



# **Americans with Disabilities Act    PM-30-04**

## **Amendments Act (ADAAA)**

Section: 30-00, EQUAL EMPLOYMENT COMPLIANCE

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### **I. Employment and Accommodations for Individuals with Disabilities**

The City of Memphis is an equal employment opportunity employer and shall not unlawfully discriminate against applicants or employees because of disability. This policy prohibiting discrimination applies to employment or hiring decisions, compensation, discipline, promotions, training, and all other terms and conditions of employment. The City shall not limit, segregate, or classify employees or applicants for employment in any way which will deprive or tend to deprive any individual of employment opportunities or otherwise affect an individual's status as an employee because of his or her disability. It is further the policy of City of Memphis to provide reasonable accommodations to qualified individuals with disabilities in all aspects of the employment process.

The City of Memphis is prepared to modify or adjust the job application process or the job or work environment to make reasonable accommodations to the known physical or mental limitations of the applicant or employee to enable the applicant or employee to be considered for the position he or she desires, to perform the essential functions of the position in question, or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities, unless the accommodation would impose an undue hardship or pose a direct threat of substantial harm to the health or safety of the applicant, employee or others.

All employees are required to comply with safety standards. Applicants who pose a direct threat to the health or safety of themselves or other individuals in the workplace or community, in which the threat cannot be eliminated by reasonable accommodation, will not be hired. Current employees who pose a direct threat to the health of safety of themselves or other individuals in the workplace or community will be placed on appropriate leave until an organizational decision has been made in regard to the employee's immediate employment situation.



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The Human Resources Division is responsible for implementing this policy, including resolution of reasonable accommodation, safety, and undue hardship issues.

All City of Memphis employment, within the civil service merit system, is based on the qualifications of the applicant as those qualifications meet the requirements of the position for which the applicant is applying. It is the policy of the City of Memphis Government that it shall not:

1. Discriminate against any otherwise qualified individual with a disability with respect to hire, compensation, hours worked, or other terms and conditions of employment solely on the basis of that individual's disability.
2. Limit, segregate, or classify individuals with disabilities in any way which deprives or tends to deprive them of employment opportunities or otherwise affects employee status; unless such limitation, segregation, or classification is because of exceptions as provided by law.
3. Discharge any individual with disability because of their disability. However, this policy does not prohibit the discharge of an individual with a disability.

## II. Definitions

- a. The term **disability** means, with respect to an individual:
  1. A physical or mental impairment that substantially limits one or more major life activities of such individual;
  2. A record of such an impairment; or
  3. Being regarded as having such an impairment
- b. The term **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.
- c. The term **major bodily functions** includes, the operation of a major bodily function, but not limited to, functions of the immune system, normal cell growth, digestive, bowel and bladder.



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- d. The term **regarded as having such an impairment** means with respect to an individual who establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
  - 1. Regarded as having such an impairment shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
  
- e. The term **qualified individual with a disability** means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
  
- f. The term **reasonable accommodation** means a modification or adjustment to a job, the work environment, the job application process, or the way things are usually done that enables a qualified individual with a disability to perform the essential functions of the job and to enjoy an equal employment opportunity. Reasonable accommodation includes, but is not limited to, making facilities accessible, adjusting work schedules, restructuring jobs, providing assisting devices or equipment, providing readers or interpreters, and modifying examinations, training materials or policies.

### III. Requesting Accommodations

#### A. Applicants for Employment

- 1. All City of Memphis position announcements will contain the statement, "It is the policy of the City of Memphis to provide reasonable accommodations to qualified individuals with a disability who are applicants for employment or employees."
  
- 2. Each applicant invited for an interview shall again be informed of the City of Memphis policy requiring reasonable accommodations to be provided in the hiring process.
  
- 3. Each applicant should make requests for accommodations through the contact person as identified in the vacancy announcement. When requested by an applicant with a disability, the Administration is



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prepared to modify or adjust the job application process to make reasonable accommodation to the known physical or mental limitations of the applicant to enable the applicant to be considered for the position he/she desires.

4. Each applicant is responsible for making timely and complete disclosures and specific requests regarding accommodations to meet his or her particular needs in order to enable the City to provide an appropriate response. It is strongly recommended that requests for accommodations be made as soon as possible to avoid delays in providing reasonable accommodations.
5. An interviewer may not ask an applicant whether or not he/she has a disability. This includes both physical and psychological disabilities. If the applicant volunteers information about a disability, the interviewer shall not ask any questions relating to the nature or extent of the disability or whether treatment will be necessary.
6. With respect to the ability to perform required job duties, an interviewer may ask each applicant whether or not he/she is able to perform the essential functions of the job applied for with or without reasonable accommodation.
  1. If an applicant indicates in response to such an inquiry that he/she can perform the essential functions of the job but does not volunteer comment on the need for accommodation, then no inquiry shall be made about the need for an accommodation.
  2. If, however, the applicant indicates in response to such an inquiry that he/she can perform the essential functions of the job and does volunteer the need for an accommodation, the interviewer may ask the applicant how he/she will perform the essential functions of the position and what accommodation will be necessary.

#### **B. Current Employees or Applicants Offered Employment**

1. To request a reasonable accommodation, an employee or applicant offered a job is required to submit a written statement to the City of Memphis Leave Coordinator. The written statement must identify the nature of the claimed physical or mental disability, identify the functional limitations with respect to the disability, and identify the requested accommodation(s).



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2. An individual who identifies him/herself as having a disability and requests a reasonable accommodation may be required to provide documentation, including medical records, sufficient to establish the existence of the claimed physical or mental impairment and the need for accommodation. The information should be appropriately current and have been prepared by a qualified professional. The employee or applicant offered a job must bear the cost of this initial verification of a disability.
3. The City of Memphis may require an employee or applicant offered a job who is requesting a reasonable accommodation to undergo further testing or evaluation by qualified professionals to verify or further establish the claimed disability, the need for an accommodation, and to provide a basis upon which a reasonable accommodation can be developed or implemented. The cost of such evaluation will be paid by the City of Memphis.
4. If an employee is having difficulty performing his/her job, the supervisor, in consultation with the Leave Coordinator, should inform the employee of the existence of the City of Memphis' policy to provide reasonable accommodations. If the employee requests a reasonable accommodation, the procedures in this policy shall apply. However, if the employee does not request an accommodation, an accommodation will not be offered nor provided.

#### **IV. Providing Accommodations**

##### **A. Decision Making Procedures**

1. Each request for an accommodation shall be reviewed on a case-by-case basis. The employee or applicant will be involved in the process of determining potential reasonable accommodations.
2. The City of Memphis Leave Coordinator will make the decision to approve or deny an accommodation request. If the hiring authority, supervisor or the Leave Coordinator is concerned about providing an accommodation, the hiring authority, supervisor and Leave Coordinator shall consult with the appropriate Division Director.
3. The decision to approve or disapprove an accommodation request must be made by the Leave Coordinator in writing and provided to the applicant or employee within 20 working days after the filing of a request. If an accommodation request is denied, the written decision must inform the employee or applicant of the complaint process



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available to that individual as listed in Section V of this policy and procedures.

4. Where there is more than one effective accommodation, the final decision as to which accommodation will be provided shall be made by the City of Memphis after consideration of the wishes of the individual, the documentation provided, and advice from other appropriate personnel.
5. A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and 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.
6. The City of Memphis does not provide individuals with disabilities with personal devices or assistance for personal use, including but not limited to wheelchairs, eye glasses, hearing aids, personal assistance for eating or dressing, or readers for personal use.
7. When no reasonable accommodation is available to allow an employee with a disability to remain in his/her current position, The City of Memphis will attempt to reassign that employee to a vacant position, which is equivalent in terms of pay and status, within the City of Memphis. The employee must be qualified for the vacant position and the position must be vacant or will be vacant within a reasonable period of time. Assignment to another vacant position is only available to employees that meet the definition of disabled, as described by the ADAAA.
8. All material and information collected from an applicant or employee regarding the individual's accommodation request shall be considered confidential information and be kept in a separate file. Upon completion of the decision making process regarding the accommodation request, all material collected will be kept in a separate, locked file by the Leave Coordinator. This information will be confidential with the following exceptions:
  - a. Supervisors and managers may be informed regarding necessary accommodations or necessary restrictions on the



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work or duties of the employee;

- b. First aid and safety personnel may be informed, when appropriate, if the disability might require alternative actions in emergency situations;
  - c. Government officials investigating compliance with non-discrimination laws shall be provided relevant information on request.
9. The Leave Coordinator will periodically monitor the effectiveness of accommodations provided to applicants or employees.

### **B. Assessing Accommodation Requests**

Several factors will be considered before asking an individual to further verify the existence of a disability and when reviewing an accommodation request for reasonableness.

1. Requesting Additional Verification
  - a. Is the employee known to have a disability?
  - b. Does the applicant or employee have an observable disability?
  - c. Does the request expand on an existing accommodation or previously provided accommodation for which verification was required?
2. Determining Reasonableness of Accommodation Request
  - a. Are the job functions for which the accommodation is required essential?
  - b. Is the applicant or employee otherwise qualified to perform the essential job functions?
  - c. Does the accommodation accomplish the desired result allowing the individual to overcome limitations of the disability to effectively perform the essential functions of the job or to enjoy the benefits and privileges of similarly situated employees? Is the accommodation necessary and effective?
  - d. Will the accommodation adversely affect the productivity or work environment of other employees in



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the work unit?

- e. Is the cost of the accommodation feasible within the budget of the City Division?
- f. Are there other more cost-effective options which will allow the individual to perform the essential functions of the job?

### V. Complaint Process

The City of Memphis has an internal complaint procedure to resolve complaints alleging violations of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments Act (ADAAA).

1. If an applicant, an applicant offered a job, or an employee disagrees with a decision regarding his or her request for an accommodation, a complaint may be filed with the Office of Equity, Diversity & Inclusion, City Hall Room 414 pursuant to this internal complaint procedure.
2. Complaints filed pursuant to this internal procedure must be filed within fifteen (15) working days after the complainant is informed of the accommodation decision. Individuals wishing to file such a complaint should immediately contact Office of Equity, Diversity & Inclusion for information on the appropriate process.
3. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

At any time, an individual may pursue other remedies available to him/her under applicable state law or federal law. An employee may contact the Office of Equity, Diversity & Inclusion, Division of Human Resources, to obtain information on existing complaint/grievance resolution processes. An employee may also file a complaint by contacting the city's Ethics Hotline at [www.cityofmemphis.alertline.com](http://www.cityofmemphis.alertline.com).