



**SUBJECT: Procedures for Compliance with Title I
of the Americans With Disabilities Act**

Title I of The Americans with Disabilities Act (ADA) makes employment discrimination against qualified individuals with a disability unlawful. The ADA prohibits discrimination in training, promotion, retention, and other aspects of employment and requires employers to provide reasonable accommodation(s) to qualified disabled employees and applicants for employment.

I. PURPOSE. This bulletin sets forth procedures to be followed by Contra Costa County departments: (1) for determining whether an employee or applicant for employment is a "qualified individual with a disability"; and (2) if so, for processing requests from such individual for reasonable accommodation(s). (As used herein, "department" includes special districts governed by the Board of Supervisors.)

II. DEFINITIONS.

- A. An "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.
- B. A "qualified individual with a disability" is a person with a disability who, with or without reasonable accommodation(s), can perform the essential functions of the position that the individual holds or desires. The employee must also meet the minimum qualification(s) of the job class.
- C. "Reasonable accommodation(s)" may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials or policies; the provision of qualified readers or interpreters; or similar modifications to the application or examination procedures, job duties, or working conditions.

D. "Undue hardship" is a basis for denying a request for reasonable accommodation(s). Factors to be considered in determining whether a specific accommodation would impose an undue hardship include:

1. The nature and cost of the accommodation(s) needed.
2. The overall financial resources of the facility or facilities involved in the accommodation(s); the number of people employed at the facility; and the effect of expenses and resources or other impact of the accommodation(s) on the facility's operation.
3. The overall financial resources of the covered entity and its size, including the number of employees, type and location and number of its facilities.
4. The type of operation(s) of the covered entity, including the composition, structure and functions of its work force, geographic separateness, and administrative or fiscal relationship of the facility or facilities to the covered entity.

E. "Essential functions" are the job duties that an employee must be able to perform, with or without reasonable accommodation(s).

1. Factors to consider in determining if a function is essential include:
 - a. Whether the reason the position exists is to perform that function;
 - b. The number of other employees available to perform the function or among whom the performance of the function can be distributed; and
 - c. The degree of expertise or skill required to perform the function.
2. Other factors to be considered include:
 - a. The actual work experience of present or past employees in the job;
 - b. The time spent performing a function;
 - c. The consequences of not requiring that an employee perform a function; and
 - d. The terms of a collective bargaining agreement.

- F. The County Administrator or designee (Affirmative Action Officer) is responsible for the development, coordination and implementation of the County's Americans With Disabilities Act requirements.

III. LIMITATIONS.

- A. The term "qualified individual with a disability" does not include individuals currently engaging in the illegal use of drugs.
- B. Disability does not include:
1. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
 2. Compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.
 3. Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this employment part of the Act.

IV. PROCEDURES FOR RESPONDING TO REQUESTS FOR REASONABLE ACCOMMODATION(S) FROM EMPLOYMENT APPLICANTS.

- A. When a qualified disabled applicant requests reasonable accommodation for any part of the application process, the Personnel Department staff shall ask the applicant what type of accommodation(s) he or she needs, and when appropriate, confer with the applicant about other possible types of accommodations.
- B. In the event the Personnel Department believes that accommodation(s) cannot be provided, the written request shall be referred to the County Administrator. The County Administrator will review the written request and determine if accommodation(s) can be provided, and if so, what accommodation(s) shall be provided.
- C. The Personnel Department shall retain all requests for accommodation(s) and provide a copy to the County Affirmative Action Officer. A written record shall be made of the actions taken as a result of the request and a copy provided to the Affirmative Action Officer and applicant.

V. REQUESTS FOR REASONABLE ACCOMMODATION(S) FROM EMPLOYEES.

- A. Department Heads are responsible for providing reasonable accommodation(s) to qualified disabled employees in their departments and accommodating referrals from the other departments. Transfers will be subject to the same requirements as other transferees. A physician's report may be requested that confirms the employee's ability to perform the essential functions of the job, and what, if any, accommodation(s) is required.
- B. An employee with a disability may make a request for reasonable accommodation(s) to his or her supervisor or designee.
- C. The supervisor or designee shall submit the request to the department head or person designated by the department head to receive such requests and the department shall provide a copy to the Department Affirmative Action Coordinator.
- D. The department head or designee shall:
1. On the form provided for that purpose, request that the employee identify the type of disability, why an accommodation(s) is necessary, and what type of accommodation(s) the employee recommends.
 2. Discuss the need for accommodation(s) and the employee's proposed accommodation(s). If the department and employee reach agreement, provide the agreed upon reasonable accommodation(s).
- E. If, after discussion, the department is not satisfied that accommodation(s) is needed, it shall request that the employee's physician's report on the employee's ability to perform the essential functions of the job, and what accommodation(s) is required.
- F. If not satisfied by the report of the employee's physician, the department shall refer the employee's physician's report to the County's physician for review. The County's physician may also examine the employee to determine whether the employee can perform the essential functions of the job with or without the requested reasonable accommodation(s). Outside specialist may be required to assist the County's physician.
- G. If the County's physician determines the employee can perform the essential functions of the job with or without the reasonable accommodation(s), the physician will so inform the department in writing and report to

the department what, if any, accommodation(s) is required. The employee must service the required probationary period for the job class; even if they are transferred to a department in the same job class. If the employee fails the probationary period due to performance, no further accommodation(s) is required.

1. If the department and employee agree with the conclusions of the County's physician, the department shall either:
 - a. Implement the recommendations of the physician; or
 - b. Implement the recommendations of the physician as modified by agreement with the employee.
 2. If employee and department cannot agree on the accommodation(s) to be provided or if the recommended accommodation(s) would cause an undue hardship, proceed with the procedures set forth in Subsection I.
- H. If the County's physician determines the employee cannot perform the essential functions of the job with reasonable accommodation(s), the physician shall report in writing to the department containing a statement of the reasons for the determination including a statement of which functions the employee cannot perform, and why.
- I. The Department Head or designee, after reviewing the County's physician's report, will:
1. Make the accommodation(s) recommended; or
 2. Request that the Department Affirmative Action Coordinator and Personnel Officer or Administrative Services Officer assist in providing a reasonable accommodation(s); and
 3. Discuss with the Personnel Department actions taken and review the Personnel Management Regulations and any applicable memoranda of understanding; and
 4. Determine what, if any, accommodation(s) can be made to an employee, and if none can be made, or if the employee does not agree to the accommodation(s), why the accommodation(s) requested by the employee is either not a reasonable accommodation(s) or would cause the County an undue hardship. All denials or requests

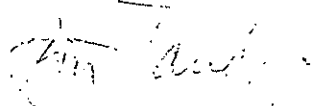
for reasonable accommodation(s) shall be sent to the Affirmative Action Officer.

- J. The Affirmative Action Officer will review the determination that an accommodation(s) is not required, is not sufficient to allow the employee to perform the essential functions of the job, or would cause an undue hardship. After the review, the Affirmative Action Officer will make recommendations in writing to the department.
- K. The supervisor or designee will advise the employee that an accommodation(s) cannot be made along with a written explanation of why the accommodation(s) cannot be made.
- L. Documentation (attached) requesting reasonable accommodation(s) and employees provided or denied reasonable accommodation(s) will be maintained by the Affirmative Action Officer.

VI. APPEAL PROCEDURE.

- A. Applicants and employees not provided with a reasonable accommodation(s) for industrial and non-industrial requests may:
 - 1. Request assistance from the Affirmative Action Officer.
 - 2. File a discrimination complaint with the Affirmative Action Officer.
 - 3. File a discrimination complaint directly with the Merit Board.
- B. Complaints filed with the Affirmative Action Officer will be handled like other discrimination complaints.
- C. Complaints filed with the Merit Board will be handled pursuant to the Personnel Management Regulations.

Attachment: Form 1A
Originating Dept.: County Administrator



Phil Batchelor,
County Administrator