

ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

PER-2.01 Internal Americans with Disabilities Policy

Effective: July 9, 2019

Supersedes: PER-2.01 (10/30/2013)

Responsible Office: Civil Rights Office (602)-712-7761

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1.01 PURPOSE

The purpose of this policy is:

- A. To state ADOT's policy regarding the Americans with Disabilities Act (ADA) of 1990, as amended, and;
- B. To give guidance for the implementation of the policy.

1.02 SCOPE

This policy applies to:

- A. All applicants seeking employment with ADOT and all employees seeking promotional opportunities within ADOT.
- B. ADOT employees, programs, services, and activities.

1.03 AUTHORITY

Americans with Disabilities Act (ADA) of 1990 (P.L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611)

Americans with Disabilities Act Amendments Act of 2008 (P.L. 110-325)

42 United States Code (U.S.C.) Chapter 126

28 Code of Federal Regulations 35.140

Title 41, Chapter 9, Article 4, Arizona Revised Statutes

1.04 BACKGROUND

The Americans with Disabilities Policy was first published in the ADOT Administrative Policies and Procedures Manual on October 1, 1992, as PER-2.01. A previous revision was completed to PER-2.01 on January 1, 1995, and expanded the list of requirements for employers and program/service providers. A complaint procedure was added in 2001 as well as definitions. A procedure to request a reasonable accommodation has been added as well as additional definitions.

1.05 DEFINITIONS

Act	Americans with Disabilities Act of 1990 (Title I-Employment), as amended, which prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment.
Auxiliary aids and services	Services or devices, including qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunication devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.
Disability	With respect to an individual, means: <ol style="list-style-type: none">1. A physical or mental impairment that substantially limits one or more of the major life activities of the individual;2. A record of such an impairment; or3. Regarded as having such an impairment
Essential Functions	Duties that are fundamental to a position, including, among others, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated. Evidence of what constitutes an essential function may include, but is not limited to: the employer's judgment; the written job description, if any; the amount or proportion, or both, of time spent performing the function; and the consequences of not requiring a function.
Extenuating Circumstances	Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. If extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the necessary accommodation is extended as reasonably necessary. Extenuating circumstances may include: waiting to receive medical documentation from a third party; waiting for adaptive equipment to assist the employee; or unforeseen circumstances caused by a delay in the mail system.
Interactive Process	A flexible process through which ADOT's management and the employee or applicant with a disability discuss the request for accommodation in a good faith effort to identify the employee's or applicant's precise limitations and reasonable accommodations.

Major Life Activities	In general, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
Mental Impairment	A mental or psychological disorder, including mental retardation, emotional or mental illness, and organic brain syndrome.
Physical Impairment	A physiological disorder or condition, cosmetic disfigurement or anatomical loss impacting one or more body systems, including neurological, musculoskeletal (the system of muscles and bones), respiratory, cardiovascular, digestive, lymphatic, and endocrine body systems.
Qualified Individual with a Disability	An individual with a disability who satisfies the required skill, experience, and education requirements of the position the individual holds or would like to hold, and who, with or without reasonable accommodation, can perform the essential functions of the position.
Reasonable Accommodation	A modification or adjustment to a position, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to perform the essential functions of the position. Reasonable accommodation includes, but is not limited to, restructuring a job, modifying a job or service site, modifying a work schedule, providing auxiliary aids and services, and other actions taken to enable qualified individuals with disabilities to perform the essential functions of the position they hold or desire or to participate in services, programs, or activities offered by ADOT. In employment situations, reasonable accommodation may also include providing qualified readers or interpreters or even reassigning to a vacant position. Reasonable accommodation is very individual and cannot substantially change the nature of the job or program, service or activity and cannot put an employee in a position to harm himself or others.
Reassignment	A form of reasonable accommodation that, absent undue hardship, is provided to an employee who, because of a disability, can no longer perform the essential functions or the employee's job without reasonable accommodation, and ADOT has determined that: (1) there are no other effective accommodations that will enable the employee to perform the essential functions of the employee's current position; or

(2) all other accommodations would impose an undue hardship. If the employee is qualified for the position, the employee shall be reassigned to the job and shall not have to compete for it.

Record of such an impairment

An individual has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

Regarded as having such an impairment

An individual is regarded as having such impairment if the individual establishes that the individual has been subjected to an action prohibited under this policy because of an actual or perceived physical or mental impairment whether or not the impairment substantially limits or is perceived to substantially limit a major life activity.

Undue Hardship

An action that requires significant difficulty or expense when considered in light of factors such as ADOT's size and financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of ADOT.

1.06 POLICY

- A. ADOT is committed to equal opportunity in all aspects of employment for qualified individuals with a disability.
- B. It is the policy of ADOT to provide reasonable accommodation in employment to qualified individuals with disabilities unless the accommodation would impose an undue hardship on the operation of ADOT or would change the essential functions of the position.
- C. Retaliation against an individual with a disability for using this policy is prohibited.

1.07 POLICY VIOLATIONS

Policy violations against a qualified individual on the basis of disability include:

- A. Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;
- B. Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this policy;

- C. Using standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability and that perpetuate the discrimination of others who are subject to common administrative control;
- D. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
- E. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless ADOT can demonstrate that the accommodation would impose an undue hardship on the operation of ADOT;
- F. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of ADOT to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
- G. Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by ADOT, is shown to be job-related for the position in question and is consistent with business necessity; and
- H. Failing to select and administer tests concerning employment in the most effective manner to ensure that, if a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant, except if the skills are the factors that the test purports to measure.

1.08 ADA REQUIREMENTS

- A. ADOT is REQUIRED to do all of the following:
 - 1. Comply with the provisions of the Act that prohibit discrimination against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.
 - 2. Make reasonable accommodations for the known disability of a qualified applicant or employee if requested and if it does not impose undue hardship on the operations of ADOT.
 - 3. Refrain from asking a job applicant about the existence, nature, or severity of a disability; however, a hiring supervisor may ask an applicant about the applicant's ability to perform specific job functions. A hiring supervisor may offer a job contingent on the applicant passing a medical exam, but only if the exam is required for all employees entering similar jobs. Medical exams must be job related.

- B. ADOT is NOT REQUIRED to do any of the following:
 - 1. Eliminate essential functions from positions.
 - 2. Lower the quality or production standards to make an accommodation as long as these standards are applied uniformly to employees with or without a disability.
 - 3. Create a new position to accommodate an employee with a qualified disability.
 - 4. Provide personal use items needed in accomplishing daily activities both on and off the job (i.e. eyeglasses, hearing aids, prosthetic limbs, or a wheelchair).
 - 5. Provide personal use amenities, such as a refrigerator, if these items are not provided to employees without disabilities.

1.09 PROCEDURE TO REQUEST A REASONABLE ACCOMMODATION

- A. ADOT's responsibilities and employee/applicant responsibilities are as follows:
 - 1. Employees and applicants for employment are responsible for requesting an accommodation under this policy as further described in this section.
 - 2. ADOT is required to provide a reasonable accommodation for the known disability of an applicant or employee if requested unless the accommodation would either impose an undue hardship on the operation of ADOT or change the essential functions of the position.
 - 3. While divisions in ADOT are required to address any specific request in good faith, there is no obligation on the part of the divisions or ADOT to determine or identify the need for an accommodation absent an employee's or applicant's specific request.
 - 4. ADOT's Civil Rights Office is responsible for ADA compliance and for engaging in an interactive process in determining whether an employee or applicant is a qualified individual with a disability for the purpose of providing a reasonable accommodation.
 - 5. On request, ADOT shall consider qualified employees and applicants under the Act for reasonable accommodation. An individual with a disability may request a reasonable accommodation at any time during the application process or during the individual's period of employment. The reasonable accommodation process begins as soon as the request for accommodation is made. All accommodation requests shall be treated as a priority and processed expeditiously, ensuring confidentiality throughout the review process.
- B. An Applicant may make a request for reasonable accommodation during the hiring process to the hiring supervisor, ADOT's Employee Relations Unit or the Civil Rights Office. If a supervisor or the Employee Relations Unit receives a request, the supervisor or the Employee Relations Unit shall contact the Civil Rights Office for guidance.

C. Employees

1. An employee shall make a request for reasonable accommodation to the Civil Rights Office. Supervisors or the Employee Relations Unit, or both, shall refer employees who indicate a need for accommodation to the Civil Rights Office for assistance and contact the Civil Rights Office for guidance.
2. An employee must meet with the Civil Rights Office officer or designee who shall facilitate an interactive process between the employee and the supervisor to determine if a reasonable accommodation can be provided to the employee. The employee must communicate as to how the employee's disability affects the employee's ability to perform the essential functions of the job and identify what workplace accommodations are necessary to assist in performing the job duties.
3. The Civil Rights Office officer or designee shall discuss the essential functions of the particular position involved and the precise job-related limitations and offer suggestions for possible reasonable and effective accommodations.
4. The Civil Rights Office officer or designee may request medical documentation of the individual's physical or mental limitations to support the request. The Civil Rights Office shall maintain any medical documentation that is collected in accordance with appropriate confidentiality procedures.
5. The employee's supervisor or division, or both, shall provide the Civil Rights Office officer or designee with information on the essential functions of the position and the impact that the requested accommodation will have on the operations of the division. The supervisor also shall provide input to the Civil Rights Office officer or designee on the effectiveness each potential accommodation will have in allowing the employee to perform the essential functions of the position.
6. The employee's supervisor in consultation with the Civil Rights Office officer and Employee Relations Unit shall determine if the employee shall be placed in a temporary work assignment or on appropriate leave pending review of the employee's accommodation request, if the impairment precludes the employee from performing any of the essential functions of the employee's position.
7. The Civil Rights Office officer or designee shall work with and use the Employee Relations Unit in:
 - a. Requesting and collecting medical information or arranging medical examinations, or both;
 - b. Processing accommodation requests as a priority and as expeditiously as possible;
 - c. Continuing the interactive process with the employee's supervisor;
 - d. Evaluating the request and consulting with management and the Human Resources Staffing unit if necessary; and
 - e. Determining if any additional health documentation or professional consultation is needed.

8. On completion of the interactive process, the Civil Rights Office officer or designee shall make a decision on the request for accommodation within thirty days after receipt of the request. If granted, the Civil Rights Office shall provide a written determination to the employee. If the accommodation cannot be provided immediately, the Civil Rights Office must inform the individual of the projected time frame for providing the accommodation absent any extenuating circumstances.
9. In addition, with Employee Relations Unit assistance, the Civil Rights Office shall:
 - a. Notify the employee and management of the decision;
 - b. Assist in coordinating the accommodation (if approved); and
 - c. Ensure appropriate records are maintained.
10. Supervisors and managers shall:
 - a. Implement the approved reasonable accommodation; and
 - b. Ensure that the approved reasonable accommodation continue as necessary.

1.10 DENIAL OF REASONABLE ACCOMMODATION REQUEST

If the Civil Rights Office denies a request for reasonable accommodation, the Civil Rights Office shall issue a written denial decision to the individual requesting the reasonable accommodation. The explanation for the denial shall clearly state the specific reasons for the denial. If the Civil Rights Office denies a specific requested accommodation, but offers to make a different one in its place, which was not agreed to during the interactive process, the denial notice shall explain the reasons for the denial of the requested accommodation. The written notice of denial also shall inform the individual that the individual has the right to file a discrimination complaint and may have rights to pursue grievance procedures. Some examples of possible reasons for denial include the following:

- A. The requested accommodation would not be effective.
- B. Providing the requested accommodation would result in undue hardship. (Before reaching the determination, the Civil Rights Office must have explored whether other effective accommodations exist that would not impose an undue hardship and therefore can be provided.)
- C. Medical documentation is inadequate to establish that the individual has a disability or needs a reasonable accommodation, or both.
- D. The requested accommodation would require the removal of an essential function of the job.
- E. The requested accommodation would require the lowering of a performance or production standard.

1.11 PROHIBITED ACCOMMODATION

Informal accommodations requested outside of this process shall not be granted and, if approved in error, shall not be binding or permanent.

1.12 CONFIDENTIALITY OF MEDICAL RECORDS

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information, including information about functional limitations and reasonable accommodation needs, that ADOT obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's official personnel file. Any ADOT employee who obtains or receives such information is strictly bound by these confidentiality requirements to the extent possible.

1.13 IMPLEMENTATION OF POLICY

The Civil Rights Office, the Human Resources Office, and ADOT's managers and supervisors are ultimately responsible for the implementation of this policy.

1.14 CORRESPONDING POLICIES

Americans with Disabilities Act of 1990

Americans with Disabilities Act Amendments Act of 2008

42 U.S.C. 12101 through 12213

PER-3.01 ADOT Light Duty Policy

PER-9.02 ADOT Nondiscrimination Policy