



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-030800 Americans with Disabilities Act (ADA)
/Americans with Disabilities Act Amendments Act of
2008 (ADAAA)

Issued: 1/19/90
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Reviewed: 9/30/20
Revised: 2/23/15

Alisha Tafoya Lucero, Cabinet Secretary

Original Signed and Kept on File

AUTHORITY:

- A. Policy *CD-000100*
- B. Americans with Disabilities Act, Americans with Disabilities Act Amendments Act of 2008, Titles I, II and V.
- C. Rehabilitation Act, Section 504
- D. NM Human Rights Act, NMSA 1978, Sections 28-1-1-15.
- E. NMSA 1978, Section 3-6-6.

REFERENCE:

- A. ACA Standards 2-CO-1C-09-1, *Standards for the Administration of Correctional Agencies*.
- B. ACA Expected Practices 5-1C-4054 and 5-5E-4429-1, *Performance Based Expected Practices for Adult Correctional Institutions*, 5th Edition.
- C. ACA Standards 4-APPFS-3E-03, *Standards for Adult Probation and Parole Field Services*, 4th Edition.
- D. ACA Standards 1-CTA-1C-03-01, *Standards for Correctional Training Academies*.
- E. ACA Standards 2-CI-5A-1 and 2-CI-5A-3, *Standards for Correctional Industries*, 2nd Edition.

PURPOSE:

To remove barriers which prevent individuals with disabilities from enjoying benefits and privileges of employment equal to those enjoyed by other similarly situated persons without disabilities and to ensure the availability of appropriate reasonable accommodation for individuals with disabilities including offenders. **[5-5E-4429-1]**

APPLICABILITY:

All full-time and part-time employees, volunteers to the Department, public or private employees of other agencies/companies doing work for the Department, consultants and contractors hired directly by the Department and inmates eligible for employment programs.

FORMS:

- A. **Reasonable Accommodation Request** form (*CD-030801.1*)
- B. **Policy Acknowledgement** form (*CD-030801.2*)

ATTACHMENTS:

None

DEFINITIONS:

- A. Americans with Disabilities Act (ADA) Coordinator: An appropriately trained and qualified individual who is educated in the problems and challenges faced by offenders with physical and/or mental impairments, programs designed to educate and assist disabled offenders, and all legal requirements for the protection of offenders with disabilities. [5-5E-4429-1]
- B. Applicant: An individual seeking employment with the Corrections Department or an employee seeking a promotion or transfer to a different position within the Corrections Department.
- C. Direct Threat: A significant risk of substantial harm to the health or safety of an individual or others that cannot be eliminated or reduced by reasonable accommodation.
- D. Disability: A physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.
- E. Employee: A person who does work for and receives wages from the Corrections Department, and whose work is under direct control and supervision of the Department. "Employee" includes term, probationary, permanent and exempt positions.
- F. Essential Functions: The fundamental job duties of any particular employment position. The term "essential function" does not include the marginal functions of the position. The job function may be essential for any or several reasons including, but not limited to, the following:
- The function may be essential because the reason the position exists is to perform that function; or
 - The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; or
 - The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function; or
 - Because it is necessary to ensure that life or safety is not jeopardized.
- G. Functional Limitations: Limitations imposed by a disability that impede or limit an individual's functioning which can include, but are not limited to, one or more of the following areas (or any area of physical or mental functioning):
- | | |
|------------------------------|----------------------|
| Sensory Functioning | Work Habits |
| Manual Dexterity | Personal Behavior |
| Motor Coordination | Academic Achievement |
| Physical Strength or Stamina | Job Seeking Skills |
| Interpersonal Relations | Mobility |
| Physical Appearance | Communication |
| Physical or Mental Comfort | Speech |

Thought Processes
Learning
Emotional Stability

Perception
Judgment
Memory

- H. Major Life Activity: Functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and the operation of major bodily functions.
- I. Mitigating Measures: Compensations made, assistive devices employed, auxiliary aids used, or actions taken to control, reduce, compensate for, or otherwise correct the impact of a physical or mental impairment. Examples of mitigating measures may include, but are not limited to, eyeglasses, medication, hearing aid, or prosthesis.
- J. Physical or Mental Impairment:
1. Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
 2. Any mental or psychological disorder, such as intellectual disability (formerly mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- K. Qualified Individual With A Disability: An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of an employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such a position.
- L. Reasonable Accommodation: A modification or adjustment to a job, the work/staff development environment, or the way things usually are done that enables an individual with a disability to enjoy equal employment opportunity, unless it can be shown that the accommodation would cause an undue hardship on the operation of the Department or cause a direct threat to the life or safety of any person. Reasonable accommodations may include, but are not limited to:
1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
 2. Job restructuring: part-time or modified work schedules; reassignment to a vacant position (employee only); acquisition or modifications of equipment or devices; appropriate adjustments or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- M. Record or History of Impairment: Persons who have a history of impairment, or have been diagnosed correctly or incorrectly as having impairment, e.g., a former cancer patient.
- N. Regarded As Impaired: Persons who have a physical or mental impairment which, though not substantially limiting a major life activity, are regarded as having such a limitation, e.g., persons who have suffered severe burns or former cancer patients.

- O. *Undue Hardship*: An action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the Department.

POLICY:

The Corrections Department, in accordance with the Americans with Disabilities Act and the Americans with Disabilities Act Amendments of 2008, will ensure that, applicants, disabled incumbents, employees, volunteers to the Department, public or private employees of other agencies/companies doing work for the Department, and consultants and contractors hired directly by the Department shall enjoy equal benefits and privileges of employment and not be subjected to discrimination on the basis of disability.

- A. An individual with a disability is entitled to equal employment opportunities. An individual with a disability is qualified if the individual satisfies the requisite skill, experience, education and other job-related requirements of the position, and if the individual, with or without reasonable accommodation, can perform the essential functions of the position or otherwise participate in staff development programs.
- B. The determination of whether an individual is qualified shall not be based on speculation regarding future inability to perform the functions, or upon consideration of potential increased health insurance premiums or workers' compensation costs. The need for a reasonable accommodation shall not serve as a factor in the employment decision.
- C. The Department shall provide a mechanism to process requests for reasonable accommodation to the known physical and/or mental impairments of an individual with a disability, either an applicant or an employee. The accommodation need not be granted if it would impose an undue hardship or direct threat. [2-CO-1C-09-1] [5-1C-4054] [4-APPFS-3E-03] [1-CTA-1C-03-1]
- D. Correctional industries operations and facilities shall comply with prevailing regulations pertaining to disabilities. [2-CI-5A-1] [2-CI-5A-3]



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AUTHORITY:

Policy *CD-030800*

PROCEDURES: [2-CI-5A-1] [2-CI-5A-3] [4-APPFS-3E-03] [5-5E-4429-1]

A. Procedures for Applicants:

1. Prior to commencing an interview, the applicant will be provided with a notice regarding the Americans with Disabilities Act/Americans with Disabilities Act Amendments of 2008.
2. If an applicant is incapable of reading the notice due to disability, the notice will be read to the applicant before commencing the interview.
3. The supervisor will determine whether an applicant satisfies requisite skill, experience, education and other related requirements of the position.
4. At no time during the interview will the supervisor inquire about a disability or the severity of a disability.
5. The supervisor will obtain a copy of the job description from the personnel officer and explain the essential job functions of the position. The supervisor will then ask without inquiring further into any disability whether the applicant can perform the essential functions with or without reasonable accommodation. The applicant will review the essential functions and sign the job description. The signed job description will be maintained on file.
6. If the applicant responds that an accommodation will be required, the requested accommodation will be recorded on a **Reasonable Accommodation Request** form (*CD-030801.1*) which is a confidential form.
7. The supervisor will interview all applicants in accordance with State Personnel Board Rules and the policy of the Corrections Department.
8. The supervisor will determine the most qualified applicant for the position based upon requisite skill, experience, education and other job-related requirements. The fact that an applicant may have a disability or require an accommodation shall not be considered in selecting the most qualified applicant. The supervisor will not make an offer of employment at this time.

9. If the most qualified applicant is an individual who has indicated that he/she can perform the essential functions, if provided with an accommodation, the supervisor will follow the same procedures as those listed for determining reasonable accommodation and for procurement of reasonable accommodation.
10. If a determination is made that the most qualified applicant cannot be reasonably accommodated, the supervisor may select the second most qualified applicant.

B. Procedures for Employees:

1. It is the employee's responsibility to request a reasonable accommodation to a disability from the appropriate Division Director, if the employee feels an accommodation(s) is necessary to perform the essential functions of the employee's job or to participate in a staff development program. If the disability is not obvious, the employee may be required to provide documentation of the disability, such as a diagnosis by a physician, medical records indicating the nature and scope of the disability, or other evidence sufficient to document the specific disability for which accommodation is requested. It is the employee's responsibility to assist in the determination of what type of reasonable accommodation(s) the individual should receive and to suggest alternatives that would be acceptable to the employee.
2. It is the responsibility of the employee's Division Director to:
 - a. Ensure that employees know of the availability of reasonable accommodations and the process for requesting them;
 - b. Identify the essential functions of the employee's position;
 - c. Assist the employee and the ADA Coordinator to determine whether a reasonable accommodation(s) can be made and, if so, what it should be, which may require the Division Director to consult with qualified rehabilitation counselors, qualified rehabilitation technicians, procurement personnel within the Department, the Corrections Department's legal counsel, and potential vendors;
 - d. Make sure an employee receives any reasonable accommodation(s) once it has been determined to be the appropriate accommodation(s) for the employee.
3. It is the ADA Coordinator's responsibility to:
 - a. Make the threshold determination whether there is a disability as defined by the ADA/ADAAA. The determination of whether an employee has an ADA/ADAAA disability must take into consideration whether the employee is substantially limited in a major life activity. Determinations will be made on a case-by-case basis.
 - b. Work with the Division Director and the employee in evaluating the essential functions of the job in question or what is otherwise needed to participate in a staff

development program.

- c. Provide technical assistance in available technology and various methods of providing accommodations and overcoming functional limitations to perform the essential functions of the job or to participate in a staff development program.
- d. Make recommendations and reach a consensus, if possible, regarding what is the most reasonable accommodation(s) for an employee, given the employee's desires, the requirements of the procurement process, the available budget, the essential functions of the job, the effect on other employees, and the effect on the operations of the agency.
- e. Consult with specialists, as necessary, including but not limited to, legal counsel, rehabilitation counselors, rehabilitation technicians, procurement personnel of the Department and of other state agencies, potential vendors, affirmative action officers, state and Department personnel officers, and the Department's budget staff.
- f. Determine if a reasonable accommodation(s) can be made.
- g. Notify the Department Secretary immediately if an employee cannot be provided with the accommodation(s) the employee desires or if no accommodation can be made.
- h. Monitor the reasonable accommodation process to ensure the employee actually received the agreed upon accommodation(s), if any.

C. Procedures for Determining Reasonable Accommodation: [5-1C-4054] [2CO-1C-09-1] [1- CTA-1C-03-1]

1. Informal Accommodations: Informal accommodations to address the functional limitations of an employee or an applicant with a disability may be made by the Division Director, within applicable Department policy and procedures, and should always be in writing. If there is any question that the informal accommodation(s) is not sufficient or that the employee or the applicant is not satisfied with the accommodation(s) provided, the employee or the applicant should be encouraged to use the formal accommodation process.
2. Formal Accommodation Process: This is a structured, documented procedure for requesting, evaluating, and receiving a determination of whether an accommodation is reasonable and, if so, receiving a reasonable accommodation.
 - a. The employee/applicant fills out the **Reasonable Accommodation** form (*CD-030801.1*) and gives it to the Division Director.
 - b. The Division Director ensures that the form is substantially filled out and forwards it to the ADA Coordinator, along with an opinion of the reasonableness and availability of the accommodation(s) requested.
 - c. The ADA Coordinator determines if the proof of the disability claimed is sufficient. If not, the Coordinator requests evidence of the disability from the

employee/applicant.

- d. The ADA Coordinator makes a determination of whether the employee/applicant is a "qualified individual with a disability" within the meaning of the ADA/ADAAA.
- e. If the ADA Coordinator determines that the employee/applicant is not a "qualified individual with a disability," the ADA Coordinator shall inform the employee/applicant, the Division Director and the Department Secretary. The ADA Coordinator shall document in detail the reasons for determining that the employee or applicant is not a qualified individual with a disability.
- f. If the ADA Coordinator determines that the employee/applicant is a qualified individual with a disability, the ADA Coordinator shall explore appropriate types of accommodations with the employee/applicant and the Division Director. The ADA Coordinator, the Division Director and the employee/applicant shall consider options in light of their roles and responsibilities, as set out in this procedure.
- g. The ADA Coordinator and the Division Director shall reach an agreement on what type of accommodation(s) will be offered to the employee/applicant. The ASD Director will be consulted as to budget implications. If budget is not available to support the accommodation(s), the Cabinet Secretary will make the final accommodation decision. All offers of accommodation(s) are subject to the State Personnel Act and rules promulgated by the State Personnel Board, the Procurement Code and rules promulgated there under, and existing Department policy.
- h. No accommodation(s) shall be agreed upon until the following factors have been considered:
 - 1) The type of accommodation(s) preferred by the employee/applicant;
 - 2) The type of accommodation(s) offered to employees or applicants in similar circumstances (in the interest of consistency);
 - 3) The cost of the service in relation to the total budget of the Department and in relation to other accommodation(s) which could be made to the employee/applicant;
 - 4) Alternative methods of providing reasonable accommodation(s) that could be made to the employee/applicant;
 - 5) Availability of the service or item needed in light of State Purchasing requirements, State Personnel rules, and applicable state and federal requirements.
- i. The accommodation(s) agreed upon by the Division Director and the ADA Coordinator shall be presented to the employee/applicant in writing.
- j. The employee/applicant shall either accept or reject the offered accommodation(s) in writing. If the proposed accommodation(s) is not accepted, the

employee/applicant shall state why the proposed accommodation(s) is not suitable.

- k. If the employee/applicant rejects the proposed accommodation(s), the ADA Coordinator and the Division Director may attempt to reach an agreement with the employee/applicant as to what accommodation(s) would be acceptable. If the ADA Coordinator and the Division Director determine that no agreement can be reached with the employee/applicant, the ADA Coordinator and the Division Director are not required to negotiate with the employee/applicant. The ADA Coordinator will inform the Department Secretary immediately in writing that the employee or applicant is not satisfied with the offered accommodation(s).
- l. Upon receipt of the ADA Coordinator's report that the employee/applicant is not satisfied with the accommodation(s) offered, the Department Secretary may:
 - 1) Affirm the decision of the ADA Coordinator and the Division Director, or
 - 2) Send the matter back to the ADA Coordinator for further consideration, or
 - 3) Overturn the decision of the ADA Coordinator and the Division Director and give the employee/applicant the accommodation(s) desired.

THE DECISION OF THE DEPARTMENT SECRETARY IS FINAL.

D. Procedures for Procurement of Reasonable Accommodations:

1. Purchasing Requirements. All purchases of items or services needed to provide reasonable accommodation(s) are subject to the provisions of the New Mexico Procurement Code, the regulations of the Department of Finance and Administration, (DFA) and the regulations of the General Services Department (GSD).
2. Purchases of Goods or Services. Reasonable accommodation(s) may require the purchase of goods or services to be provided by entities outside the Department. Services may generally be characterized as general services or professional services.

A "professional service" may be described as the services of a person requiring specialized experience, learning or higher education. An example of a professional service would be that provided by a sign language interpreter.

- a. A professional services contract that uses federal funds requires approval of the granting agency.
- b. A professional services contract must be procured in accordance with DFA regulations for the procurement of professional services.
- c. The standard DFA professional services contract should be used in contracting for professional services. The contract must contain a description of services to be rendered by the contractor and a not-to-exceed cost figure.
- d. All professional service contacts must be reviewed by the Department of Finance

and Administration for form, legal sufficiency and budget requirements.

3. A "general service" may be described as a service that, although requiring some skill or training, does not require advanced learning or specialized knowledge. Most of the services procured by the Corrections Department for reasonable accommodation(s) will be general services, as distinguished from professional services. Attendant services, clerical services, and driving services are examples of general services.
 - a. For the purchase of general services that cost under \$1,500.00 total, a Direct Purchase Order may be issued without the necessity for written or oral quotes or a contract. (It should be noted that the Procurement Code prohibits breaking down purchases into smaller units to avoid the requirements of the Procurement Code.)
 - b. If the total amount of remuneration will be between \$1,500.00 and \$5,000.00, GSD regulations require that, as far as is practicable; three written or oral price quotations must be obtained from various vendors.
 - c. The task of obtaining the price quotations can be delegated to the employee, but it is the supervisor's responsibility to ensure that this is done. The names of the businesses submitting quotations and the date and the amount of each quotation must be documented and kept in the procurement file.
 - d. A copy of the price quotations and the preferred vendor of services are then attached to a purchase request, which is sent to State Purchasing. State Purchasing may approve the choice of vendor by the Department, but is not required to do so.
 - e. After State Purchasing chooses a vendor, a contract is drawn up at the Corrections Department. The ADA Coordinator and the supervisor have the joint responsibility to ensure that this is done, with technical assistance provided by the Department's legal counsel and procurement personnel. The standard DFA contract brief should be used, with the exception that DFA approval is eliminated from the terms of the contract.
 - f. Any contract for driving services must contain a provision requiring the driver to have and maintain a satisfactory driving record. The supervisor and the ADA Coordinator have the joint responsibility to ensure that the contractor produces a lifetime driving record from the Motor Vehicle Division.
 - g. No contractor may drive a state vehicle unless the contractor has passed the State Defensive Driving Course and has a valid New Mexico Driver's License. Permission is also required from the General Services Department before any contractor may drive a state vehicle.

E. Inmate Access to a Qualified Individual:

The Warden shall designate an individual that is appropriately trained and qualified to coordinate efforts to comply with and carry out responsibilities defined by the Americans with Disabilities Act for Inmates. [4-4429-1]

NEW MEXICO CORRECTIONS DEPARTMENT
Reasonable Accommodation Request Form

Name: _____ Telephone Number: _____

I am requesting a reasonable accommodation in the work place for my disability.

Nature of Disability: _____

A reasonable accommodation is needed to assist me in accomplishing the following work tasks that are part of my job:

Employee's Signature

Date

Please give this form to your supervisor. If you wish, you may also forward the completed form to the Corrections Department, via the ADA Coordinator, Office of the Cabinet Secretary.

NEW MEXICO CORRECTIONS DEPARTMENT

Policy Acknowledgement

I, _____, acknowledge that I have received a copy of Policy *CD-030800* and Procedure *CD-030801* (Americans with Disabilities Act/Americans with Disabilities Amendments Act) and that I have familiarized myself with their contents. I further acknowledge that it is my responsibility to comply and recognize that violations may result in disciplinary action. If I have questions or if I do not understand any provisions of this Policy and Procedure, I will ask my supervisor or the Office of Equal Opportunity for assistance.

Employee's Signature

Date

Cc: Employee's Personnel File