

Arkansas National Guard
Technician Personnel
Regulation 791

Human Resources Office

Arkansas National Guard Reasonable Accommodation

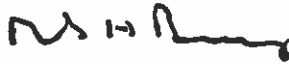
**Military Department of Arkansas Office
of the Adjutant General Arkansas
National Guard
Camp Joseph T. Robinson North
Little Rock, Arkansas 72199-9600
Issued 15 October 2018**

SUMMARY OF CHANGES

NDAA 2017 directed the National Guard to convert all T32 Excepted Service NDS technicians to T5 Competitive Service technicians. NDAA 2018 directed the National Guard to convert 12.6% of the T32 DS Excepted Service technicians to T5 Excepted Service technicians. The Human Resources Office (HRO) is reviewing, updating and publishing HRO policies to reflect the changes in law. The new policies will provide guidance to supervisors on how to manage T5 NG Employees. The following are a summary of changes made to the ARNG Reasonable Accommodations Guides; dtd 09 Sep 13.

**Director of Human Resources:
Arkansas National Guard Reasonable Accommodation**

By Order of The Adjutant
General, Arkansas National
Guard:



Mark H. Berry
Major General,
Arkansas National Guard

OFFICIAL:



Charles W. Nichols, Jr.
Col, ARANG
Human Resources Officer

History. Reasonable accommodation is any change to a job, the work environment, or the way things are usually done that allows an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other individuals in the workplace. Agencies are required by law to provide reasonable accommodation to qualified individuals with disabilities, unless doing so would impose an undue hardship to the agencies. In addition, Executive Order 13164 requires Federal agencies to develop written procedures for providing reasonable accommodation.

References.

Required and related publications are listed in Enclosure C.

Summary. The Arkansas National Guard is committed to ensure requests for reasonable accommodation are handled in an effective and expeditious manner. It is the obligation of Arkansas National Guard to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause undue hardship to Arkansas National Guard. Examples of reasonable accommodations include providing interpreters, readers, or other personal assistance; modifying job duties; restructuring work sites; providing flexible work schedules or work sites; and providing accessible technology or other workplace adaptive equipment.

Applicability. This regulation Placement Plan applies to all National Guard (NG) Employees in Arkansas. All references to "NG Employees" here after include Title 32 Technicians and Title 5 NG Employees.

Proponent and exception authority. The proponent for this regulation is the Human Resources Officer (HRO). The HRO has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The HRO may delegate this approval authority

in writing, to a branch chief or specialist in the proponent directorate.

Management Control Process. This regulation is subject to the requirements of AR 11-2. It contains internal control provisions but does not contain a checklist for conducting internal control reviews.

Supplementation. Supplementation of the regulation and establishment of local forms is prohibited without prior approval of the proponent.

Suggested Improvements. Users are invited to send comments and suggested improvements on a DA Form 2028 (Recommended Changes to Publications and Blank Forms) to TAG, AR, ATTN: NGAR-HRO-Z.

Distribution. This publication is available in electronic media only and is intended for command levels. Any public release of this shall be cleared with the FOIA official.

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Chapter 1

General Provisions

1-1. Purpose. Establishes procedures to implement a Reasonable Accommodations (RA) Program within the Arkansas National Guard and to ensure compliance with statutory and regulatory requirements. The policy provides information on reasonable accommodation to qualified employees or applicants for employment with disabilities. The Rehabilitation Act of 1973, as amended requires the employer to consider ways to alter, restructure, or change the manner of doing a job in order to allow a qualified person with a disability to perform the essential functions of a particular job, to be considered for a position he or she desires, or to enjoy equal employment opportunities.

1-2. Responsibilities.

a. Employee/Designated Representative.

- (1) Initiate the RA request by utilizing **ARNG Form 791_1-RA- "Employee Request"**.
- (2) Provide documentation as necessary to assist the State Equal Employment Manager (SEEM) to make determination.
- (3) Notify supervisor/SEEM of any change in condition requiring RA.

b. Supervisor/Supervisory Chain.

- (1) Complete **ARNG Form 791_2-RA- "Supervisor Review"**. Submit within 72 hours, or three (3) business days.
- (2) Conduct a thorough review of the individual's essential functions and make an RA recommendation.
- (3) Ensure approved RA is implemented.

c. SEEM

(1) Process **ARNG Form 791_1-RA- "Employee Request"** and **ARNG Form 791_2-RA- "Supervisor Review"**. Fill in "**Date Received**" and assign a "**Log Number**" on the **ARNG Form 791_1-RA- "Employee Request"**.

(2) Contact applicant or employee within 10 business days of receipt to begin RA request. If RA is requested by a third party, confirm with the employee.

(3) Consult with employee's supervisory chain to gather relevant information necessary to respond to a RA request.

(4) Request medical documentation as necessary to determine eligibility for RA by utilizing **ARNG Form 791- RA- Requesting Medical Documentation**.

(5) Determine if individual's impairment is a "disability" under the Rehabilitation Act.

(6) Complete one of the following:

(a) **ARNG Form 791_3- RA- "HRO Decision"** (Approved/Modified)

(b) **ARNG Form 791_3- RA- "HRO Decision"** (Denied)

(7) Complete **ARNG Form 791_b- RA- "Reporting"**

1-3. Reasonable Accommodation: The Arkansas National Guard (ARNG) is committed to ensure requests for reasonable accommodation are handled in an effective and expeditious manner. It is the obligation of ARNG to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause undue hardship to ARNG. Examples of reasonable accommodations include providing interpreters, readers, or

other personal assistance; modifying job duties; restructuring work sites; providing flexible work schedules or work sites; and providing accessible technology or other workplace adaptive equipment. The ARNG has the following objectives:

- a. To enable the individual employee to perform the essential functions of the position, or to gain access to the workplace
- b. To enable an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job
- c. To allow an employee with a disability an opportunity to enjoy equal benefits and privileges of employment are enjoyed by other similarly situated employees without disabilities.

1-4. Options for Requesting Reasonable Accommodation: The supervisor will be responsible for considering and approving requests for reasonable accommodation when possible. The Equal Employment Opportunity (EEO) staff will communicate with the requester to ensure that all effective accommodation have been considered where the specific limitation, problem or barrier is unclear. The EEO office will oversee the agency's reasonable accommodation process. The EEO office acts as a resource for individual with disabilities and agency decision makers.

a. If an employee makes an RA request to someone other than the SEEM, such as their supervisor, office director, etc. these supervisors/managers should forward the request to the SEEM immediately and must do so within 5 business days. **The RA process begins as soon as the oral or written request for accommodation is made to any supervisor or director in an employee's chain of command, so it is imperative that the request be forwarded to the DPM/SEEM within 5 business days.**

b. An individual's receipt or denial of an accommodation does not prevent the individual from making another request at a later time if circumstances change and they believe that an accommodation is needed due to limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different RA). Additionally, the SEEM may not refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g., during the application process).

c. A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication in which an individual asks or states that they need the agency to provide or to change something because of a medical condition. A supervisor, manager, or the SEEM should ask an individual whether they are requesting an RA if the nature of the initial communication is unclear.

d. A **family member, health professional, or other representative** may request an accommodation on behalf of an employee or applicant. For example, a doctor's note outlining medical restrictions for an employee constitutes a request for RA.

e. When an individual (or third party) makes an **oral request**, the SEEM must ensure that **ARNG Form 791_1- RA- "Employee Request"** is filled out. The SEEM must fill out the form if the requestor does not.

f. An employee needing RA on a recurring basis, such as the assistance of a sign language interpreter, must only submit **ARNG Form 791_1- RA- "Employee Request"** for the first request. However, the employee must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the SEEM should ensure that an employee's supervisor makes the appropriate arrangements without requiring a request in advance of each occasion.

Chapter 2

Processing a Reasonable Accommodation Request

2-1. Processing the Request.

a. The SEEM is responsible for processing requests for RA. The Director of Human Resources Office (HRO) will designate another HRO staff member to act as a back-up for the SEEM to process requests when the SEEM is unavailable for any length of time.

b. While the SEEM has responsibility for processing requests for RA, the SEEM may work closely with an employee's supervisor or office director in responding to the request, particularly those involving performance of the duties and essential functions. The SEEM will need to consult with an employee's supervisor and/or office director to gather relevant information necessary to respond to a request and to assess whether a particular accommodation will be effective. No RA involving performance of duties will be provided without first informing an employee's supervisor or, as appropriate, an office director.

2-2. The Interactive Process:

a. After a request for RA has been made, the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the SEEM must communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.

b. The SEEM will contact the applicant or employee within 10 business days after the request is made (even if the request is initially made to someone else) to begin discussing the accommodation request. In some instances, the SEEM may need to get information to determine if an individual's impairment is a "disability" under the Rehabilitation Act or to determine what would be an effective accommodation. Such information may not be necessary if an effective accommodation is obvious, if the disability is obvious (e.g., the requestor is blind or has paraplegia) or if the disability is already known to the agency (e.g., the requestor previously asked for an accommodation and information submitted at that time showed a disability existed and that there would be no change in the individual's medical condition).

c. Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different forms of reasonable accommodation. Both the individual making the request and the decision maker should work together to identify effective accommodations.

d. When a third party requests accommodation on behalf of an applicant or employee, the SEEM should, if possible, confirm with the applicant or employee that they want a RA before proceeding. Where this is not possible, for example, because the employee has been hospitalized in an acute condition, the SEEM will process the third party's request if it seems appropriate (e.g., by granting immediate leave) and will consult directly with the individual needing the accommodation as soon as practicable.

e. The SEEM may need to consult with other agency personnel (e.g., an employee's supervisor, G6 staff) or outside sources to obtain information necessary to make a determination about the request. All agency personnel must give a high priority to responding quickly to a SEEM's request for information or assistance in order to meet mandatory time frames.

f. The following applies to reassignment consideration within the interactive process when an employee needs or may require a reassignment:

(1) Reassignment will only be considered if no accommodations are available to enable

the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship.

(2) In considering whether there are positions available for reassignment, the SEEM will work with both the HRO and the employee requesting the reassignment to identify: Vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and positions which HRO has identified as becoming vacant within 60 days from the date the search is initiated and for which the employee may be qualified.

EXAMPLE: *If a search begins on May 1, then the SEEM will inquire about any positions that are currently vacant or will become vacant between May 1 and June 30. The SEEM does not have to hold open the search until July 1; if he/she finishes the search on May 15 and learns that no vacancies are currently available or anticipated by June 30, the search is over and the results should be conveyed to the employee.*

(3) Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the agency will not pay for the employee's relocation costs.

2-3. Request for Medical Information. If a requestor's disability and/or need for accommodation are not obvious or already known, the agency (specifically the SEEM) is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires RA by utilizing **ARNG Form 791- RA- Request for Medical Documentation**. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by the agency where the disability and/or need for accommodation are not obvious or already known.

a. Only the SEEM may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health professional. Even if medical information is needed to process a request, the SEEM does not necessarily have to request medical documentation from a health care provider; in many instances the requestor may be able to provide sufficient information that can substantiate the existence of a "disability" and/or need for a RA. If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform the SEEM of this fact. The SEEM will then determine whether additional medical information is needed to process the current request.

b. If the initial information provided by the health professional or volunteered by the requestor is insufficient to enable the SEEM to determine whether the individual has a "disability" and/or that an accommodation is needed, the SEEM will explain what additional information is needed. If necessary, the individual should then ask their health care provider or other appropriate professional to provide the missing information. The SEEM may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, the SEEM may ask the individual requesting accommodation to sign a limited release permitting the SEEM to contact the provider for additional information.

c. The SEEM may have the medical information reviewed by a doctor of the agency's choosing, at the agency's expense. In determining whether documentation is necessary to support a request for RA and whether an applicant or employee has a disability within the meaning of the Rehabilitation Act, the SEEM will be guided by principles set forth in the ADAA of 2008. Specifically, the ADAA directs that the definition of "disability" be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis. Notwithstanding, the SEEM may require medical information in order

to design an appropriate and effective accommodation.

d. A supervisor or office director who believes that an employee may no longer need a RA should contact the SEEM. The SEEM will decide if there is a reason to contact the employee to discuss whether he/she has a continuing need for RA.

2-4. Confidentiality. Under the Rehabilitation Act, medical information obtained in connection with the RA process must be kept confidential. This means that all medical information that the agency obtains in connection with a request for RA must be kept in files separate from the individual's personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any agency employee who obtains or receives such information is strictly bound by these confidentiality requirements.

a. The SEEM may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on a RA request. Under these circumstances, the SEEM will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the SEEM will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability.

EXAMPLE: *The G6 generally will be consulted in connection with requests for assistive technology for computers. While the G6 needs to know the employee's functional limitations, it typically has no need to know the employee's specific disability.*

b. In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

(1) Supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance in evacuation. Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.

2-5. Timeframe for Processing RA Requests. The time frame for processing a request (including providing accommodation, if approved) is as soon as possible but no later than 30 business days from the date the request is made. This 30-day period includes the 10-day time frame in which the SEEM must contact the requestor after a request for RA is made.

a. The agency will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible. The time frame above indicates the maximum amount of time it should generally take to process a request and provide a RA the SEEM will strive to process the request and provide an accommodation sooner, if possible. Unnecessary delays can result in a violation of the Rehabilitation Act.

b. The time frame begins when an oral or written request for RA is made, and not necessarily when it is received by the SEEM. Therefore, everyone involved in processing a request should respond as quickly as possible. This includes referring a request to the SEEM, contacting a doctor if medical information or documentation is needed, and providing technical assistance to the SEEM regarding issues raised by a request (e.g., information from a supervisor regarding the essential functions of an employee's position, information from the G6 regarding compatibility of certain adaptive equipment with agency's technology).

c. If the SEEM must request medical information or documentation from a requestor's doctor, the time frame will stop on the day that the SEEM makes a request to the individual to obtain medical information or sends out a request for information / documentation. It will resume on the day that the information or documentation is received by the SEEM.

d. If the disability is obvious or already known to the SEEM, if it is clear why RA is needed, and if an accommodation can be provided quickly, then the SEEM should not require the full 30 business days to process the request. The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame:

(1) An employee with insulin-dependent diabetes who sits in an open area asks for three breaks a day to test his/her blood sugar levels in private.

(2) An employee with clinical depression who takes medication which makes it hard for them to get up in time to get to the office at 9:00 a.m., requests that they be allowed to start work at 10:00 a.m. and still work an eight and a half hour day.

(3) A supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a serious learning disability asks that the agenda be distributed ahead of time because their disability makes it difficult to read quickly and he/she needs more time to prepare.

2-6. Expedited Processing of a Request: In certain circumstances, a request for RA requires an expedited review and decision. This includes where a RA is needed:

a. To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for RA to ensure that an applicant with a disability has an equal opportunity to apply for a job.

b. To enable an employee to attend a meeting scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

2-7. Extenuating Circumstances: These are circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond TMD's ability to control. When extenuating circumstances are present, the time for processing a request for RA and providing the accommodation will be extended as reasonably necessary. Extensions will be limited to circumstances where they are absolutely necessary and only for as long as required to deal with the extenuating circumstance.

2-8. Resolution of the RA Request. All decisions regarding a request for RA will be communicated to an applicant or employee by **ARNG Form 791_3- RA- "HRO Decision"**, as well as orally.

a. If the agency grants a request for accommodation, the SEEM will give the **ARNG Form 791_3- RA- "HRO Decision"** to the requestor, and discuss implementation of the accommodation. The **ARNG Form 791_3- RA- "HRO Decision"** must be filled out even if the agency is granting the request without determining whether the requestor has a "disability" and regardless of what type of change or modification is approved (e.g., agency grants a three-month removal of an essential function, which is not a form of RA but nonetheless must be specified on the **ARNG Form 791_3- RA- "HRO Decision"**).

b. A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. The form will explain both the reasons for the denial of the individual's specific requested accommodation and why the agency believes that the chosen accommodation will be effective.

c. If the request is approved but the accommodation cannot be provided immediately, the SEEM will inform the individual in writing of the projected time frame for providing the accommodation.

d. If the agency denies a request for accommodation, the SEEM will give the **ARNG Form 791_3- RA- "HRO Decision"** to the requestor and discuss the reason(s) for the denial. When

completing the **ARNG Form 791_3- RA- "HRO Decision"**, the explanation for the denial will clearly state the specific reason(s) for the denial. This means that the agency cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective." Rather, the form will state and the SEEM will explain specifically why the accommodation would result in undue hardship or why it would be ineffective.

e. If there is a legitimate reason to deny the specific RA requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the SEEM will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the SEEM will explore whether there is a RA that will meet the employee's needs.

f. If the SEEM offers an accommodation other than the one requested, but the alternative accommodation is not accepted, the SEEM will record the individual's rejection of the alternative accommodation on the **ARNG Form 791_3- RA- "HRO Decision"**.

Chapter 3

Military Technicians

3-1. Background on Military Technicians Reasonable Accommodation: Military Technicians also known as Dual Status Technicians may make reasonable accommodation requests, however, they must meet all applicable requirements for continued military service. However when a Military/Dual Status Technician loses their military membership they can lose their full-time technician job as well. The National Defense Authorization Act (NDAA) for FY 2008 [Public Law 110-181] amended Section 10216 of Title 10, United States Code to add subsection (g) which in certain circumstances can provide for the retention of military technicians who lose their military membership, and therefore their dual status (DS) military technician positions, **due to a combat-related disability.**

3-2. Conditions for Reasonable Accommodations: Under the provisions of the FY 2008 NDAA, individuals may be retained as T5 NG Employees as long as the disability:

- (a) Does not prevent him/her from performing the duties of the T5 position, and
- (b) He/she is not disqualified from performing the duties because of performance, medical or other reasons.

3-3. Processing Mil Tech Reasonable Accommodation: It does not require placement into the same [DS] position the technician held prior to mobilization and injury. Nor is the technician subject to mandatory placement as a result of the statute. HR professionals will make every effort to place the technician into a valid T5 NG Employee designated position with an established T5 position description. If an exception PD is required, normal procedures to obtain approvals will be utilized. **Inherently military positions/functions (e.g. military command, pilot, aircrew, key staff) will not be converted to T5 NG Employees to accommodate placement under this authority.**

3-4. Conversion Eligibility: T32 Conversion to T5 will be determined on the basis of:

- (a) Examination of the DD Form 214 and/or military orders to validate military service and combat-related disability; NGB Form 22; award of the Purple Heart, due to injury as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war; *and*
- (b) The attending physician's evaluation of position requirements and determination of the technician's work capacity assessment or "job readiness" certification. Certification of "job readiness" is a determination that the technician is likely to succeed in the performance of the duties of the position. A "qualified" individual with a disability is a technician who, with or without reasonable accommodation, can perform the essential functions of the position.

3-5. T5 Conditions of Employment: Selectees for continued service as T5 NG Employee positions must meet basic education, experience, training and physical requirements set by NGB, DoD or OPM. They must also meet any selective placement factors that apply to the position being filled. If they require a reasonable accommodation they should follow the procedures set forth in this guide.

Chapter 4

Reasonable Accommodation Dispute Resolution

4-1. Informal Dispute Resolution: Whenever possible and in accordance with the desires of the individual filing the complaint, the matter will be resolved in an informal setting. Informal resolution may include mediation when the parties agree. These mediation services may include consultation with the complainant and any other parties involved, either separately or jointly. Confidentiality in mediation shall be maintained.

a. An individual dissatisfied with the HRO decision of a RA request can ask the Director of HRO to reconsider that decision. An individual must request reconsideration within 10 business days of receiving **ARNG Form 791_3- RA- "HRO Decision"** by utilizing **ARNG Form_a- RA- "Resolution"**. A request for reconsideration will not extend the time limits for initiating administrative, statutory, or collective bargaining claims. Submit request to:

Arkansas National Guard
ATTN: Director, Human Resource Office
P. O. Box 17, Bldg 7300, CJTR
North Little Rock, AR 72199

b. Office of the Executive Director: An individual with a qualified disability who alleges any violation of the ADA may file a written or verbal complaint with the following:

Arkansas National Guard
ATTN: EEO Coordinator, Human Resource Office
P. O. Box 17, Bldg 7300, CJTR
North Little Rock, AR 72199
Phone: (501) 212-4231
Fax: (501) 212-4209

c. A complaint should be filed within 14 calendar days after the date of the most recent alleged unlawful practice or discriminatory act, or within 14 calendar days after the date the complainant was notified or became aware of the alleged violation. A complaint should contain the following information:

- (1) The name and address of the person filing it.
- (2) A description of the alleged violation of the ADA.
- (3) The date(s) of the alleged violation.
- (4) The name(s) of person(s) involved.
- (5) The outcome desired.

4-2. Information Tracking and Reporting. In order for the agency to ensure compliance with these Procedures and the Rehabilitation Act, the SEEM will complete ARNG Form 791_b- RA- "Reporting" (Encl A) within 5 business days of issuing the decision.

a. These forms will be the basis of an annual report available to all employees that will provide a qualitative assessment of the agency's reasonable accommodation program, including any recommendations for improvement of the agency's Reasonable Accommodation regulation.

b. This annual report will not contain confidential information. This report will provide only general information, such as the total number of requests for accommodations, the types of accommodations requested, and the length of time taken to process requests.

Confirmation of Employee Request for Reasonable Accommodation/Personal Services Assistance

Date of request: _____ **Date Received (completed by SEEM):** _____

Applicant or Employee's Name: _____

Applicant or Employee's Phone Number: _____

Office of Employee: _____

Accommodation Requested (be as specific as possible: adaptive equipment, reader, interpreter, working space modification): _____

Reason for the Request (if the accommodation is time sensitive, indicate this then explain):

Log Number: _____

(Assigned by the SEEM)

Privacy Act Statement

The Rehabilitation Act of 1973, 29 U.S.C. section 791, and Executive Order 13164 authorize collection of this information. The primary use of this information is to consider, decide, and implement requests for reasonable accommodation. Additional disclosures of the information may be: To medical personnel to meet a bona fide medical emergency; to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding; to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

Reasonable Accommodation/Personal Services Assistance Supervisor Review Form

Date: _____

1. Name of individual requesting reasonable accommodation: _____

2. Job Title (include occupational series and Pay Grade): _____
Employee Duty Location: _____

3. Supervisor Contact Information:

Phone: _____

Email: _____

4. Describe disability and functional limitations: _____

5. Describe accommodations being requested and purpose for request: _____

6. List essential functions of the position and indicate whether the employee can perform the function with the requested accommodation:

- | | | | | |
|--|--|-----------------------------------|-----------------------------------|---|
| <input type="checkbox"/> Bending | <input type="checkbox"/> Hearing | <input type="checkbox"/> Reaching | <input type="checkbox"/> Speaking | <input type="checkbox"/> Other (Describe) |
| <input type="checkbox"/> Breathing | <input type="checkbox"/> Interacting With Others | <input type="checkbox"/> Reading | <input type="checkbox"/> Standing | |
| <input type="checkbox"/> Caring For Self | <input type="checkbox"/> Learning | <input type="checkbox"/> Seeing | <input type="checkbox"/> Thinking | |
| <input type="checkbox"/> Concentrating | <input type="checkbox"/> Lifting | <input type="checkbox"/> Sitting | <input type="checkbox"/> Walking | |
| <input type="checkbox"/> Eating | <input type="checkbox"/> Performing Manual Tasks | <input type="checkbox"/> Sleeping | <input type="checkbox"/> Working | |

a. _____ YES ___ NO ___ N/A*

b. _____ YES ___ NO ___ N/A*

c. _____ YES ___ NO ___ N/A*

d. _____ YES ___ NO ___ N/A*

*Accommodation not necessary to perform this function. (Attach additional pages if necessary)

7. Was medical information provided? If yes, indicate by whom and identify who reviewed medical information.

8. Describe steps taken to evaluate effectiveness and feasibility of requested accommodation.

Print Name (Supervisor)

Date

Signature (Supervisor)

Reasonable Accommodation/Personal Services Assistance Human Resource Officer Decision Form

Date: _____

1. Accommodation Request is: _____ Approved _____ Denied _____ Modified

If APPROVED, indicate what accommodation will be provided. If MODIFIED, describe modification and provide reason. If DENIED, complete item 4 below.

2. APPROVED ACCOMMODATION: _____

3. REQUEST MODIFIED: _____

4. REQUEST DENIED: check reasons for denying the accommodation. (Check all that apply)

_____ The individual did not provide documentation of a disability that substantially limits a major life activity.

_____ The requested accommodation is ineffective (will not enable individual to perform the essential functions of the position).

_____ The individual's disability/limitations do not prevent him/her from performing the essential functions of the position.

_____ The accommodation/modification request will:

_____ create an undue administrative burden

_____ create an undue impact on operations

_____ fundamentally alter the nature or operation of the facility

_____ require lowering of current performance standard(s)

_____ An effective accommodation that would not pose an undue hardship was offered, but was rejected by the individual.

HRO Approval Authority (Print)

State Equal Employment Manager (Print)

Signature/Date

Signature/Date

Resolution of Reasonable Accommodation/Personal Services Assistance Request Form

(Must complete numbers 1 – 3; complete numbers 4 -7 if applicable)

Date: _____

1. Name of individual requesting reasonable accommodation: _____

2. Applicant or Employee's Phone Number: _____

3. Accommodation Requested (be as specific as possible, eg., adaptive equipment, reader, interpreter, working space modification): _____

4. Accommodation(s):
☐ Approved as specifically requested
☐ Approved but different from original request*
☐ Denied

*if the approved accommodation is different from the one(s) originally requested, identify the alternative accommodation(s):

5. Request denied because: (may check more than one box)

- ☐ Requestor does not have a Rehabilitation Act Disability
- ☐ Accommodation ineffective
- ☐ Accommodation would cause an undue hardship
- ☐ Medical Documentation Inadequate
- ☐ Accommodation would require removal of essential function
- ☐ Accommodation would require lowering performance or production standard
- ☐ Other (please identify) _____

6. Detailed reason(s) for denial (must be specific, e.g. why accommodation would be ineffective or cause undue hardship):

7. If the deciding official offered an accommodation that is different from the one originally requested, explain: (a) the reasons for the denial of the accommodation originally requested; and (b) why the alternative accommodation would be effective.

8. An individual who disagrees with the resolution of the request may ask the Director of the Human Resources Office to reconsider that decision within 14 business days of receiving the "Resolution" form. Note that requesting reconsideration does not extend the time limits for initiating administrative, statutory, or collective bargaining claims.

9. If you are dissatisfied with the resolution and wish to pursue administrative, statutory, or collective bargaining rights, you must take the following steps:

- For an EEO complaint pursuant to 29 C.F.R. subsection 1614, contact an EEO counselor in the EO/EEO office within 45 days from the date of receipt of this Form or a verbal response (whichever comes first).
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.
- For adverse actions over which the Merit System Protection Board has jurisdiction, initiate an appeal to the MSPB within 30 days of an appealable adverse action as defined in 5 C.F.R. subsection 1201.3

Name of Deciding Official

Signature of Deciding Official

Date reasonable accommodation denied/approved (if different from date of completing this form): _____

Privacy Act Statement

The Rehabilitation Act of 1973, 29 U.S.C. section 791, and Executive Order 13164 authorize collection of this information. The primary use of this information is to consider, decide, and implement requests for reasonable accommodation. Additional disclosures of the information may be: To medical personnel to meet a bona fide medical emergency; to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding; to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

Reasonable Accommodation/Personal Services Assistance Information Reporting Form

Name of individual requesting reasonable accommodation: _____

Office of Requesting Individual: _____

1. Reasonable accommodation: (check one)

____ Approved (Whether it is what was originally requested or an alternate)

____ Denied

2. Date accommodation requested: _____

Who received the request: _____

3. Date accommodation request referred to Disability Program Manager/SEEM, if applicable: _____

4. Determined that individual:

____ does ____ does not have a disability as defined by the Rehabilitation Act

____ no disability determination made

5. Date accommodation approved or denied: _____

6. Date accommodation provided (if different from date approved): _____

7. If time frames outlined in the SOP were not met, explain why.

8. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office):

9. Accommodation needed for: (check one)

____ Application Process

____ Performing Job Functions or Accessing the Work Environment

____ Accessing a Benefit or Privilege of Employment (e.g., attending a training program or social event)

10. Accommodation(s) requested:

11. Accommodation(s) provided (if different from what was requested):

12. Cost of accommodation provided:

13. Was medical information required to process this request? If yes, explain why?

14. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g. Job Accommodation Network, disability organization):

15. Comments:

16. Please attach all documentation connected with this request.

Enclosure B

Service Animal Policy and Definitions

1. It is the policy of the Arkansas National Guard (ARNG) to adhere to the Americans with Disabilities Act (ADA) regarding all State and Federal Civilian Employees including Contractors. The Act allows individuals with disabilities the right to bring Service Animals (SA) onto public premises. Installations, armories, bases, and other facilities under control of the ARNG shall comply with this Federal mandate regarding SA.
2. A disability is defined as a physical or mental impairment which substantially limits one or more of an individual's "major life activities" such as walking, talking, seeing, hearing, learning, etc.
3. Service Animals are defined as animals individually trained to work or perform specific tasks directly related to the individual's disability to help mitigate or alleviate the disability. Service Animals are **working animals** and **exclude** the following: pets; comfort or emotional support animals, whose mere presence helps people with mental illness feel better; and therapy animals, which provide affection and physical comfort to people in often stressful situations, such as hospitals. These excluded groups are not considered SA because they do not perform specific tasks related to an individual's disability.
4. Specific tasks performed by SA may include but are not limited to the following: guiding people who are blind; alerting people who are deaf; retrieving objects for people with mobility impairments; providing physical support for people with balance/stability issues; protecting people suffering from a seizure; reminding people with psychiatric illness to take medication; calming people with post-traumatic stress disorder during an anxiety attack; interrupting impulsive/destructive behavior of people with neurological disabilities; and alerting people to the presence of allergens.
5. Currently, only dogs and miniature horses are considered SA. Other animal species, whether domestic, wild, or trained, do not qualify as SA.

Reasonable Accommodation Procedure

Employees must first request a Reasonable Accommodation (RA) for an individual with disabilities before attempting to bring SA to the workplace. Title I of the ADA does not automatically allow employees to bring a SA to work. They shall submit requests through their supervisors to their respective personnel offices (State or Federal). A workplace RA is defined as a change or adjustment in a work area that makes it possible for an otherwise qualified employee with a disability to perform the duties or tasks required, provided that the RA does not place undue hardship, including financial or extenuating circumstances, upon the Agency. Excluding any hardship, attempts will be made to grant the requested RA. If the RA is not possible, employees requesting RAs and management will work together to create mutually acceptable accommodations.

Service Animal Identification

Federal Law under the ADA does not require that SA be certified, and supervisors may not insist on seeing certification documents or tags. They are allowed to ask owners/handlers if the animal is a SA and what specific task the SA performs but not about the nature or extent of the individual's disability. Although it is not a Federal legal requirement for SA to wear special vests, harnesses, collars, or tags, some SA owners/handlers prefer to have their animals assessed and trained, so that SA may be identified by wearing particular gear.

Once SA are trained, some owners/handlers also feel more comfortable because they are able to provide identification papers/cards upon request. Service animals may either be professionally trained or trained by their owners.

Service Animal Owner Responsibilities

1. It is the responsibility of the SA owner to ensure minimal disruption in the work area by the following:

a. The SA shall be properly trained to provide specific assistance to individuals with disabilities.

b. The SA must be harnessed, leashed, or tethered under control unless these devices interfere with their work, or the individual's disability prevents using these devices. If so, the SA must be under control through voice, signal, or other effective methods.

c. The SA shall be properly cleaned and groomed to minimize pest infestation and odors.

d. Owners have sole responsibility to provide care for SA including breaks, water, food, and comfortable bedding. Hydration and feeding should be accomplished out of the work area to minimize hygienic issues.

e. All efforts should be made to have SA urinate and defecate away from areas frequented by the public then cleaned up as soon as possible.

f. If the SA is a canine, it shall have all current vaccinations and be licensed with the appropriate city/county Animal Control Department. A miniature horse SA must also meet all local licensing requirements, if any.

Service Animal Behavior

1. The SA shall not distract or obstruct other SA in the performance of their duties.

2. Service Animals which are disruptive, including those not trained as housebroken, excessively barking, growling, or displaying other aggressive behavior, may be excluded from the work area.

Arkansas National Guard Visitors with Service Animals

Arkansas National Guard visitors with SA shall be treated similarly as outlined above, except that they shall not request a RA.

Supervisor Considerations Regarding Service Animals

1. To address concerns of coworkers and workplace visitors who may have fear or allergy issues, employers should consider taking the following actions:

a. Allow employees in question to work in different areas of the building and establish different travel paths.

b. Utilize alternatives to in person communication such as telephone, fax, email, teleconferencing, or videoconferencing.

c. Grant flexible scheduling for employees in question.

d. Plan so that employees/visitors in question do not use common areas at the same time.

e. Ask the employee with the SA if he/she is able to use temporary accommodations to replace tasks performed by SA during meetings attended by employees/visitors in question.

- f. Use portable air purifiers and/or High Efficiency Particulate Air (HEPA) filters.
- g. Ask the employee with the SA if he/she is willing to regularly use dander care products on it.
- h. Ask the employee/visitor who is allergic to the SA if wearing an allergen mask would be beneficial.
- i. Have the work area (including shelves, carpets, cubicle walls, and window treatments) regularly dusted, vacuumed, and cleaned.

Fraudulent Representation

Any person who knowingly and fraudulently represents himself as an individual with disabilities who requires a SA to be present in the workplace is in violation of Federal Law and subject to fine and/or imprisonment.

Point of Contact: Point of contact is the ARNG Human Resources Office, Equal Employment Specialist, at (501) 212-4231.

Enclosure C

Personal Assistance Services (PAS)

1. The process for requesting PAS, the process for determining whether such services are required, and the agencies right to deny such requests when provision of the services would pose an undue hardship, are the same as for RA process.
2. The Arkansas National Guard is only required to provide PAS if:
 - a. An individual is an employee of the Arkansas National Guard;
 - b. An individual has a targeted disability;
 - c. An individual requires the services because of his or her targeted disability;
 - d. An individual will be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any required RA have been provided; and
 - e. Providing PAS will not impose an undue hardship on the Arkansas National Guard.
3. Personal assistance services will be provided by a PAS provider. The Arkansas National Guard may require PAS providers to perform services to more than one individual, and PAS providers may perform tasks unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide PAS in a timely manner.
4. If the Arkansas National Guard is utilizing a PAS provider who will be assigned to a single individual, and if that individual prefers a particular provider (e.g. because the provider has worked with the individual in the past), the Arkansas National Guard will give primary consideration to the employee's choice to the extent permitted by law.
5. The Arkansas National Guard is prohibited from taking adverse actions against job applicants or employees based on their need for, or perceived need for PAS.



DEPARTMENT OF THE ARMY

Human Resource Office
Bldg 7300, Camp Robinson
North Little Rock, Arkansas 72199-9600

NGAR-HR-Z

Month

MEMORANDUM FOR *(Fill in Employee Healthcare Provider Name and Address)*

SUBJECT: Request for Medical Documentation

1. Your patient has requested an accommodation *(describe the requested accommodation here)* because of functional limitations caused by his/her disability. Since the disability is not visible, and we do not have documentation on file, I would appreciate information that would allow me to determine whether this individual has a disability covered by the Rehabilitation Act of 1973. The information that you provide will also help me determine whether the requested accommodation will be effective in eliminating or minimizing the limitations caused by the disability.

2. The key duties that your patient has advised that he/she is unable to perform, or benefits and privileges of employment that he/she is unable to enjoy are: *(Filled out by Supervisor and HR Specialist)*.

a. What key duties is/are affected?

- | | | | | |
|--|--|-----------------------------------|-----------------------------------|---|
| <input type="checkbox"/> Bending | <input type="checkbox"/> Hearing | <input type="checkbox"/> Reaching | <input type="checkbox"/> Speaking | <input type="checkbox"/> Other (Describe) |
| <input type="checkbox"/> Breathing | <input type="checkbox"/> Interacting With Others | <input type="checkbox"/> Reading | <input type="checkbox"/> Standing | |
| <input type="checkbox"/> Caring For Self | <input type="checkbox"/> Learning | <input type="checkbox"/> Seeing | <input type="checkbox"/> Thinking | |
| <input type="checkbox"/> Concentrating | <input type="checkbox"/> Lifting | <input type="checkbox"/> Sitting | <input type="checkbox"/> Walking | |
| <input type="checkbox"/> Eating | <input type="checkbox"/> Performing Manual Tasks | <input type="checkbox"/> Sleeping | <input type="checkbox"/> Working | |

3. I have been given the responsibility for determining if your patient is covered by the Rehabilitation Act. I cannot proceed until I receive the requested information. If you have any questions, please contact me at the telephone number below:

- a. HRO Rep Name, Title
Street Address
City, State, Zip
Phone Number
Fax Number
E-mail

4. **Please do NOT provide a copy of the patient's complete medical history.** The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. At present, we only need the following information:

a. The nature, severity, and duration of the impairment:

b. One or more of the activities the impairment limits (walking, reaching, breathing, etc.):

c. The extent or degree to which the impairment limits an activity:

d. The reason the individual requires accommodation or the particular accommodation requested, and/or:

e. How the accommodation will assist the individual in applying for a job, performing the essential functions of the job, or to enjoy a benefits of employment:

5. Healthcare Provider Information:

a. Printed Name Healthcare Provider: _____

b. Signature of Healthcare Provider: _____

c. Date of Signature: _____

d. Medical/Professional License Category and Number: _____

6. Point of Contact for this memo and designated program manager is The State Equal Employment Manager at 501-212-4231.

FIRST AND LAST NAME
Rank, Branch, AR ANG
State Equal Employment Manager

Enclosure E

FAQ Pertaining to Reasonable Accommodation

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and became effective January 1, 2009. Because this law made several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the implementation and utilization of federal agency reasonable accommodation programs.

This guide explains the provisions of Executive Order 13164, which requires federal agencies to establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The Guidance also provides background information on the requirements of the Rehabilitation Act of 1973, and sets forth instructions for implementing each of the procedural requirements of the Executive Order.

- Who is covered by the Executive Order?

The Order applies to executive branch agencies and their employees and applicants for employment. It does not apply to employers or employees in the private sector.

- What is reasonable accommodation?

Reasonable accommodation is a change in the work environment or in the application process that would enable a person with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations: (1) changes to a job application process to permit people with disabilities to be considered for jobs; (2) changes to enable people with disabilities to perform the essential functions of a job; and (3) changes to give people with disabilities equal access to the benefits and privileges of employment.

- What are the legal requirements that govern an agency's obligation to provide reasonable accommodation?

Agencies must provide reasonable accommodation to qualified employees or applicants with disabilities unless the accommodation would create an undue hardship on the operation of the agency. A person with a disability is qualified for a job if s/he can perform the essential functions of that job with or without the reasonable accommodation.

For more guidance on the legal standards governing reasonable accommodation, agencies should consult the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, on the web at www.eeoc.gov.

- Why is reasonable accommodation important?

While many people with disabilities can apply for and perform jobs without the need for reasonable accommodation, workplace barriers may keep others from entering the work force and still others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are to be done). Reasonable accommodation removes workplace barriers for people with disabilities. It also allows agencies to expand their pool of qualified workers.

- Why are reasonable accommodation procedures important?

If a person with a disability needs a reasonable accommodation in order to do, or to apply for, his or her job, it is essential that federal agencies handle the request in a prompt, fair, and efficient manner. Establishing procedures in advance will assure that individuals with disabilities

understand how to approach the system and know what to expect. Procedures will also help agency managers understand what is expected of them.

- What are the general standards for reasonable accommodation procedures?

While each agency will design its own procedures, all procedures must meet the following general standards:

- The procedures must be flexible.
- The procedures must be written in plain language.
- The procedures must be designed to expand employment opportunities for people with disabilities.
- The procedures must enable an agency to meet its obligations under the Rehabilitation Act.

- How can a person with a disability start the reasonable accommodation process?

A person with a disability may start the process by making an oral or written request for a reasonable accommodation. Agencies must consider an individual's request if it is made to any of the following: his/her supervisor; a supervisor or manager in his/her immediate chain of command; the EEO office; any other office designated by the agency; or, in connection with the application process, any agency employee with whom the applicant has contact. An agency may not require people with disabilities to use particular words in their requests; nor may it wait to begin processing a request until a written form is submitted.

- Which agency employees should be involved in considering an individual's request for reasonable accommodation?

Agency procedures should authorize first-line supervisors to consider and approve requests for reasonable accommodation wherever possible. Agencies may also designate particular offices to oversee the reasonable accommodation process and/or to provide assistance and information to all agency employees involved in the process.

- Are there specific steps that all agencies must follow?

No. Each agency should design procedures that work best for its work force. All agency procedures should, however, require that agency decision makers talk to the individual requesting the accommodation where the person's specific disability or limitation is unclear; where an effective accommodation is not obvious; or where the parties are choosing between different possible reasonable accommodations.

- What is the time period for processing requests?

Because the amount of time it takes to respond to a request for reasonable accommodation will often depend on the nature of the accommodation, the Guidance does not set specific time lines. Time limits should, however, be as short as reasonably possible. Where an accommodation is needed immediately -- where, for example, an applicant needs a modification to the application process in order to apply for a job -- the agency's procedures should also provide for expedited processing of the request.

- What if an agency can't meet its time frames?

Sometimes there may be factors that an agency could not have anticipated or avoided that will delay the consideration or provision of a reasonable accommodation. In such circumstances, the agency must notify the individual of the reason for the delay and consider whether there are

temporary measures that could be taken to assist the person with a disability until a decision on the requested accommodation can be made.

- When may an agency ask for medical information in connection with a request for reasonable accommodation?

An agency is entitled to know that an individual has a covered disability that requires a reasonable accommodation. Therefore, the agency may ask for information about the disability, the activities it limits, and the need for accommodation -- but only if the disability and/or need for accommodation is not obvious, or if information already submitted by the individual is insufficient for the agency to make these determinations. An agency may not otherwise ask for medical information based on a person's request for a reasonable accommodation.

- Must an agency keep medical information confidential?

Yes. The information may be disclosed to those involved in determining whether to grant the reasonable accommodation. Beyond those agency decision makers, however, there are strict limitations on those to whom the information may be provided.

- What if a request for reasonable accommodation is denied?

If an agency denies a request for reasonable accommodation, it must inform the individual in writing of the denial and the specific reasons for it. The agency should also notify the individual that s/he has a right to file an EEO complaint and to engage in any informal dispute resolution procedures the agency makes available for this purpose.

- What if the individual wants to challenge a denial of reasonable accommodation?

The Executive Order encourages agencies to use voluntary, informal dispute resolution processes to resolve disagreements resulting from the reasonable accommodation process. These informal processes must be in addition to -- and may not modify or replace -- the EEO complaint process.

- Can the individual file an EEO complaint under the Rehabilitation Act?

The Executive Order does not create new rights for Executive branch employees or applicants. However, nothing in the Executive Order limits an individual's rights under the Rehabilitation Act. Where an individual believes that a denial of a reasonable accommodation, or an aspect of the reasonable accommodation process, has resulted in a violation of the Rehabilitation Act, therefore, s/he may file an EEO complaint through the process set forth in EEOC regulations at 29 C.F.R. Part 1614. The individual must initiate the EEO complaint process within 45 days of the date of the challenged action, whether or not s/he is engaged in an informal dispute resolution process at the same time.

- Does the Executive Order impose reporting or recordkeeping requirements?

The Executive Order requires each agency to submit its procedures, and any modifications it later makes to those procedures, to the EEOC. The Order also requires each agency to track information that will enable the agency to evaluate its own performance in considering and granting requests for reasonable accommodation. The Order does not, however, impose any specific recordkeeping requirements.

- May an employer ask an individual for documentation when the individual requests reasonable accommodation?

Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional

limitations. The employer is entitled to know that the individual has a covered disability for which s/he needs a reasonable accommodation.

Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in documentation from the employee's treating physician that confirms that the hospitalization

was related to the multiple sclerosis and provides information on how long an absence may be required from work.

If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation. On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

- Are there situations in which an employer cannot ask for documentation in response to a request for reasonable accommodation?

Yes. An employer cannot ask for documentation when:

- (1) Both the disability and the need for reasonable accommodation are obvious, or
- (2) The individual has already provided the employer with sufficient information to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested.

Enclosure F

References:

Americans with Disabilities Act of 1990 (ADA)

Americans with Disabilities Act Amendments Act of 2008 (ADAA); 25 September 2008

Rehabilitative Act of 1973, Section 504

Public Law 114-328, 23 December 2016, "*National Defense Authorization Act 2017*"

Public Law 114-92, section 1053, 25 November 2015, "*The National Defense Authorization Act for 2016*"

29 U.S.C. §791; "*Employment of Individuals with Disabilities*"

32 U.S.C. §709; "*Technicians: Employment, Use, Status*"

Executive Order (EO) 13164; Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, 26 July 2000

Army Directive 2013-01, "Guidance of the Acquisition and Use of Service Dogs by Soldiers."; dtd 18 January 2013

AFI 36-205; Affirmative Employment Program, Special Emphasis Program, and Reasonable Accommodation Policy; dtd 01 December 2016

U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Revised Americans with Disabilities (ADA) Requirements 2010, "Service Animals," July 2010.

U.S. Department of Justice, Civil Rights Division, Disability Rights Section, "Commonly Asked Questions about Service Animals in Places of Business," 14 July 2008.

References for Medical Documentation (CyberFeds)

Requesting medical documentation for reasons other than accommodation

- An agency may ask for information that may be connected to a disability if it is job-related and consistent with business necessity. *Slavin v. U.S. Postal Service*, [107 LRP 31475](#) , EEOC No. 0120061503 (EEOC OFO 2007).
- If an employer has a reasonable belief that a worker poses a direct threat due to a medical condition or that she is unable to perform her essential job functions due to a medical condition, the employer's disability-related job inquiries are permissible as job-related and consistent with business necessity. *Norton v. Department of Veterans Affairs*, [106 LRP 11224](#) , EEOC No. 01A51018 (EEOC OFO 2006).
- The agency did not subject a city carrier to discrimination based on his disabilities (left arm and hand partially immobile due to stroke, hearing impairment, seizure) when it asked him to undergo a fitness-for-duty examination. The exam was job-related and consistent with business necessity because agency management had a reasonable belief that the carrier could not perform the essential functions of his position safely as evidenced in part by his difficulty driving with just his right hand while reaching across his body to deliver mail, the manner in which he operated his turn signal in his agency vehicle, and his safety violations. *Buster D. v. U.S. Postal Service*, [117 LRP 28209](#) , EEOC No. 0120151128 (EEOC OFO 2017).
- The agency acted legitimately when it sent the complainant for a fitness-for-duty examination after a manager observed him exhibiting unusual behavior and becoming agitated when speaking with her about incidents in the workplace. Other employees had also identified the complainant as a cause of problems in the workplace. *Watson v. U.S. Postal Service*, [113 LRP 30415](#) , EEOC No. 0120121195 (EEOC OFO 2013).
- The agency's order for the complainant to undergo a fitness-for-duty examination was job-related and consistent with business necessity. Management had a reasonable belief that he posed a direct threat to safety based on its observation of an exacerbation of his bipolar disorder when he made several "disturbing" statements. *Sanders v. U.S. Postal Service*, [113 LRP 17004](#) , EEOC No. 0120130214 (EEOC OFO 2013).
- The Department of Veterans Affairs did not discriminate when it required a motor vehicle operator to get medical clearance to drive. His position required a commercial driver's license. At his physical examination, he did not meet the medical criteria for the license due to his blood-sugar levels and blood pressure. The requested clearance was job-related and consistent with business necessity. *Clark v. Department of Veterans Affairs*, [109 LRP 49317](#) , EEOC No. 0120070620 (EEOC OFO 2009).
- The agency did not discriminate by simultaneously issuing the complainant a performance review and a counseling statement, or by requesting medical documentation for a fitness-for-duty exam. Where a supervisor has a reasonable belief that an employee's sporadic attendance and increased medical restrictions due to a medical condition are impairing her ability to perform the essential functions of her job, the scheduling of a fitness-for-duty exam may be found to be job-related and consistent with business necessity. *Clark v. Department of Defense*, [109 LRP 38798](#) , EEOC No. 0120073283 (EEOC OFO 2009).
- The agency did not subject the complainant to disability discrimination when it requested return-to-work certification after he experienced atrial fibrillation. Based on information previously received from the complainant's doctor and a review of his medical documentation by other doctors, the agency had a reasonable belief that his ability to perform the essential functions of his job could be impaired, and that its request to return-to-work certification was job-

related and consistent with business necessity. *Slavin v. U.S. Postal Service*, [107 LRP 31475](#) , EEOC No. 0120061503 (EEOC OFO 2007).

- **Hadley:** Although the complainant's supervisors were following the agency's Employee Labor Manual and standard operating procedure when they requested more detailed medical information after the employee presented a note from his physician for a one-day absence indicating that, among other things, he had been seen for depression, the inquiry violated the ADA because the supervisors admitted they did not believe the depression interfered with the complainant's performance. *Hadley Guide to Federal Sector Equal Employment Law and Practice: Clearance to Return to Work*, citing *Bernal v. U.S. Postal Service*, [108 LRP 37141](#) , EEOC No. 0720080038 (EEOC OFO 2008).

- The agency violated the Rehabilitation Act when a supervisor asked the complainant what medications he was taking in response to the complainant's statement that medications were making him sleepy. *Uchtmann v. Department of Agriculture, Agricultural Marketing Service*, [113 LRP 11238](#) , EEOC No. 0120110532 (EEOC OFO 2013).

- The agency violated the Rehabilitation Act when it refused to allow the complainant to return to work without further medical documentation, even though he was found fit for duty by a physician. *Grayson v. U.S. Postal Service*, [109 LRP 3856](#) , EEOC No. 0720080044 (EEOC OFO 2009).

- The supervisor unlawfully contacted the complainant's physician's office without permission and inquired whether he could take physical therapy at a VA medical center. This was improper because the contact was likely to elicit information about a disability. The EEOC also found some evidence that the supervisor posed as a workers' compensation representative in an effort to get information about the complainant. *Torres v. Department of Veterans Affairs*, [108 LRP 7782](#) , EEOC No. 0120061190 (EEOC OFO 2008).

- The complainant, who had spina bifida, failed to show the agency's request for medical documentation was improper. Her revelations that she had bowel and bladder incontinence due to her disability, and also that she had an infection, led the agency to legitimately request information in order to insure she didn't pose an infectious risk to the patients in the medical/surgical/ICU area where she worked. *Norton v. Department of Veterans Affairs*, [106 LRP 11224](#) , EEOC No. 01A51018 (EEOC OFO 2006).

- The agency didn't violate the Rehabilitation Act when it called the complainant's doctor and ordered the complainant to undergo fitness-for-duty exams based on his erratic behavior, his expression of "bad thoughts" about other employees, and his attempted suicide. The agency's actions were job-related and consistent with business necessity. *Cimo v. Department of Defense, Army & Air Force Exchange Service*, [105 LRP 42492](#) , EEOC No. 01A52441 (EEOC OFO 2005).

- When an employee makes contradictory claims regarding whether he is fit to perform the duties of his job, an agency may order a job-related fitness-for-duty exam without violating the Rehabilitation Act. *Sullivan v. Department of the Interior*, [108 LRP 7735](#) , EEOC No. 0120060885 (EEOC OFO 2008).

- The complainant was not subjected to disability discrimination when the agency required her to submit medical documentation in support of her requests for leave. An agency generally may not request documentation that an employee has a disability each time she requests leave, but it may request documentation to show that requested leave is for a disability-related reason. *Fresh v. Department of Justice, Federal Bureau of Investigation*, [108 LRP 4393](#) , EEOC No. 0120064076 (EEOC OFO 2008).

- In *Hilton v. U.S. Postal Service*, [101 FEOR 3048](#) , EEOC No. 01971239 (EEOC 2001), the EEOC found the agency improperly used the complainant's return from maternity leave as an excuse to request medical information concerning the complainant's seizure disorder, which was completely unrelated to the reason for her leave. She was removed based on her refusal to release the medical information.

- The agency violated the Rehabilitation Act when a management official asked the complainant to explain her medical condition at a staff meeting and when, upon the complainant's release from the hospital, he asked her to provide a doctor's note stating she was not homicidal or suicidal. *Chambliss v. Social Security Administration*, [103 LRP 11296](#) , EEOC No. 01A21179 (EEOC OFO 2003).

Failure to provide documentation

- If an individual's disability or need for reasonable accommodation is not obvious, and the individual refuses to provide the reasonable documentation requested by the employer, then the individual is not entitled to reasonable accommodation. [EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#).

- **Hadley:** When a complainant fails to provide necessary medical information in support of a reasonable accommodation request, the EEOC often looks at it as a failure of the complainant to engage in the interactive process, something that is fatal to the complaint. *Akbar v. U.S. Postal Service*, [111 LRP 42494](#) , EEOC No. 0120081202 (EEOC OFO 2011). [Hadley Guide to Federal Sector Equal Employment Law and Practice: Reasonable Medical Documentation](#).

- A store worker for the Defense Commissary Agency was not denied reasonable accommodation for his degenerative foot condition because it was not obvious and he did not provide sufficient medical documentation in support of his request for a change in jobs, despite repeated attempts by agency officials to obtain the necessary medical information. *Felton Z. v. Department of Defense, Defense Commissary Agency*, [117 LRP 7208](#) , EEOC Nos. 0120150590, 0120161958 (EEOC OFO 2017).

- The agency did not subject the complainant to disability discrimination when it issued him a notice of termination after he failed to submit adequate medical documentation concerning his ability to return to work after being out for a substantial period of time for psychiatric treatment. The agency was not required to contact the complainant's psychiatrist or schedule him for an exam with a contract psychiatrist after he failed to submit medical documentation required by established agency policy. *Delgado v. U.S. Postal Service*, [103 LRP 25343](#) , EEOC No. 01A00055 (EEOC 2003).

- The agency could not be held liable for a failure to accommodate because the complainant refused to permit the agency to obtain the necessary documentation to determine the need for the specific accommodation the complainant requested. *Ross v. Department of the Treasury*, [101 FEOR 3080](#) , EEOC No. 01982708 (EEOC 2001).

- The agency was unaware of the complainant's medical diagnosis when it terminated him for failing to provide a medical release indicating it was safe for him to return to work after he experienced heart problems. There was no evidence the agency knew of the complainant's diagnosis because he failed to provide the documentation requested by the agency. Absent knowledge of the claimed disability, the agency had no obligation to provide reasonable accommodation. *Lavery v. Department of Veterans Affairs*, [103 LRP 8261](#) , EEOC No. 01A14788 (EEOC OFO 2003).

- The complainant was not subjected to unlawful discrimination when she was not allowed to immediately return to work following her hospitalization for an epileptic seizure. Her return to work was legitimately delayed by inadequate documentation and the agency's legitimate request for a fitness-for-duty examination. *Rogan v. U.S. Postal Service*, [103 LRP 45687](#) , EEOC No. 01A13388 (EEOC 2003).

Enclosure G

Designated Management Official: The person who has authority to decide whether the Department will provide a requested accommodation. The Designated Management Official who grants a request for an accommodation shall also be referred to as the “decision maker.”

Dual Status/Military Technician: Positions in the National Guard Technician Program that require military membership in the National Guard as a condition of technician employment are in the excepted service under the provisions of 32 USC 709. This status means they are “excepted” from the rules that govern civil service employees in the areas of tenure and competitive requirements for appointments. Employment as a NG military technician does not result in “competitive” civil service status. Loss of military membership for any reason can cause termination of technician employment.

Essential Job Functions: The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be “essential” if, among other things, the position exists specifically to perform that function, there is a limited number of other employees who could perform the function if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

Invisible (Hidden) disabilities: These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Major Life Activities: A major life activity is an activity of fundamental significance to most people in daily life and not simply something important to a particular individual. A major life activity includes obvious functions, such as hearing, seeing, walking, speaking, caring for self, performing manual tasks, and breathing

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

Non-Dual Status Technician: Positions in the National Guard Technician Program that do not require military membership in the National Guard as a condition of technician employment are Non-Dual Status Technicians. This status means the rules that govern civil service employees in the areas of tenure and competitive requirements for appointments are in force and result in “competitive” civil service status.

Person with a Disability: An individual has a physical or mental impairment that substantially limits one or more of the person’s major life activities; has a record of such impairment or is regarded as having such impairment. Based on court decision, examples of major life activities include caring for yourself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Physical Impairment: Any physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respirator, genitor-urinary, hemic and lymphatic, skin and endocrine

Reasonable Accommodation: The Rehabilitation Act of 1973 requires federal agencies to provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in work

environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities.

Targeted Disabilities: Targeted disabilities are deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine.

Undue Hardship: The significant difficulty or expense incurred, should the Department provide a particular accommodation. Agencies do not have to provide reasonable accommodations that would impose an undue hardship on the operation of the agency.