

MARYLAND DEPARTMENT OF HEALTH
Office of Equal Opportunity Programs
Equal Access Compliance Unit
201 W. Preston Street, Room 422-H | Baltimore, MD 21201 | (410) 767-6600

ADAAA REASONABLE ACCOMMODATIONS PROCEDURES

In accordance with the Titles I and II of the Americans with Disabilities Act Amendments Act (ADAAA), Section 504 of the Rehabilitation Act of 1973, Title 20 of the State Government Article, Annotated Code of Maryland, and Title VII of the Civil Rights Act, the Maryland Department of Health (“MDH” or the “Department”) does not discriminate against persons with a disability in the provision of services, programs, benefits or activities. Procedures outlined in this document have been established to assist MDH employees with maintaining compliance with State and Federal statutes and laws.

Definitions

Disability

A mental or physical impairment that substantially limits at least one major life activity of an individual; a record of such an impairment; or being regarded as having such an impairment.

Major life activities include, but are not limited to: caring for oneself, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working, and the operation of major bodily functions.

Major bodily functions include but are not limited to: functions of the immune, digestive, neurological, respiratory, circulatory, endocrine and reproductive systems, normal cell growth, bowel, bladder and brain.

Qualified individual with a disability- EMPLOYMENT

A person with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Qualified individual with a disability- PUBLIC PROGRAM or SERVICE RECIPIENTS

For purposes of receiving services, education or training, qualified individuals with disabilities are disabled persons who meet the essential eligibility requirements established by the service, education or training.

Request for Reasonable Accommodations Definition:

A reasonable accommodation is any modification or adjustment to a job, work environment or program that will enable a qualified employee, applicant or recipient with a disability to perform essential job functions, participate in the application process, or benefits of the service and/or program.

Interactive Process

The interactive process is an informal contact involving both the requesting party and the determining party, where the precise job limitation(s) resulting from the disability is identified and potential reasonable accommodations that could overcome those limitations are discussed.

Requests for Reasonable Accommodations for Disabilities Due to Pregnancy

Effective October 1, 2013, pursuant to Chapters 547 and 548 of the 2013 Acts of the Maryland General Assembly and State Government Article § 20-609 employees are now granted a statutory right to reasonable accommodations if the pregnancy causes or contributes to a disability, and if the accommodation does not impose an undue hardship for the employer. Employers are required to recognize disabilities caused by pregnancy or childbirth as temporary disabilities for all job-related purposes and shall explore with the employee all possible means of providing the reasonable accommodation throughout the duration of the employee's pregnancy without creating an undue hardship to the employer. This law requires that under these circumstances, the pregnancy be treated as a temporary disability under any health or temporary disability insurance or sick leave plan available in connection with employment.

Employers may require medical documentation from an employee's health care provider regarding the medical advisability of a reasonable accommodation to the same extent certification is required for other temporary disabilities. The certification shall include: date a reasonable accommodation is medically advisable; probable duration; explanation as to the medical advisability of the reasonable accommodation.

Further, this law requires that employers post in a conspicuous location, and include in any employee handbook, information concerning the employee's rights regarding this law.

Accommodations Procedure

1. For **employment related matters**, requests for reasonable accommodations may be made to the unit Supervisor/Manager, Personnel Liaison, unit ADA Designee, or [MDH Equal Access Compliance Unit](#). For **public program/service-related matters**, requests may be made to an employee of the public entity or the MDH Equal Access Compliance Manager. *(For the purpose of this document, these individuals will be noted as the designated party or parties.)*
 - a. Note: requests may be made in writing or verbal. While MDH encourages that the Request for Accommodation Form be completed and submitted by the requesting party for recordkeeping purposes, the law does not require the request be made in writing; the interactive process must begin once MDH becomes aware of the request, written or verbal.
2. Once the request has been made, the designated party (cited in section 1) will meet with the program participant or employee to clarify the request and, **only if necessary**, request that the employee or participant submit sufficient medical documentation. (e.g., the medical limitation is not obvious and/or the nexus between the accommodation request and the self-identified disability is unclear.)

3. The designated party (cited in section 1) may contact the MDH Office of Equal Opportunity Programs (OEOP) [Equal Access Compliance Unit \(EACU\)](#) for guidance; or submit the request for a reasonable accommodation directly to EACU.
 - a. If the request is submitted directly to EACU, the MDH Equal Access Compliance Unit representative will discuss with both the requesting party and employer/public entity the nature of the reasonable accommodation request, the possibilities of granting the accommodation and alternatives for resolving the matter.
4. After all necessary documentation has been received from the employee or program participant, the designated party (cited in section 1), and other applicable parties may meet to make determinations for the accommodation request.
 - a. The medical documentation should explain the disability and functional limitations. The medical documentation must also substantiate why the requested reasonable accommodation is needed.
 - b. The designated party should not request documentation that is unrelated to determining the limitation and the necessity for an accommodation (e.g., requesting entire medical records or asking the requesting party's health care provider to reveal limitations not related to the request).
 - c. In **employment related matters**, if medical documentation does not address specific concerns held by the employer regarding the employee's ability to perform the essential functions of the job, the employee should be asked to have their health care provider complete and return a task analysis. If the task analysis is not returned in a timely manner (e.g., within 14 days) or remains unclear, the employee may be referred to the State Medical Director for the completion of the task analysis. Upon receipt of the task analysis and no or minimal improvement in the performance of essential job functions over a reasonable timeframe, (e.g. 60 days), the employee may be referred to the State Medical Director for a workability evaluation, if the referral is consistent with business necessity.
5. Employees referred to the State Medical Director (SMD) are required to report for the evaluation, with all expenses incurred by the Department. After such evaluation, the SMD will make a determination regarding the employee's ability to perform the essential functions of the job, with or without a reasonable accommodation.
6. The employee or program participant must be promptly notified of the outcome of their accommodations request after the interactive process has been completed and all necessary documentation is reviewed.
7. Information obtained by the employer regarding the medical condition or history of the applicant or employee must be maintained on separate forms and in separate files from the personnel record. This information is treated as a confidential medical record and shall only be disclosed to supervisors or managers that are related to the accommodation, first aid and safety personnel, when appropriate (e.g., emergency medical treatment is required) and government officials investigating compliance with the ADA.
8. COMAR 17.04.03.16 (D) requires that the reasonable accommodation process is documented in writing. This includes the specific accommodations that were considered,

offered, rejected by the employee or denied by management, as well as reasons for the denial. All approved accommodations should be documented as well.

Task Analysis

The Task Analysis is a form that is completed by a medical professional who evaluates an employee's physical ability to perform his/her essential job functions.

In accordance to COMAR 17.04.03.16(D), the appointing authority shall prepare an appropriate task analysis sheet and request that an examining physician complete and return it before an applicant is denied employment or an employee is involuntarily demoted or separated for medical reasons.

Task Analysis does not require that health care provider complete sections that are not relevant to the employee's job functions. Therefore, designated parties ***must highlight*** the areas of the form the health care provider is expected to complete and indicate the specific job duties that are under evaluation. **(e.g., If driving is not an essential function of the employee's position, the driving section of the Task Analysis Form shall not be highlighted nor completed by the employee's treating health care provider.)**

Compliance Monitoring

The unit ADA Designee will track all requests for employment related reasonable accommodations within their respective department(s) and report the information annually to EACU by October 15th of each year. A tracking form is attached.

Undue Hardship

MDH has a statutory obligation to provide a requested reasonable accommodation only if such a modification or adjustment does **not** cause an undue hardship. Undue hardship is defined as a request that poses a significant negative impact on the expenses and/or resources of the organization. Such an impact is determined by the cost of the accommodation in relation to the size, total financial resources, legitimate safety concerns, nature and structure of the employer's business and the facility providing the accommodation. In this case, all finances and resources under Maryland State Government will be considered for MDH requests.

Complaint Investigations

Any person who alleges discrimination on the basis of disability, including alleged failure to accommodate, in the provision of employment, services, activities, programs or benefits by MDH may [file a complaint with OEOP](#). All complaints or suspicions of potential discrimination, harassment or retaliation will be promptly investigated.

Internal complaints may be filed in writing or by contacting the MDH Equal Access Compliance Unit representative. Complaints filed with OEOP, must be filed ***within one (1) year (no longer 30 calendar days)*** after first knowledge or reasonably knowing of the alleged violation, by contacting:

Maryland Department of Health
[Office of Equal Opportunity Programs](#)
Equal Access Compliance Unit

201 W. Preston Street, Room 422-H | Baltimore, Maryland 21201
Office: (410) 767-6600 | Fax: (410) 333-5337
mdh.oeop@maryland.gov

Within 15 calendar days of receipt of the complaint, the complainant will be contacted to discuss the complaint and possible informal resolutions, including mediation. Within 15 days after the discussion or 60 days after the complaint has been filed, the MDH Equal Access Compliance Unit will notify the complainant of the Department's decision or will request an extension pending further need for investigation. The Equal Access Compliance Manager will make every attempt to resolve the complaint as soon as possible.

Parties may also file an external complaint with the **Maryland Commission on Civil Rights**, 6 St. Paul Street, Suite 900, Baltimore, Maryland 21202, 410-767-8600 (Phone), 410-333-1841 (Fax), within 300 days of the alleged violation or the **Equal Employment Opportunity Commission**, 10 South Howard Street, Baltimore, Maryland, 21202, 1-800-669-4000 (Phone), 410-962-4270 (Fax) within 300 days of the alleged violation.

As an alternative to contacting the Maryland Commission on Civil Rights, a **program participant** may file with **U.S. Department of Health & Human Services**, Office of Civil Rights, 150 South Independence Mall, Suite 372, Philadelphia, Pennsylvania 19106, 1-800-368-1019 (Phone), 215-861-4431 (Fax) Website: <http://www.hhs.gov/ocr/civilrights/complaints/index.html> within 180 of the alleged violation.

Complaints may be filed with any one of the external agencies and OEOP simultaneously.

Discipline

Any employee found to have violated the ADA may be subject to disciplinary action that includes, but is not limited to reprimand, demotion, suspension, or dismissal.

Appeals

If applicants or participants of MDH programs are dissatisfied with the OEOP's decision, they may file an external complaint with one of the aforementioned listed entities, under the "Complaint Investigation" section of this document, within the noted timeframes.

Confidentiality

Pursuant to the Annotated Code of Maryland, State Personnel and Pensions §5-214 Information obtained as part of an investigation conducted under this subtitle is confidential within the meaning of Title 10, Subtitle 6 of the State Government Article.

Retaliation

It is unlawful to retaliate against individuals for opposing an alleged discriminatory activity or participating in the investigation of an alleged violation of discrimination. Any employee found to have violated Federal or State laws prohibiting retaliation may be subject to disciplinary action that includes, but is not limited to reprimand, demotion, suspension or dismissal.