

# COUNTY OF SONOMA

## Disability and Reasonable Accommodation Policy

### I. POLICY STATEMENT

The County of Sonoma (County) is committed to providing equal employment access to all qualified applicants and employees, and a workplace free of discrimination on the basis of medical condition, physical disability or mental disability.

The Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) prohibit employment discrimination based on a person's disability, perceived disability or history of disability. The FEHA is a California state law enforced by the Department of Fair Employment and Housing (DFEH). The ADA is a federal law enforced by the Equal Employment Opportunity Commission. In some cases the FEHA is more protective than the ADA.

The ADA and FEHA require employers to provide reasonable accommodation to individuals who have a known medical condition, physical disability or mental disability where accommodation is needed to (1) enable an individual to be considered for a job, (2) enable an individual to perform the essential functions of his or her job, or (3) enable an individual to enjoy equal benefits and privileges of employment. The FEHA also requires employers to engage in a timely, good faith interactive process with an employee or applicant who requests reasonable accommodation.

This Disability and Reasonable Accommodation Policy (Policy) identifies the County's plan to meet the requirements of the ADA and FEHA, and any other related state or federal laws. This policy provides a framework to discuss disability-related concerns, and provides for an interactive process to discuss accommodation. This Policy also replaces the Disability Guidelines (originated in 2003 and revised in 2006.)

This Policy is administered under the direction of Human Resources Department by the County's Equal Employment Opportunity/American's With Disabilities Act Program Coordinator (EEO Manager). This Policy applies to all employment practices such as: recruitment, firing, hiring, training, job assignments, promotions, pay, benefits, layoff, leave, and all other employment-related activities.

### II. INDIVIDUALS COVERED BY THE FEHA

A person covered under the FEHA is someone who:

1. Has an actual physical or mental disability or medical condition;
2. Has been perceived to have a disability;
3. Has had a record or history of a disability;
4. Is being regarded or treated as having, or having had a disability.

### III. DEFINITIONS

The following definitions are provided solely as a guide to assist in the interpretation and application of this Policy. Further detail is available from the County's Equal Employment Opportunity/American's With Disabilities Act Program Coordinator (EEO Manager) and is also set forth in the American with Disabilities Act ([www.eeoc.gov](http://www.eeoc.gov)), the California Fair Employment and Housing Act ([www.dfeh.ca.gov](http://www.dfeh.ca.gov)), California Government Code section 12926, related federal and state laws and regulations, and cases interpreting those acts and regulations. The following definitions may be subject to change due to a change in applicable law.

Mental disability includes, but is not limited to, the following:

Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

Physical disability includes, but is not limited to, the following:

Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, which limits a major life activity.

A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

"Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

Medical condition means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

Limits A Major Life Activity:

"Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A mental, psychological or physiological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult. "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

Qualified Individual with a Disability:

A person who (1) satisfies the job-related requirements for the position; and (2) is able to perform the essential functions of the position with or without reasonable accommodation.

Essential Functions:

Essential functions are the job duties so fundamental to the position that the individual cannot do the job without performing them. Factors to consider in determining if a job function is essential include:

- Whether the reason the position exists is to perform that function
- The number of other employees available to perform the function or among whom the performance of the function can be distributed
- The degree of expertise or skill required to perform the function, and whether the function is specialized and the individual is hired based on his/her ability to perform it.

Evidence of whether a particular function is essential includes, but is not limited to, the following:

1. The County's judgment as to which functions are essential.
2. Written job descriptions prepared before advertising or interviewing applicants for the job.
3. The amount of time spent on the job performing the function.
4. The consequences of not requiring the incumbent to perform the function.
5. The terms of a collective bargaining agreement.
6. The work experiences of past incumbents in the job.
7. The current work experience of incumbents in similar jobs.

The County uses an Essential Functions Worksheet (EFW) to identify essential job functions. The EFW describes the typical job duties/tasks and the physical/environmental factors of the job. Generally, there is one EFW for each Job Class in a Department; however, if the requirements of a position vary significantly from those of other positions in the class, there may be more than one EFW for a particular job class.

#### Reasonable Accommodation:

The County is required to provide reasonable accommodation for the known disabilities of a qualified employee or applicant to (1) enable to individual to be considered for a job; (2) enable the individual to perform the essential functions of his or her job; or (3) enable the individual to enjoy equal benefits and privileges of employment. The County is not required to provide an accommodation that would be an undue hardship or that would present a direct threat to the employee/applicant or others.

A reasonable accommodation may include, but is not limited to, the following:

1. Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position (does not apply to applicants), acquisition or modification of equipment or devices, adjustments or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

If a qualified individual with a disability or medical condition can perform the essential functions of a position, with or without accommodation, the County is required to provide a reasonable accommodation unless the accommodation would represent an undue hardship to the County's operation or would present a direct threat to the employee or to others.

#### Undue Hardship:

An accommodation poses an undue hardship when it requires significant difficulty or expense. Significant difficulty or expense is determined by evaluating several factors including, but not limited to: the nature and cost of the accommodation; the overall financial resources of the Department and impact on Department operations; the overall size and financial resources of the County; and the nature of the County's operations.

#### Direct Threat:

An individual who, because of a disability, poses a direct threat to the health or safety of the individual or other persons, even with a reasonable accommodation, is not a qualified individual with a disability. A direct threat is a significant risk of substantial and imminent harm, which cannot be eliminated or reduced to an acceptable level by reasonable accommodations. A threat that is remote or theoretical is not sufficient to conclude that a person is not a qualified person with a disability. The assessment of whether or not a person poses a direct threat must be made

on a case-by-case basis considering the following factors: duration of the risk; nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm.

#### **IV. NOTICE OF A DISABILITY**

The employee/applicant is responsible for notifying the supervisor or interviewer that he/she has a disability or medical condition which requires reasonable accommodation. Notice of a disability may come in the form of (1) the employee/applicant's direct statement to a supervisor/interviewer that he/she is unable to perform a duty that is part of the job because of a disability; (2) the employee/applicant's direct request for an accommodation to the supervisor/interviewer or (3) the supervisor's/interviewer's receipt of information regarding an employee/applicant's disability or need for accommodation.

#### **V. REQUESTING AN ACCOMMODATION DURING RECRUITMENT**

The County will include a statement on all applications and recruitment packages indicating the availability of reasonable accommodation in the application process with instructions to applicants on the method for requesting reasonable accommodation.

When a qualified disabled applicant requests an accommodation, the Human Resources Department staff will confer with the applicant on the type of accommodation(s) he/she needs. When the applicant's disability is not obvious or known; or when additional medical clarification is needed; appropriate documentation of the disability, limitations and the needed accommodation will be sought from the applicant. Given the time sensitivity of the recruitment process, Human Resources staff will move as quickly as possible to make a decision, and if appropriate, provide an accommodation.

#### **VI. REQUESTING AN ACCOMMODATION DURING EMPLOYMENT**

Generally, to comply with privacy laws, the County is subject to strict limitations with regard to making inquiries about the physical, mental or medical condition of an employee. Employees are therefore responsible for making their disability known and requesting accommodation when needed.

An accommodation may be requested verbally or in writing to the employee's supervisor or manager, Department ADA Coordinator, or the County's Human Resources Office. Generally, unless the need for accommodation is obvious, documentation from an appropriate medical provider will be required which identifies: (1) the physical or mental limitations imposed by the disability or medical condition; and (2) for each limitation, the expected duration and whether it is permanent or temporary.

If the need for accommodation is temporary, the Department will consider whether temporary transitional duty is appropriate, as governed by the County's Temporary Transitional Duty Program, administered by Human Resources Risk Management Division. If the need for accommodation is permanent, the parties will discuss permanent accommodation.

## **VII. THE INTERACTIVE PROCESS**

When a request for accommodation is made, the Department head/designee in consultation with the Human Resources Department, and the individual requesting an accommodation must engage in a good faith interactive process to determine what, if any accommodation shall be provided. Employees have a right to a representative of their choice involved during the interactive process. Employees/applicants and the County must communicate with each other about the request, the process for determining whether an accommodation will be provided, and the potential accommodations. The County encourages verbal dialogue between the Department and the individual requesting accommodation, as well as written communications. During the interactive process the employee/applicant and the Department may discuss a variety of possible accommodations. Two-way communication is essential to this process. Applicants, employees, managers and supervisors are encouraged to contact the Human Resources Department at any time during this process to request assistance or advice.

While each request for accommodation is unique and individual cases vary, steps to be taken in the Interactive Process may include, but are not limited to the following:

- Obtain information from the individual and the individual's medical provider regarding the limitations caused by the disability or medical condition and the need for accommodation. The County provides its EFW for the position to the employee/applicant for their medical provider to identify restrictions and whether they are temporary, or permanent. If the report of the employee's/applicant's medical provider is inadequate, incomplete or conflicts with other information obtained, the Department may ask the employee/applicant to obtain further information from the medical provider or may refer the employee to a physician of the County's choice, at the County's expense.
- In consultation with the employee/applicant, identify all possible accommodation(s) which would enable the applicant/employee to be considered for the position at issue, perform the essential functions of the position at issue, or otherwise enjoy equal benefits and privileges of employment.
- In consultation with the employee/applicant, assess the reasonableness of each accommodation in terms of effectiveness and equal opportunity for the employee/applicant.
- Implement the accommodation most appropriate for both employee/applicant and the County. It should be understood that the County does not have to provide the accommodation preferred by the employee/applicant or his/her medical provider. The County has the ultimate discretion to choose amongst the accommodations, so long as the chosen accommodation is reasonable and effective. If one accommodation costs more or is more burdensome than the other, the County may choose the less expensive or less burdensome accommodation, or one that is easier to provide.

### Current Employees Only:

If a qualified employee with a disability or medical condition cannot perform the essential functions of their current position, with or without accommodation, but may be qualified to perform the essential functions of a different position, the County will explore reassignment to a vacant position. Reassignment to another position is only made to vacant, funded positions. Efforts will be made to find a vacant position within the employee's current Department. If a suitable position does not exist within the employee's current Department, Human Resources will conduct a county-wide job search and consider alternatives provided by its Civil Service Rule provisions, including free name, transfer, and voluntary demotion provisions. Promotions, creation of new positions, or displacement of other employees are not a required part of the accommodation process.

### **VIII: CONFIDENTIALITY:**

Departments shall maintain all medical information obtained in the disability accommodation process in a locked file that is stored separate from the employee's personnel file and labeled CONFIDENTIAL MEDICAL INFORMATION. All parties will make every reasonable effort to limit the review of confidential medical information to a "need to know" basis.

### **IX: RESPONSIBILITIES:**

Applicants: Must advise the Human Resources Department if they wish to request an accommodation during the recruitment, testing or selection process. Once an applicant has been referred to a Department for a hiring interview, the applicant must notify the hiring manager if they believe they need accommodation to participate in the selection interview, and may elect to discuss whether they are a qualified individual with a disability and need an accommodation in order to perform the essential functions of the position.

Employees: An employee may initiate a request for reasonable accommodation orally or in writing to their supervisor or manager, Department ADA Coordinator, or the Human Resources Department. The accommodation request must adequately communicate that an adjustment or change at work is needed because of a disability or medical condition, and whether the restriction is temporary or permanent, and must usually provide medical documentation to support the request.

Managers/Supervisors: Managers and Supervisors are responsible for being familiar with and understanding this policy. They are responsible for consulting with their Department ADA Coordinator and the Human Resources Department on accommodation issues and the interactive process.

Department ADA Coordinators: Are responsible for coordinating accommodation requests within their Departments and consulting with the Human Resources Department and identifying training needs.

EEO Manager: Is responsible for the overall coordination of this policy.

## **X: COMPLAINT RESOLUTION**

If the employee/applicant is not satisfied with the outcome of the interactive process with the Department, they have several options available to them:

- Contact the County's Human Resources Department to discuss the accommodation request. If an acceptable resolution is not reached, the employee may make an informal complaint or file a formal complaint with the County pursuant to the County's Equal Employment Opportunity Discrimination Complaint Procedure.
- Contact the Department of Fair Employment and Housing by calling 1-800-884-1684 or by visiting their website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov).
- Contact the federal Equal Employment Opportunity Commission, by calling 1-800-669-4000 or by visiting their website at [www.eeoc.gov](http://www.eeoc.gov).