

Administrative Policy No. 18.26

Subject: Disability Reasonable Accommodation

Authorizing Sources: [Americans with Disabilities Act of 1990](#)
Rehabilitation Act of 1973; 29 CFR Part 1630
[Chapter 41.06 RCW](#) (State Civil Service Law)
[Chapter 49.60 RCW](#) (Discrimination -- Human Rights Commission)
[WAC 357-19-465](#) (Reemployment Services)
[Chapter 357-26 WAC](#) (Reasonable Accommodation)
[WAC 357-46-160](#) and [WAC 357-46-165](#) (Layoff and Separation)
[WFSE CBA Article 32](#)
[Coalition CBA Article 33](#)
[SEIU CBA Article 27](#)

Information Contact: DSHS Human Resources

Effective Date: July 1, 2005

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Approved By: Original signed by Wendy Long
Senior Director, Human Resources Division

Purpose:
To provide guidance to Department of Social and Health Services managers and employees for meeting reasonable accommodation requirements of federal and state law.

Scope:
This policy applies to all current employees, including probationary and non-permanent employees, and candidates and applicants for employment with DSHS, in all aspects of the job including, but not limited to, recruiting, application process, hiring, training, or office sponsored events/parties.

Additional guidance:

Administrative policies:

[18.25 affirmative action and religious discrimination](#)

18.66 discrimination, harassment, and other inappropriate behaviors

Grievance process:

- WFSE article 29 [grievance procedure](#)
- SEIU article 36 [grievance procedure](#)
- [Coalition article 31 grievance procedure](#)

[EEOC Reassignment](#)

Definitions:

Disability:

Under the Washington Law Against Discrimination ([RCW 49.60.040](#)) disability means:

- A. The presence of a sensory, mental, or physical impairment that:
 1. Is medically recognizable or diagnosable;
 2. Exists as a record or history; or
 3. Is perceived to exist whether or not it exists in fact.
- B. A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job.
- C. For purpose of this definition, "impairment" includes, but is not limited to:
 1. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
 2. Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Under the Americans with Disabilities Act, disability means:

- A. A physical or mental impairment that substantially limits one or more of the major life activities of an individual such as but not limited to: walking, seeing, hearing, breathing, learning, caring for oneself, performing manual tasks, working, speaking, etc.;
- B. A record of such impairment; or

C. Being regarded as having such impairment.

Direct threat: A significant risk of substantial harm to the health and safety of self or others, for reasons connected to a disability. The risk must be specific, substantial, demonstrable, likely, or imminent; and must be incapable of being eliminated or reduced to an acceptable level through reasonable accommodation.

Effective accommodation: In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, whether the accommodation will enable the person with a disability to perform the essential functions of the job in question.

Equal employment opportunity: An opportunity for individuals with a disability to enjoy the same opportunities to participate in the application process, to be considered for a job, and enjoy the benefits and privileges of employment that employees without disabilities enjoy.

Health care professional: A person who has completed a course of study and is licensed to practice in a field of health care, which includes the diagnosis and assessment of the particular disability or disabilities in question.

Qualified person with a disability: A person with a disability who meets the skills, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential job functions at the established performance standards.

Reasonable accommodation: For persons with disabilities, as defined by state or federal law, reasonable accommodation may include, but is not limited to:

1. Accommodation in application procedures, testing, and the interview process; or
2. Modifications or adjustments to a job, work method, or work environment that make it possible for a qualified person with a disability to perform the essential functions of a position or enjoy the benefits and privileges of employment equal to employees without disabilities. For example, this may include job restructuring, assistive technology, modified schedule, modified workplace environment, leave and reassignment, and will be determined through the interactive process.

Undue hardship: A request for reasonable accommodation that has been denied based on unduly costly, extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the agency.

Policy:

The human resources division (HRD) develops and administers the disability reasonable accommodation policy. This policy will be reviewed every three years for effectiveness.

DSHS is committed to providing persons with disability equal opportunity to employment, access to programs, facilities, and services offered by DSHS. For additional information see administrative policy [18.66](#) discrimination, harassment, and other inappropriate behaviors.

Persons with disabilities have the right to request to receive reasonable accommodation in all aspects of employment with DSHS and without stigma, harassment, or retaliation. DSHS's reasonable accommodation process is designed to:

1. Ensure equal opportunity in the application process;
2. Enable a qualified individual with a disability to perform the essential functions of a job; and
3. Enable an employee with a disability to enjoy equal benefits and privileges of employment.

It is the responsibility of each employee to comply with this policy.

A. Employee Responsibility

1. This policy provides that individuals with a disability have the right to request to receive reasonable accommodation.
2. An employee who has a disability requiring accommodation has the responsibility to inform their immediate supervisor or the human resources division, either orally or in writing, of the existence of an impairment, and that they need a reasonable accommodation to perform their job functions or to receive equal benefits, privileges, or terms and conditions of employment.
 - a. Individuals are not required to reveal diagnoses or the details of medical treatments to immediate supervisors or to coworkers.
3. Requests for a disability reasonable accommodation can also be initiated by completing an intake at the following DSHS [reasonable accommodation website](#).
4. The employee is responsible for providing sufficient medical documentation that establishes a reasonable likelihood that engaging in job functions without a reasonable accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.
5. The employee may request a review, by the DSHS secretary or designee, if a reasonable accommodation is denied.

B. Department Responsibilities

1. DSHS must acknowledge receipt of the request for reasonable accommodation. The department will begin processing a reasonable accommodation request within thirty (30) calendar days of receipt.
2. Supervisors will not request medical documentation regarding the impairment or discuss medical information with the employee.
 - a. If an employee voluntarily shares information about their disability or impairment with their supervisor, the supervisor must keep that information confidential.
3. If an employee gives their supervisor written information, the supervisor is to immediately forward the documents(s) to HR.
4. Medical records received by DSHS are confidential and will be maintained separately from personnel records and supervisory files.

C. Interactive reasonable accommodation process

1. Each request for reasonable accommodation will be assessed on a case-by-case basis through the interactive reasonable accommodation process. The duty to provide reasonable accommodation is ongoing and may arise any time an employee's disability, impairment, or job changes.
2. To qualify for a reasonable accommodation in employment, when the disability or the need for accommodation is not obvious, DSHS may ask the employee and their health care professional(s) to provide sufficient documentation indicating that a disability or medical impairment is known or shown to exist in fact; and

The impairment has a substantially limiting effect on the individual's ability to:

- a. Perform their job;
- b. Apply or be considered for a job; or
- c. Have access to equal benefits, privileges, or terms or conditions of employment.

Refusal by the employee to provide sufficient medical documentation may result in denial of reasonable accommodation or separation from employment.

3. An interactive process may include, but is not limited to, one or more of the following:

- a. A request to obtain sufficient medical documentation from a qualified health care professional to support that a disability exists and to substantiate the need for a reasonable accommodation;
 - b. A review of the current position description, an analysis of the particular job functions and qualifications; or
 - c. A consultation with the individual to:
 - i. Ascertain the precise job-related limitations imposed by their disability and how those limitations could be overcome with a reasonable accommodation; and
 - ii. Identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.
4. DSHS may obtain a second opinion from a health care professional chosen and paid for by DSHS verifying the disability and limitations of work.
5. Decisions regarding an employee's reasonable accommodation(s) will be made by the appointing authority or designee. If two or more effective accommodations exist, and after considering the preference of the requester, the appointing authority or designee may select the reasonable accommodation(s) to be provided.
- a. The reasonable accommodation unit within HRD is available to assist and advise as needed.
6. Reassignment to a vacant position is the reasonable accommodation of last resort. This type of reasonable accommodation must be considered for an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation.
7. Under this policy, DSHS is not required to:
- a. Eliminate an essential function or duty of the job;
 - b. Lower performance or productivity standards;
 - c. Create a position;
 - d. Displace another employee;
 - e. Offer a promotion; or
 - f. Move an employee into a position for which the employee is not qualified.
8. The employee has the right to refuse a reasonable accommodation. However, if an employee refuses the reasonable accommodation and is unable to perform the job functions without the accommodation, they are not considered to be a qualified individual with a disability and may be separated from employment.

9. The employee must be notified in writing if DSHS determines their request for reasonable accommodation is denied, documenting the reasons for the denial.

D. Determining undue hardship

1. DSHS must provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment unless doing so will impose an undue hardship on the operation of its business.
2. Before concluding a particular accommodation imposes an undue hardship, DSHS will consider whether or not there are alternative reasonable accommodations that would not impose such a hardship.
3. The secretary, or their designee, will review and make the final determination on requests for accommodations where concerns exist regarding undue hardship of the requested accommodation. DSHS will provide written justification to the individual for any decision not to provide a reasonable accommodation because of undue hardship.

E. Establishing direct threat

1. Reasonable accommodation may not be required if:
 - a. There is reasonable cause to believe that an employee poses a direct threat to the health or safety of self or others; or
 - b. A reasonable accommodation cannot reduce the risk below the direct threat level.
2. The determination that an individual poses a direct threat is to be based on an assessment of the individual's present ability to safely perform the essential functions of the job.
 - a. DSHS's appointing authority will complete an individualized assessment of the situation, which includes a current medical review and objective evidence.
 - b. A DSHS employee may be sent to a health care professional of DSHS's choosing, and at DSHS's expense, if there is objective evidence to support a reasonable belief that, due to a disability, an employee poses a direct threat to self or others, which means a high probability of a risk of significant harm.
 - c. In analyzing whether a department employee poses a direct threat, DSHS's appointing authority will consider these factors:
 - i. The duration of the risk;
 - ii. The nature and severity of the potential harm;
 - iii. The likelihood that the potential harm will occur; and

- d. The imminence of the potential harm.

If it is then determined that the person poses a significant risk of substantial harm, the appointing authority will consider whether a reasonable accommodation exists that could mitigate or eliminate the risk.

F. Disability separation

A disability separation is an action taken to separate an employee from service when DSHS determines that the employee is unable to perform the essential functions of the employee's position, or alternative position, with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action per [WAC 357-46-160](#) or applicable [Collective Bargaining Agreement \(CBA\) Articles](#).

1. Department initiated separation
 - a. DSHS may separate an employee due to disability when any of the following circumstances exist:
 - i. DSHS is unable to reasonably accommodate the employee; or
 - ii. DSHS has medical documentation of the employee's inability to work in any capacity.
 - b. Appointing authorities are required to consult with DSHS's human resources division before implementing a disability separation.
 - i. Notice of disability separation must be in writing to the employee and must include information about the option to apply for re-employment under [WAC 357-19-465](#).
2. Voluntary disability separation - employee initiated
 - a. An employee unable to perform the essential functions of their position due to a disability may choose not to pursue a reasonable accommodation and may request to be separated from employment.
 - i. The employee must submit the request to their appointing authority in writing;
 - ii. Provide medical information documenting they cannot perform the essential functions of the employee's position or class (if not already provided);
 - iii. The appointing authority is not required to consider a reasonable accommodation in lieu of the employee's request for a voluntary disability separation.
3. Reemployment Assistance

- a. Employees who are separated due to disability from employment are eligible for reemployment assistance for up to two years following separation. See [WAC 357-19-470](#).

G. Training and resources

1. The reasonable accommodation unit is available to provide training upon request. Please contact the reasonable accommodation unit at (360) 725-5813.
2. For additional information please contact DSHS's human resources division, reasonable accommodation specialist.

DSHS Official