

City of Red Bluff
Administrative Policies & Procedures – Personnel Manual

Subject: Reasonable Accommodation		Number: 22-47
		Effective Date: 10/17/2023
Departments Affected: All		Supersedes (Number/Date):
Authority: Section 2.82-A. Red Bluff City Code	File References:	
	Approved: Approved by City Council on: 10/17/2023	

Overview: The Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA) prohibit employment discrimination based on a person’s disability, perceived disability, or history of disability. The City of Red Bluff is committed to providing equal opportunity employment to all qualified applicants and employees, and a workplace free from discrimination and retaliation on the basis of a medical condition, physical disability, or mental disability.

Applicable to: All employees and candidates for employment

Definitions: ADA – Americans with Disabilities Act

CFRA – California Family Rights Act

Direct Threat - A significant risk of substantial or imminent harm, which cannot be eliminated or reduced to an acceptable level by reasonable accommodations. Assessment of whether a person poses a direct threat must be made on a case-by-case basis considering the following factors: duration of the risk, nature and severity of the potential harm, the likelihood the potential harm will occur, and the imminence of the potential harm.

FEHA – Fair Employment & Housing Act

FMLA - Family Medical Leave Act

Health Care Provider - A medical provider under FMLA and CFRA described as: 1) A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; 2) A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor authorized to practice, and performing within the scope of their practice under state law; 3) Nurse practitioners, nurse-midwives and clinical social workers, authorized to practice, and performing within the scope of their practice, as defined under state law; 4) A health care provider as previously listed, who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

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Interactive Accommodation Process (IAP) - Also referred to simply as the interactive process, is a discussion between the employee or applicant, the health care provider for the employee or applicant, and the employer. The discussion is meant to be collaborative in nature. Each party shares information about the disability or the limitations of the disability which may affect the employee or applicant's ability to perform the essential functions of the job.

Medical Condition - Either of the following: 1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or 2) Genetic characteristics, including: a) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, which is known to be a cause of a disease or disorder in a person or in his or her offspring, or that is determined to be associated with a statistically increased risk of development of disease or disorder, and that is presently associated with any symptoms or any disease or disorder, b) Inherited characteristics which may be derived from the individual or the family member, and are known to cause a disease or disorder in a person or his or her offspring, or is determined to be associated with a statistically increased risk of development of a disease or disorder, and are presently not associated with any symptoms of any disease or disorder.

Mental Disability – Includes but is not limited to: Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities which limit one or more major life activities.

Physical Disability - Includes but is not limited to: Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss which affects one or more body systems, including neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine which limits one or more major life activity.

Qualified Individual - A person who satisfies the job-related requirements of the position and is able to perform the essential functions of the position with or without reasonable accommodation.

Reasonable Accommodation - A modification or adjustment made to the application or hiring process, a modification or adjustment made to the way the job is performed, or any modification or adjustment to the work environment which allows a person with a disability, who is otherwise qualified for the job, to perform the essential functions and enjoy equal employment opportunities.

Serious Health Condition – An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential care facility, or continuing treatment by a health care provider.

Undue Hardship - May exist when it poses a significant difficulty or expense on the Department and/or the County. Significant difficulty or expense is determined by evaluating the nature and cost of the accommodation, availability

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of financial resources, as well as the overall impact on Department and County operations.

Guidelines:

The City of Red Bluff will make every reasonable effort to provide accommodations in accordance with the ADA, FEHA, and this policy, with the purpose of enabling an individual to: 1) be considered for a job; 2) perform the essential functions of their job; and 3) enjoy equal benefits and privileges of employment.

The City is required to provide reasonable accommodation for the known disabilities of a qualified individual. A reasonable accommodation may include, but is not limited to the following:

- Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.
- Job restructuring, part-time or modified work schedules, reassignment to a vacant position (not applicable to applicants), acquisition or modification of equipment or devices, adjustments or modifications of examinations, training materials, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The ADA and FEHA require employers to engage in the interactive accommodation process with employees or applicants who request reasonable accommodation. Employers must provide reasonable accommodation to individuals who:

- Have an actual medical condition, physical disability, or mental disability.
- Have been perceived to have a disability.
- Have a record or a history of a disability.
- Are regarded or treated as having or having had a disability.

For purposes of reasonable accommodation, physical and mental disabilities do not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from current unlawful use of controlled substances or other drugs.

Disability Notification

The City is subject to strict limitations with regard to making inquiries about an individual's medical condition or disability. Therefore, the employee or applicant is responsible for providing notification identifying they have a condition or disability which requires reasonable accommodation. Submission of this information is voluntary. A verbal or written notice of a disability may come in the form of:

- A direct statement from an employee or an applicant to a supervisor or interviewer indicating he or she is unable to perform an essential function of the job because of a disability.

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- An employee or applicant's direct request for a reasonable accommodation to the supervisor or interviewer.
- A supervisor or interviewer's receipt of information regarding an employee or an applicant's disability or need for accommodation.

Notification may also be made to the Department Head or the Human Resources Department.

Interactive Accommodation Process (IAP)

Communication is essential throughout the interactive process. Keep in mind, each employee is unique and specific details about their disability may vary widely. The IAP should be used as a two-way dialogue between the Department and the individual requesting an accommodation. It is required that a member of the Human Resources Department be present to assist with facilitating the dialogue, especially in cases when an employee's statutory leave has been exhausted, or there are permanent accommodations.

When a request for accommodation has been made, the Department Head or designee, in consultation with Human Resources and the individual requesting accommodation, must promptly engage in a good faith interactive accommodation process. The purpose of the IAP is to determine what, if any, accommodation can be provided. Employees have a right to have a representative of their choice involved during the IAP.

Responsibilities for the Human Resources Department in the IAP should include, but are not limited to the following:

- Communicating with the employee or candidate the process of determining whether an accommodation will be provided.
- Obtaining information from the individual and the individual's health care provider regarding limitations and the need for accommodation.
- In consultation with the employee or applicant, identifying all possible accommodations, which would enable the employee or applicant to be considered for the position, perform the essential functions of the position, or otherwise enjoy equal privileges of employment.
- In consultation with the employee or applicant, assessing the reasonableness of each accommodation in terms of effectiveness and equal opportunity for the employee or applicant.
- Implementing the accommodation which is most appropriate for the employee or applicant and the City.

The interactive process is an ongoing activity. In order for all potential accommodations to be thoroughly considered, the involved parties may need to meet on multiple occasions.

It should be noted, the City is not obligated to provide the accommodation most preferred by the employee or applicant or their health care provider. The Department Head, or their designee, has the ultimate discretion to choose

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amongst the accommodations, so long as the chosen accommodation is reasonable and effective. The City is also not required to provide an accommodation which would result in an undue hardship or an accommodation which would present a direct threat to the employee, applicant, or others. *For example, if one accommodation costs more or is more burdensome than the other accommodation, the Department Head may choose the less expensive or less burdensome accommodation, or another accommodation which is easier to provide.*

The City may require the completion of a Physician's Return to Work Certificate by the individual's health care provider to establish that an individual has a disability that necessitates a reasonable accommodation. If the information provided by the health care provider is inadequate, incomplete, or conflicts with other information obtained, the Human Resources Department may request further clarifying information, and in some instances may send the employee or applicant to a physician of the City's choice at the City's expense.

For current employees only: If an employee with a disability or medical condition can no longer perform the essential functions of their position, with or without an accommodation, but is qualified to perform the essential functions of a different position, the City will explore reassignment. In consultation with the Department Head or their designee, efforts will first be made to reassign the employee to a vacant and funded position within the employee's current department. If a suitable position does not exist within the employee's current department, the Human Resources Department will conduct a citywide search to assess whether a vacant position (for which the employee is qualified) exists in another department. Promotions, creation of new positions, or displacement of other employees are not considered a requirement and will not be considered as part of the reasonable accommodation process.

Documentation and Communication

Documentation outlining the reasonable accommodation process establishes compliance with the regulatory requirements of the ADA and FEHA. Therefore, notes will be taken throughout the IAP and a summary of events may be drafted using the written notes taken during the interactive process. Upon conclusion of the interactive process, a copy of the notes and/or summary will be placed in the employee's confidential medical file. A copy may also be provided to the employee upon their request.

When a reasonable accommodation has been established, the decision should be immediately communicated to the employee and their supervisor or designee, and the Department Head. Notification should be provided to the employee in writing to ensure understanding between the parties.

Confidentiality

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. Documents containing

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medical information shall be kept in a confidential medical file which is separate from the employee's personnel file. Confidential medical information is limited to a "need to know" basis. Supervisors or managers who need to know may be informed about necessary work restrictions or duties related to the reasonable accommodation, however medical information should only be disclosed if strictly necessary. *For example, an insulin diabetic may need a reasonable accommodation for periodic meal breaks. The supervisor may be informed of the need for periodic breaks, AND to be cognizant of any objective signs in the employee's behavior which may signal a need for an unscheduled break.*

If the disability requires emergency treatment, medical information may also be disclosed to first aid and safety personnel.

Whenever medical information is disclosed, the individual disclosing the information must ensure the recipients comprehend confidentiality requirements. For more information on the legal obligations and privacy laws for employees with access to confidential information, see AP&P 22-10: Employee Responsibility to Maintain Confidentiality.

An applicant may initiate a request for reasonable accommodation verbally or in writing, to the Human Resources Department, the interviewer, or they may indicate a need for reasonable accommodation through the online employment application process. Reasonable accommodation may be requested during the recruitment, examination process, selection process, or if there is a need for reasonable accommodation to perform the essential functions of the position.

Department Heads and supervisors are expected to be familiar with the reasonable accommodation process and this policy. In the event a request for reasonable accommodation is received, Department Heads and / or supervisors are responsible for participation in the interactive process meeting. Human Resources must be contacted to help facilitate the dialogue.

References: Americans with Disabilities Act www.ada.gov; California Department of Fair Employment and Housing www.dfeh.ca.gov; Govt. Code §12945.1 – 12945.6 Calif Family Rights Act; Govt. Code §19702.3 Family Care Leave; Code of Regulations Title 2 §11087-11098 California Family Rights Act; United States Code Title 29 §2601-2654 Family and Medical Care Leave Act of 1993; Code of Federal Regulations Title 29 §825.100-825.800 Family and Medical Leave Act of 1993.