

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency
Office of General Counsel



MLA 06-02
March 8, 2006

MEMORANDUM OF LEGAL ADVICE

Issue

Is the Child and Family Services Agency ("CFSA") required to provide accommodation to an employee who has a disability?

Conclusion

For the reasons below, we have concluded that under the Americans with Disabilities Act ("ADA"), the CFSA must make reasonable accommodation to the known disability of a qualified applicant or employee unless doing so would impose an "undue hardship" on the operation of the agency.

Authority

- a. Americans with Disabilities Act of 1990 ("ADA"), as amended (P.L. 101-336; 42 U.S.C. § 12101 *et seq.*); 29 C.F.R. Part 1630.
- b. D.C. Human Rights Act of 1977, as amended (D.C. Official Code § 2-1401.01 *et seq.*) (2001); 4 D.C.M.R. § 102.
- c. D.C. Official Code § 1-620.07 (2001); D.C. Personnel Regulations, Chapter 20B, §§ 2049, 2099, Health.
- d. D.C. Official Code § 1-631.01 *et seq.* (2001); Chapter 31A of the D.C. Personnel regulations, Records Management and Privacy of Records.

General Provisions

- a. Title I of the ADA prohibits covered entities from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.
- b. An individual with a disability is a person who: (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment.

- c. A major life activity is a function that the average person can perform with little or no difficulty, such as working, caring for oneself, seeing, hearing, walking, breathing, speaking, learning, sitting, standing, lifting, and reaching.
- d. A qualified individual with a disability is one who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the position.
- e. Reasonable accommodation is any effective modification or adjustment to a job, employment practice, or work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity, and may include, but is not limited to:
 - Making existing facilities used by employees readily accessible to, and usable by, persons with disabilities.
 - Job restructuring, modifying work schedules, reassignment to a vacant position;
 - Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, or providing qualified readers or interpreters.
- f. Generally, it is the obligation of the individual with a disability to request reasonable accommodation. The request could be in plain language, without use of ADA/legal terminology, and it could be oral.
- g. An employer is required to make reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business.
- h. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation (is the action excessively costly, extensive, substantial, or disruptive, or would it fundamentally alter the nature or operation of the entity?).
- i. When the disability or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his or her disability and functional limitations.
- j. Disability-related inquiries and medical examinations of employees must be job-related and consistent with business necessity. All medical-related information must be kept confidential and in separate and secure files. Records must be kept for at least one year from the making of the record or personnel action involved (29 C.F.R. § 1602.14).
- k. In accordance with the D.C. Human Rights Act of 1977, as amended (D.C. Official Code § 2-1401.01 *et seq.* (2001), the District of Columbia does not discriminate on the basis of actual or perceived disability. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

General Guidelines

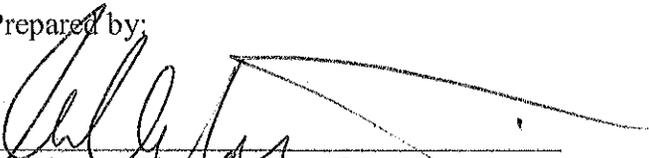
When considering an employee's request for ADA accommodation, the CFSA may follow these guidelines:

- a. Ask the individual to put the request in writing; respond to the request in writing.
- b. Promptly discuss the request with the employee and obtain any relevant information pertaining to the nature of the disability and the employee's functional limitations in order to identify an effective accommodation.
- c. Request that the employee provide medical documentation from his treating physician, if the disability and need for accommodation are not obvious (see Chapter 20B, § 2099, of the D.C. Personnel Regulations for an example of medical information to request).
 - Provide the employee with a position description so that the physician could indicate whether the employee could perform the essential functions of the position with or without reasonable accommodation.
 - Request the employee sign a limited medical release to allow appropriate CFSA staff to ask for and receive medical information related to the medical condition(s) for which the employee is requesting reasonable accommodation.
 - Inform the employee that failure to provide the medical documentation may result in the denial of the request for reasonable accommodation.
- d. If the accommodation granted is leave, provide appropriate notices if the employee is eligible under the Family and Medical Leave Act ("FMLA") which is designed to help employees to take reasonable leave for certain family and medical reasons (D.C. Official Code § 32-501 *et seq.* (2001), 4 D.C.M.R. 1600 *et seq.*; 29 U.S.C. 2611 *et seq.*, 29 C.F.R. 825.100 *et seq.*).

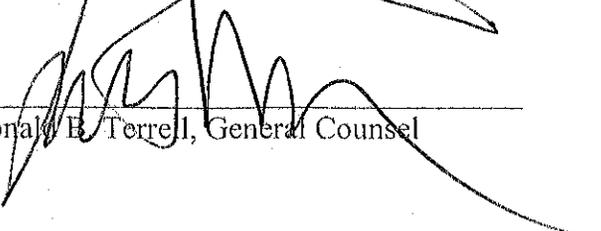
Resources:

- Job Accommodation Network: www.jan.wvu.edu (provides ADA information and resources).
- U.S. Equal Employment Opportunity Commission: www.eeoc.gov/types/ada.html.
- U.S. Department of Labor: www.dol.gov/dol/topic/benefits-leave/fmla.htm.

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