




<b>Approved by:</b> Juan Williams, Commissioner	<b>Policy Number:</b> 22-003 (Rev. 08/25/2023)
<b>Signature:</b> 	<b>Supersedes:</b> 18-001
<b>Application:</b> Executive Branch Agencies and Employees	<b>Effective Date:</b> August 31, 2022
<b>Authority:</b> T.C.A. § 4-3-1703, T.C.A. § 8-30-104, T.C.A. § 50-10-101 et. seq., T.C.A. § 4-21-401	<b>Rule:</b> Chapter 1120-07

## Employment Reasonable Accommodation

It is the policy of the State of Tennessee to provide reasonable accommodation to qualified individuals who are employees or applicants for employment, unless to do so would cause undue hardship or a direct threat.

To ensure compliance with applicable state and federal laws, this policy establishes guidance regarding reasonable accommodation and the interactive process, based on (1) disability, (2) pregnancy, childbirth, lactation, and/or related medical conditions, and (3) religion. This policy is intended to provide assistance to individuals seeking reasonable accommodation as well as agencies responding to accommodation requests.

### Definitions

*Disability:*

- 1) A physical or mental impairment that substantially limits one or more major life activities; or
- 2) A record of a physical or mental impairment that substantially limits a major life activity; or
- 3) Being regarded as having such an impairment, meaning the individual has been subjected to an action prohibited by the Americans with Disabilities Act (ADA) because of an actual or perceived impairment that is not both minor and transitory (will last fewer than six months).

*Qualified Individual/Applicant:* An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the position and can perform the essential functions of the position, with or without reasonable accommodation.

*Essential Functions:* The fundamental job duties that an employee must be able to perform, with or without reasonable accommodation.

*Lactation:* Employees who is nursing and/or needs to express breastmilk during the workday within one years of birth of the nursing child.

*Physical impairment:* Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

*Mental Impairment:* Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*Substantially Limits:* An individual is (or has been) substantially limited in performing a major life activity as compared to most people in the general population.

*Major Life Activity:* Activities include but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions and/or individual organs within a body system, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

*Reasonable Accommodation (for disability- and/or pregnancy-related accommodation requests):*

- 1) Modifications or adjustments to a job application process that enable a qualified applicant to be considered for the position such qualified applicant desires; or
- 2) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual who is qualified to perform the essential functions of that position; or
- 3) Modifications or adjustments that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees.

*Reasonable Accommodation (for religious accommodation requests):* Any adjustment to the work environment that will allow an individual to act in accordance with the individual's religious beliefs and/or practices.

*Religion:* All aspects of religious observance and practice, as well as belief. This includes traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism. It also includes religious beliefs that are new, uncommon, not part of a formal church or sect, or are only held by a small number of people.

*Interactive Process:* An informal process between the agency and individual requesting the accommodation to clarify what the individual needs and to identify the appropriate reasonable accommodation.

*Undue Hardship (for disability- and/or pregnancy-related accommodation requests):* An accommodation that causes significant difficulty or expense to the agency. In determining whether an accommodation would impose an undue hardship, factors to be considered include:

- 1) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding; and
- 2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources; and
- 3) The overall financial resources of the agency, the overall size of the agency with respect to the number of employees, and the number, type, and location of its facilities; and
- 4) The type of operation or operations of the agency, including the composition, structure, and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the agency; and
- 5) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

*Undue Hardship (for religious accommodation requests):* A religious accommodation could be determined to be a "substantial burden" when it is shown that "the burden from the requested accommodation(s) would instead result in substantial increased cost in relation to the conduct of its particular business." In order for the hardship to be "undue," it must rise to an "excessive" or "unjustifiable level." Factors relevant to undue hardship may include:

- 1) The type of workplace;
- 2) The nature of the employee's duties;
- 3) The identifiable cost of the accommodation in relation to the size and operating costs of the employer; and
- 4) The number of employees who will in fact need a particular accommodation.

When evaluating a religious accommodation request, the agency must document the agency's review of the accommodation request.<sup>1</sup>

*Direct Threat:* A significant risk of substantial harm, based on objective, factual evidence regarding the individual's present ability to perform essential job functions, which cannot be eliminated or reduced to an acceptable level with a reasonable accommodation.

*Coordinator:* The individual or individuals designated and authorized by the agency to receive, process, and make decisions regarding accommodation requests.

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<sup>1</sup> See DOHR's website for the ADA Toolkit including resources and specifically, Accommodation Evaluation Form. <https://www.teamtn.gov/hr/policies-resources/forms-documents.html>.

*Retaliation:* Any adverse action taken against an individual or individuals for exercising rights under this policy.

*Interference:* Coercion, intimidation, threatening behavior, or interference with an individual exercising rights under this policy, or taking these actions against someone for aiding or encouraging someone else to exercise rights under this policy.

### **Requests for Accommodation**

When an applicant or employee needs an accommodation, the individual or his or her representative must let the agency know that he or she needs an adjustment to the work environment, an adjustment to how the work is completed, or change to the hiring process related to a (1) disability, (2) religious belief, or (3) pregnancy, childbirth, lactation, and/or pregnancy-related condition. Note that merely self-identifying as an individual with a disability, religious belief, and/or pregnancy-related condition is not considered a request for a reasonable accommodation. An individual seeking an accommodation for a disability or a pregnancy-related accommodation may complete the request in writing using the attached form (Request for Reasonable Accommodation). An individual seeking an accommodation for a religious belief and/or practice must complete the request in writing and may use the attached form (Request for Reasonable Accommodation). In order to ensure timely processing, requests should be submitted directly to the agency's ADA (Americans with Disabilities Act) Coordinator, when possible.

An employee who is nursing or needs to express breastmilk during the workday shall be provided reasonable time and an appropriate space, if applicable, to nurse and/or express breastmilk within one year of the nursing child's birth. Nursing employees shall be provided reasonable break time to nurse and/or express breastmilk for their nursing child each time such employee has a need to express breastmilk. If an employee works in office or utilizes a mobile work arrangement, the employee is entitled to a space to express milk, other than bathroom, that is shielded from view and free from intrusion from co-workers and the public. If an employee utilizes a Work from Home arrangement pursuant to the Alternative Workspace Solutions (AWS) Policy,<sup>2</sup> this policy is still applicable and the employee shall be provided reasonable break time to nurse and/or express breastmilk for their nursing child each time such employee has a need to express breastmilk within one (1) year of birth of the nursing child.

### **Interactive Process**

The Agency's ADA Coordinator shall initiate the interactive process by contacting the individual seeking accommodation within 10 business days following receipt of the request, absent extenuating

<sup>2</sup> See <https://www.tn.gov/content/dam/tn/hr/policy/DOHRPolicy14-001.pdf>.

circumstances requiring extension of this timeframe. During the interactive process, if the basis for the request and type of accommodation required are not obvious, the Coordinator may ask questions concerning the nature of the individual's disability, religious belief, and/or pregnancy-related condition, and the individual's limitations, in order to identify an effective accommodation. The individual seeking the accommodation must describe the problems posed by the workplace barrier or the barrier experienced during the hiring process. The Coordinator may ask the individual for reasonable documentation about his or her condition or religious belief, limitations, and the need for reasonable accommodation (see "Documentation" section).

The Coordinator shall make a decision regarding the accommodation request within 30 business days following receipt of sufficient documentation, absent extenuating circumstances requiring extension of this timeframe. If no documentation was requested, the decision shall be made within 30 business days of initiating the interactive process, absent extenuating circumstances requiring extension of this timeframe. If there are multiple possible reasonable accommodations that would be effective, the Coordinator has the discretion to choose the accommodation that is most effective in removing the barrier for the individual seeking accommodation. However, for pregnancy, childbirth, lactation, or related medical conditions, the Coordinator shall not require an employee to take leave as a reasonable accommodation, if another accommodation can be provided. The individual is not required to accept the accommodation offered by the Coordinator. However, if the individual needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept a reasonable accommodation offered by the Coordinator, he or she may not be qualified to remain in the job and may be separated for the good of the service.

When an accommodation has been selected, the Coordinator shall notify the individual in writing of the selected accommodation and any relevant information regarding implementation of the accommodation. The Coordinator shall make reasonable efforts to implement the accommodation as soon as practicable and communicate with the individual regarding any delays and reasons for those delays, if applicable.

Reasonable accommodations may be implemented on a temporary or trial basis. In this case, the Coordinator shall notify the individual in writing of this, including the date the accommodation will be reassessed.

### **Monitoring and Periodic Evaluations**

For any granted accommodation, the agency has the authority to monitor and/or reassess the effectiveness of the accommodation and whether it creates an undue hardship (as needed). In addition, the individual with the accommodation shall notify the Coordinator if the selected accommodation is not effective at removing a workplace barrier. If an accommodation becomes an undue hardship to the agency or is not effective at allowing the individual to perform the essential functions of the job, the Coordinator and the individual shall reengage in the interactive process.

### **Reassignment**

As a result of the interactive process, if the Coordinator determines that the individual cannot perform the essential functions of the job with or without reasonable accommodation, the individual may no longer be qualified for the job. In this case, the Coordinator may recommend the individual be reassigned to a vacant position within the agency, unless it would be an undue hardship. The individual must be qualified for the new position (i.e. must satisfy the requisite skill, experience, education, and other job-related requirements of the position), and must be able to perform the essential functions of the new position with or without reasonable accommodation. When considering reassignment, the agency must reassign the employee to a vacant position that is equivalent in terms of pay, status, or other relevant factors. If there is no vacant equivalent position, the agency may reassign the employee to a vacant lower position for which the individual is qualified. If the employee accepts reassignment to the vacant lower position as an accommodation, the employee will be compensated at the pay rate of the vacant lower position. When reassignment is granted as a reasonable accommodation, the individual is not required to compete for the lower vacant position. Agencies may not promote an employee into a higher position as a reasonable accommodation. However, if an employee has the requisite skills, knowledge, and experience, they may compete for a higher-level vacant position.

If reassignment to a vacant position would create an undue hardship, or there are no vacant positions within the agency for which the individual qualifies, the individual may be separated for the good of the service. The individual is not required to accept reassignment as a reasonable accommodation. However, if reassignment is necessary to allow the individual to perform an essential function or to eliminate a direct threat, and he or she refuses to accept the reassignment, the individual may not be qualified to remain in the job and may be separated for the good of the service.

### **Documentation during the Interactive Process**

If the condition/religious belief and need for accommodation is not obvious, the Coordinator may ask the individual for reasonable documentation about his or her condition or religious belief, limitations, and the need for reasonable accommodation. However, for requests related to pregnancy, childbirth, lactation, or related medical conditions, the Coordinator may only request this documentation if the employee is requesting an accommodation related to temporary transfer to a vacant position, job restructuring, light duty, or an accommodation that requires time away from work. Requested documentation must be submitted to the Coordinator as soon as practicable. Coordinators may establish a deadline for the individual making the request to provide requested documentation, but must allow at least 14 calendar days from the date of the request for documentation. The Coordinator may also require that the documentation come from an appropriate healthcare provider or rehabilitation professional (or religious spiritual leader/scholar for religious accommodation requests) who typically treat the type of condition for which the employee is seeking accommodation(s) for. If the individual's condition/religion or need for a reasonable accommodation is not obvious, and

he or she fails to provide the documentation requested by the Coordinator within the prescribed timeframe, absent extenuating circumstances, then he or she is not eligible to proceed in the interactive process until the documentation is provided.

If the Coordinator requests reasonable documentation, and the documentation provided is insufficient (i.e. does not specify the existence of a disability/pregnancy-related condition/religious belief and explain the need for reasonable accommodation), the Coordinator shall explain to the individual why the documentation is insufficient and allow the individual at least 7 calendar days to provide the necessary requested information.

### **Confidentiality of Accommodation Request Records**

Agency personnel shall keep information obtained in connection with the reasonable accommodation process confidential. All information obtained by the agency must be kept in files separate from the individual's personnel file and in a location that is accessible only to authorized personnel who have a legitimate business need to access the information, such as designated human resources personnel. This includes the accommodation request and any documentation related to the approval and/or implementation of the request. Disability-related documentation, such as written requests for accommodation, medical information obtained to substantiate an employee's disability, and other information gathered as part of the interactive process, must be maintained by the agency for at least a two-year period.

In some circumstances, an individual seeking accommodation may make the request via a representative, such as an attorney, health care provider, or family member. In such circumstances, confidential information shall not be shared with the representative unless the agency receives authorization from the individual seeking the accommodation.

### **Retaliation and Interference**

Agencies are prohibited from retaliating against an applicant or employee for asserting rights under this policy.

Agencies are prohibited from interfering with the exercise or enjoyment of rights under this policy, or with the assistance of another in exercising or enjoying those rights. Agencies are prohibited from coercion, threats, intimidation, or interference with respect to rights under this policy.

Agencies are also prohibited from discriminating against or harassing an applicant or employee on the basis of disability, religion, or pregnancy, childbirth, and related medical conditions.

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If an employee or applicant believes he or she has been subjected to conduct that violates this policy, he or she is encouraged to report those incidents as soon as possible after the event occurs, pursuant to the State's Workplace Discrimination and Harassment Policy (12-008).

### **Directive to Supervisors**

If an individual seeking an accommodation submits the request to a supervisor or manager-level employee, whether verbally or in writing, the supervisor or manager shall forward the request to the Coordinator, if known, as soon as practicable, or to the supervisor or manager's human resources officer.

During the interactive process, supervisors are required to cooperate with the Coordinator's directives or requests. If the individual requesting accommodation provides requested documentation to a supervisor, the supervisor shall forward such documentation to the Coordinator as soon as practicable. The supervisor shall not maintain copies of documentation received from the employee or the employee's representative. The agency's Coordinator may share certain information with an individual's supervisor or other authorized manager as necessary to make appropriate determinations on a reasonable accommodation request or implementation of an accommodation. Under these circumstances, the supervisor or manager shall keep such information confidential.

Supervisory personnel who fail to appropriately handle reasonable accommodation requests may be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

Questions regarding this policy should be directed to the Department of Human Resources Office of the General Counsel. Agencies are also encouraged to use the resources found in the ADA Toolkit, which can be found at: <https://www.teamtn.gov/hr/policies-resources/forms-documents.html>.



**Request for Reasonable Accommodation**

*Form No. HR0004*

**Section I. Personal Information**

Date of Request: \_\_\_\_\_

Requestor's Name: \_\_\_\_\_

Requestor's Title: \_\_\_\_\_ Supervisor: \_\_\_\_\_

Agency: \_\_\_\_\_ Division or Work Facility: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Work Email: \_\_\_\_\_

I am requesting reasonable accommodation based on:

Religion

Pregnancy, childbirth, lactation, and/or related medical condition

Disability

**Section II. [For Religious-Based Requests]**

Explain the conflict between your religious practice and your work responsibilities:

What specific workplace accommodation do you request?

State length of time the accommodation is requested, specifically include the date(s)/frequency of the requested accommodation (e.g. daily, weekly, etc.):

Identify your religious practice or belief and state how this accommodation enables you to participate in your religious practice or belief without impacting your ability to meet the required functions of your position:

Describe any alternate accommodation(s) that might address your needs:

*CONTINUE TO NEXT PAGE*

**Section III. [For Pregnancy- and Disability-Based Requests]**

What limitation, impairment, or condition is interfering with your ability to perform your job function(s)? Describe the nature of the condition:

Describe the job function(s) you are having difficulty performing because of the condition, and the extent to which the condition limits that activity:

What accommodation(s) are you requesting? How will the requested accommodation(s) assist you?

Please provide any additional information you believe is necessary to evaluate the request. You may attach additional information if necessary:

**Section IV. Signature**

I understand that this request does not entitle me to the accommodation I am seeking, but will be helpful in determining the accommodation which best assists me and the agency. I understand that I may be required to provide additional documentation about the basis for my request and the requested accommodation(s) to further evaluate my accommodation request. I further understand that the agency will maintain and use this information solely in evaluating my request.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date