

YOUTH SERVICES POLICY

Title: Americans with Disabilities Act - (Employees, Applicants, Candidates, Visitors) Next Annual Review Date: 11/30/2017	Type: A. Administrative Sub Type: 2. Personnel Number: A.2.13
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References: Federal Register, July 26, 1991(28 CFR Part 35) and republished as Appendix D to 28 CFR, Part 36, Nondiscrimination on the Basis of Disability in State and Local Services - Final Rule; La. R.S. 46:1403, 1404 and 1413(F); Child Protection Act 15:575 thru 587.3; La. Civil Rights for Handicapped Persons (La. R.S. 46:2251 et seq.), Title VII of the Civil Rights Act of 1964 and 1991; Americans with Disabilities Act of 1990 (ADA) as amended by the ADA Amendments Act of 2008 (P.L. 110-325), United States Code TITLE 42 -Chapter 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES, Sec 12101 et seq.; La. Employment Discrimination Law (La. R.S. 23:301 et.seq.); Executive Order JBE 16-11; Civil Service Manual, Part 18; ACA Standards 2-CO-1C-09, 2-CO-1C-09-1, 2-CO-1C-10, 2-CO-2B-04 (Administration of Correctional Agencies); 4-JCF-6C-02, 4-JCF-6D-07(Performance-Based Standards for Juvenile Correctional Facilities); YS Policy Nos. A.2.1 "Employee Manual", A.2.5 "Family and Medical Leave of Absence", A.2.10 "Hiring, Reallocation to or Promotion of a Juvenile Justice Specialist", A.2.28 "Return to Work", A.2.46 "Employee Grievance Procedure" and A.2.47 "Equal Employment Opportunity"; Youth Services Affirmative Action Plan; Index of Essential Job Functions and Essential Functions Form	
STATUS: Approved	
Approved By: <i>James Bueche, Ph.D., Deputy Secretary</i>	Date of Approval: 11/30/2016

I. AUTHORITY:

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

II. PURPOSE:

- A. To establish the Deputy Secretary's commitment to equal employment opportunities for all employees, applicants, and candidates for employment.
- B. To establish formal procedures regarding the reasonable accommodation of employees, the public, applicants and candidates.
- C. To constitute the Index of Essential Job Functions as part of this policy.

III. APPLICABILITY:

All applicants, candidates, visitors, and employees of Youth Services.

IV. DEFINITIONS:

Americans with Disabilities Act (ADA) - A comprehensive law passed by Congress to protect disabled persons from discrimination in employment, hiring, transportation, access to public facilities, and services and telecommunications. The ADA was amended in 2008 with an effective date of January 1, 2009 and is now also referred to as the American with Disabilities Act Amendments Act (ADAAA). (Refer to YS Policy No. A.2.10)

Applicant - A person who has applied for a job and whose qualification for such is unknown.

Candidate - A person who has successfully passed the required test(s), if any, and/or meets the Civil Service minimum qualifications for the job sought.

Disability - With respect to an individual, the term disability means:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- An individual regarded by others as having such impairment.

Equal Employment Opportunity (EEO) - The operation of a system of human resource administration which ensures an environment that will provide an equal opportunity for public employment to all segments of society based on individual merit and fitness of applicants without regard to race, color, religion, sex, sexual orientation, gender identity, age, national origin, political affiliation or disability (except where sex, age or physical requirements constitute a bonafide occupational qualification necessary to the proper and efficient operation of the agency/organization). The Equal Employment Opportunity Commission (EEOC) is the federal regulatory body for EEO related complaints and charges.

Essential Functions - Basic job duties, with or without reasonable accommodation, an employee/applicant needs to be able to perform.

Family and Medical Leave - Leave for which an employee may be eligible under the provisions of the Family and Medical Leave Act (FMLA) of 1993. (Refer to YS Policy No. A.2.5)

First ADAAA Questionnaire (Americans with Disabilities Act Amendments Act) – A standard form to be completed by an employee's treating healthcare provider(s) when accommodations are requested [see attached].

Impairment: Physical and Mental

- ***Physical*** - Any physiological disorder or condition, cosmetic disfigurement or anatomical loss impacting one or more body systems (neurological, musculoskeletal, respiratory, cardiovascular, digestive, lymphatic, and endocrine.)
- ***Mental*** - Any mental or psychological disorder a person has that substantially limits one or more of major life activities, such as mental retardation, emotional or mental illness, and organic brain syndrome.

Qualified Individual With A Disability - An individual with a disability as previously defined herein, who can perform the essential functions of the job with or without reasonable accommodation.

Substantially Limits – An individual’s major life activity is substantially limited if he is unable to perform a “major life activity” that most people in the general population can perform.

Unit Head - Deputy Secretary, Facility Directors, and Regional Managers.

YS Central Office - Offices of the Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, General Counsel, Deputy Assistant Secretary, Regional Directors, and their support staff.

V. POLICY:

It is the Deputy Secretary’s policy to assure equal opportunities to all employees, applicants and candidates for employment without regard to disability, except where physical requirements constitute a bonafide occupational qualification necessary for proper and efficient operations of the agency. Equal opportunities shall be provided for employees in areas of compensation, benefits, promotion, recruitment, training, and all other conditions of employment. Equal employment opportunity information shall be posted in prominent accessible places at each employment location.

VI. PROCEDURES:

A. Coordination of ADA Matters

The Deputy Undersecretary shall serve as the YS ADA Coordinator. The Coordinator is charged with reviewing, recording and monitoring YS ADA matters and shall also advise and make recommendations to the Deputy Secretary/designee. Each Unit Head shall designate an ADA Coordinator.

B. Requests for Accommodation

A qualified individual with a known disability of a permanent nature should be accommodated where reasonably possible, providing the accommodation does not constitute a danger to the individual or others, and does not create undue hardship on YS or its employees. If such individual is an employee or a candidate for employment, the individual must be able to perform the essential functions of the job with said accommodation.

Any person (employee, applicant, candidate or visitor) may complete a "Request for Accommodation" form [see Attachment A.2.13 (a)]. The person completing the form must forward it to the designated Unit ADA Coordinator for processing and action as instructed by the Unit Head. The Unit Head shall make a decision and ensure that the person is notified of and receives a copy of the decision. A copy of the completed "Request for Accommodation" form, along with the Unit Head's response to the request shall be forwarded to the YS ADA Coordinator.

Accommodations may also be requested by employees and candidates in the space provided on the pertinent "Essential Functions Form". Such requests shall be processed in the same manner as the "Request for Accommodation" form described above.

The attached "First ADA/AA Medical Questionnaire" completed by all treating healthcare providers may also be required when clarification is needed. [The "First ADA/AA Medical Questionnaire" shall be drafted by a designated YS attorney when needed.]

C. Essential Job Functions

1. General Requirements

Employment candidates that are requesting accommodation under this policy must complete an "Essential Functions Form" at the time of interview for employment. Existing employees must complete an "Essential Functions Form" prior to their return to employment or at the Unit Head's discretion after the "Request for Accommodation" form has been completed. Employees may be required to update the "Essential Functions Form" when deemed necessary by the Unit Head.

The Index of Essential Job Functions contains the "Essential Functions Form" for each job category used by YS. The Index is maintained in each Unit's Human Resource (HR) Liaison's office and in the Office of State Human Capital Management (OSHMC) located in the Department of Public Safety (DPS). Revisions to the Index require the approval of the Deputy Secretary.

2. Employee and Unit Specific Requirements

Employees may be required by the Unit Head to complete and update their “Essential Functions Form” under the following conditions (this is not an exclusive list):

- a. Exhaustion of sick leave and exhaustion of Family and Medical Leave Act (FMLA) entitlement if applicable;
- b. Expressed inability to participate in a mandatory work-related activity, such as training, and/or to perform essential job functions; and/or
- c. Determination by the appropriate supervisor(s) that the employee appears to be unable to perform essential job functions.

The Unit Head shall require the employee to provide an updated “Essential Functions Form” and “Medical Certification Form” [see Attachment A.2.13 (b)] from the employee's health care provider so the employee's status under the ADA can be assessed. The “Medical Certification Form” must include:

- 1) A prognosis;
- 2) Whether the condition is temporary or permanent;
- 3) When the condition began;
- 4) The expected date of return to duty;
- 5) Whether the employee is able to perform the essential functions of the job with or without accommodation; and
- 6) A description of the accommodation needed.

In certain situations a second opinion by an independent physician may be appropriate. This opinion would be at the Unit's expense.

D. Determination of Disability, Accommodation and Return to Work (refer to YS Policy No. A.2.28)

1. Upon receipt of the information requested relative to the employee's condition, the Unit Head shall forward copies to the YS ADA Coordinator. The Unit Head, with the assistance of the YS ADA Coordinator, shall determine whether the request/condition qualifies for ADA accommodation and take action as appropriate using the following guidelines. The Unit Head shall convene a meeting with the employee before any action is taken in order to allow both parties to engage in an interactive process to explore all options.

- a. If an employee falls under Section VI.C.2.b or c. and the Unit Head is unable to determine whether this is due to a temporary or permanent condition, the Unit Head may place the employee in forced sick, annual or compensatory leave consistent with State Civil Service (SCS) rules until this determination can be made.
 - b. If the condition does not qualify under the ADA, leave under FMLA (if eligible) or a temporary duty assignment may be appropriate. When feasible, employees who are temporarily disabled may be allowed to return to work in other assignments. If an employee is unable to return to work in any manner and has exhausted his sick leave and FMLA entitlement, he may be separated for exhaustion of sick leave.
 - c. If the disability is qualifying but no accommodation is available or the requested accommodation cannot be granted after the interactive meeting session, the Unit Head shall take the appropriate action.
 - d. In all of the above-described situations, the Unit Head shall forward all documentation, including the completed "Request for Accommodation" form and/or the "Essential Functions Form" relating to any request for accommodation, minutes from the interactive meeting(s), and other pertinent documents to the YS ADA Coordinator.
2. Reasonable accommodation(s) should be considered for qualified individuals with a permanent disability prior to separation from employment due to exhaustion of sick leave. Employees subject to such separation must also have exhausted their FMLA entitlement.

E. Conciliation Options

1. When a person feels that they have experienced discrimination in any manner or they are not satisfied with the results of a request for accommodation, that person may seek redress through the following:
 - YS grievance process (refer to YS Policy No. A.2.46 and/or the "Employee Manual", YS Policy No. A.2.1);
 - The Equal Employment Opportunity Commission for employment related complaints;
 - The U.S. Department of Justice (USDOJ) for issues not related to employment; and/or
 - Through the Louisiana Civil Service Commission.

2. Persons are encouraged to use the internal procedures to address and resolve complaints to the extent possible. Use of these internal procedures does not restrict a person from filing a complaint with the appropriate federal agency prior to exhaustion of the YS internal process.

F. General

Additional information pertaining to EEO and ADA is available in the Unit's HR Liaison's office and in the OSHCM office located at DPS.

Previous Regulation/Policy Number: A.2.13

Previous Effective Date: 11/23/2015

Attachments/References:

A.2.13 (a) Request for Accommodation

A.2.13 (b) Medical Certification Form

First ADA/A Questionnaire Template