

**Federal Energy Regulatory Commission
Office of the Executive Director (OED)**

**Reasonable Accommodation
Policy/Guidance**



July 30, 2018

Federal Energy Regulatory Commission
Office of the Executive Director
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1 AUTHORITY

Executive Order 13164 signed by President William J. Clinton, July 26, 2000, requires all Federal Agencies to establish procedures to facilitate the provision of reasonable accommodations. The Order helps to implement the Rehabilitation Act of 1973.

The Rehabilitation Act of 1973 covers Federal employees and applicants. Specifically, the Rehabilitation Act of 1973, which incorporates the standards found in the Americans with Disabilities Act, prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors.

2 PURPOSE

Many individuals with disabilities can apply for and perform jobs without reasonable accommodations; however, there are workplace barriers that keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles or they may be procedures or rules. Reasonable accommodations remove workplace barriers for individuals with disabilities. This policy establishes effective written procedures for the expeditious processing of requests for reasonable accommodation by employees and applicants with disabilities.

3 SCOPE

This policy applies to FERC employees and applicants seeking employment with FERC.

4 ACTION

This policy/guidance replaces FERC's Reasonable Accommodation Procedures issued in October 2012.

5 ROLES AND RESPONSIBILITIES

The Disability Program Manager (DPM) is responsible for:

- Overseeing the reasonable accommodation program agency-wide;
- Receiving and responding to requests for accommodations;
- Requesting medical documentation when necessary to support requests for accommodation;
- Maintaining the confidentiality of medical documentation to the extent required by law;
- Evaluating and coordinating requests for accommodation with the appropriate personnel;
- Approving/denying requests for reasonable accommodation;
- Providing guidance regarding the accommodation process to all employees; and
- Ensuring that accommodations are appropriate and effective.

Supervisors, Team Leaders and Human Resources Specialists (staffing) are responsible for:

- Recognizing requests for accommodation;
- Notifying the DPM within two (2) business days of each such referral; and
- Consulting with the DPM to ensure the accommodations requested are appropriate.

6 POLICY/GUIDANCE**Legal Requirements**

Under Executive Order 13164, FERC is required to establish effective written procedures to ensure the expeditious processing of requests for reasonable accommodation. Under the Rehabilitation Act of 1973, FERC is required to provide reasonable accommodation for qualified: (1) individuals with disabilities in the application process for Federal employment; (2) Federal employees with disabilities so that they can perform the essential functions of a position; and (3) Federal employees with disabilities so that they can enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities, unless doing so would cause significant difficulty or expense (undue hardship) for the employer.

Disability

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law. A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he or she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Essential Functions

Essential functions are those job duties that are so vital to a position that the position cannot be performed without those functions. A function can be “essential” if, among other things; the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform the duties. Determination of the essential functions of a position will be made on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

Accommodation

In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities, including modifications or adjustments to a job application process, the work

environment, the manner or circumstances under which a position held or sought is customarily performed, or to enable an employee with a disability to enjoy equal benefits and privileges of employment.

Accommodations take many forms. Some common examples include:

- Providing part-time or modified work schedules;
- Restructuring the job;
- Granting breaks or approving leave;
- Altering how or when job duties are performed;
- Moving to different office space;
- Providing assistive technology, including information technology and communications equipment or specially designed furniture;
- Providing a reader or other staff assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff;
- Removing an architectural barrier, such as reconfiguring work spaces;
- Providing accessible parking;
- Providing materials in alternative formats (e.g., Braille, large print);
- Reassignment to a vacant position for which the employee is qualified (last resort).

Benefits and Privileges of Federal Employment

Benefits and privileges of federal employment may include, but are not limited to, agency-sponsored training (whether provided by the agency or an outside entity), services (e.g., employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), social and professional functions, emergency evacuation plans, and workplace communications through e-mail, public address systems, or during meetings, whether or not that communication relates directly to performance of an employee's essential job functions. They may also include opportunities for advancement, such as details, temporary team leader or acting supervisor designations, and other special assignments.

Undue Hardship

FERC does not have to provide an accommodation, if doing so would cause an undue hardship. Undue hardship means that the accommodation would be too difficult or too expensive to provide, based on the overall agency resources and workplace operations.

Some accommodations pose an undue hardship not due to cost but because of their impact on the agency or on a particular office or component of the agency where the requester works, including the impact on the ability of other employees to perform their duties or the impact on the ability to conduct business.

Undue hardship must be determined on a case-by-case basis. The possible impact of an accommodation should be assessed based on objective information and with due consideration

to any options or alternatives which might lessen a potential hardship of the proposed accommodation.

Requesting a Reasonable Accommodation

A request for a reasonable accommodation must specify that a work adjustment or change is needed for a reason related to a medical condition. A request for reasonable accommodation may be submitted either verbally or in writing at any time; and need not mention the phrase "reasonable accommodation" or use the term "disability". An individual need not fill out any specific form in order for the interactive process to begin; and does not have to have a particular accommodation in mind before making a request. The request may be made to a supervisor or manager in the individual's chain of command, the DPM, or Human Resources.

A family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. For tracking purposes, verbal requests should be confirmed in writing by submitting a follow up email to the agency DPM. Submitting a verbal request will not delay processing.

An employee needing a reasonable accommodation on a recurring basis, (e.g., sign language interpreter) is only required to submit the request once, but should give advance notice and updated medical documentation each time the accommodation is subsequently needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting) the employee's supervisor will make the appropriate arrangements.

All requests for accommodation must be submitted to the DPM. Applicants for employment should contact the Staffing specialist listed on the FERC vacancy announcement; the accommodation request will then be forwarded to the DPM Supervisors, team leaders and Human Resources Specialists (staffing) that receive requests for accommodation should notify the DPM within two (2) business days of receipt. The DPM will then contact the requester.

Recognizing a Request for Accommodation

It is very important that supervisors, team leaders and Human Resources Specialists (staffing) are able to recognize a request for an accommodation. Not recognizing a request for an accommodation can have serious implications and may be perceived as a denial of accommodation.

The following are examples of requests for accommodations:

- An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing."
- An employee tells his supervisor, "I need six weeks off to get treatment for a back problem."
- A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office.
- A request for unpaid leave for an employee's own medical condition beyond what the Family and Medical Leave Act (FMLA) or an agency's leave policy allows;
- A request that states the need for an accommodation or describes a workplace related barrier but does not include a proposed solution; or

- A request that implicates both the Rehabilitation Act and other requirements (e.g., workers' compensation).

If a Supervisor, team leader, or Human Resources Specialist (staffing) is unclear as to whether he or she has received a request for an accommodation, then he or she should contact the DPM for guidance.

The Interactive Process

The DPM will begin the interactive process within ten (10) business days after receiving a request for an accommodation. Where a particular reasonable accommodation can be provided in less than ten (10) business days, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. Sometimes the appropriate reasonable accommodation for a particular request is obvious or apparent. Where it is not obvious or apparent, the DPM will engage the requester in an interactive process to evaluate the request and determine whether and what type of accommodation is appropriate. The phrase “interactive process” refers to the mutual sharing of information and ideas between the requester and the DPM. The requester shares responsibility for making the interactive process work by providing information that the DPM reasonably needs to evaluate the request. The interactive process usually includes, but is not limited to, the following:

- The DPM will communicate with the requester when the specific limitation, problem, or barrier is unclear, when the effective accommodation is not obvious, or when there are different possible accommodations.
- The DPM will ask the requester for suggested accommodation solutions and preferences.
- The DPM should ask for supporting medical information especially when the disability or need for accommodation is not obvious, apparent, or already known. The agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner.
- When the requester can identify the workplace barrier, but not the appropriate accommodation, the DPM, if necessary, will consult in-house experts or outside resources.
- When a requested accommodation is not effective, would pose an undue hardship, or is otherwise not legally required (e.g., removing an essential job function), the DPM will explore alternative reasonable accommodations.
- If an accommodation is provided but it is ineffective, the requester should promptly notify the DPM, and the DPM will re-initiate the interactive process.
- When a request involves an employee's work performance or conduct, the DPM will work closely with the supervisor to gather relevant information necessary to respond to the request and to assess whether a particular accommodation will be effective.
- The DPM may consult with other FERC personnel (e.g., an employee's supervisor, Information Technology staff) or outside sources to obtain information necessary to make a determination about the request.

Medical Documentation

The DPM may ask an applicant or employee for medical information in support of an accommodation request if it is not obvious or already known that the requester is an individual with a disability and needs an accommodation. FERC is entitled only to information sufficient to show that the applicant or employee has a disability and needs a reasonable accommodation. He/She may not ask for information unrelated to the condition for which the accommodation has been requested (e.g., an individual's entire medical record). It is the responsibility of the applicant/employee to provide appropriate medical information requested by FERC when the disability or need for accommodation is not obvious, apparent, or where there is not sufficient information.

If the initial information provided by the health professional or volunteered by the requester is insufficient to enable the DPM to determine whether the individual has a "disability" and/or that an accommodation is needed, the DPM will explain what additional information is needed. Supplemental documentation may also be needed that demonstrates how the requested accommodation will help the individual perform the essential functions of the employee's position. If necessary, the individual should then ask his/her health care provider or other appropriate professional to provide the missing information. The DPM may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual, the DPM may ask the individual requesting accommodation to sign a limited release permitting the DPM to contact the provider for additional information. The DPM may have the medical information reviewed by a medical professional of the agency's choosing at the agency's expense.

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that FERC obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any FERC employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The DPM may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, the DPM will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

- Supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
- First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance in evacuation; and
- Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.

Decision on Request for Accommodation

The DPM will notify the requester of the decision on the Resolution of Reasonable Accommodation Request Form within thirty (30) business days after receipt of the request for accommodation. If the DPM does not have sufficient information to evaluate the request within thirty (30) business days the time frame will be extended. The DPM will notify the requester in writing if the time frame is extended and the reason for the extension.

A request for reasonable accommodation will be expedited to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.

A request for reasonable accommodation will also be expedited to enable an employee to attend an event scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five (5) days.

If the request is denied, the written decision will explain the basis for the denial and notify the requester of his/her right to appeal. The denial of a request for an accommodation does not prevent an individual from making another request at a later time if the circumstances change (e.g., the disability worsens or the individual is assigned new duties).

Implementation of the Accommodation

Accommodations vary depending on the needs of the person with a disability and the nature of a job. Approved accommodations will be implemented as soon as practicable. The DPM will provide the requester with an approximate date of implementation and inform the requester of the status of his/her request. If an accommodation is not readily available, the DPM may offer a temporary accommodation until a permanent solution is available. The DPM will coordinate implementation of the accommodation and ensure that the accommodation is effective.

Reassignment as an Accommodation

Reassignment is the accommodation of last resort. An individual with a disability may be reassigned to a position provided that: (1) there is not a suitable reasonable accommodation available in the individual's current job; (2) a vacant funded position exists for which the individual is qualified; 3) it would not pose an undue hardship. "Vacant" means that the position is available when the employee asks for reasonable accommodation, or the employer knows that a position will become available within a reasonable amount of time.

FERC cannot reassign an employee who could be reasonably accommodated in his or her current position unless the employee voluntarily agrees. The FERC is not required to displace another employee, or promote or create a new position for the employee with a disability. The scope of the vacancy search is not limited to the facility, commuting area, sub-component, or type of work to which the individual with a disability is assigned at the time the need for accommodation arises.

Informal Dispute Resolution

An individual dissatisfied with the decision rendered by the DPM can ask the Executive Director of the Office of Executive Director to reconsider that decision. An individual must request reconsideration within ten (10) business days of receiving the decision.

The Executive Director will render a decision within twenty (20) business days of receipt of the reconsideration request. The decision rendered by the Executive Director is the **final Agency decision**. A request for reconsideration does not extend the time limits for initiating administrative, statutory, or collective bargaining claims.

Statutory and Collective Bargaining Claims

These Procedures do not limit or supplant statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims remain unchanged, including the time frames for filing such claims.

The Reasonable Accommodation Decision letter notifies employees of their rights to pursue separate administrative, statutory or collective bargaining remedies; if the accommodation of their choice is denied. . A request for reconsideration does not extend the time limits for initiating those claims.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:

For an EEO complaint, contact an EEO counselor within forty-five (45) days from the date of receipt of the written resolution notice or a verbal response to the request (whichever comes first). The forty five (45)-day filing period may not be applicable where there is an unreasonable delay in making a decision regarding an accommodation and the applicant or employee files a challenge before the decision is made.

For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement (see FERC's Labor/Management Agreement, Article 18).

For adverse actions over which the MSPB has jurisdiction, initiate an appeal to the MSPB within thirty (30) days of the appealable adverse action as defined in 5 C.F.R. §1201.3.

These procedures create no new enforceable rights under section 501 of the Rehabilitation Act of 1973, any other law, or the collective bargaining agreement. Executive Order 13164, which requires all Federal agencies to adopt reasonable accommodation procedures, explains in section 5(b) that the procedures are "intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, [or] its agencies."

Time Frames for Processing Requests

A request for an accommodation may be submitted at any time. Supervisors, team leaders and Human Resources Specialists (staffing) that receive a request for an accommodation are required to notify the DPM within two (2) business days of receipt. The DPM will then contact the requester to begin the interactive process. The DPM will begin the interactive process within ten (10) business days after receipt of the request for accommodation. The DPM will provide the

requester with a written decision within thirty (30) business days after receipt of the request for accommodation.

If the DPM does not have sufficient information to evaluate the request within thirty (30) business days, then the time frame will be extended. The DPM will inform the requester in writing if the time frame has been extended and the reason for the extension. Extensions will be limited only for as long as reasonably necessary to deal with the extenuating circumstance.¹ Accommodations will be implemented or denied, absent extenuating circumstances, within thirty (30) business days.

When all the facts and circumstances known to the agency make it is reasonably likely that the individual will be entitled to an accommodation, but the accommodation cannot be provided immediately, the agency will provide the individual with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship.

When necessary, a request for reasonable accommodation will be expedited to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job. A request for reasonable accommodation will also be expedited to enable an employee to attend an event scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five (5) days.

Information Tracking and Reporting

In compliance with the Rehabilitation Act of 1973, the DPM will complete the “Reasonable Accommodation Information Request Form” within five (5) business days of issuing a decision.

This information will be the basis of an annual report assessing FERC’s reasonable accommodation program and recommendations for improvement. The annual report will not contain confidential information about specific requests for reasonable accommodations. The annual report will be publicized to FERC employees.

If you have requested an accommodation and would like to check the status please contact the DPM via e-mail at Kadia.Givner@ferc.gov

Inquiries and Distribution

Any employee wanting further information concerning these procedures may contact the Disability Program Manager (DPM) via e-mail at Kadia.Givner@ferc.gov.

These procedures shall be posted on FERC’s Intranet and Internet sites. Copies will be available in the EEO Advisor’s office and distributed to all new employees as part of their orientation on their first day of work.

¹ “Extenuating circumstances” is applicable to “factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation.”

7 REFERENCES

- [FERC EEO counselor](#)
- [FERC's Labor/Management Agreement](#)
- [Executive Order 13164](#)
- [5 C.F.R. 1201.3](#)

APPENDIX A: ACRONYMS/TERMS AND DEFINITIONS

Acronym/Term	Definition
DPM	Disability Program Manager
Accommodation	In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities, including modifications or adjustments to a job application process, the work environment, the manner or circumstances under which a position held or desired is customarily performed, or to enable an employee with a disability to enjoy equal benefits and privileges of employment.
Disability	The term “disability” means: 1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of a substantially limiting impairment; or (3) being regarded (i.e. treated) as having a substantially limiting impairment.
Essential Functions	Those job duties that are so vital to the position that the individual holds or desires that he/she cannot do the job without performing them. A function can be “essential” if, among other things; the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform the duties. Determination of the essential functions of a position will be made on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.
Undue Hardship	Undue hardship means that the accommodation would be too difficult or too expensive to provide, based on the overall agency resources and workplace operations.
Interactive Process	The mutual sharing of information and ideas between the requester and the DPM.

APPENDIX B: OBTAINING SIGN LANGUAGE INTERPRETERS

Work Events Outside The Workplace

FERC will provide an interpreter for an employee who is deaf or hard of hearing who, as part of his/her job, attends a meeting or event outside of the workplace. If he/she attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters.

When an employee goes to a meeting, conference, or training program outside the workplace, FERC will provide a contract interpreter. FERC will provide transportation for or reimburse the travel costs of the employee and the costs for the interpreter(s). Similarly, if FERC pays for meals for the employee who is deaf or hard of hearing while attending these types of events, then the office of the employee with the disability must also pay for the meals for the interpreter.

Interpreting Phone Calls

Employees who are deaf or hard of hearing should schedule an interpreter when services are needed to interpret business-related phone calls. The telecommunication relay service is available to all FERC employees to serve telephone needs when a sign language interpreter is not available.

APPENDIX C: RESOURCES

Department of Veterans Affairs

<http://www.va.gov/index.htm>

Disability and Business Technical Assistance Centers (DBTACs)

The DBTACs provides information, training, and technical assistance on the ADA.

1-800-949-4232 (Voice/TTY)

Job Accommodation Network (JAN)

JAN is a service of the President's Committee on Employment of People with Disabilities that provides information, free-of-charge, about many types of reasonable accommodations.

<http://askjan.org/>

1-800-526-7234 (Voice)

Office of Personnel Management

<http://www.opm.gov/disability>

(202) 606-1800 (Voice)

(202) 606-2532 (TTY)

Registry of Interpreters for the Deaf

The Registry offers information on locating and using interpreters and transliteration services.

<http://rid.org/>

(703) 838-0030 (Voice)

(703) 838-0459 (TTY)

RESNA Rehabilitation Engineering and Assistive Technology Society of North America

RESNA can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities.

<http://www.resna.org/>

(703) 524-6686 (Voice)

U.S. Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

<http://www.eeoc.gov/>

1-800-669-3362 (Voice) 1-800-800-3302 (TTY)

U.S. Merit Systems Protection Board (MSPB)

The MSPB is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems.

<http://www.mspb.gov/>