



HR Bulletin

OFFICE OF HUMAN RESOURCES

- I. APPROVAL DATE:** April 8, 2010
- II. NUMBER:** 10-003B
- III. SUBJECT:** Reassignment of a Qualified Employee with a Disability
- IV. PURPOSE:** This bulletin establishes the U.S. Environmental Protection Agency's (EPA or Agency) policy on the reassignment of qualified employees with disabilities in accordance with the EPA Reasonable Accommodation (RA) Order (3110.21 A2) and both sets of Reasonable Accommodation Procedures (referenced in section VII below).
- V. DEFINITIONS:**
- (a) *Reasonable accommodation:* For purposes of this policy, a change in the work environment that enables a qualified individual with a disability to perform the essential functions of his or her job. Reasonable accommodation may include reassignment to a vacant position.
 - (b) *Qualified individual:* An employee who satisfies the requisite skill, experience, education, and other job-related requirements of the position and can perform the essential functions of the position, with or without reasonable accommodation.
 - (c) *Undue hardship:* A determination that an accommodation would result in significant difficulty, expense, or disruption, or would fundamentally alter the nature or operation of the office/division/unit. The financial resources of EPA as a whole must be considered before an office/division/unit/region, etc., can use "expense" as the undue hardship.
 - (d) *Vacant position:* A position that is available when the employee asks for reasonable accommodation or a position that the employer knows will become available within a reasonable period of time (for EPA, that period is sixty (60) business days as stated in both sets of EPA RA Procedures referenced in section VII below). A position is considered vacant even if an employer has posted a notice or announcement seeking applications for that position.
- VI. COVERAGE:** This policy applies to an EPA employee who, because of a disability, can no longer perform the essential functions of his or her

current position, with or without reasonable accommodation, or if the only other accommodation for such an employee would cause undue hardship to the Agency. Nothing in this Bulletin supersedes the reasonable accommodation procedures negotiated between the Agency and its unions.

**VII. AUTHORITY/
REFERENCES:**

- Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791; and 29 C.F.R. §§ 1614.101 (a) and 1614.203.
- The Americans with Disabilities Act Amendments Act of 2008 (ADAAA)
- Executive Order 13164, dated July 26, 2000 - *Requiring Federal Agencies To Establish Procedures To Facilitate the Provision of Reasonable Accommodation*
- EPA Order 3110.21 A2 - *Providing Reasonable Accommodations for EPA Employees and Applicants with Disabilities*
- *Procedures for Providing Reasonable Accommodation for EPA Employees and Applicants with Disabilities* – Revised January 2009
- *National Reasonable Accommodations Procedures for American Federation of Government Employees* – Revised January 2009

**VIII. ROLES/
RESPONSIBILITIES:**

(a) The National Reasonable Accommodation Coordinator (NRAC): will ensure that the Agency fulfills its responsibility under the reassignment component of the Reasonable Accommodation Procedures.

(b) Local Reasonable Accommodation Coordinators (LORAC): as needed, LORACs will be assigned duties and responsibilities consistent with this policy and will keep the NRAC informed of the process in their respective geographic locations.

(c) The Director, Office of Human Resources (OHR) or his or her designee: will provide notification to the senior management in the Program Office, Region, or Lab where a vacancy has been identified.

(1) For employees being considered for reassignment in Headquarters, the Director, OHR, or his or her designee, will contact the Deputy Assistant Administrator (DAA) for the employee's Assistant Administrator (AA)-ship (or the appropriate AA-ship) and provide the needed documentation, justification and instruction to place the employee in the identified position for which he or she qualifies.

(2) For employees being considered for reassignment in a Region or Lab, the Director, OHR, or his or her designee will

contact the Deputy Regional Administrator (DRA) or DAA (for Lab personnel who report to an AA) and provide needed documentation, justification and instruction to place the identified employee in the position for which he or she qualifies.

(d) The Servicing Human Resources (HR) Office or Shared Service Center (SSC)

(1) Will provide information to the NRAC on positions that are vacant or will become vacant within the sixty (60) business day period, to the extent that the SSC is aware of such information.

(2) Will search for potential vacancies within the Agency. The specific qualifications of an employee will be assessed by the appropriate servicing HR Office or SSC. Based on an assessment of the qualifications of the affected employee, the servicing HR Office or SSC will inform the NRAC of the series, grade level and vacant positions for which the employee may be eligible as a reassignment.

(e) Employee: will assist the NRAC, and the servicing HR Office or SSC, consistent with requirements contained in the EPA Reasonable Accommodation (RA) Order (3110.21 A2), reasonable accommodation negotiated procedures, or the EPA Reasonable Accommodation Procedures, as applicable, and this policy.

IX. POLICY:

(a) The Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) Amendments Act of 2008, specifically list "reassignment to a vacant position" as a form of reasonable accommodation. In addition, the Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance, *Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, October 17, 2002*, states that where available, reassignment must be provided to an employee who, because of a disability, can no longer perform the essential functions of his or her current position with or without reasonable accommodation.

(b) Before considering reassignment as a reasonable accommodation, the Agency shall first consider those reasonable accommodations that would enable an employee to remain in his or her current position. Reassignment as a reasonable accommodation is required only after all other efforts to provide reasonable accommodation have been exhausted and it has been determined that:

(1) There are no effective accommodations that will enable the employee to perform the essential functions of his or her

current position; or

(2) All other accommodations would impose an undue hardship.

(c) The Agency will identify all positions it has reason to believe will become vacant over a period of sixty (60) business days from the date of the request for reassignment. A position is considered vacant even if the Agency has posted a vacancy announcement seeking applications for that position or has a certificate where a selection has not yet been made. EPA is not required to create a vacant position in order to provide a reasonable accommodation to a disabled employee.

(d) The Agency must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the Agency must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the Agency must place the individual in the position that comes closest to the employee's current position in terms of pay, status, or other relevant factors. The Reasonable Accommodation procedures also allow the affected employee to indicate whether there are limits on the search they would like the Agency to conduct. Such limits may include, but are not limited to, the lowest grade acceptable to the employee as well as what geographic area the employee would consider. Reassignment does not include giving an employee a promotion, thus, an employee must compete for any vacant position that would constitute a promotion.

(e) An employee must be "qualified" for the new position. An employee is "qualified" for a position if he or she:

(1) Satisfies the requisite skill, experience, education, and other job-related requirements of the position, and

(2) Can perform the essential functions of the new position, with or without reasonable accommodation.

The employee does not need to be the best qualified individual for the position in order to be reassigned. There is no obligation for the Agency to assist the employee to become qualified. Thus, the Agency does not have to provide training so that the employee acquires the necessary skills to take a job. However, the Agency would have to provide an employee who is being reassigned with any training that is normally provided to anyone hired for or transferred to a position.

(f) The Agency cannot deny a reassignment to an employee solely because he or she is in a "probationary" or "trial" status. An employee with a disability is eligible for reassignment to a new position, regardless of whether she or he is under such status, as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose.

However, if the "probationary" or "trial" employee has never adequately performed the essential functions of the original position, with or without reasonable accommodation, then he or she is not entitled to reassignment because he or she is considered not "qualified" for the original position. In this situation, the employee is similar to an applicant who applies for a job for which he or she is not qualified, and then requests reassignment.

(g) Applicants are not entitled to reassignment.

(h) The Agency must provide reasonable accommodation to individuals with disabilities, including reassignment, even though such reassignments are not available to others. The Rehabilitation Act does not limit the Agency's obligation to reassign only to positions within a particular office, division, or branch. Rather, the extent to which EPA must search for a vacant position will be limited only to the extent that it creates an undue hardship. If an employee is being reassigned to a different geographical area, the employee must pay for any relocation expenses unless the employee's office pays such expenses when granting voluntary transfers to other employees.

X. PROCEDURES:

(a) The employee agrees to be considered under the reassignment component of the reasonable accommodation process.

(b) The NRAC explains the reassignment process to the employee and obtains a current resume from the employee.

(c) The NRAC determines geographic parameters for consideration for reassignment (i.e., the NRAC will ask the employee where geographically he or she will accept reassignment).

(d) The NRAC will ask the employee what is the lowest grade level he or she will consider.

(e) The NRAC forwards the employee's resume to the appropriate servicing HR Office or SSC.

(f) The employee's servicing HR Office or SSC provides the NRAC with a determination of grade and occupational series for which the

employee generally qualifies as well as a list of positions available.

(g) The NRAC provides information regarding the reassignment process to the Director of OHR and forwards him/her, or designee, the notice of reassignment of the particular employee. The NRAC will proceed as expeditiously as possible in determining whether there are appropriate vacancies. The process requires the NRAC to identify all positions within the predetermined grade structure that are vacant or the Agency has reason to believe will become vacant over the next sixty (60) business days and for which the employee is qualified, with or without a reasonable accommodation. Once the search has been completed, and the servicing HR Office or SSC has identified whether there are any vacancies, the servicing HR Office or SSC will convey this information to the NRAC.

(h) The NRAC ensures that all vacant positions within the predetermined grade structure for which the employee is qualified are considered.

(i) The Director of OHR, or his or her designee, contacts the DAA or DRA in the employee's AA-ship, Region, or Lab with the information and instructions from the NRAC needed to place the employee in an appropriate position within the employee's AA-ship, Region, Lab or another AA-ship, Region, or Lab.

(j) If a vacant position exists within the predetermined grade structure for which the affected employee is qualified and can perform the essential job duties either with or without a reasonable accommodation, the employee will be formally offered the position consistent with the Director of OHR, or his or her designee, instructions. If no such position can be identified, or if the employee refuses an offer of reassignment to such a position, the Agency will have fulfilled its obligation under the reasonable accommodation process and appropriate personnel action may be taken by the employee's current office/division/branch.

(k) The appropriate servicing HR Office or SSC will communicate to the NRAC when each step in this process occurs and ensure that all appropriate vacant positions are considered.

XI. RECORDS:

Please see EPA's Record Schedules policies at <http://www.epa.gov/records/policy/schedule/index.htm> for detailed retention instructions for the following:

(a) EPA Records Schedule 068: Reasonable Accommodation Request Records.

XII. MATERIALS SUPERSEDED:

None.

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Office of Human Resources