

KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 02-129D	PAGE NUMBER 1 of 9
		SUBJECT: HUMAN RESOURCES: ADA, Accommodation Requests and Disability Compliant Resolution	
Approved By:  Secretary of Corrections		Original Date Issued: 09-15-15	
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APPLICABILITY:	<input type="checkbox"/> ADULT Operations Only	<input type="checkbox"/> JUVENILE Operations Only	<input checked="" type="checkbox"/> DEPARTMENT-WIDE
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POLICY STATEMENT

The Department of Corrections (DOC) shall not discriminate against qualified employees or job applicants with disabilities. The DOC shall provide a mechanism to process requests for reasonable accommodations made by a qualified individual with a disability, either as a job applicant or a KDOC employee so that he/she has the opportunity to participate in all DOC's employment opportunities.

DEFINITIONS

Agency ADA Coordinator: An employee, who is trained in all ADA requirements and is designated to be responsible for the Administration of the Department's ADA Compliance Program.

Americans with Disabilities Act (ADA): A federal civil rights law establishing a clear and comprehensive prohibition of discrimination on the basis of disability.

Appointing Authority: Any person or group of persons empowered by the constitution, by statute, or by lawfully delegated authority to make appointments to positions in the State service pursuant to K.A.R. 1-2-9. Anytime this term is used in this IMPP, it can be read as referring to the "appointing authority or designee" as noted in IMPP 02-109D.

Essential Functions: A basic duty of the job which:

1. Is the reason for the positions existence; or
2. Cannot be reasonably performed by other employees because of factors which include, but are not limited to, the following
 - a. Other employees do not have the expertise or skills to perform the function.
 - b. The function is critical for the safety and security of staff and/or offenders.
 - c. The function accounts for a significant portion of the work assigned to the position.
 - d. The number of other employees available to perform the duty is not sufficient

Official Medical File: Private and confidential medical file maintained in only one secure location and available only to those with a need to know.

Official Personnel File: A permanent file containing all non-medical transactions relating to a person's employment with DOC.

Official Record: A current and accurate record of the employee's work history including all important information relating to it as described in K.A.R. 1-13-1a.

Qualified Individual: A person who meets the skill, experience educations, and other job related minimum requirements of a position held or desired and who can, with or without reasonable accommodation perform the essential functions of the job, is a qualified individual.

Reasonable Accommodation: Modifications, adjustments or restructuring of a job settings or methods, application or hiring process, or other employment related concerns, facilities, or process which would enable a qualified individual with one or more disabilities to compete equally for a job, perform the essential functions of the job, or participate in all benefits and functions afforded similarly situated employees without disabilities are reasonable accommodations.

Statewide ADA Coordinator: A person designated by the Governor or his representative to be responsible for Statewide compliance with the ADA in state service, who is located in the Department for Children and Families.

Undue Hardship: A modification or adjustment to a job setting or process, or other employment related concern which is not reasonable is an undue hardship. The following shall be taken into consideration in determining whether an undue hardship exists:

1. Whether the requested accommodation fundamentally alters the program service, activity or position to the point that it can no longer perform at an adequate level;
2. Nature and cost of the proposed accommodation in relation to the financial resources of the state;
3. Number of employees at the facility; and,
4. The overall operation of the DOC including the structure and purpose of the workforce.

PROCEDURES

I. ADA Coverage

- A. The ADA covers both physical and mental impairments as determined on a case-by-case basis that are long term in nature and limit a major life function that may include:
 1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss that affects any of the following:
 - a. Special sense organs;
 - b. Neurological;
 - c. Musculoskeletal;
 - d. Respiratory (including speech organs);
 - e. Cardiovascular;
 - f. Reproductive;
 - g. Digestive;
 - h. Geni-to-urinary;
 - i. Hemic;
 - j. Lymphatic;
 - k, Skin; or
 - l. Endocrine.
 2. Any mental or psychological disorder such as.

- a. mental retardation,
 - b. Organic brain syndrome,
 - c. Emotional or mental illness; or
 - d. Specific learning disabilities.
3. Past substance abuse.
- B. Although individuals who have recovered from past substance abuse are covered under the ADA, persons who are current illegal substance abusers are not covered.
- C. To be considered disabled under the ADA, the individual must meet at least one (1) of the following criteria:
1. Have an impairment that substantially limits one (1) or more major life activities.
 2. Have a record of such an impairment because they previously had an impairment and have now recovered and have suffered some sort of negative job action due to that record.
 3. Have a disability that does not substantially limit a major life activity or have no disability, but be regarded as having a disability by the DOC representatives (e.g., supervisors, managers, interview teams, etc.)
 - a. The individual is only covered under this portion of the regulation during the period that the individual is so regarded.
- D. Temporary impairments are seldom covered under the ADA. Impairments that do not limit major life activities are not covered except when regarded as disabled by the employer as stated above.
- E. Some examples of reasonable accommodation include:
1. Modification of equipment, such as a hearing device for a telephone.
 2. Providing services, such as a sign language interpreter, for a training or interviews.
 3. Removal of one or more non-essential duties that cannot be accommodated by other means, such as a requiring a clerical employee to drive weekly to pick up supplies.
 4. Modifications to facilities, such as widening a doorway or installing ramps for a wheelchair access to work areas, restrooms, break rooms, etc.
 5. Supervisors and managers shall confer with the Agency ADA coordinator:
 - a. Anytime they believe that the applicant or employee will be unable to perform the essential functions of their job, even with an accommodation.
 - b. When it appears that a requested accommodation is unreasonable.
- F. Since these are general statements and examples, supervisors and managers are encouraged to consult with the DOC ADA Coordinator anytime they have questions regarding whether an individual is covered under the ADA.

II. Responsibility

- A. The following contact information shall be posted on internal employment related bulletin boards:

1. State ADA Coordinator
Kansas Department for Children and Families
555 S. Kansas Avenue
Topeka, KS 66603
785-296-1389

2. KDOC ADA Coordinator
714 SW Jackson, Suite 300
Topeka, KS 66603
Agency Telephone: 785-296-4273
Agency Cell Phone: 785-213-3450
Toll Free 1-844-522-1956

a. The Agency ADA Coordinator shall investigate and provide resolution for all complaints based upon disability consistent with this policy, provide training on the use of the policy and Agency expectations, and maintain confidential files on all disability complaints

B. Supervisors and managers will assure that this IMPP and the Statewide procedure are posted internally on all employment related bulletin boards in locations accessible to employees and applicants.

III. Reasonable Accommodations

A. Requests by Employment Applicants

1. The qualified disabled applicant, is responsible for initiating the interactive discussion process with regard to reasonable accommodation.

a. Applicants shall be asked to notify the office conducting the interview, of any necessary accommodation needed to attend the interview, prior to the interview date.

2. Interviewers shall not require or allow inappropriate questions, tests, equipment, or qualifications in the selection process. They shall not consider any record of a disability that may have been inadvertently indicated on an application, nor may they record or consider any disability related responses inadvertently provided to any neutral questions.

3. During all employment interviews, an interviewer shall indicate that DOC complies with the requirements of all federal and state non-discrimination laws including the requirement to provide reasonable accommodations under the Americans with Disabilities Act and amendments thereto.

a. They may then ask the candidates if they have read the position description, and if so whether they believe they are able to perform the essential job functions.

b. No other discussion that may elicit disability related information shall occur during any portion of the interview process.

B. Requests by Employees

1. Managers responsible for processing new employees shall provide a copy of this procedure to newly hired employees and obtain a signed copy of Attachment A for inclusion in the employees Official Personnel File.

2. It is the responsibility of the employee to initiate the interactive process by making a request for accommodation to his/her supervisor/manager based upon a medical need that the employee believes to be covered.

- a. Supervisors and managers who receive a request for accommodation shall meet in private with the requesting employee and evaluate the reasonableness of the request and implement those determined to be reasonable.
 - (1) Any questions regarding the appropriateness of a request shall be discussed with the Agency ADA coordinator and any documentation provided shall be maintained only in the employee's permanent medical file.
 - (2) The supervisor/manager shall discuss any requests thought to represent an undue hardship, with the Agency ADA Coordinator.
3. Upon learning from the employee of a potential medical issue that may represent a covered disability, the supervisor shall engage in a private conversation with the employee regarding what the Agency may do to assist.
 - a. The supervisor or manager shall review any requests for assistance and take steps to provide reasonable accommodation.
 - b. An interactive process between the employee and the supervisor should be used to determine what reasonable accommodation will be provided.
 - c. When a non-apparent disability exists, the supervisor or manager may request that the medical documentation necessary to determine that a disability exists, be provided by the requestor from their qualified medical practitioner.
 - d. Any questions regarding the appropriateness of a request shall be discussed with the Agency ADA coordinator and any documentation provided shall be maintained only in the employee's permanent medical file.
 - e. Nothing in this IMPP shall preclude a manager from providing a workplace variance that would allow a person to more easily perform the duties of their position, regardless of disability status.
- C. Some examples of reasonable accommodation include:
 1. Modification of equipment, such as a hearing device for a telephone.
 2. Providing services, such as a sign language interpreter, for a training or interviews.
 3. Removal of one or more non-essential duties that cannot be accommodated by other means, such as a requiring a clerical employee to drive weekly to pick up supplies.
 4. Modifications to facilities, such as widening a doorway or installing ramps for a wheelchair access to work areas, restrooms, break rooms, etc.
 5. Supervisors and managers shall confer with the Agency ADA coordinator:
 - a. Anytime they believe that the applicant or employee will be unable to perform the essential functions of their job, even with an accommodation.
 - b. When it appears that a requested accommodation is unreasonable.

IV. Health and Safety Considerations

- A. In the case of a person with a disability that poses a direct or significant threat to the safety of themselves or others, the DOC may dismiss or refuse to hire the individual, provided that the threat is based upon knowledge, not speculation, when the threat cannot be eliminated by providing reasonable accommodation, which may include transfer to a different position consistent

with other portions of this policy stated below.

- B. When it appears that such a threat may exist, the Appointing Authority shall evaluate the threat and the possibility of reasonable accommodation by taking the following factors into consideration:
 - 1. Duration of the risk.
 - 2. The nature and severity of the potential harm.
 - 3. The likelihood that potential harm will occur.
 - 4. The imminence of potential harm.
- C. The Appointing Authority should confer with the Agency ADA Coordinator to determine whether some reasonable accommodation may alleviate the threat.
- D. If the disabled individual is a current DOC employee, and there is no accommodation that would allow the employee to remain in their current position, the accommodation of last resort would be to look for another open and available position within the DOC meeting all the following criteria:
 - 1. The employee must meet the minimum qualifications and be able to perform the essential functions of an open and available position, with or without a reasonable accommodation, at the time of the appointment.
 - 2. The employee does not pose a direct threat in the new position.
 - 3. The position is at the same salary level or if not available at a lower level in the position in the range resulting in the least loss of pay possible.
 - 4. Any such appointment would be non-competitive.
- E. If no position exists within the DOC the Appointing Authority will consult with the Agency ADA Coordinator.

V. Prohibition of Discriminatory Actions

- A. The appointing authority shall monitor the atmosphere and events at the work site sufficiently to ensure that no employee is being subjected to discrimination based upon a disability. Any employee who participates in discriminatory actions prohibited by this IMPP may be subject to disciplinary action, which may include dismissal. Actions which could be discriminatory could include but are not limited to:
 - 1. Disallowing the consideration of an individual due to, or not hiring a qualified individual because of, a disability.
 - 2. Inappropriately initiating discussions with an employee or applicant, regarding a disability or need for a reasonable accommodation.
 - 3. Inappropriately engaging in discussions with others who do not have a need to know about an applicant or employee's medical condition or disability.
 - 4. Using screening criteria, tests or qualifications for a job that are not necessary to perform the essential functions of the job, and which would disproportionately exclude otherwise qualified disabled persons.
 - 5. Failing or refusing to make a reasonable accommodation when requested by an employee or applicant.

6. Refusing to hire a qualified applicant based solely upon their need for a reasonable accommodation.
 7. Refusing to make reasonable accommodations or supply necessary reasonable modifications to equipment or procedures so that a disabled employee or applicant is afforded the same opportunities during tests, trainings, or demonstrations.
 8. Refusing to provide reasonable accommodations which would allow access to the same privileges of employment, such as break rooms, trainings, and work related functions.
- B. Supervisors and managers shall not:
1. Refuse to; accept applications for interview or hire a qualified individual based upon the person's disability, regardless of whether the applicant has acknowledged that they have a disability.
 2. Inappropriately initiate discussions with employees regarding a reasonable accommodation,
 3. Discuss the applicant's ability to physically or mentally perform a job with an applicant during an interview at a pre-offer stage,
 4. Use interview questions or testing procedures that would screen out disabled persons that are not related to the essential functions of the job.

VI. Disability Complaints - General Procedure

- A. Any employee or applicant who believes they have been discriminated against on the basis of a disability has the right to file a complaint under the provisions of the ADA and may do so in writing or verbally. Employees are encouraged to discuss their complaint with their supervisors, managers, the ADA Coordinator, or the Director of Human Resources.
- B. The Statewide grievance procedure outlined below shall be used for complaints based upon a disability. Any complaints filed shall be forwarded to the Agency ADA Coordinator, who will refer it to the Statewide ADA Coordinator for processing.
- C. Employees and applicants also have the right to file with the Equal Employment Opportunity Commission (EEOC) or the Kansas Human Rights Commission (KHRC) within 180 days of the alleged violation.
- D. Any findings, notices and recommendations will be sent to the complainant by certified mail, or hand delivered with a written receipt acknowledging its delivery.

VII. Complaint Process

- A. Employees or applicants who wish to file a complaint shall follow these steps:
 1. Step 1: Information regarding the allegations provided internally to the Appointing Authority, Agency ADA Coordinator, or Director of Human Resources will be forwarded to the Statewide ADA Coordinator's office within 45 calendar days of the alleged violation.
 - a. Employees and applicants may choose to file directly through the Statewide ADA Coordinator's office listed in Section II.A.1. above.
 2. Step 2: In most cases the State ADA Coordinator will refer the complaint back to the Agency ADA Coordinator for processing.
 3. Step 3: The Agency ADA Coordinator shall investigate the complaint and determine the validity of the complaint and provide any necessary resolution. The investigation shall

include providing the complainant, any person against whom the complaint was filed, the Appointing Authority and others as applicable the opportunity to submit information or evidence.

a. Special Circumstances

- (1) If the complaint involves the Agency ADA Coordinator, the State ADA Coordinator shall designate an impartial person to conduct the investigation and preform the related responsibilities.

4. Step 4: Within 60 calendar days of the date of filing the ADA Coordinator shall provide a written determination to the complainant, the person against whom the complaint was filed, the Appointing Authority, and the State ADA Coordinator. The Agency ADA Coordinator's written report shall include a determination regarding the validity of the complaint, a description of any resolution and the following statement: "If you disagree with this decision, you have thirty (30) days to file a request for reconsideration with the Statewide ADA Coordinator".

B. Reconsideration of Complaints

1. Either party to the complaint may appeal a decision regarding a complaint by submitting a request to the Statewide ADA Coordinator for reconsideration of the decision. Requests shall be submitted directly to the Statewide ADA coordinator within 30 calendar days of the party's receipt of the written decision from the Agency ADA Coordinator.

VIII. Files

- A. The ADA Coordinator shall establish a confidential complaint file consisting of the pertinent documents acquired during the complaint process and investigation. The documents shall include, but not be limited to:
 1. All written and email correspondence regarding the complaint
 2. Decisions and recommendations
 3. Any provided investigatory statements
 4. Findings of the investigation
- B. Information regarding complaints, requests for accommodation, and other disability issues shall not be included in any employee's official personnel file except as for the minimal documentation needed to support any disciplinary action proposed against an employee based upon the findings of the investigation. Any submitted medical documentation shall only be maintained in the applicable employee's permanent official medical file.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None

REFERENCES

42 U.S.C. 12101 (American with Disabilities Act of 1990 and amendments thereto)
K.S.A. 44-1001, 44-1002, 44-1005, 44-1009, 44-1012, 44-1013
K.A.R. 1-2-9; 1-13-1a
IMPP 02-109D
NOTICE TO THE PUBLIC memo to all State Agencies, dated 10-10-2012
Executive Order 92-154

ATTACHMENTS

Attachment	Title of Attachment	Page Total
A	Employee ADA Acknowledgment	1 page

KANSAS DEPARTMENT OF CORRECTIONS

ADA ACKNOWLEDGMENT

I. Receipt of KDOC ADA Employment Policy

I, _____, the undersigned, am employed by the Kansas Department of Corrections in the position of _____, and hereby acknowledge, by my signature below, that on this date I was provided with a full and complete copy of IMPP 02-129D, ADA Accommodation Requests and Disability Compliant Resolution policy, which discusses expectations, accommodation requests and how to file a complaint, and confirm that I was afforded adequate time, on the job, to read the same, and was informed by my supervisor that I could ask any questions of said supervisor, the appointing authority, or the human resources manager, necessary to understand the policy. I further hereby agree that I understand and agree to fully abide by the policy.

Date

Signature of Employee

Date

Signature of Supervisor

AFTER THIS FORM HAS BEEN SIGNED BY THE EMPLOYEE AND SUPERVISOR, IT SHALL BE FORWARDED TO THE HUMAN RESOURCES OFFICE OF THE FACILITY OR OFFICE WHERE THE EMPLOYEE WORKS, AND SHALL BE MADE A PERMANENT PART OF THE OFFICIAL PERSONNEL FILE OF THE EMPLOYEE.