

CVUSD

Administrative Regulation

AR 4032

Personnel

Reasonable Accommodation

Note: Pursuant to the federal Americans with Disabilities Act (ADA) (42 USC 12101-12213) and the state's Fair Employment and Housing Act (FEHA)(Government Code 12900-12996), employers have a duty to reasonably accommodate qualified employees and job applicants with known disabilities, except when such accommodation would cause an undue hardship to the employer. This accommodation is not required for individuals who are not otherwise qualified for the job.

Note: Pursuant to 28 CFR 35.150 and 35.160, the district must also afford individuals with disabilities (including community members, students, and employees) an equal opportunity to participate in or enjoy the benefits of a service, program or activity. To this end, the district may need to provide auxiliary aids and services and ensure that existing services and facilities are readily accessible to and usable by individuals with disabilities. See BP 0410 - Nondiscrimination in District Programs and Activities. See BB 9320 - Meetings and Notices. See BB 9322 - Agenda/Meeting Materials.

Definitions

***Note: The following section contains some basic definitions of terminology used in the ADA. Government Code 12926.1 (FEHA) is intended to provide additional protections independent from those in the ADA. For example, Government Code 12926 and 12926.1 provide definitions of "physical disability" and "mental disability" that require a "limitation of a major life activity," but do not require, as does the ADA, a "substantial limitation." Government Code 12926 and 12926.1 also provide that, beyond the federal law, a condition limiting a major life activity shall be determined without respect to any mitigating measures (e.g., medications, assistive devices), unless the mitigating measure itself limits an individual's ability to participate in a major life activity. ***

Disability, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

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

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

Note: The following definition and examples of "reasonable accommodation" are further described in the EEOC Guidance. Pursuant to 29 CFR 1630.2 and the EEOC Guidance, evidence as to whether a function is "essential" includes the employer's judgment, written job descriptions, the consequences of not requiring the incumbent to perform the function, the terms of a collective bargaining agreement, and work experience of past and current employees in the job. These considerations underscore the importance of developing and maintaining detailed, up-to-date job descriptions, preferably signed by individuals holding the position.

Essential functions are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (29 CFR 1630.2)

Reasonable accommodations that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to: (29 CFR 1630.2)

1. Making existing facilities accessible and usable
2. Restructuring the job duties
3. Offering part-time or modified work schedules
4. Acquiring or modifying equipment or devices
5. Changing tests, training materials or policies
6. Providing qualified readers or interpreters
7. Reassigning the employee to a vacant position

Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. (29 CFR 1630.2)

Undue hardship is a determination based on an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding
2. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at this facility, the effect on expenses and resources of the facility, or the impact on the operations of the facility
3. The overall financial resources, size, number of employees, and the number, type and location of facilities of the district
4. The type of operation of the district, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation
5. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Requests for Reasonable Accommodation

***Note: Pursuant to 28 CFR 35.107, each district having 50 or more (full- or part-time) employees must designate at least one employee to coordinate its efforts to comply with the ADA, including complaint investigation. This coordinator may be the same individual designated by the district, pursuant to 34 CFR 106.8, to coordinate efforts to comply and to investigate complaints regarding Title IX (discrimination on the basis of gender). A sample complaint procedure is provided in AR 4031 - Complaints Concerning Discrimination in Employment. Districts that have not so designated an individual in BP 4030 - Nondiscrimination in Employment should modify the following paragraph to include the title of the individual designated by the district. ***

The district designates the position specified in BP 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Note: The ADA applies to both qualified district employees and job applicants. The EEOC's Enforcement Guidance clarifies that, in order for a request for reasonable accommodation to be valid, the employee or applicant need not mention the ADA, use the term "reasonable accommodation," nor put the request in writing. Government Code 12940 provides that the employer and employee engage in an informal, interactive process to clarify the individual's needs and identify the appropriate reasonable accommodation.

***Note: Generally, according to the EEOC Guidance, a district is not obligated to ask an employee whether a reasonable accommodation is needed when the employee has not informed the district that an accommodation is necessary. However, the district should initiate the reasonable accommodation interactive process without being asked if the district (1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.

Note: With regard to job applicants, the EEOC Guidance states that the district may tell applicants what the hiring process involves and may ask applicants whether they will need reasonable accommodation for the process. Generally, the district may not ask the applicant whether he/she needs a reasonable accommodation for the job.

When requesting reasonable accommodation, the employee or employee's representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition.

When requesting reasonable accommodation during the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation for the process.

Employees' requests for reasonable accommodation may first be considered informally by the site administrator. The site administrator shall consult with the coordinator before any decision as to accommodation is made.

Note: According to the EEOC Guidance, the district may ask the individual for reasonable documentation about his/her disability when the need for accommodation is not obvious. The following paragraph is consistent with the EEOC Guidance.

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the district to submit a list of specific questions to the health care or vocational professional.

Note: The EEOC Guidance states that if the employee provides insufficient documentation, the district may require the employee to undergo a medical examination, as specified below. However, before requiring the employee to submit to such an examination, the district should specify why the documentation is insufficient and give him/her an opportunity to provide the missing information in a timely manner.

If the documentation submitted by the employee does not specify the existence of a qualifying disability and explain the need for reasonable accommodation, the district may require the employee to submit to an examination by a health care professional selected and paid for by the district.

Note: The following process is consistent with 29 CFR 1630.2 and the EEOC Guidance.

Upon receiving a request to reasonably accommodate a qualified employee with a disability, the coordinator shall:

1. Determine the essential functions of the job
2. Engage in an informal, interactive process with the employee to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodation, and assess their effectiveness

Note: According to the EEOC Guidance, the district is not required to provide the reasonable accommodation preferred by the individual. Rather, the district must only provide an accommodation that is "effective." Pursuant to 29 CFR 1630.2, an "effective accommodation" is one which allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment.

Note: Pursuant to 42 USC 12112, the district must provide reasonable accommodation to qualified individuals unless the district can prove that to do so would cause undue hardship. Undue hardship is determined on a case-by-case basis and includes any action that is unduly costly, extensive, substantial, disruptive, or that fundamentally alters the nature or operation of the district. The burden of proving undue hardship rests with the district, and what may be an undue hardship for one district may not be an undue hardship for another, depending on factors such as cost and district size. Even if the cost of an accommodation does pose an undue hardship, the disabled person should have the opportunity to pay for the portion of the cost that constitutes an undue hardship, or to personally provide the accommodation.

3. Develop a plan for reasonable accommodation which is effective and allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment and does not impose undue hardship on the district

Note: According to EEOC regulations, employers may require that in order to be qualified for a job, a person must not pose a "direct threat" to the health and safety of himself/herself, or others, in the workplace. In 2002, the U.S. Supreme Court in *Chevron USA v. Echazabal* upheld the regulation as it relates to the health and safety of the employee requesting the accommodation. Employers considering refusing an accommodation based solely on the "direct threat" to the worker requesting accommodation should be extremely cautious and consult legal counsel before acting.

Note: Pursuant to 29 CFR 1630.2, a "direct threat" is a significant risk that cannot be eliminated or reduced by reasonable accommodation. Before finding that a person is not qualified by reason of posing such a threat, the employer must consider whether reasonable accommodation could reduce the risk of harm to an acceptable level. If no such accommodation exists, the district may refuse to hire the applicant or may discharge the employee in question.

To qualify for a job, an individual shall not pose a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation. (29 CFR 1630.2)

The determination of whether an individual poses a significant risk of substantial harm to himself/herself or others shall be made on a case-by-case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risks, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of potential harm. (29 CFR 1630.2)

The coordinator may confer with the site administrator, the district medical advisor and/or other district staff before making a final decision as to the accommodation.

Reasonable Accommodation Committee

Note: At the suggestion of the Office for Civil Rights, some districts have established a Reasonable Accommodation Committee to help in planning for the reasonable accommodation requested by an applicant or employee. The following optional section should be modified to reflect district practice and deleted by those districts without a Reasonable Accommodation Committee.

The coordinator may appoint a Reasonable Accommodation Committee to review or assist in the development of appropriate plans to reasonably accommodate an employee or qualified job applicant who has requested an adjustment in work duties or environment because of known physical or mental disabilities. The membership of this committee may change on a case-by-case basis. The committee may include:

1. A district administrator
2. A site administrator
3. A medical advisor or rehabilitation specialist
4. A certificated employee
5. A classified employee

Committee members shall be selected on the basis of their knowledge of the relevant issues, including:

1. The specific functions and duties required in the position
2. The physical work environment
3. Available accommodations

At the coordinator's discretion, the employee or applicant requesting accommodation may participate in or be excluded from committee meetings. If the employee or applicant is excluded from committee meetings, the coordinator shall communicate with him/her so that he/she has the opportunity to interact and contribute to planning the reasonable accommodation.

The coordinator shall take steps to ensure the confidentiality of information related to medical conditions.

Appeal Process

If the employee or applicant is not satisfied with the decision of the coordinator, he/she may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The Superintendent or designee shall give the employee or applicant his/her decision within 15 working days of receiving the appeal.

Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Governing Board in accordance with the district's procedure for such complaints.

Note: The employee or applicant also may appeal directly to the Office for Civil Rights at any point.

Legal Reference:

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

UNITED STATES CODE, TITLE 29

701-794e Vocational Rehabilitation Act

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act, especially:

35.107 Designation of employee

36.101-36.608 Nondiscrimination on the basis of disability by public facilities

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 Direct threat

COURT DECISIONS

Colmenares v. Braemar Country Club, Inc., 2003 Cal.LEXIS 1131

Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045

US Airways, Inc. v. Barnett, (2002) 535 U.S., 122 S.Ct. 1516

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

WEB SITES

EEOC: <http://www.eeoc.gov>

Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

CSBA: (7/99 3/01) 3/03

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