

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL
STANDARD OPERATING PROCEDURE

Reassignment of a Qualified Employee with a Disability

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A. Purpose

The purpose of this Standard Operation Procedure (SOP) is to provide Guidelines for the Division of Personnel and departmental human resource staff in the reassignment of a qualified employee with and Americans with Disability Act (ADA) qualifying disability. A deviation from these guidelines may be necessary due to the unique aspects of each situation.

B. Scope

This reassignment process applies to employees in the classified and partially exempt service.

NOTE: This SOP applies to probationary employees only if the probationary employee with a disability adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for reassignment arose. If the probationary employee has never adequately performed the essential functions, with or without reasonable accommodation, then s/he is not entitled to reassignment because s/he was never “qualified” for the original position.

C. Authority

1. Americans with Disabilities Act of 1990.

D. Overview

The Americans with Disabilities Act and EEOC Enforcement Guidance treat reassignment of qualified employees with disabilities as a form of reasonable accommodation.

NOTE: EEOC Enforcement Guidance is considered when determining how to handle individual cases.

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E. When is Reassignment Necessary?

Reassignment is the reasonable accommodation of last resort and may be required after one of the following determinations has been made:

1. There are no effective reasonable accommodations that will enable the employee to perform the essential functions of his/her current position, or
2. All other reasonable accommodations would impose undue hardships or would pose a direct threat to the employee or other employees.

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F. Preparing for Reassignment

1. Prior to beginning the reassignment process, the Human Resource Manager (HRM) and the statewide ADA Coordinator, whose position is located in the Department of Labor and Workforce Development, will meet to make the following determinations:
 - Whether or not the employee has an ADA qualifying condition;
 - If a reassignment, as described in section E, is necessary; and
 - If enough information has been provided by the employee and/or the employee's health care provider regarding his/her ADA qualifying disability to determine if s/he could perform the essential functions of current vacancies with or without reasonable accommodation.

In making this determination the following documents will be reviewed:

1. Employee's ADA Reasonable Accommodation Request*
2. Documentation in Support of Request: Health Care Provider Information*
3. Employer's notes from the reasonable accommodation interview and other related information**
 - These documents are provided by and available to the Department of Labor & Workforce Development, Division of Vocational Rehabilitation, State ADA Coordinator's Office, website at www.labor.state.ak.us/ada/home.htm
 - Optional Guidelines for conducting a Reasonable Accommodation Interview are also provided by and may be located on the Department of Labor & Workforce Development, Division of Vocational Rehabilitation, State ADA Coordinator's Office, website listed above. These guidelines are specifically not required by this SOP.

NOTE: If additional information is required from the employee or his/her health care provider, the request should be made through the employee at the time s/he is notified that the employer is considering reassignment to an alternate, vacant position.

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2. If the HRM and statewide ADA Coordinator determine reassignment is appropriate, the employer notifies the employee in writing (Addendum A) that:
 - a) the employee has determined the employee cannot perform the essential functions of his/her position with or without reasonable accommodation and reassignment to an alternate, vacant position is being considered
 - b) the employee has seven (7) working days from the date of notification to submit a Reassignment Applicant Profile (Addendum B) to his/her department Human Resource Manager.
 - i. The employee may indicate his/her interest in other geographic locations for reassignment.
 - ii. The employee is solely responsible for relocation expenses unless the reassignment to a different location is the accommodation that the employer determines is appropriate.
 - c) If, within the specified timeframe listed in (b) above, the employee fails to submit a Reassignment Applicant Profile or the requested medical information, the employee's qualification for current vacancies will be based on available information.
 - d) For the purpose of reassignment, a vacancy is defined as a vacant position an agency intends to fill.

NOTE: Addendum A must be sent via certified mail to the employee.

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G. The Reassignment Process – Department-wide

1. Within two (2) working days of receipt of the Reassignment Applicant Profile and additional information on the employee's ADA qualifying disability, if requested, the HRM will conduct a job search within the department for a vacant position in the same job classification with essential functions that the employee could perform with or without reasonable accommodation. Positions in the employee's current bargaining unit will be considered first.
2. If a vacancy is not identified in G.1 above, within seven (7) working days of receipt of the Reassignment Applicant Profile and additional information on the employee's ADA qualifying disability, if requested, the HRM will conduct a job search within the department for a vacant position in another job classification within the same or equivalent salary range with essential functions that the employee could perform with or without reasonable accommodation.
3. Determinations of equivalent salary ranges in other bargaining units are made on a case-by-case basis, in consultation with the Division of Personnel.
4. The Human Resource Manager will review the Position Descriptions for the vacancies identified in the employee's current or equivalent salary range and will make a determination if the employee can perform the essential functions of the positions with or without reasonable accommodation.
 - a) If there is more than one position for which the employee is eligible, the HRM will share information regarding the positions' essential duties with the employee for review.
 - b) If the employee's education and experience in comparison to the vacancies are equal, the employee's preference will be considered.
 - c) The employee will be offered the position that most closely matches his or her education and experience. The employee's work history and the work environment will also be considered.

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5. If a laid-off employee, injured worker or pregnant employee also has rights to the single, eligible position identified in this process, the circumstances will be evaluated and a determination will be made by the Director of the Division of Personnel regarding placement. Although not exclusive in making this determination, the following will be considered:
 - a) The Existence of other positions available for any of the competing employees or former employees; and
 - b) Whether or not the other employees are currently working in a classified or partially exempt position.
6. If a vacancy is not identified in G.4, the employee will be notified that his/her Reassignment Applicant Profile and related medical reports are being forwarded to the Department of Administration, Division of Personnel (Addendum C).

NOTE: Addendum C must be sent via certified mail to the employee.

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H. The Reassignment Process – Statewide

1. Upon receipt of the employee's Reassignment Applicant Profile and related medical records and correspondence from the HRM, the Division of Personnel will begin a fifteen (15) working day job search. The job search will be conducted in the following manner.
 - a. Within one (1) working day of receipt and every five (5) calendar days thereafter through the 15th working day, all job postings at or below the employee's current or equivalent salary range, for which the employee meets the minimum qualifications will be identified including nonpermanent, seasonal and part-time positions (if applicable).
 - b. The Division of Personnel will review position descriptions for these vacancies and will determine whether the employee can perform the essential functions with or without reasonable accommodation. Recruitment and selection will be places on hold for vacancies closest to the employee's current salary range.
2. Determinations of equivalent salary ranges in other bargaining units are made on a case-by-case basis.
3. Upon completion of the fifteen (15) working day job search:
 - a) If there is more than one position for which the employee is eligible, the Division of Personnel will share information regarding the positions' essential duties with the employee for review.
 - b) If the employee's education and experience in comparison to the vacancies are equal, the employee's preference will be considered.
 - c) The employee will be offered the position that most closely matches his or her education and experience. Positions in the employee's current bargaining unit will be considered first. The employee's work history and the work environment will also be considered.

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4. If a laid off employee, injured worker or pregnant employee also has rights to the position identified in H.3, the circumstances will be evaluated and a determination will be made by the Director of the Division of Personnel regarding placement. Although not exclusive in making this determination, the following will be considered.
 - a) The existence of other positions available for any of the competing employees or former employees; and
 - b) Whether or not the employees are working in a classified or partially exempt position.
5. If the employee disagrees with the determination made on whether s/he can perform the essentials functions of the position with or without reasonable accommodation, the State's ADA Coordinator will make a final determination.
6. Once a single, eligible position is identified, the Division of Personnel will notify the HRM of the department with the vacancy of the impending placement.
7. Following notification to the HRM, a written offer will be made to the employee (Addendum D). The employee will have ten (10) working days from the date of receipt of the offer to accept the offer. Failure to accept the offer or to respond within ten (10) working days will subject the employee to separation.

NOTE: Addendum D must be sent via certified mail to the employee.

8. The department with the vacancy determined to be the most appropriate placement for the employee will accept the employee for reassignment unless a unique and unusual circumstances exception has been approved for the position under 2 AAC 07.096(b) prior to notification of the impending placement.
9. If during the fifteen-day job search, a vacancy at or below the employee's current or equivalent salary range is not identified for which the employee is qualified and which has essential functions that the employee can perform with or without reasonable accommodation, the employee's supervisor, department Human Resource Manager, and Division of Personnel staff will meet with the employee. The employee will be informed that the attempt to accommodate him/her through reassignment was unsuccessful and that s/he is subject to separation (addendum E).

NOTE: Addendum E must be sent via certified mail to the employee.

10. The employee may waive reassignment with written notification to his or her HRM. An employee who waives reassignment will be separated.

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1.) Documentation

All documentation and correspondence that mention the employee's condition or accommodation attempts will be kept in a confidential medical file. Personnel actions concerning reassignment will be included in the personnel file and the personnel action comments will be:

When separation and employee:

“_____ (name) is separated from state service effective _____ (date) and is eligible for rehire with prejudice.”

When reassigning an employee:

“_____ (name) is appointed to _____ (position) effective _____ (date) through preferential employment rights.”

Dear _____:

The Department of _____, Division of _____ is offering you a (fulltime, part time, etc.) (job classification), PCN _____ in (location). The position is located at _____. The supervisor is _____. A position description is attached for your information. If you accept this offer you will be expected to report to work on _____ at _____.

You must respond to this offer by _____(ten (10) working days from the date of this letter). If your do not accept this offer of if your fail to respond by this date, you will be subject to separation.

Please indicate your decision below and return this letter to _____ at _____ or fax it to _____ by the date and time specified above.

If you wish to obtain additional information about this position you may contact _____ at _____.

Sincerely,

Employee Programs Manager

____ I accept PCN_____, a(n) _____ and will begin work on _____.

____ I do not accept PCN_____, and understand that I will not be subject to separation.

cc: Human Resources Manager
Department of _____
(receiving department)

Human Resources Manager
Department of _____
(current department)

State ADA Coordinator
Division of Vocational Rehabilitation
Department of Labor and Workforce Development

Dear _____:

Pursuant to the Americans with Disabilities Act and the Equal Employment Opportunity Commission's enforcement guidance, a thorough job search has been conducted in an attempt to reassign you to an alternate vacant position as a reasonable accommodation. Unfortunately, we were unsuccessful in locating a position at or below your current salary range or an equivalent salary for which you are qualified and able to perform the essential functions with or without reasonable accommodation. Therefore, effective _____ you will be separated from your employment with the State of Alaska.

Sincerely,

Employee Programs Manager

cc: Human Resources Manager
Department of _____

State ADA Coordinator
Division of Vocational Rehabilitation
Department of Labor and Workforce Development