and Equity Programs.

- Attachment 1: ADA Accommodation Request Form
- Attachment 2: ADA Reasonable Accommodation Funding Request



County of Fairfax, Virginia

Americans with Disabilities Act Accommodation Request Form

Fairfax County Government shall provide reasonable accommodations to qualified applicants and employees with disabilities to enable them to perform the essential functions of their jobs, or to enjoy the equal benefits and privileges of employment and the employment process, unless providing such accommodation would impose an undue hardship. This form should be used in conjunction with the Fairfax County Policy and Procedures for Administering the Reasonable Accommodation Process for Employees and Applicants.

INSTRUCTIONS: Applicants should complete sections I and II and submit this form to the department staff supervising the application process. Current employees should complete section I and submit this form to your immediate supervisors or an employee in your supervisory chain if the immediate supervisor is unavailable.

Supervisors receiving requests for reasonable accommodation should complete section III. Department directors should complete section IV. When complete, return one copy of the form to the applicant or employee requesting the accommodation. Department supervisory staff, HR managers and/or ADA Representatives should assist applicants or employees in completing this form where requested.

Section I. – To be completed by the applicant or employee

Note: If requested, your physician must certify, based on your position description, your functional limitations, as well as the necessity and the type of accommodation that is being requested.

Internal Document

NAME:

First Name: _____ Last Name: _____

ADDRESS:

Street: _____

City: _____ State: _____ Zip: _____

TELEPHONE:

Home: _____ Work: _____ Cell: _____

EMPLOYMENT:

Department:_____ **Division:**_____

Position: _____

Email: _____

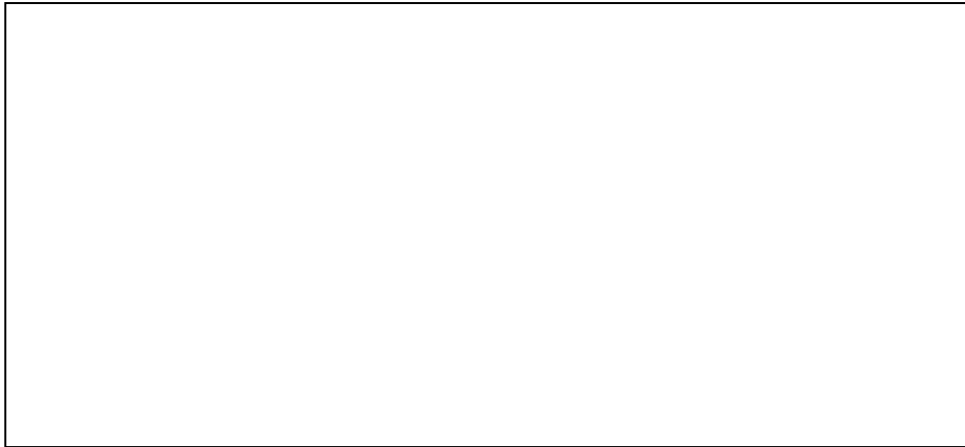
GINA DISCLAIMER

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to a request for medical information. "Genetic Information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

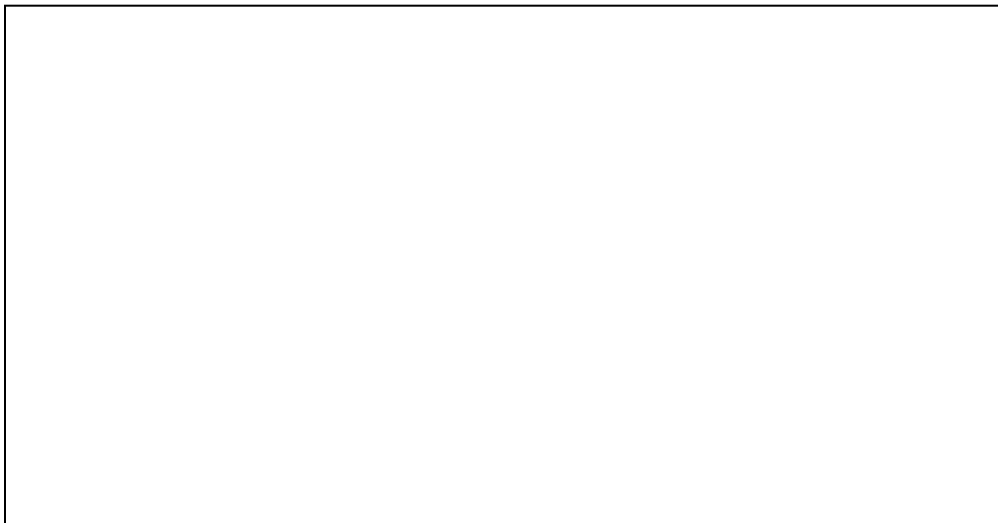
EMPLOYEE

- A. What specific Medical Accommodation is being requested? Is this a permanent or temporary request? If temporary, what is the expected duration of the Medical Accommodation?**

B. What job function(s) or benefits of employment are you having difficulty performing due to your medical condition



C. Describe any suggested ADA accommodation(s) that you believe will assist you in addressing the above-referenced limitation(s).



D. Explain how that suggested accommodation will assist you?

E. If applicable, identify the source suggested for providing the accommodation(s).

Applicant/Employee Signature

Date

RETURN THIS FORM TO YOUR SUPERVISOR

Received by:

Department Contact

Date

Section II - Complete this section only if you are a job applicant.

Position/title applied for _____

Department/Division (if known) _____

Location of Position (if known) _____

Job Vacancy Announcement Number (if known) _____

What accommodation are you requesting with the job application process:

Describe all suggested accommodation(s) that you believe may assist you in the application process

Agency Contact Person (if known) _____

Date of Examination/Interview _____

Section III. – To be completed by employee’s HR Manager/Generalist, in consultation with the employee’s supervisor. Follow departmental procedures for review and evaluation.

1. Department impact:

Note: Please include other accommodations that may be necessary as a result of the approval of this request. Examples may be the purchase and installation of equipment, facility modification, training, etc.

2. Impact on department operations or other department employees:

Supervisor or HR Manager/Generalist Signature

Date

SECTION IV.

Department Director's comments:

Approved **Denied**

Department Director's Signature

Date

After completing this section, the department should return a copy of this form to the applicant or employee.



This form will be made available in an alternative format upon request. Direct your request to the Equity Programs Division, Fairfax County Office of Human Rights and Equity Programs, 12000 Government Center Parkway, Suite 318, Fairfax, VA 22035; 703-324-2953 (V), 711 (TTY), 703-324-3570 (Fax).



ADA REASONABLE ACCOMMODATION FUNDING REQUEST

Information provided in the following form shall be kept as confidential as possible. However, persons involved in making decisions to provide an accommodation, as well as those processing this request, must necessarily be informed of the type and nature of the request.

Date:		Department Name:	
Name of Requestor:			
Check Appropriate Box:	<input type="checkbox"/> Employee	<input type="checkbox"/> Candidate	
Describe the accommodation that is being requested. Be as specific as possible (such as a piece of equipment or device, a brief description of the equipment or device, etc.)			
Cost:	\$	Signature of Requestor:	
Agency Director/Designee Signature:			
This section is to be completed by OHREP			
Request Approved:	Yes <input type="checkbox"/> No <input type="checkbox"/>	Reason for Denial:	
Amount Approved:	\$	Approved by:	
Signature of Approver:			Date:

This form is to be used in conjunction with Procedural Memorandum Number 39-04, Policy and Procedure for the Reasonable Accommodation Process In Employment. Submit completed forms to the Office of Human Rights and Equity Programs Director.