



2.06 REASONABLE EMPLOYMENT ACCOMMODATIONS

Purpose

The City of Portland is dedicated to providing an equitable employment environment for all job applicants, job candidates, employees, interns, and elected officials (collectively, “Workers”). As part of this commitment, the City provides reasonable accommodations for qualifying people with disabilities, people who are pregnant or have related conditions, and people who have religious customs and/or beliefs (a “Protected Status”) to enhance workplace productivity and facilitate equal employment opportunities. The goal of this Rule is to ensure all Workers can readily and efficiently request and receive reasonable accommodations necessary to help them perform their essential job functions.

This Rule facilitates the City’s compliance with Title I of the Americans with Disabilities Act (ADA) of 1990 as amended and Title VII of the Civil Rights Act of 1964 as amended. The Rule also facilitates compliance with Oregon state law, namely ORS 659A.112 and ORS 659A.033.

It is the City’s policy that reasonable accommodation requests are processed without regard to the requestor’s race, color, ethnicity, religion, gender, marital status, familial status, national origin, age, disability status, sexual orientation, gender identity, source of income, veteran status, or other protected status.

Definition of Disability

As defined by the ADA, “disability” means a physical or mental condition that substantially limits one or more major life activities, or there’s a record of such a substantially limiting condition.

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

Definition of Religion

As defined by the Civil Rights Act, “religion” includes all aspects of religious observance and practice, as well as beliefs. The Equal Employment Opportunity Commission (EEOC) further defines “religious beliefs” to include theistic beliefs (i.e. those that include a belief in God) as well as non-theistic moral or ethical beliefs about right and wrong that are sincerely held with the strength of traditional religious views. Social, political, and/or economic philosophies and personal preferences are not considered religious beliefs.

Definition of Pregnancy

As described by Oregon state law and for the purposes of this Rule, “pregnancy” means pregnancy, childbirth, or a related medical condition, including but not limited to lactation.

Note: For nursing City employees who have a need to express milk for a child 18 months of age or younger, Oregon state law (ORS 653.077) provides such employees a reasonable rest period to express milk each time the employee has a need to express milk and requires the City to make reasonable efforts to provide a private location for nursing other than a public restroom or toilet stall. For more information, please speak with a Human Resources Business Partner.

Definition of Reasonable Accommodation

A reasonable accommodation is a change in the work environment or in the way job duties are typically performed that provides an equal employment opportunity. It is provided when:

- A qualifying applicant or candidate with a Protected Status needs an accommodation to have an equal opportunity to apply for a job with the City of Portland.
- A qualifying City of Portland elected official or employee with a Protected Status needs an accommodation to perform the essential functions of their job or to gain access to the workplace.
- A qualifying elected official or employee at the City of Portland who has a Protected Status needs an accommodation to enjoy equal access to benefits and other privileges of employment (e.g. trainings).

The City is not required to provide accommodations that would pose an undue hardship (e.g. too costly or disruptive to City operations), that fundamentally change the essential functions of a job, that violates an applicable collective bargaining or other agreement, or that might threaten the health and safety of the employee who made the request or the health and safety of other employees. However, in these cases, the City of Portland may discuss whether some other form of workplace modification may be effective.

Responsibilities

It is the responsibility of the Worker to request a reasonable accommodation. Read the “Initiating a Reasonable Accommodation” section for more information on requesting an accommodation.

Recruiters, hiring managers, supervisors, and other City staff must notify the Bureau’s assigned Human Resources Business Partner of any reasonable accommodation request they receive from a Worker. Managers and supervisors normally participate in the interactive process with both the Business Partner and the Worker to fulfill an accommodations request.

The Bureau’s assigned Human Resources Business Partner is responsible for initiating the interactive process with the person who requests an accommodation and to involve any person who the Business Partner deems necessary to ensure an effective and timely accommodation is provided. The Business Partner must ensure the Worker is informed of the outcome of the accommodations request. Business

Partners are also responsible for tracking data related to their Bureaus' accommodations requests.

The Bureau of Human Resources (BHR) is responsible for coordinating and monitoring the reasonable accommodations system at a Citywide level. This includes providing technical assistance and appropriate training to all Business Partners, managing the appeals process for reasonable accommodations, and Citywide recordkeeping on reasonable accommodations.

Role of Business Partners

Each City of Portland Bureau or Office has a designated Human Resources Business Partner to oversee the reasonable accommodation process. All reasonable accommodation requests are handled by or in conjunction with the Business Partner. When a determination of reasonable accommodation is made, the Business Partner will work with managers and/or recruiters to ensure the accommodation provided is appropriate to meet the Worker's needs and enables the person to perform the essential functions of their position. Business Partners may work with Operating Bureau Personnel Administrators (OBPA's) or other administrative staff to facilitate implementation of reasonable accommodations as needed.

Confidentiality

The City will ensure the confidentiality of all medical information obtained regarding a request for reasonable accommodation as well as the confidentiality of all associated communications during the interactive process. Both Bureaus and Business Partners must keep all medical documentation they receive in a file separate from an individual's personnel file. Non-medical information obtained during this process is shared on an as-needed basis with those involved in providing a reasonable accommodation.

Initiating a Reasonable Accommodation Process

The reasonable accommodations process begins when the City of Portland becomes aware that a Worker may need an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a Protected Status. This may occur when:

- A Worker requests a reasonable accommodation;
- A Worker discloses a Protected Status;
- A recruiter, manager or Business Partner recognizes an obvious challenge of a Worker due to a Protected Status; or
- A Worker returns to work after a leave of absence with a Protected Status.

Important Note: At times, the City of Portland may provide work modifications regardless of whether a Protected Status exists when permitted under the law. For example, the City of Portland has an ergonomic program available to all employees who may seek special equipment to address or prevent various injuries and conditions. Under the ergonomic program, an employee with carpal tunnel syndrome may request an ergonomic chair, stand/sit desk, or wrist pad. Requests under the ergonomic program, or other employee wellness programs may not require medical documentation. For more information on the ergonomic program, please contact the City of Portland's Risk Management division by calling (503) 823 – 5101. Additional contact information is available at the [Risk Management website](#).

Requesting a Reasonable Accommodation

A request is any communication in which a Worker asks or states that they need an accommodation because of a Protected Status.

A request may be made directly to a Business Partner, manager, supervisor, or (if applicable) a recruiter. A request does not have to include any special words, such as “religious accommodation,” “pregnancy accommodation,” “reasonable accommodation,” “disability,” or “ADA.”

A recruiter, manager, or the Business Partner may ask for clarification if they are unsure if the Worker is requesting a reasonable accommodation.

Upon being notified of an accommodation request, the Business Partner will provide the Worker with the appropriate Accommodation Request intake form.

If a Worker discloses a Protected Status, returns to work with a Protected Status (usually an ongoing disability); or if a recruiter, manager, or Business Partner recognizes an obvious challenge of a Worker due to a Protected Status, then the recruiter, manager, or Business Partner may proactively inquire if a reasonable accommodation would be helpful. If the Worker states they do not need an accommodation, the offer will be documented in writing by the Business Partner and no further action will be taken. If the Worker states that they do need an accommodation, the Business Partner will provide an Accommodation Request intake form.

Important Note for Workers with Disabilities: While a Worker does not have to disclose their disability until they feel they need an accommodation, it is recommended that Workers not wait until their performance appraisal meeting or during a disciplinary proceeding to disclose a disability and request an accommodation. The City of Portland does not have to rescind disciplinary actions administered prior to a request for an ADA accommodation. Any prospective discipline after disclosure will be administered as appropriate under the circumstances.

Interactive Process

The interactive process is a collaborative effort between the Worker, the manager, and the Business Partner to discuss the need for an accommodation as well as identify effective accommodation solutions.

It is expected that in the case of accommodations for applicants, the timing of the interactive process would be a priority so the applicant does not lose out on the opportunity to compete for a job.

Generally, an interactive process will be initiated as soon as feasible but no later than three (3) business days of the original accommodation request being made.

If an accommodation request is made to a recruiter, manager, supervisor, or other City staff person, the Business Partner must be notified within one (1) business day. Upon notification of an accommodation request, the Business Partner has two (2) business days to initiate the interactive process with the Worker.

An interactive process includes, but is not limited to:

- Understanding the job-related challenge that is generating the request;

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- Learning more about the Worker's a Protected Status is prompting the need for an accommodation, including the Worker's ability to perform essential functions of the job and what options are available to accommodate the Worker; and
 - Determining the reasonable accommodation solution(s) that may be effective in meeting the Worker's needs.

Depending on the type of accommodation requested, an interactive process may require input from City Attorneys, the Disability Resources and Employment Specialist, other Human Resources staff members, or other relevant Bureaus. A third-party vendor or community partner may also be consulted depending on the type of request sought.

A Worker's failure to cooperate with or participate in the interactive process could result in delayed consideration of a request or in its denial. If this occurs, the Worker may initiate a new accommodation request and interactive process at any time.

Medical Documentation for Workers with Disabilities

If the disability or need for accommodation is obvious or adequate medical documentation has already been provided for other reasons (e.g. a Family Medical Leave file or a Workers Compensation record may suffice), medical documentation may not be required.

When the disability or need for accommodation is not obvious, or further information is required as part of the interactive process, a Worker may be asked to sign a release form authorizing the Business Partner to secure additional job-relevant information from the Worker's health care provider as to the nature of the Worker's medical condition and/or whether the requested accommodation is necessary. The Business Partner may also give the Worker a list of questions to give to the health care provider or other appropriate professional to answer.

The Worker's cooperation in this process is necessary. A failure to cooperate with this process could result in delayed consideration of a request or in its denial.

Important Note: Medical information will be disclosed only on a need-to-know basis. Accommodations may be provided without informing the Worker's manager of the Worker's diagnosis or disability type.

Determination

When all necessary information is received from the Worker (including medical documentation, if needed) and the manager or supervisor, the Business Partner will assess the accommodation request and determine whether to approve or deny the request.

The Business Partner may consult with key advisors on a need-to-know basis (e.g. City Attorneys, the Bureau of Technology Services, Facilities staff, the Disability Resources and Employment Specialist) for input on the proposed accommodation, including whether an alternative modification or accommodation may be available.

When a decision has been made, the Business Partner will communicate the decision to the Worker and discuss the Worker's questions or concerns, if any, about that decision. The decision will also be communicated to the Worker's manager or supervisor, as well as any relevant stakeholders.

When the City of Portland grants an accommodation, the Business Partner will provide an Approval of Accommodation letter to the Worker. The letter will include next steps for implementation, as well as any training that may be needed.

A decision to provide an accommodation other than the one specifically requested will still be regarded as a decision to grant an accommodation. If an alternative accommodation is offered but declined by the Worker, the Business Partner will note the Worker's rejection of the alternative accommodation on the Approval letter.

If the City of Portland denies a request for accommodation, the Business Partner will provide a Denial of Accommodation letter to the Worker and discuss the reason for the denial. The letter will explain both the reasons for the denial of the accommodation request and the process for appealing this decision. If appropriate, the Worker will be informed of alternatives that could be explored.

When there are multiple accommodation options available to allow the performance of essential job functions, the City retains its right to select which one to implement.

Important Note: A Worker's receipt or denial of an accommodation does not prevent them from making another request if they believe an additional or different accommodation is needed due to changing workplaces or job expectations (e.g. an employee is assigned new duties or works in a new building location). City of Portland managers and Business Partners cannot refuse to process a request for a reasonable accommodation, and a reasonable accommodation request may not be denied based on a belief that the accommodation should have been requested earlier (e.g. during the application process or before the Worker returned from a leave of absence).

Time Frame for Processing Requests

The City of Portland will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible. While the City will facilitate providing reasonable accommodations to the best of its ability, individual cases may be more time consuming or challenging than others. Accordingly, all timelines specified in this Rule are aspirational.

The time frame for processing a request for job applicants and candidates (including providing accommodation, if approved) is as soon as possible but generally no later than 15 business days from the date the Business Partner received the initial accommodation request. This 15-day period includes the two (2) -day period in which the Business Partner must contact the applicant or candidate after being notified of a request for a reasonable accommodation.

The time frame for processing a request for employees, interns, and elected officials (including providing accommodation, if approved) is as soon as possible but generally no later than 30 business days from the date that the Business Partner received the initial accommodation request. This 30-day period includes the 2-day period in which the Business Partner must contact an employee, intern, or elected official after being notified of a request for a reasonable accommodation.

For disability-related accommodation requests, if the Business Partner must request medical documentation from the Worker's health care provider, the time frame will stop on the day the Business Partner makes a request to the Worker to obtain medical information or sends out a request for documentation and resumes on the day the Business Partner receives all needed documentation. It is therefore recommended that the Worker work closely with their health care provider to expedite their response to the City of Portland's inquiry, ideally within 1-2 weeks.

An extension of the time frame for providing an accommodation will be considered when circumstances come up that could not have been anticipated or avoided in advance of the request for accommodation or are beyond the City of Portland's ability to control. This may include times when the purchase, testing, and installation of software or hardware for approved accommodations requires additional time. When these circumstances are present, the time for processing a request for reasonable accommodation will be extended as reasonably needed by the Business Partner, in consultation with appropriate stakeholders. In these cases, the Worker, manager, and other need-to-know individuals will be notified as to the revised timeline, the reason for the additional time, and when the solution is expected to be ready.

Expedited Processing

In certain circumstances, a request for reasonable accommodation may require an expedited review and decision. This includes times when a reasonable accommodation is needed:

- To enable an applicant to apply for a job.
- To enable an applicant to participate in an interview or selection process.
- To enable an employee to attend a last-minute meeting or training.
- To address a safety-related concern in the workplace.

If the modification is approved, all reasonable efforts will be made to provide the modification in as short a timeframe as possible.

Temporary or Trial Accommodations

Many accommodations are implemented long-term, while some accommodations last for only a temporary period. Every situation is unique and requires case-by-case analysis of the Worker's limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and City operations.

Implementing a temporary change offers an opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term. Situations that can warrant provision of a temporary or trial accommodation may include, but are not limited to:

- When time is needed to research a permanent accommodation solution, to acquire equipment, or to arrange a service;
- When it is necessary to test an accommodation to determine if it is effective and/or compatible with existing City technology;
- When the medical condition is temporary but sufficiently severe enough to entitle the Worker to accommodation;

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- When it is necessary to avoid temporary adverse conditions in the work environment; or
 - When an accommodation can currently be provided but may eventually pose an undue hardship if provided long-term.

If a trial accommodation is found to be ineffective, then the Business Partner will contact the Worker to restart the interactive process.

Reassignment

If a Worker with a Protected Status cannot be accommodated in the Worker's current class or assignment in the current Bureau, the Bureau will refer the employee to the Business Partner and the Bureau of Human Resources for consideration of a permanent or temporary reassignment as appropriate and if possible.

Monitoring an Accommodation

It is the responsibility of the Worker to monitor the effectiveness of the accommodation. If an accommodation is no longer effective, then the Worker should notify the Business Partner or manager and the interactive process should be revisited.

Appeals

To appeal an ADA accommodation determination: A Worker who disagrees with the outcome of an ADA accommodation request may send an appeal request to the Bureau of Human Resources by email to ADATitleI@portlandoregon.gov where it will be reviewed by the Disability Resources & Employment Specialist. The appeal must be requested by email within 10 business days from the date of the Denial of Accommodation form. This deadline is strictly enforced.

To appeal a religious or pregnancy accommodation determination: A Worker who disagrees with the outcome of a religious or pregnancy accommodation request may send an appeal request to the Bureau of Human Resources by emailing the Employee and Labor Relations Team Manager. The appeal must be requested by email within 10 business days from the date of the Denial of Accommodation form. This deadline is strictly enforced.

Complaints

A Worker with a Protected Status who believes they have been discriminated against in an employment action or reasonable accommodation request (including any form of retaliation) may file a complaint with the Bureau of Human Resources. For more guidance on the complaint process, read HRAR 2.02 Prohibition Against Workplace Harassment, Discrimination and Retaliation.

Tracking and Record Keeping for Audit Purposes

To ensure compliance with this Rule, as well as relevant U.S. federal and Oregon state laws, the Human Resources Business Partners are responsible for tracking and recording all accommodation requests that occur within their assigned Bureau(s).

Inquiries

Any employee wanting further information concerning these procedures may contact their Human Resources Business Partner.

References

Title I of the Americans with Disabilities Act (ADA) of 1990, as amended
Title VII of the Civil Rights Act of 1964, as amended
ORS 659A.112
ORS 659A.033

**Administrative Rule
History**

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