



**State of Oklahoma  
Office of Management and Enterprise Services  
Policies and Procedures**

**Reasonable Accommodation**

<b>Effective Date of Policy: 04/01/2019</b>	<b>Next Scheduled Review: 04/01/2020</b>
<b>Effective Date of Original Policy: 10/01/2012</b>	<b>Policy Number: OMES - 031</b>
<b>Last Reviewed: 02/25/2019</b>	<b>Replaces Policy Number: HCM - 17</b>
<b>Date Policy Last Revised: 04/18/2018</b>	
<b>Approved: Dana Webb, as Designee of OMES Director John Budd</b>	<b>Approval Date: 02/25/2019</b>

**References:** Americans with Disabilities Act Amendments Act of 2008 (ADAAA), Section 504 of the Rehabilitation Act and 25 O.S. §§ 1101, et seq.

**Policy**

The Office of Management and Enterprise Services (OMES) believes in an inclusive workplace. We support and comply with state and federal laws, which mandate reasonable accommodation be provided to qualified applicants and all employees with a disability, or disabilities, so that they have equal access to the application process, are able to perform the essential functions of the position held or desired, and have benefits and privileges of employment equal to those of non-disabled individuals. OMES recognizes its obligation to apply terms and conditions of employment equitably. Further, OMES requires all employees, including employees with disabilities, to adhere to OMES policies, including employment policies regarding conduct and performance. OMES recognizes and respects the rights of individuals with disabilities to be gainfully employed. Accordingly, it is the intent of OMES to provide reasonable accommodation to employees and applicants with disabilities unless to do so would cause an undue hardship.

**For the purpose of this policy, the following terms mean:**

"**Essential Functions**" means those job duties a person holding the job absolutely must be able to do. Essential job functions are used to determine the rights of an employee with a disability under the ADAAA. An employee who can't perform the essential job functions, even with a reasonable accommodation, isn't considered qualified for the job and isn't protected by the ADAAA.

Determination of essential job functions of a position is done on a case-by-case basis to reflect the job as it is actually performed.

**"Major Life Activities"** means the activities an average person can perform with little or no difficulty. Major life activities include, but are not limited to:

- Seeing (vision).
- Hearing.
- Walking.
- Breathing.
- Performing manual tasks.
- Learning.
- Caring for oneself.
- Concentrating.
- Lifting.
- Operation of major bodily functions (e g., including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).
- Working.

**"Individual with a Disability"** means a person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such an impairment.

**"Medical Information"** means any knowledge of or documentation of a medical condition. Other examples include, but are not limited to, medical diagnoses; letters or forms from an employee's medical doctor, psychologist, or other health care provider; medications; and information volunteered by an employee.

**"Qualified Individual with a Disability"** means an individual with a disability who: a) satisfies the skill, experience, education and other requirements related to the job for which he or she applies or holds, and b) is able to perform the essential functions of the particular job with or without reasonable accommodation.

**"Reasonable Accommodation"** means any change in the work environment or adjustment in the manner a task is normally performed which enables a qualified individual with a disability to have equal access to the application process, be able to perform the essential functions of the position held or desired, and have benefits and privileges of employment equal to those of non-disabled individuals. Reasonable accommodation(s) may include, but are not limited to, the following:

- Making the physical work environment accessible to and usable by a person with disabilities.
- Modifying a job so a person with a disability can perform the essential functions of the job. This may involve eliminating non-essential elements or changing procedures.

- Acquiring or modifying equipment or devices.
- Providing qualified readers or interpreters.
- Reassigning or referring an employee with a disability to a vacant position, if attempts at other suggested or recommended methods of reasonable accommodation have failed.

(Note: The agency is under no obligation to create a position for an employee with a disability or promote or transfer an employee into a position for which he or she is not qualified. Additionally, OMES has no obligation to provide training for an employee to enable the individual to gain the requisite education and skills necessary to qualify for a vacant position.)

In accordance with ADAAA regulations, reasonable accommodation may be provided to persons with disabilities. However, reasonable accommodation will not and is not required to be provided to persons who have been regarded as not having a disability.

“**Undue Hardship**” means a significant difficulty or expense for OMES, which could result if it provided a specific type of accommodation. Determination of undue hardship is made on a case-by-case basis, considering several factors, including, but not limited to:

- The impact of the accommodations on the individual facility as well as OMES operations and delivery of services.
- The nature and cost of the reasonable accommodation(s).

OMES is not obligated to provide an accommodation if it would result in undue hardship.

## **Procedure**

### **Applicants**

The Human Capital Management division (HCM) of OMES shall advise applicants through the job posting that reasonable accommodation to individuals with disabilities may be provided upon request.

HCM shall coordinate arrangements for reasonable accommodation requests of applicants through HCM.

An applicant shall not be asked whether he or she is disabled.

An applicant may be asked questions regarding his or her ability to perform the essential functions of a position only if all applicants are asked identical question.

Should an applicant voluntarily indicate the presence of a disability, follow-up questions regarding reasonable accommodation may be pursued.

A qualified applicant shall not be denied employment based upon his or her request that a reasonable accommodation be provided in the application or interview process.

In situations where a conditional or tentative job offer is extended to an applicant and the agency determines it is unable to reasonably accommodate the individual in performing the essential functions of the position, then the offer of employment shall be rescinded.

### **Employees/Human Resources**

1. An employee who believes he or she is disabled and in need of reasonable accommodation is responsible for providing notification to HCM. This notice may come directly from the employee or it may be communicated through a third party (e.g., health care provider, family member or friend) on the individual's behalf. Each request for reasonable accommodation shall be assessed on a case-by-case basis.
2. HCM shall direct employees who believe they are in need of reasonable accommodation to complete OMES Form HCM003, Reasonable Accommodation Request to initiate his or her request.
3. The employee will submit the reasonable accommodation request to HCM.
4. The employee and HCM shall meet to discuss and identify the type of reasonable accommodation(s) the employee needs, including acceptable alternatives. HCM reserves the right to request additional medical documentation when necessary to determine the existence of a disability, determine the employee's ability to perform the essential functions of the position involved, and assist in determining an appropriate reasonable accommodation.
5. HCM shall notify the employee in writing of the determination. The employee shall inform Human Resources of his or her decision to accept or reject the reasonable accommodation offer in writing within five (5) working days of the determination. If the employee rejects the reasonable accommodation, he or she shall state why the proposed reasonable accommodation is not suitable.
6. Human Resources shall notify appropriate personnel of the employee's decision to accept or reject the reasonable accommodation.

The following factors shall be considered before making a final determination concerning reasonable accommodation:

1. The type of reasonable accommodation requested.
2. The type of reasonable accommodation offered to employees in similar circumstances.
3. The alternative reasonable accommodation(s).

4. The availability and cost of the needed service or item necessary to effect the reasonable accommodation.
5. Whether or not providing the accommodation would cause significant disruption of the operations.

If a temporary medical condition limits an employee's ability to perform the essential functions of his/her job, Human Resources shall be consulted to make a determination whether a reasonable accommodation is necessary.

An employee who disagrees with the reasonable accommodation determination may file an appeal to that decision with the OMES director. Appeals must be filed in writing within five (5) working days of receiving notice of the determination. The OMES director's decision on the reasonable accommodation appeal shall be final.

### **Confidentiality**

OMES shall keep confidential any medical information it learns about an employee or job applicant, regardless of whether the employee is a qualified individual with a disability. OMES staff shall keep confidential the fact of an employee receiving a reasonable accommodation.

Information and reasonable accommodation may be disclosed in the following circumstances:

- To supervisors or managers who need to meet the employee's need for reasonable accommodation(s) or in connection with an employee's work restrictions.
- To first aid or safety personnel in cases where an employee's condition may require emergency treatment or where an employee would require assistance in the event of an emergency.
- To government officials investigating compliance with the Americans with Disabilities Amendment Act or similar federal or state laws.
- As needed for workers' compensation purposes.
- As needed for insurance purposes.

All medical records pertaining to the reasonable accommodation request shall be maintained in Human Resources.

An employee who believes that the confidentiality of his/her medical information and/or reasonable accommodation has been violated may file a complaint with Human Resources in compliance with the procedures set forth in OMES Complaint and Investigation Process Policy.