

# Reasonable Accommodation

Number: I-3

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## 1.0 POLICY

In accordance with the Americans with Disabilities Act as Amended and the Pregnant Workers Fairness Act, the Town of Carolina Beach provides employees with the opportunity to request reasonable accommodations within the workplace.

## 2.0 PURPOSE

The Town recognizes there may be circumstances when employees may need reasonable accommodation to perform essential functions and duties of their position. This policy provides the rules and procedures the Town uses to comply with the Americans with Disabilities Act and the Pregnant Workers Fairness Act.

## 3.0 SCOPE

This policy covers all employees and applicants of the Town of Carolina Beach.

## 4.0 DEFINITIONS

- **4.1 Americans with Disabilities Act as Amended (ADA)** - The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.
- **4.2 Decision Maker** - The individual with authority to approve or deny a request for reasonable accommodation such as the Town Manager or his designee.
- **4.3 Employee with a Disability** - An employee who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
- **4.4 Essential Functions** - Those job duties that are so fundamental to the position that the employee believes they cannot do the job without performing them. A function can be essential if 1) the position exists specifically to perform the function, 2) there are a limited number of other employees who perform the function, or 3) the function is specialized, and the employee was hired based on their ability to perform the specific function. Determining the essential functions must be made on a case-by-case basis to ensure they reflect the job as performed and not just the components of a generic position.
- **4.5 Pregnant Workers Fairness Act (PWFA)** - An Act, which is an amendment to the ADA, signed into law on December 29, 2022, and which will be in effect as of June 27, 2023, in which an employer must provide reasonable accommodations to workers with known limitations related to pregnancy, childbirth or related medical conditions unless the accommodation will cause the employer an 'undue hardship'.
- **4.6 Qualified Employee with a Disability** - An employee with a disability is qualified if (1) they satisfy the requisite skill, experience, education, and other job-related requirements of the position; and (2) they can perform the essential functions of the position, with or without reasonable accommodation.

- 4.7 **Undue Hardship** - Undue hardship is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis.

## 5.0 ORGANIZATIONAL RULES

- 5.1 A request for reasonable accommodation is a statement from an employee expressing a need for an adjustment or change in their work functions, or from an applicant in the employment process, or in a benefit or privilege of employment for a reason related to a disability or condition. The reasonable accommodation process begins as soon as the request for accommodation is provided by the employee. The request does not have to have been in writing and the employee does not have to use the words "reasonable accommodation," "disability," "ADA" or "Pregnancy Fairness Act". The employee may request a reasonable accommodation at any time even if they have not previously disclosed an existence of a disability or health condition.
  - A. An employee may request reasonable accommodation (orally or in writing) from their supervisor, another supervisor or manager in their immediate chain of command, the Department Director, the Human Resources Director, or the Town Manager.
  - B. In the employment application process, an applicant may request a reasonable accommodation (orally or in writing) from any employee in the Human Resources Department with whom the applicant had contact in connection with the completion of application. The Human Resources Department is responsible for training all Town staff involved in the application process to recognize requests for reasonable accommodation and process them according to Town policy and procedures. Department Directors are also responsible for on-going training of their staff to ensure they have been trained and remain abreast of Town policies and procedures relative to reasonable accommodation requests.
  - C. A family member, health professional, or other representative may request reasonable accommodation on behalf of an employee or applicant. The request must go to the Human Resources Department or to the same person to whom the employee or applicant would otherwise make the request.
- 5.2 The person who processes the request for reasonable accommodation will be referred to as the "decision maker." The Town has three decision makers including the Human Resources Director, a Department Director, and the Town Manager. Any supervisor receiving a request for accommodation can utilize the **Confirmation of Request for Reasonable Accommodation** to document the request for accommodation.

The request should be forwarded to the decision maker as soon as possible and no later than five (5) business days after receipt. If the person receiving the request is the decision maker, they will notify the appropriate Department Director and Human Resources Director of the request and follow the proper process for resolution.

## 6.0 PROCEDURES

- 6.1 Upon receipt of a reasonable accommodation request, the decision maker will communicate with the employee within five (5) business days to discuss the request

and determine whether an accommodation can be provided or the potential for other accommodations which may be suitable for both the employee and the Town. The Human Resource Director will explain the process.

- 6.2 When a request for reasonable accommodation is made by a third party, the decision maker should (if possible) confirm with the applicant or employee that they want accommodation before proceeding.
- 6.3 The decision maker who receives a request for reasonable accommodation may share information connected with the request with other Town officials only when the Town official(s) need to know the information in order to make determinations on a reasonable accommodation request. Supervisors/Managers or any employee who has access to this information should not discuss the request with those outside the decision-making process.
- 6.4 The Town is entitled to know an employee or applicant has a covered disability or condition that requires a reasonable accommodation. However, when a disability or condition, and/or need for reasonable accommodation is not obvious or otherwise already known to the decision maker, the Town may require the employee or applicant to provide reasonable documentation about the disability and/or condition and their functional limitations.
- 6.5 If the decision maker believes medical information is necessary to evaluate a reasonable accommodation request, they must obtain written authorization from the employee and send it to the Town's Corporate Health Provider for interpretation. This action is to ensure the Town has sufficient information in order to substantiate the employee does have a disability or condition and needs reasonable accommodation.
  - A. In order to get the most relevant information, requests should describe the nature of the job, the essential functions the employee is expected to perform, and any other relevant information. The decision maker may work with the supervisor and/or Director to seek this information.
  - B. If the information provided by the health professional (or information volunteered by the employee requesting the accommodation) is insufficient for the decision maker to finalize the request, the decision maker may ask for further information as outlined below:
    1. The decision maker will explain to the employee seeking the accommodation, in specific terms, why the information provided was insufficient, what additional information is needed, and why it is necessary.
    2. The employee may then ask their health care or other appropriate professionals to provide the missing information.
    3. The decision maker and the employee requesting the accommodation may agree on the accommodation and the employee will sign a limited release. If signed, the decision maker may submit a list of specific questions (relevant to the nature of the essential functions of the job) to the employee's medical or health care professional as long as the employee has given them permission for such contact.
  - C. If, after a reasonable period of time (7 business days) sufficient information has not been received by the decision-maker, the request will be denied.
  - D. The Town's Corporate Health Partner will advise the decision maker whether the documentation supports the reasonable accommodation request and provide any relevant information about the employee's functional limitations which are relevant to the essential functions of the job.
  - E. In those instances when the employee requesting the accommodation supplies medical information directly to the decision maker without being asked, the decision maker will consider such documentation.
- 6.6 The Town will process requests for reasonable accommodation and provide appropriate accommodations as soon as reasonably possible. However, the time

necessary to process a request will depend on the nature of the accommodation, whether supporting information is needed, and the availability of resources to accommodate the request.

A. **Expediting Processing:** In certain circumstances, a request for reasonable accommodation requires a review and decision in fewer than 15 business days. An example is enabling an applicant to apply for a job. Depending on the time frame for receiving applications, conducting interviews, taking tests, and making hiring decisions, it may be necessary to expedite the request to ensure the applicant with a disability or condition has an equal opportunity to apply for the job. Therefore, Human Resources and the Department Director where the vacancy exists must be proactive in making a decision and provide reasonable accommodation where appropriate. This may include providing interpreters for meetings.

If an accommodation request can be processed by the requesting employee's Department Director, no supporting medical information is required. If no extenuating circumstances apply, the request can be processed and the accommodation would be provided within 15 business days from the date the Supervisor or Director receives the request. A copy of the approval of accommodation must be sent to Human Resources. Failure to meet the 15 business day time frame is not an extenuating circumstance.

B. **Extenuating Circumstances:** These are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing accommodation will be extended as reasonably necessary. By Town policy any extension based on extenuating circumstances should be limited to circumstances deemed strictly necessary. All Town staff is expected to act as quickly as possible in processing requests and providing accommodations. Examples of extenuating circumstances may include:

1. There is an outstanding initial or follow-up request for medical information, or Corporate Health is evaluating the medical information which has been provided.
2. The purchase of equipment may take longer than 15 - 20 business days based on the Town's Acquisition Policies and Procedures.
3. Equipment must be back-ordered, the vendor typically used by the Town for goods and services has unexpectedly gone out of business, or the vendor cannot supply the needed goods or services promptly and another vendor is not immediately available.
4. The employee with the disability or condition needs to become familiar with the equipment on a trial basis to ensure it is effective before the Town decides to purchase it.

**Note:** A decision maker being unavailable does not constitute extenuating circumstances. All decision makers must identify a back-up in their absence.

When extenuating circumstances are present, the decision maker must notify the employee of the reason for the delay and the approximate date when a decision or provision of the reasonable accommodation is expected. Any further developments or changes should also be communicated promptly to the employee.

- 6.7 Granting a Reasonable Accommodation Request - as soon as the decision maker determines a reasonable accommodation will be provided, the decision should be

immediately communicated to the employee. If the accommodation cannot be provided on a timely basis, the decision maker must inform the employee an approximate time frame when the accommodation can be provided. This notice does not need to be in writing, but must be documented in the file.

- 6.8 Denial of Reasonable Accommodations - When the decision maker determines a request for reasonable accommodation will be denied, they must provide the employee with a written denial. The decision must be written in plain language and clearly stating the specific reason(s) for the denial. Where the denial also includes an offer to make a different accommodation which was not agreed to during the communication process, the denial notice will explain both the reasons for the denial and the reasons why the chosen accommodation would be more effective and would result in less undue hardship.
- 6.9 Denial is appropriate if the requested accommodation would result in undue hardship to the Town. Before reaching this determination, the decision maker must have explored if other effective accommodations exist that would not impose undue hardship on the Town and would not incur a safety hazard for the employee, other employees of the Town, or citizens. A determination of undue hardship means that a specific accommodation would result in a significant difficulty or expense, or would fundamentally alter the nature of the Town's operations. When evaluating budgetary or administrative concerns, the decision maker should consult the applicable federal regulations and the "Enforcement Guidance on Reasonable Accommodation and Undue hardship the Americans with Disability Act."

An employee with a disability or condition can request a prompt appeal if their request was denied for the following reasons:

1. Medical documentation was inadequate to establish that the employee has a disability and/or needs a reasonable accommodation.
2. The requested accommodation would require the removal of an essential function.
3. The requested accommodation would require the lowering of a performance production standard.

A request for an appeal should be sent to the Human Resources Director. The employee may present additional information in support of their request. The decision maker will respond to the request for reconsideration within five (5) business days.

If the decision maker was the Human Resources Director and they do not reverse the decision, the employee can request an appeal to the Town Manager. The Town Manager will issue a final decision on the request with five (5) business days.

- 6.10 Required Tracking and Monitoring – Human Resources will maintain the requests for reasonable accommodation for the employee's tenure with the Town or for five years, whichever is longer. Annually the Human Resource Director will tabulate the following information related to reasonable accommodation requests:
  - A. The number of requests (identified by type) that have been submitted and their status (granted or denied);
  - B. The jobs (occupational series, grade, and department) that pertain to requested reasonable accommodations;
  - C. The reasons for denial;
  - D. The period of time taken to process each request for reasonable accommodation; and

E. The sources of technical assistance consulted when trying to identify possible reasonable accommodations.

In addition, the report will provide a qualitative assessment of the Town's reasonable accommodation program including any recommendations for improvement of the policies and procedures.

- 6.11 Privacy Information - Medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means all medical information obtained by the decision maker in connection with a request for reasonable accommodation, including information about functional limitations and reasonable accommodations needs, must be kept in files separate from the employee's personnel file. It also means any decision maker or employee who obtains or receives such information is strictly bound by these confidentiality requirements. All medical documents will be forwarded to Human Resources for storage.

Human Resources will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 CFR 1611. This information may be disclosed only as follows:

- A. Supervisors and Managers with a need to know (including the decision maker who requested the information) may be advised of the necessary work restrictions on the duties of the employee and of the necessary accommodation(s). However, medical information should only be disclosed if strictly necessary.
- B. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment
- C. Government officials may be given information necessary to investigate the agency's compliance with anti-discrimination laws; and
- D. The information may in certain circumstances be disclosed to worker's compensation offices or insurance carriers.

Whenever medical information is disclosed, the employee disclosing the information must inform the recipients of the information about the confidentiality requirements.

## **7.0 APPENDIX, APPENDICES**

- Confirmation of Request for Reasonable Accommodation