

**STOREY COUNTY ADMINISTRATIVE
POLICIES AND PROCEDURES**

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AUTHORITY: BOC
COUNTY MANAGER: PAW

SUBJECT: Employment Disabilities

I. Purpose of Policy

The employer recognizes that the personnel relating to fair employment practices encompass its commitment to fair and equitable treatment of all employees and applicants, including those with disabilities. The employer also recognizes that there are specific issues relating to individuals with disabilities that must be individually addressed. The employer acknowledges its responsibility to ensure that individuals in the workplace can efficiently and safely perform the essential functions of their jobs without posing a direct threat to themselves and others.

II. Policy

It is the employer's policy to comply proactively with the applicable employment provisions of disability laws, including the American with Disabilities Act (ADA), as amended and Nevada Law (NRS 613.310, NRS 281.370, and NRS 233.010). The employer does not tolerate discrimination against any qualified individual with a disability in regard to any terms, conditions, or privileges of employment and it prohibits any type of harassment or discrimination based on the physical or mental disability, history of disability, or perceived disability of an individual holding or seeking employment with the employer.

The employer is committed to provide reasonable accommodation wherever the need for such is known to the employer and whenever the employee or applicant indicates a need for reasonable accommodation, provided that the individual is otherwise qualified to perform the essential functions of the assigned job and the employee's performance of the assigned job duties does not pose an obvious threat to the safety of him/herself or others.

III. Determination of Disability

In determining whether an employee or an applicant has a disability under the law, the employee/applicant must have a physical or mental impairment that substantially limits one or more life activities, have a record of such an impairment, or is regarded as having such an impairment.

1. 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, concentrating, thinking, communicating, reading, sitting, reaching, interacting with others, and working.
2. 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, genitourinary, cardiovascular, hemic, lymphatic, musculoskeletal, respirator, circulatory, endocrine, and reproductive functions.

IV. Disability-Related Inquiries

The employer shall adhere to the provisions of applicable laws regarding an employer's limitations on making disability-related inquiries or requiring medical examinations.

The employer's restrictions regarding disability-related inquiries and medical examinations apply to all employees/applicants, whether or not they have disabilities. A disability-related question to an applicant may be a violation of law, even though the applicant may not have a disability.

The employer may require the employee to provide a fitness-for-duty certification from an appropriate medical provider whenever the employer has reason to believe the employee may be unable to perform the essential functions of his/her job. (Reference: Policy 220 Genetic Information Nondiscrimination Act (GINA)).

V. Confidentiality of Medical Records

Under the ADA, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that the employer obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file.

This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The ADA Coordinator may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, the ADA Coordinator will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the ADA Coordinator will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability.

In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

- supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance in evacuation; and
- government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.

VI. Accommodation

1. Assignment of an ADA Coordinator

The Administrative Officer and/or Personnel Director shall serve as the employer's ADA Coordinator, or s/he may assign the function to another qualified human resources representative.

2. Accommodation for Applicants

Whenever an applicant requests accommodation in applying for, testing, or interviewing for a position with the employer, the ADA Coordinator shall determine whether the applicant's condition constitutes a disability under the disability laws. The employer's ADA Coordinator shall then determine whether the request for accommodation for a covered disability is reasonable or if another type of accommodation can be provided. In making that determination of reasonableness, the ADA Coordinator may consider whether granting such requests might impose an undue hardship on the employer.

3. Accommodation Process and Determination

When the employer has some objective reason to believe an employee may need some type of accommodation to perform his/her essential job functions, the employer must initiate an interactive process (See subsection 3 below) with the employee to find out what accommodation the employee might need. Also, whenever an employee approaches his/her supervisor, the employer's ADA Coordinator, or any other manager within the employer requesting some type of accommodation, the employer will initiate the interactive process. Interactive Process

After a request for accommodation has been made, the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the employer must communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.

The employer will contact the employee within 10 business days after the request is made to begin discussing the accommodation request. In some instances, the employer may need to get information to determine if an individual's impairment is a "disability" under the ADA and this policy or to determine what would be an effective accommodation. Such information may not be necessary if an effective accommodation is obvious, if the disability is obvious (e.g., the requestor is blind or has a paraplegia) or if the disability is already known to the employer (e.g., the requestor previously asked for an accommodation and information submitted at that time showed a disability existed and that there would be no change to the individual's medical condition).

Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different forms of reasonable accommodation. Both the individual making the request and the decision maker should work together to identify an effective accommodation. A list of suggested resources for identifying accommodations is contained in Appendix 205A of this policy.

When a third party (e.g., an individual's doctor) requests accommodations on behalf of an employee, the employer should, if possible, confirm with the employee that s/he wants a reasonable accommodation before proceeding. Where this is not possible, for example, because the employee has been hospitalized in an acute condition, the employer will process the third party's request if it seems

appropriate (e.g., by granting immediate leave) and will consult directly and as soon as possible with the individual needing the accommodation.

The ADA Coordinator may need to consult with other personnel (e.g., an employee's supervisor, Information Technology staff, etc.) or outside sources to obtain information necessary to make a determination about the request. The employer expects that all staff will give a high priority to responding quickly to a request of the ADA Coordinator for information or assistance. Any delays by employer personnel may result in failure to meet required timeframes and may be grounds for disciplining the employee to whom the request for information was made.

a. Reassignment

There are specific considerations in the interactive process when an employee needs, or may need, a reassignment.

- Generally, reassignment will only be considered if no accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship.
- In considering whether there are positions available for reassignment, the ADA Coordinator will work with the employee requesting the reassignment to identify: (1) current vacant positions within the employer for which the employee may be qualified, with or without reasonable accommodation; and (2) positions which ADA Coordinator has reason to believe will become vacant within 15 days from the date the search is initiated and for which the employee may be qualified.

b. Requests for Medical Information

If a requestor's disability and/or need for accommodation are not obvious or already known, the ADA Coordinator is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the qualifications under the ADA. It is the responsibility of the employee to provide appropriate medical information requested by the employer where the disability and/or need for accommodation are not obvious or already known.

Only the ADA Coordinator may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate healthcare professional. Even if medical information is needed to process a request, the ADA Coordinator does not necessarily have to request medical documentation from a health care provider; in many instances the requestor may be able to provide sufficient information that can substantiate the existence of a "disability" and/or need for a reasonable accommodation. (See Section V above about the confidentiality of all medical information obtained in processing a request for accommodation.) If an individual has already submitted medical documentation in connection with a previous request for accommodation,

the individual should immediately inform the ADA Coordinator of this fact. The ADA Coordinator will then determine whether additional medical information is needed to process the current request.

If the initial information provided by the healthcare professional or volunteered by the requestor is insufficient to enable the ADA Coordinator to determine whether the individual has a “disability” and/or that an accommodation is needed, the ADA Coordinator will explain what additional information is needed. If necessary, the individual should then ask his/her health care provider or other appropriate professional to provide the missing information. The ADA Coordinator may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, the ADA Coordinator may ask the individual requesting accommodation to sign a limited release permitting the ADA Coordinator to contact the provider for additional information. The ADA Coordinator may have the medical information reviewed by a doctor of the agency’s choosing, at the employer’s expense.

In determining whether documentation is necessary to support a request for reasonable accommodation and whether an employee has a disability within the meaning of the ADA, the ADA Coordinator will be guided by principles set forth in the ADA. Specifically, the ADA directs that the definition of “disability” be construed broadly and that the determination of whether an individual has a “disability” generally should not require extensive analysis. Notwithstanding, the ADA Coordinator may require medical information in order to design an appropriate and effective accommodation.

A supervisor or office director who believes that an employee may no longer need a reasonable accommodation must contact the ADA Coordinator. The ADA Coordinator will decide if there is a reason to contact the employee to discuss whether s/he has a continuing need for reasonable accommodation.

The employer may make disability-related inquiries and require medical exams that are required or necessitated by applicable laws or regulations; e.g., federal safety regulations, OSHA requirements, etc.

c. Timeframe for Processing Requests and Providing Reasonable Accommodation

1. Generally

The time frame for processing a request (including providing accommodation, if approved) is as soon as possible but no later than 30 business days from the date the request is made. This 30-day period includes the 10-day timeframe in which the ADA Coordinator must contact the requestor after a request for reasonable accommodation is made.

The employer will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible. The timeframe above indicates the maximum amount of time it should generally take to process a request and provide a reasonable accommodation. The ADA Coordinator will

strive to process the request and provide an accommodation sooner, if possible. Unnecessary delays can result in a violation of the ADA.

The timeframe begins when a verbal or written request for reasonable accommodation is made, and not necessarily when it is received by the ADA Coordinator. Therefore, everyone involved in processing a request should respond as quickly as possible. This includes referring a request to the ADA Coordinator, the ADA Coordinator contacting a health care provider if medical information or documentation is needed, and for everyone involved to provide technical assistance to the ADA Coordinator regarding issues raised by a request (e.g., information from a supervisor regarding the essential functions of an employee's position, information from the Information Technology (IT) staff regarding compatibility of certain adaptive equipment).

If the ADA Coordinator must request medical information or documentation from a requestor's doctor, the time frame will stop on the day that the ADA Coordinator makes a request to the individual to obtain medical information or sends out a request for information/documentation, and will resume on the day that the information/documentation is received by the ADA Coordinator.

If the disability is obvious or already known to the ADA Coordinator, if it is clear why reasonable accommodation is needed, and if an accommodation can be provided quickly, then the ADA Coordinator should not require the full 30 business days to process the request. The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame:

- An employee with insulin-dependent diabetes who sits in an open area asks for three breaks a day to test her blood sugar levels in private.
- A supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a serious learning disability asks that the agenda be distributed ahead of time because his disability makes it difficult to read quickly and he needs more time to prepare.

2. Expedited Processing of a Request

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision. This includes where a reasonable accommodation is needed:

- To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.
- To enable an employee to attend a meeting scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

3. Extenuating Circumstances

These are circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond the employer's ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. Extensions will be limited to circumstances where they are absolutely necessary and only for as long as required to deal with the extenuating circumstance.

d. Resolution of the Reasonable Accommodation Request

All decisions regarding a request for reasonable accommodation will be communicated to an employee verbally and the appropriate forms subject to this policy.

1. If the employer grants a request for accommodation, the ADA Coordinator will provide the ADA Accommodation Approval Form (See Form 205F4) to the requestor, and discuss implementation of the accommodation. The form must be filled out even if the employer is granting the request without determining whether the requestor has a "disability" and regardless of what type of change or modification is approved (e.g., employer grants a three-month removal of an essential function, which is not a form of reasonable accommodation but nonetheless must be specified on the form.
 - A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. The form will explain both the reasons for the denial (See ADA Accommodation Denial Form 205F5) of the individual's specific requested accommodation and why the employer believes that the chosen accommodation will be effective.
 - If the request is approved but the accommodation cannot be provided immediately, the ADA Coordinator will inform the individual in writing of the projected time frame for providing the accommodation.
2. If the employer denies a request for accommodation, the ADA Coordinator will give the ADA Accommodation Denial Letter (See Form 205F5) to the requestor and discuss the reason(s) for the denial. When completing the form, the explanation for the denial will clearly state the specific reason(s) for the denial. This means that employer cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective." Rather, the form will state and the ADA Coordinator will explain specifically why the accommodation would result in undue hardship or why it would be ineffective.
 - If there is a legitimate reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the ADA), the ADA Coordinator will explore with the individual whether another accommodation would be possible and reasonable. The fact that one accommodation proves

ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the ADA Coordinator will explore whether there is a reasonable accommodation that will meet the employee's needs.

- If the ADA Coordinator offers an accommodation other than the one requested, but the alternative accommodation is not accepted, the ADA Coordinator will record the individual's rejection of the alternative accommodation on ADA Employee Request for Accommodation Form 205F1.

e. Resources

- ADA Reasonable Accommodation Checklist (Form 205 F);
- ADA Employee Request for Accommodation (Form 205 F1);
- ADA Accommodation Request—Employee Release (Form 205 F2);
- ADA Accommodation Request—Health Care Provider Information (Form 205 F3);
- ADA Accommodation Approval Letter (Form 205 F4);
- ADA Accommodation Denial Letter (Form 205 F5)

VII. Glossary of ADA-Related Terms and Usage

1. An “**essential function**” is a fundamental job duty of the position held or desired. A function is essential if the job exists to perform that function, a limited number of other employees are available to perform the function, or the function requires special skill or expertise. Determinations as to essential functions must be made on a case-by-case basis and are normally determined based on such factors as:
 - The written job description prepared before advertising or interviewing applicants for the job;
 - In the employer's judgment, the amount of time spent performing the function;
 - Input as to the actual work experience of past employees in the job or current employees in similar jobs; and
 - The nature of the work operation and the consequences of not having the function performed.

Marginal functions associated with any job should not be considered essential functions. Punctuality and regular work hours may not be an essential function of some jobs. For example, if the job functions can be performed without the presence of a supervisor, adhering to established work hours may not be an essential function. Therefore, reasonable accommodations to the contrary may be necessary.

2. A **“disability-related inquiry”** is a question (or series of questions) likely to elicit information about a disability. Generally, disability-related inquiries are not allowed during the hiring process. Examples of disability-related inquiries not permitted include:
 1. Asking whether the employee/applicant currently has or has ever had a disability, how s/he became disabled, or inquiring about the nature or severity of an employee’s/applicant’s disability;
 2. Asking an employee/applicant a broad question about his/her impairments that is likely to elicit information about a disability;
 3. Asking an employee/applicant whether s/he is currently taking any prescription drugs or medication; and
 4. Asking about an employee’s/applicant’s genetic information.

Other examples of prohibited disability-related questions include, but are not limited to, asking about an employee’s/applicant’s prior workers’ compensation history, and asking an employee’s/applicant’s coworker, family member, doctor, or other person about the employee’s/applicant’s disability.

Questions that are not likely to elicit information about a disability are not prohibited under the ADA. These types of inquiries include asking employees/applicants about their general well-being, whether they can perform the essential job functions, whether they currently use illegal drugs. The employer may also ask an employee, but not a job applicant, about non-disability-related impairments such as how s/he broke his/her arm.

3. A **“medical examination”** is a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual’s physical or mental impairments or health. Medical examinations include, but are not limited to:
 - Vision tests conducted and analyzed by an ophthalmologist or optometrist; blood, urine, and breath analyses to check for alcohol use;
 - Blood pressure screening and cholesterol testing; nerve conduction tests;
 - Range-of-motion tests that measure muscle strength and motor function;
 - Pulmonary function tests;
 - Psychological tests designed to identify a mental disorder or impairment; and
 - Diagnostic procedures such as x-rays, CAT scans, and MRIs.

Procedures and tests that employers may require that are generally not considered medical examinations include:

- Blood and urine tests to determine the current illegal use of drugs;
 - Physical agility and physical fitness tests;
 - Tests that evaluate an employee’s/applicant’s ability to read labels or distinguish objects as part of a demonstration of the ability to perform actual job functions.
4. Under the ADA, an “employee” is an individual employed by an employer. Generally, an individual is an employee if the employer controls the means and manner of his/her work performance. Where more than one entity controls the means and manner of how an individual’s work is done, the individual may be an employee of each entity.

RESPONSIBILITY FOR REVIEW: The County Personnel Director and/or Administrative Officer will review this policy every 5 years or sooner as necessary.

Appendix 205A: Selected Reasonable Accommodation Resources

POOL/PACT Human Resources

775.887.2240 (Main Office)

The county's insurance pool provides human resources consultation and support, sample policies and forms, and other resources regarding human resources and ADA compliance.

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

EEOC has published many ADA and Rehabilitation Act-related documents that may assist both individuals requesting accommodations as well as those involved in the decision-making process. Most of these documents are available at www.eeoc.gov.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>.

A service of the Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations and provide referrals to other organizations that may have particular information about accommodations for persons with different disabilities.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can provide information on reasonable accommodation and make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- Information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),
- Centers where individuals can try out devices and equipment,
- Assistance in obtaining funding for and repairing devices, and
- Equipment exchange and recycling programs.