

PERSONNEL POLICY MANUAL



EMPLOYMENT STATEMENTS

Policy Number: 2.8

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Title: REASONABLE ACCOMMODATION FOR
QUALIFIED INDIVIDUALS WITH DISABILITIES

Effective: 03/01/17

Authorized by:

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Supersedes: ---

SUMMARY

OTS provides “reasonable accommodations” to qualified applicants and employees with disabilities.

A “reasonable accommodation” is any change in the workplace or the way work is customarily performed.

An individual or the individual’s representative must inform OTS of the need for a “reasonable accommodation.”

Once a request is made, OTS and the individual must communicate about the request, the nature of the workplace problem, the health condition requiring the accommodation, and alternative workplace accommodations.

OTS prohibits retaliation against individuals on the basis that they have requested reasonable accommodations.

Scope

This policy applies to all employees.

Policy on Reasonable Accommodation

To ensure qualified individuals with disabilities¹ enjoy equal access to all employment opportunities, Oahu Transit Services, Inc. (“OTS”) doing business as TheBus and TheHandi-Van, provides reasonable accommodations to its employees and applicants to

¹ An individual with a “disability” is a person who has a physical or mental impairment that substantially limits one or more major life activity (“actual” disability) or has a record of such an impairment, even if they currently do not have any actual disability or are regarded as having a disability. Reasonable accommodations will not be provided to individuals who only meet the “regarded as” definition of disability. Individuals who meet the “actual” or “record of” definitions of disability must be able to show that the disability or past disability requires a reasonable accommodation. A “qualified individual with a disability” is an individual who can perform the essential functions of the position with or without reasonable accommodation.

compete for a job; to perform the essential functions² of the job or to gain access to the workplace; and to enjoy equal access to benefits and privileges of employment.

A "reasonable accommodation" is defined as any change in the workplace or the way things are customarily done to enable an individual with a disability to enjoy equal employment opportunities. OTS does not have to provide the exact accommodation requested. If more than one accommodation is effective, OTS may choose which one to provide. OTS does not have to provide the accommodation if the accommodation would cause "undue hardship" to the employer. "Undue hardship" means the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the nature and structure of the business operation.

Accommodations which pose a "direct threat," a significant risk of substantial harm to the health or safety of the individual or others in the workplace that cannot be eliminated or reduced by reasonable accommodation, will be rejected. A "significant" risk is a high, and not just a slightly increased, risk. The determination that an individual poses a "direct threat" must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job, considering a reasonable medical judgment relying on the most current medical knowledge and/or the best objective evidence. Regarding the employment of individuals with psychiatric disabilities, the employer must identify the specific behavior that would pose a direct threat. An individual does not pose a "direct threat" by having a history of psychiatric disability or being treated for a psychiatric disability.

OTS has a Reasonable Accommodation Team ("Team") in Human Resources to oversee the reasonable accommodation program. All requests for reasonable accommodation will be handled by the Team. If a request is given to a manager or supervisor rather than directly to the Team, that manager or supervisor should immediately forward the request to the Team. The manager or supervisor should email the Team at HR@thebus.org with the request and scanned copies of all documentation on the same day it is received. The original documentation should be hand-delivered to the Team or sent in a sealed confidential transmittal to Human Resources by the next business day.

² The "essential functions" of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform 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 if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

Reasonable Accommodation Procedures

The Team will document and keep records of all communication, information, and documents obtained through the reasonable accommodation process.

1. Requesting Reasonable Accommodation

An applicant or employee must inform OTS that the applicant or employee needs an adjustment or change concerning an aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An applicant or employee may request a reasonable accommodation, orally or in writing. An individual should request a reasonable accommodation from the Team. Information about contacting the Team will be in the job opening announcement.

A request does not have to include any special words—"reasonable accommodation," "fair employment," "disability" or "Americans with Disabilities Act (ADA)." A request is any communication in which individuals state they need OTS to provide or to change something because of a medical condition. If the nature of the initial communication is unclear, the supervisor, manager, or the Team should ask the individual whether they are requesting a reasonable accommodation.

A family member, health professional, or other representative may request an accommodation on behalf of an OTS employee or applicant. A doctor's note outlining medical restrictions for an employee constitutes a request for reasonable accommodation.

When an individual (or third party) makes an oral request, the Team must ensure that the "Request for Reasonable Accommodation" form ("Request Form") is completed. The Team should fill out the Request Form if the individual does not.

An employee needing a reasonable accommodation on a recurring basis, such as the assistance of a sign language interpreter must submit the Request Form only for the first request. However, the employee requesting accommodation must give advance notice each subsequent time the accommodation is needed. If the accommodation is needed regularly (e.g., a weekly staff meeting), the Team should ensure that the employee's supervisor arranges the accommodation without requiring a request before each occasion.

2. Processing the Request

While the Team has responsibility for processing requests for reasonable accommodation, the Team will work closely with an employee's supervisor or manager in responding to the request, particularly those involving job performance.

3. The Interactive Process

After submittal of a request for an accommodation, the parties will begin the interactive process to determine what accommodation should be provided. This means that the individual requesting the accommodation and the Team must communicate with each other about the request, the precise nature of the problem generating the request, how a health condition is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting the individual's needs.

The Team may ask questions concerning the disability and the individual's functional limitations to identify an effective accommodation. While the individual with a disability does not have to specify the precise accommodation, the individual must describe the problems posed by the workplace barrier. Suggestions from the individual with a disability may assist the Team in determining the reasonable accommodation to provide.

The Team should contact the applicant or employee within 10 business days after the request is made.

Two-way communication is critical throughout the process, but particularly where:

- the limitation, problem, or barrier is unclear;
- an effective accommodation is not obvious; or
- the parties are considering different forms of reasonable accommodation.

Both the individual making the request and the Team should work together to identify effective accommodations. There are specific considerations in the interactive process when an employee needs, or may need, a reassignment.

- Reassignment will only be considered if no accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship or a direct threat.
- In considering whether positions are available for reassignment, the Team will identify: (1) vacant positions for which the employee may be qualified (i.e. perform the essential functions), with or without reasonable accommodation; and (2) positions which the Team has reason to believe will become vacant and for which the employee may be qualified.

4. Requests for Medical Information

If an individual's impairment or need for accommodation is not obvious or already known, the Team may seek medical information showing that the individual has a covered disability that requires accommodation.

If the initial information provided by the health professional or volunteered by the individual cannot enable the Team to determine whether the individual has a "disability"

or what accommodation is needed, the Team will explain what additional information is needed. The Team may ask the individual requesting accommodation to sign an individually-tailored limited medical release permitting the Team to contact the health care provider for additional information. The Team may have the medical information reviewed by a doctor of its choosing, at OTS's expense.

If a supervisor or manager believes that an employee may no longer need a reasonable accommodation or that work circumstances have changed, they should contact the Team. The Team will determine if there is a reason to contact the employee to discuss whether the employee has a continuing need for reasonable accommodation.

5. Confidentiality of Medical Information

Medical information must be kept confidential and in a file separate from the individual's personnel file.

Medical information may be disclosed to:

- supervisors and managers to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
- first aid and safety personnel if the disability might require emergency treatment or assistance in evacuation; and
- government officials to investigate the Company's compliance with the Law.

6. Time Frame for Processing Requests and Providing Reasonable Accommodations

The time target for processing a request (including providing accommodation, if approved) is as soon as reasonably possible but no later than 30 business days from the date the request is made.

If the Team requires medical information, the time frame will stop on the day that the Team makes a request to the individual to obtain medical information or sends out a request for information/documentation and will resume on the day that the information/documentation is received by the Team.

7. Resolution of the Request for Reasonable Accommodation

All decisions regarding a request for reasonable accommodation will be communicated to the applicant or employee both orally and by a document titled "Resolution of Reasonable Accommodation Request" ("Resolution of Request").

Grant of Request. If the Team grants a request for accommodation, it will meet with the individual to discuss implementation of the accommodation. If the request is granted,

but the accommodation cannot be provided immediately, the Team will inform the individual in writing of the projected time frame for providing the accommodation.

A decision to provide an effective accommodation, even if it is not in the form specifically requested, will be deemed a decision to grant an accommodation. In such case, the Team will explain both the reasons for the denial of the individual's specifically requested accommodation and why the Team believes that the chosen accommodation will be effective. An individual may refuse to accept the effective accommodation chosen by OTS. In such case, the Team will record the individual's rejection of the alternative accommodation on the Resolution of Request. If such individual cannot perform the essential functions of the job thereafter, the individual will not be deemed "qualified" under the law to remain in the job.

Denial of Request. If the Team denies the specific request for accommodation, the Team will meet with the individual and discuss the reason(s) for the denial. The Resolution of Request will state the specific reason(s) for the denial, i.e., why the accommodation would cause undue hardship or why it would be ineffective. The Team will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not mean this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action not required by law, the Team will explore whether a reasonable accommodation will meet the employee's needs.

8. Relation of Procedures to Statutory and Collective Bargaining Claims

These procedures do not limit 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.**

Retaliation Prohibited

OTS forbids retaliation which means, adverse action against individuals on the basis that they have engaged in a protected activity. "Adverse action" is an action that is likely to interfere with or deter individuals from engaging in a protected activity, such as termination, refusal to hire, denial of promotion, intimidation, threats, harassment, unjustified negative evaluations, unjustified negative references, increased surveillance, and assault or unfounded civil or criminal charges. "Protected activity" includes opposing discrimination or harassment (e.g. complaining about an alleged discrimination or harassment, notifying others of the intent to file a charge or complaint, refusing to obey an order reasonably believed to be discrimination or harassment), participating in a discrimination proceeding (e.g. filing a charge of employment discrimination; assisting, cooperating with or serving as

a witness in an investigation, proceeding, or litigation of alleged discrimination or harassment), or requesting reasonable accommodations (whether granted or not).

Reporting of Discrimination, Harassment, or Retaliation

Individuals who have witnessed, been subjected to, or believe that someone has been the subject of discrimination, harassment, or retaliation in violation of this policy must immediately report the matter to the Team. Any individual who feels reporting to the Team would be or has been futile, unsatisfactory, or counterproductive, should contact the Director of Human Resources. Any individual who is determined, after investigation, to have engaged in discrimination, harassment, or retaliation in violation of this policy will be subject to discipline up to and including discharge (and for employees covered by the Teamsters contract, up to and including suspension pending dismissal).

An individual may also file complaints with external agencies. However, complaints are encouraged to be initially filed through OTS to determine if internal resolution is possible. The following external agencies will accept complaints:

1. EEO Officer
Department of Transportation Services
City & County of Honolulu
Fasi Municipal Building
650 South King Street, 3rd Floor
Honolulu, HI 96813
Phone: (808) 768-8310
2. Equal Employment Opportunity Commission
300 Ala Moana Boulevard, Room 7127
Honolulu, HI 96850-7127
Phone: (800) 669-4000
3. Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813-5080
Phone: (808) 586-8636

While OTS will not condone any form of retaliation against individuals who have made a good-faith complaint of discrimination, harassment, or retaliation with the Team or any governmental agency, individuals who file knowingly false and/or untruthful complaints will be subject to discipline up to and including discharge (and for employees covered by the Teamsters contract, up to and including suspension pending dismissal).

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Attachments:

1. Request for Reasonable Accommodation
2. Resolution of Request for Reasonable Accommodation
3. Authorization for Release of Health Information Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA")
4. Letter to Health Care Provider "Request for Documentation and Information Regarding Disability Accommodation Request," in Compliance with Hawaii Civil Rights Commission ("HCRC") Regulation, Hawaii Administrative Rules ("HAR") § 12-46-190(d)
5. Selected HCRC Regulations
6. Health Care Provider Accommodation Certification