



## **DIRECTIVE 5707. REASONABLE ACCOMODATION**

1. **Purpose.** This document sets forth the procedures the Federal Mediation and Conciliation Service (FMCS) will use to process requests for reasonable accommodation by applicants and employees with disabilities.
2. **Policy.** It is the policy of FMCS to comply fully with the reasonable accommodation requirements of the law. FMCS will provide reasonable accommodation for known physical or mental limitations of qualified applicants and employees with disabilities unless an accommodation would impose an undue hardship on the Agency.
3. **Authority.**
  - a. The Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendments of 2008, requires federal employers to provide reasonable accommodation for qualified individuals with disabilities unless the accommodation would pose an undue hardship for the agency.
  - b. Executive order 13164 and Equal Employment Opportunity Commission (EEOC) policy guidance requires each federal agency to establish written procedures for processing requests for reasonable accommodation by applicants and employees with disabilities.
4. **Key Terms.**
  - a. An individual with a disability: (1) a person who has a physical or mental impairment that substantially limits one or more major life activities; (2) a person who has a record of such impairment; or (3) a person who is regarded as having such impairment.
  - b. Reasonable accommodation: any change in the work environment or in the way that job duties customarily are performed that enables an individual with a disability to enjoy equal opportunities.
  - c. Essential functions: job duties that are so fundamental to the position that an individual holds or desires that he/she cannot do the job without performing those functions. A function can be deemed essential if, among other things:
    - 1) The position exists specifically to perform that function;
    - 2) There are a limited number of other employees who could perform the function or;
    - 3) The function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position will be done on a case-by-case basis.
  - d. Qualified individual with a disability: an individual with a disability is qualified if he/she:
    - 1) Satisfies the requisite skill, experience, education, and other requirements of the



position and;

- 2) Can perform the essential functions of the position, with or without reasonable accommodations.
- e. **Undue hardship:** FMCS is not required to provide a particular reasonable accommodation if it would cause significant difficulty or expense for the Agency. Determination of undue hardship will be made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the accommodation on the operations of FMCS.
- f. **Disability manager:** an FMCS employee designated by the FMCS Director to serve as the disability manager. The disability manager will be responsible for processing, coordinating, and tracking requests for accommodation, and for deciding whether to grant a requested accommodation or some alternative form of accommodation, or to deny the request. The FMCS disability manager is the Human Resources Director or his/her designee.

## 5. Procedures for Requesting Reasonable Accommodation.

- a. Requests for reasonable accommodation will be handled on a case-by-case basis and involve an interactive process between the employee or applicant and FMCS management. The employee or applicant, however, carries the initial duty to inform management in his/her chain of command of the disability that may require an accommodation.
- b. Management then has the responsibility to initiate an interactive process to identify the precise limitations resulting from the disability and the potential reasonable accommodation that could overcome those limitations.
- c. **Initiating the process:** an employee must direct an oral or written request for reasonable accommodation to his/her immediate supervisor, a supervisor or manager in his/her immediate chain of command, the disability manager, the FMCS Equal Employment Opportunity (EEO) Program Manager, or, in connection with the application process, any agency employee with whom the applicant has contact. Officials responsible for receiving such requests must be alert to accommodation requests even if the individual does not use words such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” An applicant for employment may make an oral request (followed up in writing) or written request to an FMCS employee in the office of human resources with whom the applicant has had contact in the application process. A family member, health professional, or other representative may request an accommodation on behalf of an employee or applicant. Upon receiving an accommodation request, FMCS shall initiate a dialogue among the disability manager, an affected supervisor, and the employee or applicant.
- d. **Obtaining medical information to evaluate the request:** if the disability manager believes that medical information or documentation is necessary to evaluate a request for reasonable accommodation, he/she shall request it. When the disability manager requests



appropriate medical documentation, all time frames freeze until the documentation requested is provided. If the information provided is incomplete, the disability manager will provide the employee or applicant with a written request for additional medical documentation identifying the information or documentation needed. A health care professional may provide necessary documentation for an applicant or employee, or the disability manager may request that the individual sign a release of medical information pertinent to his/her condition. It is the responsibility of the employee or applicant requesting accommodation to provide appropriate medical information related to the functional impairment and the requested accommodation where the disability and/or need for accommodation is not obvious.

- e. FMCS will only request information or documentation regarding (1) the nature, severity, and duration of the individual's impairment; (2) the activity or activities that the impairment limits; (3) the extent to which the impairment limits the individual's ability to perform the activity or activities; and (4) why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.
- f. The disability manager will evaluate the medical documentation. If he or she deems it necessary, the disability manager may, at FMCS's expense, consult with a physician chosen by FMCS and/or may request that the individual be examined by a physician chosen by FMCS. An individual's failure to provide appropriate information or documentation or to cooperate in FMCS's efforts to obtain such information or documentation can result in a denial of a reasonable accommodation request.
- g. All medical information and documentation that FMCS obtains regarding a request for reasonable accommodation will be kept in a file separate from the individual's personnel file. The disability manager will maintain custody of all records obtained or created during the processing of requests for reasonable accommodation. These records will be maintained and safeguarded in accordance with the Privacy Act and the Freedom of Information Act. If medical information is disclosed, the official disclosing the information will inform the recipient about the confidentiality requirements.
- h. In some cases, the disability manager may determine that the individual does not have a disability under the law but that he/she may have a temporary medical condition that warrants other consideration. In such cases, the individual may consult with the office of human resources on leave or other programs appropriate to the circumstances.
- i. Selecting an appropriate accommodation: the parties will communicate throughout the decision making process regarding the request and potential accommodations. The employee or applicant may not be entitled to the specific accommodation requested. The disability manager will suggest possible accommodations in consultation with appropriate FMCS officials, such as staff in the office of information technology and administrative services.



- j. Reassignment will be considered only if:
- a) No reasonable accommodations are available to enable the individual to perform his/her current job; or
  - b) The only other effective reasonable accommodation would cause FMCS undue hardship.

FMCS is not required to reassign an individual or create a position as a means of reasonably accommodating an employee.

- k. Time frames for processing accommodation requests: the disability manager will generally determine whether to grant or deny an accommodation request within 15 business days of receiving all information relevant to the request, absent extenuating circumstances. Possible causes for delay can include situations in which equipment must be back-ordered or the vendor has unexpectedly gone out of business. If there is a delay, the agency will notify the individual of the reason and of the expected date of completion. A violation may occur under the Rehabilitation Act where a particular reasonable accommodation can be provided in less time than is authorized under these procedures. The disability manager may expedite processing of the request or may extend time frames in the selection process to allow disabled applicants to compete for job vacancies.

6. Granting/Denying a Reasonable Accommodation Request. If a request for accommodation is granted, the disability manager will inform the requesting individual of the projected timeframe for providing the accommodation. The time frame may depend on the nature of the accommodation, but will be as short as reasonably possible.

If the disability manager denies the request, he/she will respond in writing to the requesting individual with the specific reasons for the denial. Within 10 days of the denial, the requesting individual may request reconsideration to a Deputy Director or his/her designee. The denial will include information about the individual's administrative, statutory, collective bargaining rights, and the right to use alternative dispute resolution procedures through the EEO Office when requesting reconsideration of denials of reasonable accommodations.