



**POLICIES AND PROCEDURES
FOR
AMERICANS WITH DISABILITIES ACT**

I. PURPOSE

The purpose of the New Mexico Department of Finance and Administration (“DFA”) Policies and Procedures for Americans with Disabilities Act (“Policies”) is to provide a clear and comprehensive framework for the DFA to implement the requirements of the Americans with Disabilities Act of 1990 (“ADA”), as amended by the ADA Amendments Act of 2008 (“ADAA”).

II. POLICY

The DFA is committed to assuring equal employment opportunity for persons with disabilities in accordance with the ADA and ADAA. To this end, DFA’s policies are as follows:

- A. Comply with federal and state laws, regulations, and guidance concerning employment of persons with disabilities;
- B. Request and receive information from Employees and appropriate professionals to explain need for accommodations described in requests for accommodations;
- C. Make a determination regarding a request for accommodation based upon the information received; and
- D. Treat all information received in the request for accommodation process as Confidential Information.

III. REQUEST FOR ACCOMMODATION PROCEDURE

A. Submitting a Request for Accommodation

All requests for accommodations must be initiated by the Employee and may be made at any time to the DFA Human Resources Bureau (“HR”).

All requests for accommodations must be submitted on a *Request for Accommodation* form (Appendix B) to the HR. Requests for accommodations do not need to mention the ADA or use the phrase “Reasonable Accommodation.”

Upon receipt of a *Request for Accommodation* form, the HR:

1. May make inquiries into the ability of an Employee to perform *job-related functions*;
2. May request additional documentation using a *Notice of Need for Supplemental Information* form (Appendix C);
3. Will record the date and time of receipt of all necessary information on the *Request for Accommodation* form;
4. Will store a copy of the *Request for Accommodation* form within the Employee’s file; and
5. Must not:
 - a. Conduct a medical examination; or
 - b. Inquire as to whether an Employee is an individual with a Disability or as to the nature or severity of such Disability.

B. Making a Determination. Upon receipt of all necessary information to make a determination, the HR will review the information to determine whether an accommodation may be made, and may:

1. Consult with an internal and/or external specialist to: (i) determine whether an Employee is or is not a Qualified Individual with a Disability or serious medical condition, and (ii) whether an accommodation is needed;

2. Communicate with the hiring or immediate supervisor to identify: (i) essential job functions; (ii) Marginal Duties of the position; and (iii) accommodation options that are both reasonable and available without Undue Hardship to the DFA; or
3. Communicate to the individual requesting an accommodation what reasonable accommodation may be made without Undue Hardship to the DFA, as determined by the HR, in consultation with the DFA management.

C. Accommodation Cost. If there is an expense associated with providing the accommodation and the expense of the accommodation does not cause an Undue Hardship, as determined by the HR, in consultation with the DFA management, such expense shall be an expense of the DFA division within which the individual is being hired to.

D. Insufficient Information. If the HR determines that the *Request for Accommodation* form lacks sufficient information to make a determination, the HR may request additional information using the *Notice of Need for Additional Information* form. What is “necessary” to make a final determination shall be determined solely by the HR.

E. Pending Review. Pending a determination by the HR, the HR may provide a temporary accommodation. Temporary accommodation(s) shall not exceed thirty (30) days.

F. Notice of Pending Review. Employees are responsible for requesting from the HR the status of a pending request for accommodation.

G. Approval of a Request for Accommodation. If the HR receives and reviews all necessary information and determines the DFA will approve the request for accommodation, the HR’s final determination must state what is and is not a reasonable accommodation.

H. Disapproval of a Request for Accommodation. If the HR receives and reviews all necessary information and determines the DFA will disapprove the request for accommodation, the HR’s final determination must provide the reason for denial and describe the Undue Hardship in a format that is in compliance with section (I), below.

I. Undue Hardship. Accommodations cannot be made if unreasonable and an Undue Hardship to the DFA. If a request for accommodation will require significant difficulty, administrative burden, or expense for the DFA, then the HR will document in the final determination, the following:

1. The nature and cost of the accommodation; Financial resources of the Employer providing the accommodation;
2. Number of persons the DFA employs;
3. The effect of the accommodation on the expenses and resources of the DFA division; and
4. The impact of the request for accommodations on the operations of the DFA division.

J. Appeal. Employees may appeal the final determination issued by the HR by submitting a written appeal to the HR within fifteen (15) calendar days from the date of disapproval or proposed accommodation, unless the HR provides an extension for Good Cause shown.

1. The written appeal shall include an explanation as to why the accommodation offered is not appropriate or why the accommodation should not have been disapproved;
2. Explanations made on appeal will be investigated;
3. Resolution of the appeal shall be provided through mediation;
4. If an appropriate accommodation cannot be determined, then the HR will make a recommendation to the Agency Head; and
5. The Agency Head will make the final decision on appeal.

K. Provision of Accommodation. After the HR determines a request to be reasonable and not an Undue Hardship on the DFA, the HR may issue a final determination that approves the request for accommodation. The HR will collaborate with the hiring supervisor or immediate supervisor to provide and implement the accommodations, and document and report the Employee's

effectiveness in performing the essential functions of the job with the reasonable accommodation(s) provided.

- L. **Rejection of Accommodation.** A Qualified Individual with a Disability may reject an accommodation, aid, service, opportunity, or benefit offered by the DFA. When a individual rejects the provision of reasonable accommodation, aid, service, opportunity, or benefit by the DFA and the reasonable accommodation offered or provided by the DFA is necessary to enable the Qualified Individual to perform the essential functions of the position held or desired, and the Qualified Individual cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a Qualified Individual with a Disability.
- M. **Records.** The HR must maintain records of requests for accommodations in a Centralized Record of Accommodations for either a period of three (3) years or in accordance with the State Records Center and Archives Rules and Regulations, whichever period of time is longer.

IV. DEFINITIONS

- A. **“Agency”** means any state department, bureau, division, branch, or political subdivisions of the state and any of their branches, agencies, departments, boards, instrumentalities or institutions bound by the New Mexico State Personnel Board Rules and Regulations.
- B. **“Agency Head”** means DFA Cabinet Secretary.
- C. **“Centralized Record of Accommodations”** means a central location for all records of requests for accommodations. Records shall include but are not limited to the type of accommodation, location of assistive devices, and disposition of assistive devices.
- D. **“Confidential Information”** means all information regarding requests for accommodations, pursuant to New Mexico law, including, but not limited to, N.M.S.A. (1978) § 14-2-1 and State Personnel Board Rule 1.7.1.12 N.M.A.C. **“Confidential Information”** means information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures,

proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the agency. Confidential Information does not include information communicated between only those individuals directly involved in a request for accommodation. “Confidential Information” includes non-disclosable information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the Agency. “Confidential Information” includes communication made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

- E. **“Disability”** means a physical or mental impairment that substantially limits one or more Major Life Activities of such an individual; a record of such an impairment; or being regarded as having such an impairment that: (i) is not transitory or minor, and (ii) has an actual or expected duration of 6 months or more. Impairment may substantially limit one major life activity or more to be considered a disability. Impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

- F. **“Disciplinary Action”** means any action taken by an Agency to influence change in an Employee’s performance or behavior to the expected standard, including Formal Disciplinary Action, Informal Disciplinary Action, and Progressive Disciplinary action, including but not limited to, letters of reprimand, suspensions, demotions, and Dismissal. Disciplinary Action includes punitive action taken to change an Employee’s performance or behavior to follow the classification description.

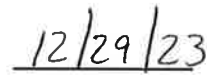
- G. **“Employee”** means (i) any person in a position in the classified service; (ii) an individual employed by the DFA, receives a wage from DFA, and whose work is under the direct control and supervision of the DFA; (iii) term, probationary, temporary, permanent, and exempt positions; or (iv) an applicant for employment within the DFA. “Employee” does not include independent contractors who perform work for New Mexico.

- H. **“Employer”** means the New Mexico Department of Finance and Administration and any person acting for the New Mexico Department of Finance and Administration.
- I. **“Good Cause”** means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason. The HR may consider any relevant factors to determine if a good cause exists.
- J. **“Major Life Activities”** means caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- K. **“Marginal Duties”** means job functions that can be redesigned or reassigned without significantly altering the purpose of the position.
- L. **“Mitigating Measure”** means compensation made by the individual to control, reduce, compensate for, or otherwise correct the impact of a physical or mental impairment. Examples of mitigating measures may include but are not limited to assistive devices, auxiliary aids, or personal actions taken.
- M. **“Qualified Individual”** means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the DFA’s judgment as to what functions of a job are essential. If the DFA has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
- N. **“Reasonable Accommodation”** means modification or adaptation of the work environment, work rules or job responsibilities, and reached through good faith efforts to explore less restrictive or less expensive alternatives to enable an Employee to perform the essential functions of the job and that does not impose an Undue Hardship on the DFA;
- O. **“Undue Hardship”** means an action requiring significant difficulty or expense, when considered in light of the following factors: (i) nature and cost of the

accommodation needed; (ii) overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; (iii) the number of persons employed at such facility; (iv) the effect on expenses and resources; (v) the overall financial resources of the covered entity; (vi) the overall size of the business of a covered entity with respect to the number of its employees; (vii) the type of operations or operations of the covered entity, including composition, structure, and functions of the workforce of such entity; and (viii) the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

- V. **REVIEW AND APPROVAL.** This Policy is effective upon the signature of the DFA Cabinet Secretary, below.


Wayne Propst, Cabinet Secretary


Date