

POLICY TITLE: REASONABLE ACCOMMODATION AND REASSIGNMENT		PAGE 1 OF 6
POLICY NUMBER: 3.10		
CHAPTER 3: PERSONNEL		
	STATE of MAINE DEPARTMENT OF CORRECTIONS	PROFESSIONAL STANDARDS: See Section VII
	Approved by: <u><i>Martin Magnusson</i></u> Signature of Commissioner	
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I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A., Section 3036-A.

II. APPLICABILITY

Entire Maine Department of Corrections.

III. POLICY

It is the policy of the Department of Corrections to provide reasonable accommodation in a timely manner for any qualified individual with a disability who is an employee or applicant for employment in accordance the Maine Human Rights Act and the Americans with Disabilities Act, unless it would impose an undue hardship or direct threat. The Department shall adhere to all state and federal laws and regulations relating to reasonable accommodation in order to afford equal employment opportunity to any qualified individual with a disability.

It is also the policy of the Department of Corrections to reassign employees to vacant equivalent positions in the event an employee becomes unable to perform the essential functions of his or her position. This policy is in accordance with state and federal laws that require the employer to explore reassignment to a vacant position if reasonable accommodation cannot be made within the employee's current position.

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VI. PROCEDURES

Procedure A: Reasonable Accommodation Under the Maine Human Rights Act and the Americans with Disabilities Act

1. **Requests.** Requests for accommodation may be directed to the supervisor or manager of the employee, the Department of Corrections EEO Coordinator, or, in the case of a job-related injury, the workers compensation representative. A supervisor or manager may also initiate the reasonable accommodation process in appropriate circumstances. **Supervisors and Managers must notify the EEO Coordinator of any reasonable accommodation request.**
2. **Documentation and Processing.** All requests for accommodation must be documented and processed as expeditiously as possible and in all cases forwarded to the Department's EEO Coordinator. The Department's EEO Coordinator shall work with the supervisor or manager to determine whether the request is reasonable under existing laws and regulations. No request shall be approved or denied prior to review by the Departmental or State EEO Coordinator and a determination that the decision is consistent with state and federal law and state policy.
3. **Medical Documentation.** The Department's EEO Coordinator may determine that it is necessary to request a statement from the employee's treatment provider verifying the disability and need for accommodation. The employee shall be asked to provide a release authorization for medical information needed to substantiate the disability and need for accommodation. If such medical documentation is not sufficient to determine whether the employee has a disability or a need for accommodation, the employee shall be advised of the need for additional medical information. If the employee does not provide additional necessary medical information, the Department may refer the employee for a supplemental medical opinion in accordance with applicable contractual agreements. Any medical information received in connection with a request for reasonable accommodation is confidential and must be kept separate from other application or employment information.
4. **Order of Accommodation Alternatives.** Accommodations must be explored in the following order:
 - a. Accommodation within the existing job;
 - b. Reassignment to a vacant equivalent position;

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- c. Reassignment to a lower graded position.
5. **Implementation.** If the request is approved by the Department, the accommodation shall be provided as promptly as possible. If denied, the employee may request that the decision be reviewed by the State EEO Coordinator in the Bureau of Human Resources.
 6. **Reassignment.** If it is determined that an employee is unable to perform the essential functions of his or her position even with reasonable accommodation, refer to Civil Service Bulletin 8.19 and the procedures below, which describe the steps for exploring reassignment to equivalent and vacant positions for which the employee is qualified.

Procedure B: Reassignment

1. The Department must first attempt to make reasonable accommodation within the employee's current position to enable the employee to successfully perform the essential functions of the position. If reasonable accommodation is not possible, or if both the employee and the Department agree that reassignment to another position within the Department is a more appropriate accommodation than accommodating the employee in his or her current position, then the following provisions apply:
2. The Department must attempt to place the employee in an equivalent vacant position for which the employee is qualified, with or without reasonable accommodation. An equivalent position is one with similar pay, status, promotional opportunities and other conditions of employment, although not necessarily in the same job classification the employee currently holds. A position is available for reassignment if it is currently vacant, approved to be filled and there are no employees with a contractual right to the position.
3. The Department may nominate the employee without testing, provided he or she meets the established minimum qualifications for the position. The transfer or demotion of a disabled employee that is necessary to provide reasonable accommodation for continued employment must be given priority over other means to fill vacancies, unless the reassignment would cause an undue hardship on the agency.
4. The Department may reassign an employee to a lower graded available position if:
 - a. there are no accommodations that would enable the employee to remain in the current position;
 - b. there are no equivalent positions available for which the employee is qualified, with or without reasonable accommodation; or,

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- c. both the Department and the employee agree that demotion is the most appropriate accommodation.
5. If demotion is being considered as a reasonable accommodation, or if no accommodation is available within the Department, the Department must inform the employee of his or her right to explore reassignment to vacant equivalent positions in other state agencies. If the employee selects this option, the Department must refer the employee to the Bureau of Human Resources where the employee shall be assisted in identifying other suitable transfer and demotion opportunities. Normal transfer and demotion qualifying procedures shall be followed.
 6. In the event the employee reassigns to a lower graded position, standard salary policies regarding demotions shall apply.
 7. If the employee is transferred or demoted, the Department must submit a statement that the action is taken in accordance with this policy to the Bureau of Human Resources when the transaction is entered on MFASIS. This statement shall serve as authorization for the reassignment and shall serve as notice to the Bureau that such an accommodation has been made.
 8. In the case of an employee from another state agency considering transfer or demotion to a position within the Department of Corrections, the Department is required to consider all such employees immediately after recalls from layoff. No candidates other than recall may be hired by the Department until disabled employees seeking transfer or demotion from other agencies have been considered. A disabled employee is qualified and must be hired if the he or she meets the established minimum qualifications for the position and is able to perform the essential functions of the position with or without reasonable accommodation.
 9. There is no obligation to promote an employee as a reasonable accommodation. The transfer and demotion provisions of the policy do not apply to applicants for employment but are applicable only to employees currently holding or having rights to positions in the Department.

Procedure C: Other Provisions

Employees Who are Injured on the Job

1. Whether an employee who is injured on the job is protected by the Maine Human Rights Act and the ADA shall depend on whether the employee meets the statutory definition of a "qualified individual with a disability."
2. Not every employee injured on the job shall meet the ADA/MHRA definition. Work related injuries do not always cause physical or mental impairments that are severe enough to substantially limit major life activities. Many on-the-job injuries do not

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cause long term impairments. The Department must consider work related injuries on a case-by-case basis to determine if an impairment exists that substantially limits a major life activity.

Employees with a Disability who are Affected by Layoff

1. Employees with a disability who are affected by layoff may have options to bump or be recalled into other positions, either under the collective bargaining agreements or under Civil Service Rules. The requirements of the ADA and MHRA to determine the essential functions of a position and to make reasonable accommodation for all employees with disabilities must be applied to bumping and recall situations.
2. If the employee is qualified to perform the work of a position but for his/her disability and reasonable accommodation cannot be made, the reassignment provisions of this policy apply.

Transitional Status

1. The Maine Human Rights Act and ADA require the search of positions that are available at the time it becomes evident that reassignment must be explored as a reasonable accommodation. Recognizing that this search may take some time to complete, employees shall be allowed to use accrued sick, vacation and/or compensatory time to cover any period that may elapse between the determination that the employee cannot continue to perform the duties of his or her position and the time that the employee is reassigned or terminated in the event that reassignment cannot be made.

Interpretive Guidance and Technical Assistance

1. A complete understanding of the relevant law and policy regarding disabilities, essential job functions, reasonable accommodation and undue hardship is necessary to properly implement and apply this policy.
2. Staff may seek technical assistance when handling requests for accommodation and reassignment. **Supervisors and Managers must notify the EEO Coordinator of any reasonable accommodation request.**

VII. PROFESSIONAL STANDARDS

ACA:

ACI - 4-4054 **Written policy, procedure, and practice provide a mechanism to process requests for reasonable accommodation to the known physical and/or mental impairments of a qualified individual with a disability, either an applicant or an employee. The accommodation need not be granted if it would impose an undue hardship or direct threat.**

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- 4-ACRS-7E-03 There is a mechanism to process requests for reasonable accomodation to the known physical and/or mental impairments of a qualified individual with a disability, either an applicant or an employee. The accommodation need not be granted if it would impose an undue hardship or direct threat.

- 4-JCF-6D-07 There is a mechanism to process requests for reasonable accommodation for the known physical and/or mental impairments of a qualified individual with a disability, either an applicant or an employee. The accommodation need not be granted if it would impose an undue hardship or direct threat.

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