
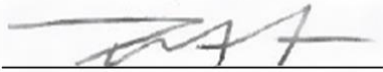


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POLICY NUMBER: 3.10		
CHAPTER 3: PERSONNEL		
	STATE of MAINE DEPARTMENT of CORRECTIONS Approved by Commissioner: 	PROFESSIONAL STANDARDS: See Section VIII
	EFFECTIVE DATE: May 19, 2003	LATEST REVISION: Augusta 22, 2024

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 with the Maine Human Rights Act (MHRA) and the Americans with Disabilities Act (ADA), 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 their 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.

IV. DEFINITIONS

1. Disability - a physical or mental impairment that substantially limits one or more major life activities, or a record of such an impairment, or being regarded as having such an impairment, or as otherwise defined in the Americans with Disabilities Act ([42 U.S.C. §12102](#)) or the Maine Human Rights Act ([5 M.R.S. §4553-A](#)).
2. Major Life Activities - functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

3. Substantially Limits - unable to perform the major life activity, or significantly restricted as to the condition, duration, or manner in which someone performs the major life activity as compared to the average person in the general population.
4. Qualified Individual with a Disability - an individual with a disability who has the experience, education, training, and other job-related requirements of the position and who is able to perform the essential functions of the job, with or without reasonable accommodation.
5. Essential Job Functions - those tasks necessary and central to a position. Job functions are considered essential if employees in the position must perform the function and:
 - a. the job exists to perform those functions; or
 - b. if there are a limited number of employees available to perform them; and/or
 - c. if the functions are highly specialized and the employee is hired for their expertise or ability to perform those functions.
6. Reasonable Accommodation - any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. It is unlawful to not make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless it can be demonstrated that the accommodation would impose an undue hardship on or direct threat to the operation of the organization. Reasonable accommodation may take such forms as:
 - a. making a facility accessible to employees;
 - b. job restructuring, within the job's classification and compensation and without unreasonable impact on other staff;
 - c. some changes or flex in work hours or days;
 - d. providing interpretive services or assistive devices; and
 - e. reassignment to a vacant position.
7. Undue Hardship - significant difficulty or expense in, or resulting from, the provision of an accommodation. The determination of "undue hardship" takes into consideration anything that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature of the operation of the Department.

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VI. ATTACHMENTS

Attachment A: [EEO Contact Information](#)

VII. PROCEDURES

Procedure A: General

1. This policy aligns with Maine Civil Service Law and the Maine Department of Administrative and Financial Services, Bureau of Human Resources policies and rules on reasonable accommodation and reassignment.

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

5-ACI-1C-07, 4-ACRS-7E-03, & 4-JCF-6D-07

1. A request 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.
2. Supervisors and managers must notify the EEO Coordinator of any reasonable accommodation request with the provided EEO Contact Information (Attachment A).
2. 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 Department's EEO Coordinator or the State EEO Coordinator and a determination that the decision is consistent with state and federal law and state policy.
3. 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. Accommodations must be explored in the following order:
 - a. accommodation within the existing job;
 - b. reassignment to a vacant equivalent position;
 - c. reassignment to a lower graded position.

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5. 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. If it is determined that an employee is unable to perform the essential functions of their position even with reasonable accommodation, refer to Civil Service Bulletin 8.19B and the procedures below, which describe the steps for exploring reassignment to equivalent and vacant positions for which the employee is qualified.

Procedure C: Reassignment as a Reasonable Accommodation Under the Maine Human Rights Act and the Americans with Disabilities Act

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 their 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 to an equivalent vacant position without testing, provided they meet the established minimum qualifications for the position. The transfer or demotion of an employee with a disability 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 or direct threat to the Department.
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
 - 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 their 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.

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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 the Human Resources Information System. 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 employees with disabilities seeking transfer or demotion from other agencies have been considered. An employee with a disability is qualified and must be hired if they meet the established minimum qualifications for the position and are 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 D: 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 (MHRA) and the Americans with Disabilities Act (ADA) depends on whether the employee meets the statutory definition of a "qualified individual with a disability."
2. Not every employee injured on the job meets the statutory definitions. 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 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.

Procedure E: 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 their disability and reasonable accommodation cannot be made, the reassignment provisions of this policy apply.

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Procedure F: Transitional Status

1. The MHRA and ADA require the search for 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 their position and the time that the employee is reassigned or terminated in the event that reassignment cannot be made.

Procedure G: 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. Supervisors and managers may seek technical assistance when handling requests for accommodation and reassignment.

VIII. PROFESSIONAL STANDARDS

ACA

- 5-ACI-1C-07** 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.
- 4-ACRS-7E-03** There is 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.
- 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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