

**STATE OF ALASKA SUPERVISOR'S GUIDE
TO TITLE I OF THE
AMERICANS WITH DISABILITIES ACT**

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STATE OF ALASKA SUPERVISOR'S GUIDE TO TITLE I OF THE AMERICANS WITH DISABILITIES ACT

In 1990, the President of the United States signed into law the Americans with Disabilities Act (ADA) mandating the elimination of discrimination against individuals with disabilities. The Governor has promulgated Administrative Order 129 to implement the ADA in State agencies.

It is the intent of the ADA that the workplace be as diverse as our society. Two major purposes of the ADA are to provide both "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities". The ADA does not provide for preferential treatment of persons with disabilities; rather, the ADA aims to provide individuals with disabilities the same opportunities and benefits that are afforded to individuals without disabilities.

The ADA requires employers to provide equal opportunities to people who, with or without a reasonable accommodation, are qualified (i.e., have the skill, experience and education) to work. State supervisors must consider applicants and employees with ADA qualifying disabilities on the basis of what they can do, not what they can not do.

This handbook will assist State supervisors and managers in addressing applicants and employees with disabilities in an interactive manner, free of stereotyping and misconceptions. It will provide basic guidance regarding the State of Alaska's policies and procedures under the ADA. Although this guide does not contain answers for all ADA questions, it does provide practical guidance on methods for addressing commonly occurring ADA issues such as what to do when an employee requests a "reasonable accommodation," and how to get information on assistive technology devices. Your agency ADA Coordinator and your Human Resources Office are available to assist you with any of your ADA questions.

THE LAW

The ADA makes it unlawful to discriminate against people with disabilities in any employment practice. Employment practices include, but are not limited to, the following:

- ◆ Recruitment
- ◆ Hiring
- ◆ Compensation
- ◆ Dismissal
- ◆ Promotion
- ◆ Job assignments
- ◆ Training
- ◆ Leave
- ◆ Layoff
- ◆ Benefits
- ◆ Other terms, conditions or privileges of employment

DEFINITION OF DISABILITY

Under the ADA, a person with a disability is defined as follows:

1. "an individual with a physical or mental impairment that substantially limits one or more major life activities"
2. "an individual with a record of a substantially limiting impairment"
3. "an individual who is perceived to have such an impairment"

For an impairment to be considered a disability, it must substantially limit some form of major life activity. Qualifying disabilities include prolonged or permanent impairments that limit major life activities such as walking, speaking, breathing, hearing, seeing, performing manual tasks, caring for oneself, learning, working, sitting, standing, lifting, as well as mental and emotional processes such as thinking, concentrating and interacting with others.

It is strongly advised that paternal or fearful assumptions about a person's health be limited to the confines of one's imagination and not expressed in a supervisor's actions.

Perceived impairments may include such non-limiting conditions as facial scarring or the unfounded belief that the individual is ill or disabled in some manner. But they are only perceptions...not disabling unless limitations are placed on an employee based upon fears or biases.

QUALIFIED INDIVIDUAL WITH A DISABILITY

To be protected under the ADA, a person must be a **qualified individual with a disability**.

The term "qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Inclusion of the term "qualified" underscores the employer's prerogative to choose and retain qualified workers. An employer is not required to hire or retain a person who is not qualified to perform a job. An individual with a disability must be able to perform the essential functions of the job, with or without reasonable accommodation, in order to be protected by the ADA.

This means the applicant or employee must:

- ◆ Be "otherwise qualified" to satisfy the employer's job requirements for education, employment experience, skills, licenses, and any other job related qualification standards; and

- ◆ Be able to perform those tasks that are essential to the job, with or without reasonable accommodation.

The ADA does not interfere with an employer's right to hire the best-qualified applicant. The ADA simply prohibits discriminating against a qualified applicant or employee because of his or her disability. If an individual with a disability is the most qualified applicant and is able to perform the essential functions of the job with or without a reasonable accommodation, it is unlawful for a supervisor to refuse to hire the individual because the supervisor does not want to provide accommodations.

COMPLIANCE WITH THE ADA DURING THE RECRUITMENT AND SELECTION PROCESS

Each supervisor has a responsibility to comply with the ADA in the recruitment and selection process. The process includes advertising, recruitment, job application procedures, testing, interviewing, and, ultimately, hiring the person best qualified for the position.

The statement "The State of Alaska complies with Title I of the Americans With Disabilities Act (ADA). Individuals with disabilities who require special accommodation, auxiliary aides or services, or alternative communication format call 1-800-587-0430 or 465-4095 or TTY 907-465-3412 correspond with (person's name)" must appear on notices and recruitment bulletins.

When applicants are notified of interviews, they should be informed that accommodation for persons with disabilities will be provided as part of the interview process. If one is needed, they should give notice prior to the interview of the type of accommodation needed.

- ◆ For example, if the office is not accessible to persons who use wheelchairs, the interview site for that applicant must be moved to an accessible location.

Determining the essential functions of the job

The ability of an individual with a disability to perform the essential functions of a position is a key element of Title I of the ADA. The first step is for the hiring supervisor to determine the essential functions of the job before beginning the recruitment and selection process.

- ◆ Essential job functions are the most important duties, tasks or core responsibilities of the position.
- ◆ Marginal functions are the duties that are not core responsibilities of the position.

Often jobs are a mixture of many duties, evolving over the years based upon organizational needs. Usually there is a specific purpose for a position's existence; federal or state law may mandate its functions, or it may provide technical or clerical support to others performing mandated functions. The actual "design" of a position is

based upon a number of factors including job location, staffing needs, existing job classifications and budget considerations.

All positions exist to perform a certain function. Other functions may be added to the position because it is convenient to do so, such as going to the post office, acting as a fill-in receptionist or speaking at conferences. The supervisor of the unit may determine that these tasks or duties are marginal functions, which may be distributed in a variety of ways among existing staff or not performed at all.

All functions should be described in the position description (PD) for the job. If the PD for the position does not accurately describe the essential and marginal job duties, it should be updated before advertising or interviewing applicants for a vacancy(s).

The following is a partial list of the types of factors that can be considered in determining if a particular function is essential:

- ◆ The reason the position exists is to perform the function
- ◆ The employer's judgment as to which functions are essential
- ◆ The amount of time spent performing the function
- ◆ The consequences of not requiring the incumbent to perform the function
- ◆ Consideration of the limited number of employees available among whom the performance of that job function can be distributed
- ◆ High degree of specialization such that the incumbent is hired for their expertise or ability to perform the particular function
- ◆ Terms of a collective bargaining agreement
- ◆ The work experience of past incumbents in the job
- ◆ The current work experience of incumbents in similar jobs

Examples of essential functions:

- ◆ An Equipment Operator Journey II position requires that an individual is able to operate a truck. Essential function: ability to drive a truck.
- ◆ The position of Administrative Clerk II types all correspondence for a unit. Essential function: production typing.
- ◆ The position of Maintenance Specialist requires an individual to operate complex, specialized machinery. Essential function: skill and ability to operate complex specialized machinery.
- ◆ A Nurse is required to dispense medication and lift patients. Essential function: licensure to dispense medication; ability to lift patients.
- ◆ A State Trooper is required to affect an arrest of a fleeing perpetrator. Essential function: grapple with perpetrator; run after perpetrator.
- ◆ A small unit consisting of three positions has the incumbents performing critical review of forms. Essential function: the ability to read, use judgement and evaluate forms, is

therefore, an essential function of the job, because the function cannot be assigned to other employees.

Examples of marginal functions

- ◆ A clerical employee may be assigned to drive to the post office every afternoon but the majority of the employee's duties consist of typing, filing and answering the phone. In this case, typing, filing and answering the phone are "essential functions" of the position. Travel to the post office is not essential if it can be assigned to someone else without jeopardizing the work or efficiency of the unit or if it can be accomplished in some other manner.
- ◆ A person hired as a truck driver is expected to fill in for the receptionist an hour each day. Driving the truck would be considered the essential function of the position. Filling in as a receptionist could be considered a "marginal" task if there were other employees available to whom this duty might be assigned.

Many supervisors and employees have difficulty in distinguishing essential from marginal job functions because they define the job as all work performed. When an employee has been performing the same group of tasks for years, often each task or function is perceived as essential. In order for the State of Alaska to comply with the ADA, all position descriptions should be updated on a regular basis to identify essential and marginal duties.

Questions, tests and demonstrations during the selection process

State supervisors may ask for demonstrations of the applicant's work as part of the selection process. Interview questions and demonstrations must always be job-related and focus on the essential functions of the job.

Once the hiring supervisor has explained the duties of the vacancy, the supervisor can ask the applicants if there is anything that would prevent the applicants from performing the duties described. Additionally, the supervisor, after telling applicants what the selection process involves, may ask the applicants whether they will need an accommodation for the process.

- ◆ *Education and experience, certifications and/or licenses.* Questions regarding the applicant's applicable education and experience, certifications and/or licenses are permissible if related to performing the duties of the position.
- ◆ *Attendance requirements.* The hiring supervisor may state attendance requirements and ask whether the applicant can meet them. A supervisor may also ask about an applicant's overall attendance record in their last job. Questions designed to detect whether the applicant abused their leave are permissible. Interviewers should not ask how many days the applicant was "sick".
- ◆ *Criminal activity records.* It is permissible to ask such questions as they are not likely to elicit information about an applicant's disability but they should be relevant to the job.
- ◆ *Illegal drug use.* It is permissible to ask an applicant about current illegal use of drugs.

- ◆ *Demonstrations.* A hiring manager may ask an applicant to explain or demonstrate how essential job functions will be performed, with or without an accommodation, or what type of accommodation would be needed to perform the functions of the job, if the hiring supervisor:
 1. Reasonably believes the applicant will need reasonable accommodation because of a known or obvious disability.
 2. The applicant has voluntarily disclosed to the supervisor that a disability might interfere with performance of a job-related function and he or she needs a reasonable accommodation.

Questions an Applicant May Not Be Asked

A hiring supervisor **may not** ask:

- ◆ About the existence, nature or severity of a disability.
- ◆ Whether an applicant can perform the major life activities such as standing, lifting, walking. These questions relate directly to the severity of an applicant's impairments and are likely to elicit information about a disability.
- ◆ About an applicant's workers' compensation history. Don't ask applicants about job-related injuries or workers' compensation history until after a conditional job offer. These questions relate directly to the severity of an applicant's impairments and are likely to elicit information about disability.
- ◆ About an applicant's **lawful drug use**. Questions regarding current or prior lawful drug use are likely to elicit information about disability and, therefore, are not permissible until after a conditional job offer. NOTE: Some state positions require drug testing. Supervisors may ask applicants about their lawful drug use if they are administering a test for illegal use of drugs. If an applicant tests positive for illegal drug use, the supervisor can validate the test results by asking about lawful drug use or possible explanations for the positive result other than the illegal use of drugs.
- ◆ Whether an applicant had been hospitalized or if they were ever treated by a psychiatrist or psychologist. Exception: Some jobs require the handling of firearms and ammunition and there are conditions that prohibit the handling of these items under federal law. Such questions may not be asked unless this criterion is job-related, consistent with business necessity and applied to all applicants after a conditional job offer.
- ◆ About an applicant's sick or family leave usage.

When unsure about questions that may or may not be asked during an interview, contact your Human Resource Manager or your ADA Divisional/Departmental Coordinator.

Questions Asked of Third Parties

A hiring supervisor may not ask a previous employer or any third party questions they could not legally ask the applicant. Examples: asking a personal reference or an applicant's friends or family about the applicant's disability, sick leave usage, illnesses or worker's compensation claims.

A hiring supervisor can ask about the applicant's ability to perform essential functions, including the ability to meet performance standards. It is also permissible to ask about the

applicant's record of punctuality and attendance, as long as sick leave or health issues are not implied in the question.

THE POST-OFFER (Conditional Job Offer) STAGE

Medical Examinations (physicals and psychological examinations)

A few State positions require that a medical or psychological examination be performed before hire. The hiring supervisor must be able to demonstrate that the requirement is job-related and consistent with business necessity. When required (e.g., state trooper, correctional officer, nurse, pilot), the examination is performed after a conditional job offer is given.

If a hiring supervisor asks post-offer disability-related questions or requires post-offer medical examinations, the supervisor must ensure:

- ◆ All entering employees in the same job category must be subjected to the examination/inquiry, regardless of disability; and
- ◆ Medical information obtained must be kept confidential in separate medical files.

REASONABLE ACCOMMODATIONS

The ADA requires an employer to make reasonable accommodations for job applicants and employees with qualifying disabilities provided that the accommodation does not constitute an undue hardship or the individual does not pose a direct threat.

Applicant Accommodations:

Reasonable accommodations will be made for qualified applicants if necessary for the applicant to participate in the hiring process. Example: an accommodation to provide an examination in an accessible format; i.e. large print, a reader, in braille, etc.

Employee Accommodations:

Accommodations **may** include, but are not limited to:

- ◆ changing equipment or devices used in the workplace;
- ◆ removal of architectural barriers, such as widening the doors to rest rooms or offices; making them accessible to employees who use wheelchairs;
- ◆ provision of qualified readers to employees with a vision impairments, or interpreters for deaf employees;
- ◆ reassigning non-essential duties to another employee; and
- ◆ a part-time or flexible work schedule.

UNDUE HARDSHIP

Employers are not required to provide an accommodation to an employee or applicant if it is an undue hardship. Undue hardship means an action requiring significant difficulty or expense; one that is unduly costly, extensive, substantial, disruptive or that will fundamentally alter the nature of the job. Whether provision of an accommodation constitutes an undue hardship is determined on a case-by-case basis.

DIRECT THREAT

Employers may require that an individual not pose a direct threat to the health and safety of himself or herself or other persons in the workplace. The employer must, however, meet very specific and stringent requirements under the ADA to establish that a direct threat exists.

“Direct threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. Such a job requirement must apply to all applicants or employees and not just to individuals with disabilities.

An example of direct threat is an individual with a contagious disease, such as hepatitis, for a food preparation position, the essential functions of which include handling and serving food, where no accommodation exists that could prevent transmission to others.

REQUESTS FOR REASONABLE ACCOMMODATIONS

Applicants and employees often worry that a request for reasonable accommodation will displease the hiring supervisor, either because of cost or inconvenience; however, it is an obligation under the law to provide accommodations unless the accommodation would create an undue hardship or pose a direct threat.

It is best to take a methodical approach in addressing requests for reasonable accommodation from employees. The following guidelines are meant to be helpful to both employees and supervisors in a collaborative manner to meet everyone’s expectations and needs.

1. The employee completes the form “ADA Reasonable Accommodation Request” and submits it to his or her supervisor. If the supervisor is aware of an employee’s need for an accommodation, the supervisor can suggest the employee request an accommodation, assist the employee in completing the form, or complete the form for the employee. This form can be obtained online at <http://www.labor.state.ak.us/ada/forms.html/> or from your Division/Department ADA Coordinator or Human Resources Office.
2. If the disability is not obvious, the supervisor can request verification that the employee has a qualifying disability. The supervisor can require the employee to submit documentation from a physician or other medical professional concerning the existence and extent of the disability. If the supervisor believes a second opinion will provide an additional perspective on the disability, the supervisor must discuss it with their Human Resources Office or ADA Coordinator. If the decision is made to send the employee to a physician of the State’s choice, the second opinion may be at the State’s expense.
3. When a qualified individual with a disability requests a reasonable accommodation, the supervisor must make a reasonable effort to determine the appropriate accommodation.

4. When it is not clear what the appropriate accommodation is, the supervisor should conduct an informal, interactive discussion with the employee. The discussion should include the following steps:
 - a. The supervisor's analysis of the particular position involved and a determination of its purpose and essential functions.
 - b. Consultation with the employee to determine the precise job-related limitations imposed by the individual's disability. If the employee cannot perform the essential job functions without an accommodation, the discussion should include plans for the employee's daily activities until the review process is completed.
 - c. Identification of potential accommodation and assessment of the effectiveness each will have in enabling the employee to perform the essential functions of the job.
 - d. Identification of the type of equipment needed as a possible accommodation. Contact suppliers for costs and information. The JOB Accommodation Network can assist in making this assessment.
 - e. Consideration of the preference of the individual; however, the supervisor has the right to select among the alternatives available.
 - f. Selection and implementation of the effective reasonable accommodation selected by the supervisor. The supervisor should move as quickly as possible to obtain approval for the equipment and determine a time line for its arrival. If the employee has to wait for months for an accommodation request to receive approval, the employee may feel the agency is not acting in good faith. Keep the dialogue open with the employee and discuss time lines for obtaining the accommodation and follow up with the employee on any unexpected delays. Slow response to requests for reasonable accommodation can act as evidence of discrimination in a court setting.

At times, a disability may be difficult to accommodate because it is not well understood or because neither the employee nor the supervisor know what equipment, modification or accommodation will enable the employee to perform the essential functions of the job. Unfortunately, physicians are not trained to understand the effect of a disability on work performance and may not know the kind of accommodation needed. Contact your Departmental ADA Coordinator or your Human Resources Office for additional reference material and service organizations which may help in identifying appropriate accommodations.

DENYING A REQUEST FOR AN ACCOMMODATION

There are many reasons a supervisor may decide it is not appropriate to approve a request for an accommodation.

1. The employee does not have an ADA **qualifying disability**.
 - a. A temporary impairment, such as a broken arm, is not significant enough to be considered a qualifying disability, taking into account its duration and the extent to which it actually limits a major life activity.
 - b. The employee is unable to provide the requested documentation from a medical professional that demonstrates he or she has a qualifying disability. In this case, the employer may require the employee to see a physician for the purpose of verification of a qualifying disability.
2. The requested accommodation will not enable the employee to perform the essential functions of the job.
3. The requested accommodation will cause the employer undue hardship or the individual will pose a direct threat. Factors to consider in making the determination are the nature and cost of the accommodation, the overall financial resources of the employer, and whether the proposed accommodation would fundamentally alter the nature of the job.

State supervisors must confer with their Human Resources Office or the departmental ADA Coordinator before a determination to deny a request for accommodation. State policy requires that all denials for accommodation must be reviewed and signed by the Commissioner of the employing department. A record of the request with the decision maker's comments, justification and response must be preserved.

AN EMPLOYEE'S RESPONSIBILITY UNDER THE ADA

When an employee has a disability that limits his or her ability to perform the essential functions of the job, it is the employee's responsibility to:

- ◆ Disclose the disability to the supervisor. The supervisor is not obligated to accommodate an unknown disability.
- ◆ Cooperate in an interactive process to find a suitable accommodation if possible.
- ◆ Respond quickly to requests for information from the supervisor.

AN EMPLOYER'S RESPONSIBILITY FOR ASSURING EQUAL ACCESS TO OTHER CONDITIONS OF EMPLOYMENT

Employees with disabilities have the right to the same terms, conditions, and privileges of employment afforded non-disabled employees. Employees have a right to equal access to:

- ◆ Training opportunities and conferences even if they require special assistance to take advantage of those opportunities
- ◆ Break rooms, office picnics, employer provided health clubs, parties
- ◆ Promotional opportunities
- ◆ Employee travel

It is the supervisor's duty to ensure employees with disabilities are included in all office

activities, are given an equal opportunity to compete for promotions, are able to travel, attend meetings and seminars and are provided with the same terms, conditions and privileges of employment as non-disabled employees.

WHEN EMPLOYEES WITH PERFORMANCE PROBLEMS NOTIFY THE EMPLOYER THEY HAVE A DISABILITY

The Equal Employment Opportunity Commission (EEOC) guidelines affirm that employers:

- ◆ May hold all employees to the same performance and conduct standards.
- ◆ Need not waive discipline imposed for conduct related to a disability which the employer was not aware.

The existence of a disability does not mean an employee does not have to meet performance or attendance standards. Employees with disabilities must meet the same performance standards as others doing the same kind of work; however, if an employee with a known disability is having difficulty performing a job, the supervisor should inquire whether the employee is in need of an accommodation.

WHEN THE ACCOMMODATION PROVIDED AN EMPLOYEE DOES NOT IMPROVE PERFORMANCE

The ADA protects “qualified” employees with disabilities; therefore, an employee with a disability must be able to perform the essential functions of the job with or without an accommodation. If the employee is unable to perform the essential functions of the job with an accommodation, the employee is no longer “qualified” for that particular position. A supervisor must contact the Human Resource Office for guidance on options available, including compliance with the State's policy on reassignment of qualified employees with disabilities.

If performance difficulties are not related to the employee's ADA qualifying disability, the issue may be addressed as solely a performance problem, consistent with department policies and collective bargaining agreements.

INDIVIDUALS WHO ILLEGALLY USE DRUGS

The ADA excludes a person who is currently illegally using drugs from the definition of a qualified individual with a disability. If an individual who uses drugs illegally also has another disability, and the employee is being discriminated against based on the other disability, the employee is still protected by the ADA.

The ADA does protect individuals who have overcome addiction to illegal drugs. This includes a person who has successfully completed a drug rehabilitation program or has otherwise been successfully rehabilitated and is no longer using illegal drugs; a person who is participating in a drug rehabilitation program and is no longer using illegal drugs; and a person who is erroneously regarded as using illegal drugs.

INDIVIDUALS WHO ABUSE ALCOHOL

Alcoholics are individuals with disabilities subject to the protections of the ADA; however, as with other persons with disabilities, they must be qualified for the position. Employees with alcoholism can be held to the same standards for job performance and behavior as are non-disabled employees, even if unsatisfactory performance or behavior is related to alcohol consumption. Employees with alcoholism may be entitled to receive a reasonable accommodation such as leave for alcohol rehabilitation and/or attendance at Alcoholics Anonymous meetings.

COMPLAINTS OF DISCRIMINATION UNDER THE ADA

Administrative Complaints

Job applicants and employees who believe they have received discriminatory treatment and their rights under the ADA have been violated can file complaints with several administrative agencies or in court. A supervisor may not retaliate against applicants or employees who file complaints alleging discrimination.

Individuals who feel they have been discriminated against may file complaints with any of the following agencies within the designated time frames:

- ◆ The ADA Coordinator in the agency where the alleged discriminatory action took place. The complaint must be filed within 90 days of the date of harm. This is an informal process. Agencies may establish internal procedures for their internal complaint process.
- ◆ The Office of Equal Employment Opportunity in the Office of the Governor. The complaint must be filed within 90 days of the alleged discriminatory action.
- ◆ The labor union representing the employee. The deadline for filing a complaint is dependent upon the provisions of the employee's collective bargaining agreement.
- ◆ The Alaska State Commission for Human Rights. The complaint must be filed within 300 days of the date of harm.
- ◆ The Equal Employment Opportunity Commission, Department of Justice. The complaint must be filed within 300 days of the alleged discriminatory practice.

Investigation of Informal ADA Complaints

All informal complaints alleging violations of the ADA should be investigated promptly and thoroughly by the agency's ADA Coordinator or other individuals designated by agency policy.

The following general steps should be taken to investigate the allegations:

1. Determine the individual's reason for filing the complaint and ascertain if it is an ADA issue.
2. Determine whether the applicant or employee has an ADA qualifying condition that substantially limits a major life activity. Medical documentation to support the determination may be requested from both an applicant or employee.

3. Meet with the complainant to ensure they have an opportunity to be heard. If the complaint has merit, take the necessary action to resolve the issue.
4. Determine whether the allegations contained in the complaint did occur. Documentation can be requested from the complainant and other and involved parties should be interviewed.

CONCLUSION

It is the responsibility of every State employee to keep the workplace free from unlawful discrimination. To make this happen, awareness of disability issues and knowledge of the law are essential.

Department ADA Coordinators can arrange for special ADA training workshops and provide both supervisors and employees with handbooks and technical assistance on the ADA. The State ADA Compliance Office has a library of training videos and other materials available for loan to supervisors and employees. If you need any assistance regarding ADA issues contact your ADA Divisional / Department Coordinator or your Human Resources Manager.

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ADA Coordinators by Department

Public Safety

450 Whittier St.
POB 111200
Juneau, Alaska 99811-1200
PH: 465-4365
TTY: 465-5491
FAX: 465-5332

Fish & Game

1255 W 8th St.
POB 25526
Juneau, Alaska 99811-5526
PH: 465-4140
TTY: 465-3646
FAX: 465-2440

Community & Economic Development

9th Floor State Office Building
POB 110803
Juneau, Alaska 99811-0803
PH: 456-5438
TTY: 1-800-770-4833
FAX: 465-2563

Labor and Workforce Development

1111 8th St. Suite 308
POB 21149
Juneau, Alaska 99802-1149
PH: 465-5952
TTY: 465-5952
FAX: 465-8753

Natural Resources

400 Willoughby Ave. 5th Floor
Juneau, Alaska 99801-1724
PH: 465-2409
TTY: 465-2409 ext 3888
FAX: 465-2492

Military & Veterans Affairs

400 Willoughby Ave. 5th Floor

Juneau, Alaska 99801-1724

PH: 465-2409

TTY: 465-2409 ext 3888

FAX: 465-2492

Revenue

11th Floor State Office Building

POB 110410

Juneau, Alaska 99811-0400

PH: 465-2308

TTY: 465-3678

FAX: 465-3288

Law

Room 205 Assembly Building

POB 110300

Juneau, Alaska 99811-0300

PH: 465-3672

TTY: 465-3626

FAX: 465-5419

Education & Early Development

801 W. 10th St. Suite 200

Juneau, Alaska 99801-1894

PH: 465-2880

TTY: 465-2880

FAX: 465-2110

Environmental Conservation

410 Willoughby Ave. Suite 105

Juneau, Alaska 99801-1795

PH: 465-5040

TTY: 1-800-770-8973

FAX: 465-4098

Corrections

802 3rd St.

Douglas, Alaska 99824

POB 112000

Juneau, Alaska 99811-2000

PH: 465-3300

TTY: 465-3274

FAX: 465-2202

Administration

10th Floor State Office Building

POB 110208

Juneau, Alaska 99811-0208

PH: 465-5657

TTY: 465-2461

FAX: 465-2263

Transportation & Public Facilities

2200 East 42nd Ave

PO Box 196900

Anchorage, AK 99519-6900

PH: 269-0851

TTY: 269-0473

FAX: 269-0847

Health & Social Services

350 Main St.

POB 110650

Juneau, Alaska 99811-0650

PH: 465-3024

TTY: 465-3196

FAX: 465-2384

Office of the Governor

240 Main St. Suite 300

POB 110001-0001

Juneau, Alaska 99811-0001

PH: 465-3896

TTY: 465-3514

FAX: 465-1641

Legislative Affairs Agency
Room 311 Goldstein Building
130 Seward St. Suite 313
Juneau, Alaska 99801-2197
PH: 465-3854
TTY: 465-4980
FAX: 465-6557

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 22, 1992

ADMINISTRATIVE ORDER NO. 129

In 1990 the President of the United States signed into law the Americans with Disabilities Act (42 U.S.c. Sec. 12101 et seq.) mandating the elimination of discrimination against individuals with disabilities and requiring state and local governments, among other affected entities, to begin complying with the Act in 1992.

It has also been the policy of the State of Alaska, as expressed in the Alaska Human Rights Act (AS 18.80) and reflected in a number of other statutes, including

- * AS 11.76.130 (making it a crime to interfere with persons with disabilities)
- * AS 09.20.010 (permitting disabled people to serve as jurors)
- * AS 35.10.015 (regarding accessibility of public buildings),
- * AS 36.30.040(b)(16) (requiring procurement regulations to prohibit discrimination),
- * AS 39.25.150(21) (requiring the personnel rules to grant employment preference in state service to severely handicapped persons),
- * AS 44.21.500 -.509 (establishing a mechanism for dealing with complaints of employment discrimination in state government), and
- * AS 47.80 (governing programs for people with disabilities)

to eliminate and prevent discrimination because of physical or mental disability in employment, in credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property, and in government policies, practices, and services. In addition AS 18.80.200(b) makes it the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.

Therefore, in furtherance of the State of Alaska's long standing commitment to human rights and equal opportunity for people with disabilities and to ensure compliance with title I and title II of the Americans with Disabilities Act of 1990, I, Walter J. Hickel, Governor of the State of Alaska, under the authority granted by article III, section 1, of the Alaska Constitution and by AS 44.17.060, hereby order the following as the policy of the executive branch of state government for the provision of services to and employment of people with disabilities and establish the Americans with Disabilities Act compliance program for the executive branch of Alaska state government.

AMERICANS WITH DISABILITIES ACT COMPLIANCE PROGRAM

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I. PURPOSE:

It is the purpose of this order and the Americans with Disabilities Act compliance program:

- A. To prevent and eliminate discrimination against individuals with disabilities in employment and public services within state government;
- B. To establish policies, guidelines and procedures for state agencies to follow to ensure compliance with title I and title II of the Americans with Disabilities Act of 1990, as amended, and their implementing regulations.

II. POLICY:

It is the policy of the state that:

- A. No qualified individual with a disability shall be excluded, by reason of such disability, from participation in or be denied the benefits of the services, programs, or activities of a state agency, or be subjected to discrimination by any such agency.
- B. No agency shall discriminate against a qualified individual with a disability because of the disability of

such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and any other term, condition, and privilege of employment.

C. Each agency shall operate each of its services, programs, and activities so that a service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

III. SUPPLEMENT TO EARLIER ORDERS:

This order supplements Administrative Order No. 18, dated November 22, 1972; Administrative Order No. 59, dated June 20, 1980; Administrative Order No. 75, dated April 8, 1983; Administrative Order No. 76, dated May 23, 1983; Administrative Order No. 81, dated October 25, 1984; Administrative Order No. 86, dated March 4, 1986; Administrative Order No. 93, dated March 4, 1987; and Administrative Order No. 109, dated May 13, 1988, by setting the controlling policies in regard to disability issues.

IV. ROLES AND RESPONSIBILITIES:

A. The Office of the Governor will retain overall responsibility for the coordination of the state's efforts to comply with and carry out its responsibilities under this order and the Americans with Disabilities Act. The governor shall appoint an official from within the state to serve as the State ADA Coordinator and make available to the public and state agencies the name, title, office address, and telephone number of the selected official.

B. The State ADA Coordinator will:

- (1) Coordinate and direct the activities of agencies under this order and the efforts of state agencies to comply with title I and title II of the Americans with Disabilities Act;
- (2) Serve as the state's primary contact and liaison with the public and agencies on compliance issues regarding the Americans With Disabilities Act and the state's ADA compliance program;
- (3) Ensure compliance with the order;
- (4) Communicate to the public and interested individuals information regarding the ADA compliance program and the names, office addresses, and telephone numbers of agency ADA coordinators appointed under this order;
- (5) Convene and facilitate meetings of the ADA taskforce assigned in this order with interdepartmental responsibilities for providing technical guidance and assistance;
- (6) Serve as the primary point of service for and the overall coordinator of the state's responses to all complaints filed against state agencies with federal and state compliance agencies under the title II compliance procedures (28 C.F.R. 35.170) where the allegations are that the state discriminated in its services, policies, or practices, or failed to comply with the Americans with Disabilities Act.

C. Each commissioner is responsible for ensuring the effective implementation of this order within her or his department and ensuring compliance with the Americans with Disabilities Act. Each commissioner shall designate an official within the department to serve as the Department ADA Coordinator and the overall administrator of the department's ADA compliance program. Each commissioner shall make available to the public, the State ADA Coordinator, and department employees the name, title, office address and telephone number of the selected official. The Department ADA Coordinator shall receive guidance and direction from the department commissioner and the State ADA Coordinator on matters dealing with the Americans with Disabilities Act and is responsible for assuring timely and adequate requests for appropriations to implement the department's ADA compliance program.

D. The Department ADA Coordinator will:

- (1) Coordinate the department's efforts to comply with and carry out its responsibilities under title I and title II of the Americans with Disabilities Act;
- (2) Serve as the department's primary liaison between the department, the public, and other agencies on issues with the Americans with Disabilities Act and this order;
- (3) Supervise the preparation and drafting of the department's title II self-evaluation required under 28 C.F.R. 35.105 and any transition plans developed under 28 C.F.R. 35.150;
- (4) Maintain the department's self-evaluation on file and make it available for public inspection as required by 28 C.F.R. 35.105 and the State ADA Compliance Program;
- (5) Supervise the department's title II complaint procedure, as required by 28 C.F.R. 35.107, and ensure that, for any complaint communicated to the department alleging noncompliance with the Americans with Disabilities Act or alleging any actions that would be prohibited by the Act or its implementing regulations, an investigation is conducted and the complaint is resolved promptly and equitably;
- (6) Develop a training plan in consultation and cooperation with the Productivity Improvement Center in the Division of Personnel and Office of Equal Employment Opportunity, Department of Administration for department employees to ensure that managers, supervisors, and employees who provide direct services to the

public are aware of their responsibilities under the Americans with Disabilities Act, the state policy, and this order, and are sensitized to the needs of people with disabilities;

(7) Direct the activities of the division directors and ADA coordinators within the department in complying with this order and with the Americans with Disabilities Act.

E. Each division director is responsible for ensuring the effective implementation of the department ADA compliance program within her or his division and ensuring compliance with the Americans with Disabilities Act. Directors of divisions with 50 or more employees shall appoint a Division ADA Coordinator to administer the division's ADA compliance program and shall make available to the public, the Department ADA Coordinator, the State ADA Coordinator, and division employees the name, title, office address, and telephone number of the selected employee.

F. The director in smaller divisions and the Division ADA Coordinator in divisions with 50 or more employees will, under the guidance and review of the Department ADA Coordinator:

(1) Coordinate the division's efforts to comply with and carry out its responsibilities under title I and title II of the Americans with Disabilities Act, this order, and department directives;

(2) Serve as the division's primary liaison between the division, the public, and other agencies on issues regarding the Americans with Disabilities Act and this order;

(3) Oversee and coordinate the preparation of the division's title II self-evaluation required under 28 C.F.R. 35.105 and assist in the preparation of any transitional plans developed under 28 C.F.R. 35.150;

(4) Serve as the coordinator for ADA complaints within the division;

(5) Ensure that notice is given to applicants, participants, beneficiaries, and other interested persons on information regarding the Americans with Disabilities Act as required in 28 C.F.R. 35.106.

V. DEPARTMENT COMPLIANCE PROGRAMS:

Each department will implement a program to ensure that it is in compliance with title I and title II of the Americans with Disabilities Act. The department ADA compliance program must include the following components and measures:

A. The appointment of a Department ADA Coordinator and division ADA coordinators for divisions with 50 or more employees by May 1, 1992 and as needed thereafter to fill vacancies;

B. An evaluation of the department's current services, policies, and practices, as required in 28 C.F.R. 35.105, to be completed initially for public comment by June 15, 1992, finalized by January 26, 1993, updated through June 30, 1993; and updated annually thereafter;

C. A plan of action, including a timetable, for making the necessary modifications to current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of the Americans with Disabilities Act and its implementing regulations, to be completed initially by January 26, 1993, updated through June 30, 1993, and updated annually thereafter;

D. Transition plans, as required in 28 C.F.R. 35.150, in the event that structural changes to facilities will be undertaken to achieve program accessibility, to be completed initially by July 26, 1992, updated through June 30, 1993, and updated annually thereafter;

E. An interim complaint procedure adopted under paragraphs IX.B. and IX.C., meeting the standards imposed by 28 C.F.R. 35.107, to be employed until the regulations referred to in paragraph IX.A. below have been adopted in accordance with the Administrative Procedure Act and have taken effect. Such an interim procedure must provide for prompt and equitable resolution of complaints alleging any action that would be prohibited by title II of the Americans with Disabilities Act;

F. A plan for providing notice to applicants, participants, beneficiaries, and other interested persons on the provisions of title II of the Americans with Disabilities Act and its implementing regulations as required by 28 C.F.R. 35.106, to be completed by July 26, 1992;

C. A plan for training managers, supervisors, and employees who provide direct services to the public in their responsibilities under the Americans with Disabilities Act and sensitizing them to the needs of people with disabilities to be completed by September 1, 1992, updated through June 30, 1993, and updated annually thereafter.

VI. TECHNICAL GUIDANCE AND ASSISTANCE:

A. The Division of Personnel and Office of Equal Employment Opportunity in the Department of Administration will provide technical guidance and assistance to agencies on how to comply with the employment provisions of title I and title II of the Americans with Disabilities Act.

B. The Division of Engineering and Operations in the Department of Transportation and Public Facilities will provide technical guidance and assistance to state agencies on developing transition plans and making structural changes to state-owned facilities to achieve program accessibility, and on providing appropriate

signage on buildings and other facilities.

C. The Division of General Services in the Department of Administration will provide technical guidance and assistance to agencies on procurement of assistive technologies and on issues where structural changes are required on state-leased facilities to achieve program accessibility.

D. The Division of Information Services in the Department of Administration will provide technical guidance and assistance to agencies on telecommunication devices for the deaf and other issues having to do with making telecommunications accessible within the state;

E. The Division of Vocational Rehabilitation in the Department of Education will provide technical advice to agencies on the nature of a disability and reasonable accommodations.

VII. TRAINING:

A. Each department will ensure that program managers, supervisors, and staff providing direct services to the public receive appropriate training to perform their duties under the Americans with Disabilities Act.

B. The Division of Personnel and Office of Equal Employment Opportunity's Productivity Improvement Center will provide advice and assistance to agencies in developing training plans and meeting training needs. Agencies shall submit the ADA training plans required under paragraph V.E. of this order and requests for training to the Productivity Improvement Center. Agencies will be responsible for training costs.

VIII. ANNUAL ADA COMPLIANCE PROGRAM AUDIT REPORT:

The Division of Audit and Management Services in the Office of Management and Budget, Office of the Governor shall conduct an annual performance audit of the State ADA Compliance Program, corresponding with the state fiscal year, and submit an audit report to the Governor and the State ADA Coordinator by September 30, 1993 and annually thereafter.

IX. COMPLAINT PROCEDURES:

A. Within 90 days of the date of this order, the State ADA Coordinator will prepare for adoption under AS 44.62.020 - 44.62.290 regulations setting out a complaint procedure meeting the requirements of 28 C.F.R. 35.107 which provide for prompt and equitable resolution of complaints alleging any action which would be prohibited by title II of the Americans with Disabilities Act. Public hearings under AS 44.62.210 may be conducted under the auspices of the Governor's Council for the Handicapped and Gifted. The regulations shall be adopted by the Governor and enforced as provided in the regulations.

B. Until the foregoing regulations are adopted, agencies shall follow the complaint procedures established under Administrative Order No. 81 for resolving complaints alleging violations of title II of the Americans with Disabilities Act.

C. For internal complaints of employment discrimination, and for employment discrimination complaints filed with federal or state compliance agencies under 29 C.F.R. 1630, 28 C.F.R. 35.170, or AS 128.80.220, agencies shall follow the procedures established under AS 44.21.505 by the Division of Personnel and Office of Equal Employment Opportunity in the Department of Administration.

X. POLICY DISSEMINATION:

A. Each agency shall post the state policy in Section II of this order in the form provided by the State ADA Coordinator on all bulletin boards and at every facility and office.

B. Each commissioner and division director shall ensure that copies of this order are disseminated to all managers and supervisors and that copies of the policy are included in all employee handbooks and department operating policies and procedures manuals.

C. The director of the Division of Personnel and Office of Equal Employment Opportunity shall ensure that a copy of this order is provided to all recruitment resources and to labor unions representing state employees.

XI. RECORDKEEPING:

A. An agency, as required by 29 C.F.R. 1602, shall maintain employee records, including applications, employee files, and agency anecdotal employee records, for a minimum of one year or, if an employment discrimination complaint has been filed, until the complaint is finally resolved, whichever is longer.

B. An agency, as required by 28 C.F.R. 35.105(c), shall maintain on file and make available for public inspection for at least three years following completion of its self-evaluation:

- (1) A list of the interested persons consulted in preparing the agency's self-evaluation and transition plans;
- (2) A description of areas examined and any problems identified; and,
- (3) A description of any actions taken and modifications made.

XII. DEFINITIONS:

Unless the context indicates otherwise, in this order

(1) "ADA" means the Americans With Disabilities Act;

(2) "agency" or "state agency" means a department, office, agency, public corporation, board, commission,

authority, or other organizational unit of the executive branch of state government excluding the University of Alaska and the Alaska Railroad Corporation;

(3) "commissioner" means the chief executive officer of an executive department or other agency with cabinet-level reporting status;

(4) "department" means one of the principal departments of the executive branch or any other agency approved by the State ADA Coordinator to function as a department under this order;

(5) "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, as defined for title I of ADA in 29 C.F.R. 1630.2(g) and for title II of ADA in 28 C.F.R. 35.104;

(6) "qualified individual with a disability" means with respect to employment, as defined in 29 C.F.R. 1630.2(m), an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and who, with or without reasonable accommodation, can perform the essential functions of the position;

For purposes of programs and services other than employment, "qualified individual with a disability", as defined in 28 C.F.R. 35.104, means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity;

(7) "order" means Administrative Order No. 129;

(8) "state" means the executive branch of Alaska state government.

XIII. EFFECTIVE DATE:

This order takes effect immediately.

DATED at Juneau, Alaska this 22 day of April, 1992.

By: S/S Walter J. Hickel
Walter J. Hickel
Governor