

Reasonable Accommodation in the EPA Workplace: A Fact Sheet from AFGE Council 238

Under Section 501 of the **Rehabilitation Act of 1973**, federal agencies are prohibited from discriminating against their employees or applicants based on disability. Private employers and state/local governments have the same mandate under Title I of the **Americans with Disabilities Act of 1990** (ADA), as amended. When Title I was enacted, some of the legal requirements of the ADA differed from the Rehabilitation Act, even though the two laws shared the same purpose -- ending employment discrimination based on disability. In 2008, Congress made the laws essentially the same by amending the Rehabilitation Act to apply the ADA standards to federal employment. **Executive Order 13164** requires federal agencies to establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. In 2003, the AFGE Council 238 negotiated a set of procedures, known as the **National Reasonable Accommodations Procedures or NRAP**, which outline the steps for requesting and providing reasonable accommodations to AFGE bargaining unit employees within EPA nationwide. The NRAP was revised in 2009 to comply with the provisions of the 2008 ADA Act Amendments.

Who is protected?

If you have a disability and are qualified to do the job, you are protected from job discrimination on the basis of your disability. An individual with a disability is a person who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment;
- or is regarded as having such an impairment.

A substantial impairment (either physical or mental) is one that substantially limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

What is reasonable accommodation?

Reasonable accommodation is a change in the work environment or in the application process that would enable a person with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations:

- changes to a job application process to permit people with disabilities to be considered for jobs;
- changes to enable people with disabilities to perform the essential functions of a job; and
- changes to give people with disabilities equal access to the benefits and privileges of employment.

Reasonable accommodation may include, but is not limited to:

- making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- job restructuring, modifying work schedules, reassignment to a vacant position;
- acquiring or modifying equipment or devices, adjusting modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

What are the legal requirements that govern the agency's obligation to provide reasonable accommodation?

Agencies **must** provide reasonable accommodation to qualified employees or applicants with disabilities unless the accommodation would create an undue hardship on the operation of the agency. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

Why is reasonable accommodation important?

Over the next decades, the proportion of workers with disabilities is expected to increase due to a number of factors but most notably due to the aging of the workforce. While many people with disabilities can apply for and perform jobs without the need for reasonable accommodation, workplace barriers may keep others from entering the work force and still others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are to be done). Reasonable accommodation removes workplace barriers for people with disabilities. It also allows agencies to expand their pool of qualified workers.

When may an agency ask for medical information in connection with a request for reasonable accommodation?

An agency is entitled to know that an individual has a covered disability that requires a reasonable accommodation; it does not need a specific medical diagnosis. The agency may request information about the disability, the nature, severity, duration and functional limitations -- but only if the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the agency to make these determinations.

Must an agency keep medical information confidential?

Yes. The information may be disclosed only to those involved in determining whether to grant the reasonable accommodation. Beyond those agency decision makers, however, there are strict limitations on those to whom the information may be provided.

How can I request reasonable accommodation?

If you decide to request an accommodation, you must let your supervisor know that you need an adjustment or change. Your request does not have to be in writing and medical documentation may be requested. Some requests are easier than others. Your Union Stewards are available to help you make a request and propose appropriate accommodations. Or check out the NRAP at <http://intranet.epa.gov/civilrights/reasonableaccommodation.htm>. Stewards from your Local are willing to help you through this process.

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