

## **Rule 2-70**

### **COMPLIANCE WITH AMERICANS WITH DISABILITY ACT (ADA) AND STATE DISABILITIES LAWS**

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#### **§ 2-70-010 PURPOSE**

It is the county's policy to ensure that qualified individuals are not discriminated against on the basis of disability and to comply with the reasonable accommodation requirements of the ADA (42 USC §§ 12101 to 12213, as modified by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and state disabilities laws (ORS 659A.100 to 659A.145). The county is committed to providing reasonable accommodations to qualified employees and applicants to ensure that individuals with disabilities enjoy full access to equal employment opportunity at the county unless to do so would cause undue hardship.

#### **§ 2-70-020 DEFINITIONS**

**DIRECT THREAT:** A significant risk of substantial harm to the health or safety of the disabled individual or others that cannot be eliminated by reasonable accommodation.

**DISABILITY:** An individual with a disability is a person who: (1) has a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

**ESSENTIAL FUNCTIONS:** The fundamental job duties of a position. Essential functions do not include the marginal functions of the position. A function may be essential for any of several reasons, including but not limited to the following: (1) a position exists specifically to perform the function; (2) there are a limited number of employees available among whom the performance of the job function can be distributed; or (3) the function is highly specialized and employees are hired for their expertise or ability to perform the particular function.

**INTERACTIVE PROCESS:** The process of the mutual information exchange between the county and the employee or applicant, and/or the county and the employee/applicant's health care provider, about

possible accommodations of employee disabilities that may allow employees to perform the essential functions of their jobs.

**MAJOR LIFE ACTIVITIES:** Basic activities that most people in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This is a nonexclusive list. It also includes the operation of major bodily functions, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**QUALIFIED INDIVIDUAL WITH A DISABILITY:** An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires and who, with or without reasonable accommodation, can perform the essential functions of the position. Individuals who currently use drugs illegally are not individuals with disabilities for purposes of this rule.

**REASONABLE ACCOMMODATION:** Modifications or adjustments to a job application process, work environment or manner in which the job is done that will enable a qualified individual with a disability to perform the essential functions of that position.

**REASSIGNMENT:** Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their position, with or without reasonable accommodation.

**SUBSTANTIALLY LIMITS:** The determination of whether an impairment “substantially limits” a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: medication, medical supplies, equipment, appliances, low-vision devices, prosthetics, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. However, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered.

**UNDUE HARDSHIP:** Significant difficulty or expense incurred by the county given the nature and net cost of the accommodation, overall county financial resources, and the type of business operation performed.

## **§ 2-70-030 EMPLOYMENT PRACTICES REGULATED BY TITLE I OF THE ADA AND STATE DISABILITIES LAWS**

(A) The county may not discriminate against individuals on the basis of disability in regard to any employment practices or terms, conditions, and privileges of employment. This prohibition covers all aspects of the employment process, including:

- Application process
- Testing
- Hiring
- Assignments
- Evaluation
- Disciplinary action

- Training
- Layoff/recall
- Leave
- Promotion
- Termination
- Benefits
- Medical examination
- Compensation

(B) Possible discriminatory actions include the following:

(1) Limiting, segregating or classifying a job applicant or employee in a way that adversely affects employment opportunities.

(2) Denying employment opportunities to a qualified individual because they have a relationship or association with a person with a disability.

(3) Refusing to make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the accommodation would pose an undue hardship to the business of the department.

(4) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability unless the standards, tests or selection criteria are job-related and necessary for the business of the department.

(C) Applicants may be asked about their ability to perform specific job functions with or without accommodation and may be asked to describe or demonstrate their ability as long as all applicants are asked the same question.

(D) The county may not make medical inquiries or conduct a medical examination until after a job offer has been made. A job offer may be conditioned on the results of a medical examination or inquiry, but only if this is required for all employees entering similar jobs.

(E) The county is not required to lower quality or quantity standards to make an accommodation.

(F) The county is not required to provide personal use items, such as glasses or hearing aids, as accommodations.

(G) The county is not required to cease disciplinary action based on a belated notice of disability and request for accommodations.

(H) Nonexhaustive examples of reasonable accommodations are as follows:

(1) Making existing facilities used by employees readily accessible to and usable by an individual with a disability.

(2) Job restructuring (the county is not required to remove or reassign essential duties of a position).

(3) Modifying work schedules (the county is not required to adjust work schedules if it places a hardship on other employees or in conducting the department's business).

(4) Permitting the use of accrued paid leave or unpaid leave.

(5) Reassignment to a vacant position (the county is not required to create a new job).

(6) Acquiring or modifying examinations, training materials, or policies.

(7) Providing qualified readers or interpreters (the county is not expected to employ persons who will read or interpret full time).

#### **§ 2-70-040 REASONABLE ACCOMMODATION REQUESTS**

(A) Managers and supervisors are responsible for identifying and listing the essential functions of positions. When position descriptions are completed, the essential functions and the physical and cognitive requirements of positions will be identified. Determination of the essential functions of a position should be done on a case-by-case basis, so that it reflects the job as actually performed and not simply the components of a generic position description.

(B) An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment, orally or in writing. The individual with a disability should request a reasonable accommodation when he/she knows that there is a workplace barrier that is preventing him or her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to employment.

(C) If the need for accommodation is not obvious, the request for accommodation *must* be submitted in writing to the department HR manager by either the employee or the employee's supervisor or by the applicant or hiring supervisor. The written statement must identify the nature of the claimed physical or mental disability, identify the functional limitations with respect to the disability, and identify the requested accommodation(s).

(D) Managers and supervisors are responsible for consulting with the department HR manager when receiving requests for reasonable accommodations from employees or applicants who have applied for or have been selected for positions. Department HR managers or designee must contact Labor Relations and the County Attorney's Office when a request for reasonable accommodation is received.

(E) The department HR manager or designee is responsible for facilitating an interactive process dialogue with the individual requesting accommodation and for determining the nature of the condition that gives rise to the potential accommodation requirement. This requires consultation with the individual and, when appropriate, the individual's healthcare provider(s) or other resources. The following forms must be completed and submitted to Labor Relations and the County Attorney:

(1) Guide to Interactive Process for Reasonable Accommodation;

- applicant);
- (2) Request for Reasonable Accommodation (completed by the employee and/or applicant);
  - (3) Department Checklist for Reasonable Accommodation Requests;
  - (4) Correspondence to/from the health care provider; and
  - (5) Authorization to Release Medical Records (if necessary).

(F) Individuals seeking accommodation must cooperate in the interactive process by providing the department HR manager with information necessary to make a decision regarding the request for accommodation. The individual may be required to execute a release allowing their health care provider(s) to disclose necessary medical information to appropriate HR representatives, Labor Relations and the County Attorney. Health care providers are instructed not to provide genetic information as part of this process, except as specifically allowed by law. Failure to provide appropriate documentation or to cooperate in the county's efforts to engage in the interactive process and/or to obtain such information and documentation can result in a denial of the reasonable accommodation request.

(G) An individual seeking accommodation may request that a representative assist them in the interactive process.

(H) Upon request, the employee or applicant's health care provider must assist in the determination of the individual's specific abilities or limitations in performing the essential functions of the position, with or without reasonable accommodation, what type of accommodation is required, if any, and whether the applicant or employee can perform the job without posing a "direct threat" to the health or safety of themselves or others. The county's health and safety requirements, if applicable, may be used when making the assessment. If the documentation provided by the health care provider is not helpful, the department HR manager or designee may contact the health care provider directly, solicit advice from other resources, or arrange for an independent medical evaluation to elicit accurate and complete information regarding the employee's abilities and limitations to perform essential functions of the job.

(I) As a general rule, the individual with a disability, who has the most knowledge about the need for reasonable accommodation, must inform the county that an accommodation is needed. However, the department HR manager or designee should initiate the reasonable accommodation interactive process without being asked if he/she knows, or has reason to know: (1) that the employee has a disability, and (2) the employee is experiencing workplace problems because of the disability. If the individual with the disability states that he/she does not need a reasonable accommodation, the county will have fulfilled its obligation under the ADA.

## **§ 2-70-050 REASSIGNMENT AS AN ACCOMMODATION**

(A) The County Attorney's Office and Labor Relations must be contacted before an employee is reassigned. Reassignment is the accommodation of last resort and is required only after it has been determined that:

(1) There are no effective accommodations that would enable an employee to remain in his/her current position, or

(2) All other reasonable accommodations would impose an undue hardship.

(B) Reassignments will only be made to vacant positions that individuals are qualified to perform. The employee does not have to be the best qualified individual for the position in order to obtain it as a reassignment. An employee is “qualified” to be reassigned into a vacancy if:

(1) He/she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and

(2) He/she can perform the essential functions of the position, with or without reasonable accommodation (see the definition of a qualified individual with a disability in 2-70-020).

(C) The county does not have an obligation to provide special training to employees to assist them in becoming qualified for positions to which they are being reassigned. However, employees with a disability that are being reassigned as a part of an accommodation process should receive the same training that is normally provided to anyone hired for or transferred to the position.

(D) Employees reassigned to another position as an accommodation will serve any trial service and probationary periods as required in applicable collective bargaining agreements and MCPR § 2-15.

(E) In considering whether there are positions available for reassignment, the department HR manager or designee will identify all vacant positions, and those that are expected to become vacant within sixty (60) days, looking first within their department, and then within the county, for which the employee may be qualified, with or without reasonable accommodation.

(F) Employees seeking reassignment to another classification must submit a resume and/or application to the department HR manager or designee for purposes of determining if an employee is qualified for a particular position.

(G) All attempts will be made to place the employee in a position that is equivalent to the employee’s current position in terms of pay, classification, and other relevant employment factors. If there is no equivalent vacancy, then vacancies in lower classifications for which the employee is qualified for should be considered. If an employee is reassigned into a position at a lower classification, the rules regarding voluntary demotion shall apply. Unless otherwise specified in an applicable collective bargaining agreement, the employee shall receive the rate of pay in the lower classification that causes the least reduction in pay.

(H) Reassignment as an accommodation means that employees with disabilities are not required to compete for positions through a recruitment process and are placed into vacant positions they are qualified for. Reassignments should be made, and positions are still considered vacant, even after recruitment announcements are posted and applications have been received, until an offer of

employment has been made to an applicant. Employees will not be reassigned to a position if such a reassignment would violate another employee's rights under a collective bargaining agreement.

## **§ 2-70-060 APPROVING AND DENYING REQUESTS FOR ACCOMMODATION**

(A) Consultation is required with the Labor Relations and the County Attorney's Office any time a request for accommodation is made or denied. The County Attorney's Office will track approvals and denials to ensure compliance with the regulations.

(B) After consultation with Labor Relations and the County Attorney's Office, the department HR manager or designee must provide a written offer or denial of reasonable accommodation to the individual requesting accommodation.

(C) Written notifications denying requests for accommodation should clearly state the specific reasons for the denial. Reasons for the denial may include:

(1) The requested accommodation would not be effective.

(2) Providing the requested accommodation would result in undue hardship.

(3) Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.

(4) The requested accommodation would require the removal of an essential function.

(5) The requested accommodation would require the lowering of a performance or production standard.

(D) The department HR manager or designee must complete the Denial of Reasonable Accommodation form and submit it to Labor Relations and the County Attorney.

(E) A determination of undue hardship is always made on a case-by-case basis, considering factors such as the nature and cost of the accommodation requested, as well as the impact of the accommodation on the business of the department. If a requested accommodation would pose an undue hardship, the department HR Manager or designee should explore whether other effective accommodations exist which would not impose undue hardship and could therefore be provided.

(F) Where multiple accommodations are suggested by the employee or applicant and their health care provider, the county will evaluate the reasonable accommodations presented. The county may also offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability. The final decision on selecting the appropriate reasonable accommodation rests with the county and will take into consideration:

(1) The effectiveness of available options;

- (2) The applicant or employee's preference;
- (3) Cost; and
- (4) Difficulty.

(G) Employees and applicants are not required to accept accommodations they have not requested. However, if the individual refuses an accommodation necessary to complete the employment process or perform essential job functions and as a result cannot perform those functions, he/she may be considered not qualified for the position.

## **§2-70-070 CONFIDENTIAL MEDICAL RECORDS**

(A) All medical information received or created by the county in connection with a request for reasonable accommodation must be kept in locked files by Human Resources separate from the employee's personnel file. This confidentiality requirement encompasses information about an individual's functional limitations and reasonable accommodation needs.

(B) The information obtained in the reasonable accommodation process may only be disclosed as follows:

(1) Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if strictly necessary.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) The information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers.

(C) An employee with a disability may voluntarily choose to disclose to co-workers his/her disability and/or the fact that he/she is receiving a reasonable accommodation. Managers and supervisors may not make such disclosure to the disabled employee's co-workers even when responding to questions. Instead, they may tell the co-workers that the county, as an employer, has a practice of assisting employees who encounter difficulties in the workplace and that these issues are personal and confidential.