



FLORIDA DEPARTMENT OF JUVENILE JUSTICE PROCEDURE

Title: Administration of the Americans with Disabilities Act Procedures

Related Policy: FDJJ - 1060

I. DEFINITIONS

Accommodation to Persons with Disabilities – The obligation of the Department to make reasonable accommodation to an employee, applicant, youth (client) or the general public for a physical or mental limitation. The exception to this rule is if the accommodation clearly affects the safety or efficiency of the Department or substantially affects costs.

Adverse Impact – The result of employment practices that appear neutral on their face but have a disproportionately negative effect upon a protected group.

Agency ADA Administrator – An employee in the Bureau of Human Resources responsible for the administration of all segments of the Americans with Disabilities Act (ADA) within DJJ and the development and implementation of policy. This employee receives, reviews, and coordinates the request for reasonable accommodations from the Regional ADA Coordinator or immediate supervisor of an employee requesting a reasonable accommodation; coordinates the review for ADA accommodations by the DJJ General Counsel's Office; and approves or denies request for ADA accommodations in consultation with the DJJ General Counsel's Office.

Agency Hiring Authority – The DJJ employee invested with the authority and oversight to advertise and fill a vacant position.

Aid-Essential Services – Auxiliary aids or services that enable a disabled individual to participate in or benefit from any activity or program.

Aid Essential Communication Situation – Any circumstance in which the importance, length, and complexity of the information being conveyed is such that the exchange of information between parties should be considered as Aid-Essential, meaning the requested auxiliary aid or service is always provided.

Americans with Disabilities Act (ADA) –

Title I - Prohibits discrimination in *employment* against qualified individuals with a disability.

Title II - Prohibits discrimination in *public services* against individuals with a disability.

Title III - Prohibits discrimination in *public accommodations* against individuals with a disability.

Title IV - Prohibits discrimination in *telecommunications* against individuals with a disability.

Covered Entity – An employer, employment agency, labor organization, or joint labor management committee.

Deaf Person – An individual who has suffered a permanent hearing impairment and is not able to discriminate speech sounds in verbal communication, with or without amplification devices.

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Disability – A physical or mental impairment that substantially limits one or more of the major life activities; or a record of such impairment; or being regarded as having such an impairment.

Discrimination Against a Qualified Individual on the Basis of Disability – Includes limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.

Disparate Treatment – Enforcing rules, regulations or other policies or practices differently for different groups, based upon their race, color, sex, age, religion, national origin, political belief, or disability.

Essential Functions – The fundamental duties of a job determined by giving consideration to whether employees in the position are required to perform the function, and then consider if whether removing that function would fundamentally change the job.

Genetic Information – An employee’s genetic tests (including genetic test done as part of a research study); genetic tests of an employee’s family member (defined as dependents and up to and including 4th degree relatives); genetic tests of any fetus of an individual or family member who is a pregnant woman and genetic tests of any embryo legally held by an individual or family member utilizing assisted reproductive technology; the manifestation of a disease or disorder in family members (family history); any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (genetic testing, counseling, or education) by an individual or family member.

Genetic Information Nondiscrimination Act (GINA) – Title I prohibits genetic discrimination by group health issuers and group health plans with respect to eligibility and premium contributions. Title II prohibits employers from using genetic information as a basis for discriminating against an individual with respect to hiring, firing or other terms and conditions of employment.

Hard of Hearing Person – An individual who has suffered a permanent hearing impairment, which is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

Hearing Impaired Person – A deaf or hard of hearing person.

Low Vision Devices – Devices that magnify, enhance or otherwise augment a visual image.

Major Bodily Function – Includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Major Life Activities – Activities which include, but are not limited to, caring for ones’ self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and the operation of a major bodily function.

Mental Impairment – Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities.

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Mitigating Measures – Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants, or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, the use of assistive technology, reasonable accommodations or auxiliary aids or services or learned behavioral or adaptive neurological modifications.

Ordinary Eyeglasses or Contact Lenses – Lenses intended to fully correct visual acuity or eliminate refractive error.

Physical Impairment – Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting the neurological, musculoskeletal, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, sensory, skin, or endocrine systems.

Program Accessibility – A public entity's programs, services or activities, when viewed in their entirety, must be readily accessible to and useable by individuals with disabilities. The concept of program accessibility is intended to make the contents of the program, service or activity equally available and accessible to persons with disabilities without excessive renovations of facilities.

Qualified Individual – An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential. If an employer has prepared a written position description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Qualified Individual With an Impairment – A person with a disability who fulfills the skills, experience, education and other job-related requirements of a position, and who can perform the essential functions of that position with or without reasonable accommodations.

Reasonable Accommodation – (a) Making existing facilities used by employees and the general public readily accessible to and useable by individuals with disabilities; (b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies; or (c) the provision of qualified readers or interpreters and other similar accommodations for individual with disabilities.

Record of Impairment – The history of a person who has been classified correctly or incorrectly as having a mental or physical impairment that substantially limits one or more major life activity.

Regarded as Having an Impairment – (a) Having a physical or mental impairment that does not substantially limit major life activities, but such impairment is treated by a recipient as constituting such a limitation; (b) having a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or (c) having none of these impairments, but being treated as having such an impairment.

Regional ADA Coordinator – The DJJ employee, located within a specific region, responsible for (a) determining if, based on ADA guidelines, an applicant or employee is covered by the provisions of the ADA; (b) receiving, reviewing and coordinating the requests for reasonable accommodations from the immediate supervisor of an employee requesting a reasonable accommodation; (c) coordinating accommodation efforts

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with the requesting supervisor; (d) researching the circumstances of a public complaint of an ADA barrier and providing a written response to the complainant within 30 days of receipt of the complaint; or (e) notifying an applicant or employee, in writing, of the action(s) to be taken in reference to an ADA complaint and providing a copy of the decision to the supervisor and the Agency ADA Administrator.

Retaliation – Any unlawful, prohibited action taken against an individual because they filed a complaint of discrimination, opposed a discriminatory practice, or participated in securing a right protected by civil rights laws. Any person alleging retaliation may file a complaint with the Florida Commission on Human Relations or the Equal Employment Opportunity Commission.

Service Animal – Any guide dog, signal dog, or other animal trained to perform tasks or assist a person with a disability.

Substantial Limitation – (a) An inability to perform a major life activity that an average person can perform; (b) a significant restriction on the condition, manner or length of time under which an activity can be performed as compared with the ability of an average person having comparable skills, training or ability; or (c) specifically in regard to working, a significant restriction on a person’s ability to perform in a job class or a broad range of jobs, compared with the ability of an average person having comparable skills, training, or ability.

Transitory (Minor) Impairment – An impairment with an actual or expected duration of 6 months or less.

Undue Burden (Program Accessibility) – Significant difficulty or expense to make alterations to buildings or facilities in which programs, services or activities are conducted in order to ensure equal benefit and opportunity to persons with disabilities.

Undue Hardship (Employment) – An accommodation that is excessively costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the Department or facility.

II. STANDARDS/PROCEDURES

A. Reasonable Accommodation Request from Applicants:

1. Any applicant for employment may request a reasonable accommodation at any time during the job application process.
2. When an accommodation is requested, the “[Request for Reasonable Accommodation – DJJ Applicant](#)” form (Attachment #1) must be completed and submitted. The request must be submitted to the Agency Hiring Authority and must indicate the type of accommodation requested.
3. The Agency Hiring Authority will contact the Regional/Facility ADA Coordinator or the Agency ADA Administrator if he or she is not sure if the applicant is covered by ADA.
4. If the determination is to deny any reasonable accommodation request, the Agency ADA Administrator must be consulted prior to the final decision being approved.

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5. When necessary, the Agency ADA Administrator shall forward all appropriate documents to the DJJ General Counsel's Office for review, comments, and recommendations.
6. All job announcements must include the statement "*Applicants requiring a reasonable accommodation, as defined by the Americans with Disabilities Act, must notify the agency hiring authority and/or the People First Service Center (1-877-562-7287). Notification to the hiring authority must be made in advance to allow sufficient time to provide accommodation.*"
7. Any cost involved in accommodating the applicant must be approved by the Regional Director or higher in the region where the accommodation is being requested. The appropriate Assistant Secretary or equivalent designee shall approve all costs associated with accommodations made at Headquarters.

B. Reasonable Accommodation Requests from Employees:

1. Any employees may request a reasonable accommodation under the ADA. The request for accommodation may be submitted on the "[Request for Reasonable Accommodation - DJJ Employee](#)" Form (Attachment #2) to their immediate supervisor.
2. The supervisor shall acknowledge to the employee, receipt of the accommodation request within five (5) business days of receipt of the form.
3. The supervisor shall review the accommodation request with the Facility or Regional ADA Coordinator prior to discussing it with the employee.
4. If an employee requests reasonable accommodation to perform the essential functions of the job, the immediate supervisor, Regional ADA Coordinator or the Agency ADA Administrator may request supporting documentation about his/her disability and functional limitations. The documentation must be from an appropriate health professional, who is currently providing health care to the employee. See Attachment #3 for [Sample Letter to a Medical Provider](#) requesting supporting documentation. The letter must be attached to (1) the "[Authorization for Release of Medical Information for ADA Purposes](#)" (Attachment #4), (2) the "[Certification of Health Care Provider – ADA](#)," (3) a copy of the employee's current position description, and (4) any applicable Protective Action Response (PAR) requirements. All required documents must be provided to the requesting employee's supervisor within 20 business days from the date of the letter requesting the documentation.
 - a. According to information contained in Title II of the Genetic Information Nondiscrimination Act (GINA) (rev. 11/10), "When an agency makes a request for health-related information (e.g. to support an employee's request for reasonable accommodation under the ADA or a request for sick leave), it should warn the employee or health care provider from whom it requested the information, not to provide genetic information. It is recommended the warning be in writing. The final regulations suggest language such as the following:
 - i. The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and others entities covered by GINA Title II from requesting or

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requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic Information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

5. Any cost involved in accommodating the employee must be approved by the Regional Director or higher in the region where the accommodation is being requested. The appropriate Assistant Secretary or equivalent designee shall approve all costs associated with accommodations made at Headquarters.
6. The Regional ADA Coordinators shall review all requests for reasonable accommodations within their region. They shall also acknowledge receipt of the request, to the appropriate supervisor, within five (5) business days and shall coordinate all accommodations with the supervisor. Whether the accommodation request is approved or denied, the Regional ADA Coordinator shall ensure all decisions are made in a consistent and unbiased manner.
7. If the determination is to deny any reasonable accommodation request, the Agency ADA Administrator must be consulted prior to the final decision being approved.
8. The Regional ADA Coordinator shall notify the employee in writing of the action to be taken regarding the accommodation requested. When the request has been finalized, the Regional ADA Coordinator shall forward all appropriate documents to the Agency ADA Administrator in the Bureau of Human Resources within five (5) business days of notifying the employee.
9. If the applicant/employee is not satisfied with the decision, he or she may request a review by the Secretary of the Department or his/her designee, or file a complaint following the complaint process detailed below in Section E.

C. Reasonable Accommodations for Nursing Mothers:

1. For a period of up to one year following a child's birth, supervisors and managers must provide a nursing mother:
 - a. A "reasonable break time" each time she needs to express breast milk; and
 - b. A location, other than a bathroom, shielded from view and free from intrusion, which may be used by the employee to express breast milk.
2. An employer is not required to compensate an employee receiving reasonable break time for the purpose of expressing breast milk for any work time spent for such purpose.

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3. Any state law, which provides greater protection than that provided under the Americans with Disability Act, shall preempt the Act.
4. Managers and supervisors of every work unit must ensure nursing mothers are aware of the break requirements and have appropriate contingency plans in place that will enable them to provide an appropriate accommodation when an eligible employee makes a request.
5. “Although the specific Fair Labor Standards Act (FLSA) of 1938, 29 USC § 207(r) provision does not include a definition of “reasonable” break time, nor does it require that such break times be compensable, the U.S. Department of Labor has indicated that employers are required to provide a reasonable amount of break time to express milk ... “*as frequently as needed by the nursing mother.*”

D. Program Accessibility and Accommodations for the Public:

1. Any member of the public with a disability, who encounters barriers, either physical or otherwise, when visiting or conducting business at any department facility, may contact the Facility or Regional ADA Coordinator or the Agency ADA Administrator. The person may submit their comments in writing or verbally to the Facility or Regional ADA Coordinator or the Agency ADA Administrator. The “[Notice of ADA Barrier](#)” form (Attachment #5) should be used to document the report.
2. The Regional ADA Coordinator must research the circumstances described and provide a written response from the Regional Director, Facility Superintendent or Chief Probation Officer to the person reporting the barrier within 30 business days of receipt of the complaint or comment. A copy of the complaint and the written response must be submitted to the Agency ADA Administrator for review prior to responding to the complainant.
3. Individuals must be given the opportunity to request the auxiliary aid or service that meets their needs. The individual’s preference must be given primary consideration. If a different method of accommodation is provided, it must be equally effective.

E. Complaint Process:

1. Applicants, employees, and members of the public who wish to file discrimination complaints may file them internally or externally or both.
 - a. Internal Complaints:
 - i. Internal complaints are filed with the Regional ADA Coordinator or the Agency ADA Administrator by completing and submitting:
 - (1) [Request for Reasonable Accommodation – DJJ Applicant](#) (Attachment 1);
 - (2) [Request for Accommodation – DJJ Employee](#) (Attachment 2); or
 - (3) [Notice of ADA Barrier](#) (Attachment 5).

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2. All complainants, witnesses, and other participants must be advised of their right to request reasonable accommodations for any phase of the complaint process. All correspondence issued to participants shall contain information for requesting accommodations.
3. Internal complaints alleging a violation of Title I of the ADA must be filed within 365 days of the alleged violation with the Agency ADA Administrator at 2737 Centerview Drive, Tallahassee, Florida 32399-3100. Complaints may also be filed with the Florida Commission on Human Relations, the United States Equal Employment Opportunity Commission or the United States Department of Justice.
4. Internal complaints alleging a violation of Title II of the ADA must be filed with the Agency ADA Administrator at 2737 Centerview Drive, Tallahassee, Florida 32399-3100 or with the appropriate Regional ADA Coordinator, within 180 days of the alleged violation. If the complaint is filed with the Regional ADA Coordinator, he or she will forward the complaint to the Agency ADA Administrator. The Agency ADA Administrator shall coordinate all responses through the DJJ General Counsel's Office. Complaints may also be filed with the Florida Commission on Human Relations, the United States Equal Employment Opportunity Commission or the United States Department of Justice.

b. External Complaints:

- i. Applicants, employees, and members of the public may file an external complaint with one of the following agencies:

United States Department of Justice (USDOJ)
Civil Rights Division
Coordination and Review Section
Post Office Box 66118
Washington, D.C. 20035-6118
(202) 514-0301 (Voice); TDD (202) 514 0383

Executive Director (FCHR)
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 200
Tallahassee, Florida 32301-4857
(850) 488-7082; Fax (850) 488-5291

United States Equal Employment Opportunity Commission (EEOC)
501 East Polk Street, Suite 1000
Tampa, Florida 33602
(800) 669-4000 (Voice); (813) 228-2841 (Fax); (800) 669-6820 (TDD)

United States Equal Employment Opportunity Commission (EEOC)
Miami Tower, 100 SE 2nd Street, Suite 1500
Miami, Florida 33131
(800) 669-4000 (Voice); (305) 808-1855 (Fax); (800) 669-6820 (TDD)

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III. RESPONSIBILITY AND DUTIES

A. Secretary of the Department

1. The Secretary or his/her designee reviews complaints filed by applicants/employees regarding ADA compliance decisions made by department employees.

B. Regional Director or Above

1. The Regional Director approves all expenditures involved in accommodating an applicant or employee under the ADA.

C. Agency ADA Administrator

1. Administers all segments, including the development and implementation of policy, of the Americans with Disabilities Act within DJJ.
2. Receives, reviews, and coordinates the request for reasonable accommodations from the immediate supervisor or Regional ADA Coordinator of an employee requesting a reasonable accommodation.
3. Coordinates the review by the DJJ General Counsel's Office, of requests for ADA accommodation.
4. Approves or denies requests for ADA accommodations based on consultations with the DJJ General Counsel's Office.
5. Forwards all appropriate documents to the DJJ Bureau of Human Resources.

D. Regional ADA Coordinator

1. Determines if, based on ADA guidelines, an applicant or employee is covered by the provisions of the ADA.
2. Receives, reviews, and coordinates the requests for reasonable accommodation from the immediate supervisor of an employee requesting a reasonable accommodation.
3. Coordinates accommodation efforts with the requesting supervisor.
4. Researches the circumstances of a public complaint of an ADA barrier and provides a written response to the complainant within 30 business days of receipt of the complaint.
5. If the determination is to deny any reasonable accommodation request, consults with the Agency ADA Administrator prior to the final decision being approved.
6. Notifies an applicant or employee, in writing, of the action(s) to be taken in reference to an ADA complaint and provides a copy of the decision to the supervisor and the Agency ADA Administrator.

E. Agency Hiring Authority

1. Provides the applicant with the "[Request for Reasonable Accommodation – DJJ Applicant](#)" form when an accommodation is requested.

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2. Contacts the Regional ADA Coordinator or the Agency ADA Administrator if he or she is not sure if the applicant is covered by ADA.

F. Immediate Supervisor

1. Receives and discusses the request for a reasonable accommodation with the Regional ADA Coordinator prior to discussing it with his/her employee and, when appropriate, provides the accommodation, or a reasonable alternative.
2. Acknowledges receipt of an ADA accommodation request within five business days and forwards a copy of the request and response to the Regional ADA Coordinator for review and coordination.
3. Provides a nursing mother (employee) a reasonable break time and a suitable location to express breast milk.
4. Ensures nursing mothers are aware of the break requirements and a suitable location is available.
5. Ensures timesheets accurately reflect time off if applicable.

IV. ATTACHMENTS

Attachment 1 [Request for Reasonable Accommodation – DJJ Applicant](#)

Attachment 2 [Request for Reasonable Accommodation - Employee](#)

Attachment 3 [Sample Letter to Medical Provider Requesting Supporting Documentation for Reasonable Accommodation under the ADA](#)

Attachment 4 [Authorization for Release of Medical Information in Reference to the Americans With Disabilities Act](#)

Attachment 5 [Notice of ADA Barrier](#)

Attachment 6 [Certification of Health Care Provider - ADA](#)

V. LINKS

Federal Links:

Americans with Disabilities Act www.ada.gov/

Fair Labor Standards Act <http://www.dol.gov/whd/flsa/index.htm>

The Civil Rights Act of 1964 <http://www.archives.gov/education/lessons/civil-rights-act/>

State Links:

Florida Administrative Code
http://dms.myflorida.com/human_resource_support/human_resource_management/for_state_personnel_system_employees/personnel_rules_and_statutes