

**United States Section
International Boundary and Water Commission**

Directives Management System

Volume I : Mission Support
Part 0700 : Office of the Commissioner
Chapter 0702 : Equal Employment Opportunity
Directive 07027 : Reasonable Accommodations for Individuals with Disabilities
Citation : SD.I.07027
Proponent : Equal Employment Opportunity
Effective Date : 17 July 2014

1. **Purpose:** To provide employment opportunities for persons with disabilities who otherwise would not be able to perform the essential functions of their job, and to allow employees with disabilities to perform or be more productive.
2. **Requirement and Authority:**
 - A. Executive Order 13164 (65Federal Register 46565) “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation” requires each agency to adopt procedures for processing requests for reasonable accommodations.
 - B. Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) As amended.
 - C. The United States Section of the International Boundary and Water Commission, (USIBWC), hereby establishes its Procedures to Facilitate the Provision of Reasonable Accommodation.
3. **Applicability:** This policy applies to all USIBWC employees and applicants for employment. All USIBWC supervisors in their roles as hiring officials, are responsible for ensuring compliance with the policy contained herein.
4. **Overview:**
 - A. Establish prompt, fair, and effective procedures to respond to requests for reasonable accommodation by individuals with disabilities, who are federal employees or applicants for federal employment with USIBWC.
 - B. Increase awareness of the responsibility to provide for the expansion of opportunities for individuals with disabilities.

- C. Ensure that managers and supervisors comply with the provisions of laws, regulations, and policies regarding reasonable accommodation.
- D. Establish a standard procedure to capture data for reporting disability-related actions to higher headquarters.

5. Responsibilities

A. Applicants, Employees, and Managers

- (1) Applicants and employees with a disability must inform the employer that a reasonable accommodation is needed to do the following: participate in the application process to be considered for employment; to perform the essential job functions; or to receive equal benefits and privileged of employment.
- (2) Managers and supervisors at all levels, but especially immediate supervisors will:
 - (a) Promote the reasonable accommodation process.
 - (b) Provide necessary resources to support the reasonable accommodation process.
 - (c) Provide all applicants and employees with information about their rights and responsibilities related to disabilities in the workplace; including their right to request reasonable accommodation because of a medical condition.
 - (d) Review reasonable accommodation requests received from applicants and employees; and begin the interactive process to identify and implement a reasonable accommodation in coordination with Equal Employment Opportunity and Human Resources Offices.

B. Equal Employment Opportunity (EEO) Office: The Equal Employment Opportunity Officer will:

- (1) As the proponent for the Program for Individuals with Disabilities, assist supervisors and coordinate with the HR office on all reasonable accommodation requests.
- (2) Track and report reasonable accommodation request in the annual MD-715 report.

C. Human Resources Office: The Human Resources Officer will:

- (1) Review and coordinate with the hiring supervisor and the EEO Office all reasonable accommodation requests received from applicants for employment.

(2) Where appropriate, provide information and assistance to supervisors regarding reasonable accommodation requests from applicants and employees with disabilities.

(3) Assist with modifications to positions or reassignment to alternative positions as a result of reasonable accommodation.

6. Steps and Procedures for Requests:

- A. An applicant or employee may initiate a request for reasonable accommodation orally or in writing. If the request is made orally, the individual will be asked to complete a written request for record-keeping purposes. Regardless of how it is initiated, the oral or written request starts the reasonable accommodation process and begins the interactive process required by law. A decision maker must begin processing an oral request immediately upon receipt of such a request and should not wait for the written confirmation.
- B. When an individual with a disability requests assistance in completing the written request for reasonable accommodation, the supervisor must provide assistance. Employees may also seek assistance from the EEO or HR Offices. A copy of the written confirmation request will be provided to the EEO Officer in their role as the Disability Program Manager.
- C. The reasonable accommodation process is initiated when an individual with a disability, for a reason related to a medical condition, indicates to a supervisor in their chain, the EEO Office, or the HR Office the need for an adjustment or a change at work; or a job applicant makes such a request to the HR Office. The medical condition does not have to be apparent to the individuals listed above. The requestor does not have to use any particular words, cite the Rehabilitation Act of 1973, or even use the term "reasonable accommodation" or "disability". The disability does not have to be obvious, such as cancer, or a respiratory, cardiac, neurological, or immune deficiency disorder. It may be related to a specific medical diagnosis or simply be related to how the employee reacts to a new medication. It is impossible to list or identify every possible situation that can trigger a reasonable accommodation request.
- D. A family member, health professional, or other representative may request a reasonable accommodation on behalf of the individual with a disability. The need for a reasonable accommodation should then be confirmed with the person who has the disability.
- E. The request for accommodation begins an interactive and flexible process between the requester and the decision maker. The process may include communicating with the requester to clarify the request, obtaining and exchanging information with the requester to the extent necessary regarding needs and

alternatives, searching for solutions, consulting outside resources, and evaluation possible accommodations and additional information, if needed.

- F. Immediate supervisors will consider and approve requests for reasonable accommodation, whenever possible. Each reasonable accommodation request will be different and will have to be considered on a case-by-case basis. The person receiving the request will forward it promptly to the appropriate official. They will ensure copies of the request are provided to the EEO Office, HR Office and the Legal Affairs Office. An employee or applicant should be informed as soon as possible about the status of their reasonable accommodation request, especially if an urgent situation exists.
- G. The decision maker or any employee who obtains or receives information in connection to a request for reasonable accommodation is bound by strict confidentiality requirements. All records will be maintained in accordance with the Privacy Act of 1974 and requirements of Title 29 C.F.R. Part 1611. This information may be disclosed only as follows:
 - (1) Agency officials and managers who need to know (including the deciding official who requested the information) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if strictly necessary.
 - (2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
 - (3) Government officials may be given information necessary to investigate USIBWC's compliance with the Rehabilitation Act.
 - (4) The information may in certain circumstances be disclosed to worker's compensation offices or insurance carriers.
- H. The agency will process requests for reasonable accommodation and provide accommodations, when appropriate, as soon as reasonably possible. All parties must recognize the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information and/or medical documentation.
- I. Where the requested accommodation is determined to be reasonable by management and will not pose an undue hardship to USIBWC, the reasonable accommodation should be provided or denied, in writing, within 30 business days of the request. The 30 business day time period stops running while information is being provided by the employee or a health care provider. Once the information is received, the time period begins running again. If there are extenuating circumstances that will preclude providing the requested reasonable

accommodation within 30 calendar days, the requester will be notified of the reason for the delay and will be provided the anticipated completion date in writing. In the interim, management may also consider whether a provisional or temporary accommodation should be provided. "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing delivery of an accommodation. The following are examples of extenuating circumstances:

- (1) The purchase of equipment may take longer than 15 business days because of requirement under the Federal Acquisition Regulation.
 - (2) Equipment must be back-ordered, the vendor typically used for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediate available.
 - (3) The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before it is purchase by the agency.
 - (4) New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
- J. For granted accommodations requests, decision makers have the responsibility for following through and making any necessary arrangements to ensure the accommodation is provided in a timely manner. If the reasonable accommodation is not covered through the Computer/Electronic Accommodation Program (CAP), the organization will determine how funding will be provided to support the provision.
- K. Prior to denying any accommodation request, decision makers will coordinate with the EEO Officer, HRO and the Legal Affairs Office for a review of the request. If a request for a reasonable accommodation is denied, the individual will be informed in writing and advised that a request for reconsideration may be submitted with any additional information within 10 calendar days of receipt of the denial.
- L. Supervisors will complete EEOC Form 557b, Reasonable Accommodation Information Reporting Form and submit it (without any medical information), the EEO Officer, who will maintain it for the length of the employee's tenure with USIBWC or a minimum of three years.

7. Medical Information:

- A. If the disability or need for accommodation is not obvious or already known by the supervisor, the employee or applicants for employment must provide relevant medical information related to the disability; for example, the functional impairment and/or limitations at issue; and, the requested accommodation. If additional

information is needed, the decision maker will coordinate with HRO and EEO for assistance in requesting the information.

B. Additional medical information may be requested, only to the extent reasonably necessary, if initial medical information:

(1) Does not clearly explain the nature of the disability, the need for reasonable accommodation, or the permanent or temporary nature and duration of the disability.

(2) Does not clearly explain the activity or activities the impairment limits or the extent to which the impairment limits the individual's ability to perform the activity or activities.

(3) Does not clarify how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy the benefits and privileges of the workplace.

C. An authorization for disclosure of medical or dental information may be used to request the use and/or disclosure of an individual's protected health information in order to process the reasonable accommodation request. The applicant or employee should write "reasonable accommodation request" in the space provided. In most cases, it will be unnecessary to request and/or provide an applicant's or employee's entire medical record unless all the information contained therein is related to whether the applicant/employee can perform the essential job functions.

D. The decision maker may have the medical information reviewed by a medical expert of the Commissioner's choice at USIBWC's expense to assist in assessing functional abilities. If the medical documentation provided by the employee does not result in sufficient information on which to assess the employee's accommodation request USIBWC may require the requestor to be examined by a health care professional of USIBWC's choice at USIBWC's expense.

E. In accordance with the Rehabilitation Act of 1973, medical information may not be requested where:

(1) The disability, the need for reasonable accommodations, and the type of accommodations necessary are obvious or already known. For example, requesting medical information for a deaf employee working in an office is unnecessary for a decision maker to provide an accommodation to assist the employee in using their phone.

(2) The individual has already provided the agency with sufficient information to document the existence of the disability and how it functionally limits the

individual from performing the essential duties of the position the person holds or for which the person is being considered.

F. The Rehabilitation Act also requires that all medical information be kept confidential and maintained in a secure location. If necessary, medical information may only be shared with other agency officials who need the information to perform their duties. When medical information is disclosed to appropriate officials, they must be informed regarding the confidentiality requirements under the law.

G. In order to maintain the confidentiality of the medical information and the reasonable accommodation request data, these records must be filed separately from the employee's personnel files maintained in most offices. All documents that identify the employee's medical condition, diagnosis, treatment plan, or prognosis are to be treated as medical records. These include doctor or other care provider notes that relate to the disability, such as sick slips and return to duty notes. Access to these medical records must be limited to the supervisor and only those management officials with a need to know the information in order to perform their official duties. Failure to maintain the confidentiality of this information may be determined to be a violation of the Privacy Act or the Health Insurance Policy and Accountability Act (HIPAA) of 1996, resulting in liability to the employer and possible disciplinary action against the offending official.

8. **Types of Reasonable Accommodation:** There is no standard "one size fits all" answer to what constitutes a reasonable accommodation. If one is identified, it must be tailored to the individual's needs and must result in the employer's mission still being met. Cost alone may not be used as a reason for not providing a reasonable accommodation. Creativity and flexibility should govern the interactive process of identifying a reasonable accommodation. The outcome should focus on the employee still being able to perform all of the essential tasks of the employee's permanent position for which the employee was hired. If the interactive dialogue reveals that the employee will not be able to perform all of the essential tasks of the employee's permanent position, even with a reasonable accommodation, the decision maker should immediately notify the Director of Human Resources. The following options should be considered in this process:

A. Modifications or adjustments may be made to the application process, to the job, or the workplace. Refer to the examples described for reasonable accommodation in the glossary. A variety of resources, some cost-free, are available to assist management in making modifications to workplace facilities and equipment. Assistance may be obtained from the EEOO, HRO and the Computer/Electronic Accommodations Program (CAP).

B. Alternative work schedules, such as flexitime or telework, and use of paid and unpaid leave, each providing specific flexible work arrangements between a supervisor and an employee.

- C. Reassignment is the accommodation of last resort. Reassignment is available only to employees, not to applicants. Reassignment must be considered if no other accommodation is available to enable the individual to perform the essential functions of the current position or if the only effective accommodation would cause an undue hardship to the Agency. Reassignment may be made only to a vacant position for which the employee is otherwise qualified. The law does not require the organization to create a new position or move other employees from their jobs in order to create a vacancy. The law also does not require a change of supervisor as a reasonable accommodation. Reassignment cannot be an adverse action and must be noncompetitive.
- D. If reassignment is being considered as an accommodation, the decision maker should explain to the employee why they cannot be accommodated in the current position. The decision maker should determine the employee's preferences with respect to the reassignment. For example, is the employee willing to be reassigned:
- (1) Outside the facility or outside the commuting area, including outside the geographical area, and if so, to what locations;
 - (2) To a different type of position for which he/she may be qualified, and if so to what type(s);
 - (3) To a different sub-component of the department, and if so, to which one(s); to a lower-grade position, if no position is available in their current grade level. If so, identify down to what grade level.
- E. If reassignment is being considered as an accommodation, the decision maker must consult with the HRO for assistance in conducting a vacancy search based upon the employee's expressed preference and qualifications. A search must first focus on equivalent positions within the Agency before extending the search to other areas within the employee's expressed preferences.
- F. A qualified employee with a disability requesting accommodation can be offered a reassignment as a reasonable accommodation to a position for which a vacancy announcement has been published as long as a selection to fill the position has not been made and there are no pending Priority Placement Program matches. If an employee is being reassigned to a different geographical area, the employee must pay for any relocation expenses unless the activity routinely pays such expenses when granting voluntary transfers to other employees.

9. Denial of Reasonable Accommodation:

- A. If an individual's request for reasonable accommodation is denied, the individual must be notified in writing of the reason. The denial must be completed using EEOC Form 557a, Resolution of Reasonable Accommodation Request. Where

appropriate, the notice of denial should be provided in an alternate format; such as large print, Braille, etc.

- B. Where the employer identifies a different accommodation, the notice must explain why the employer rejected the individual's request and why the employer's chosen accommodation would be effective. While the law requires the employer to consider the individual's preference, the employer selects and implements the accommodation deemed most appropriate for both the individual and the organization.
- C. In determining if a proposed reasonable accommodation poses an undue hardship, the overall resources and options available to USIBWC must be considered; not just the budget or resources of an individual segment.
- D. At all stages of the process, the decision maker should be coordinating with the EEOO, HRO and the Legal Affairs Office.

10. Avenues of Redress for Denied Reasonable Accommodations Requests

- A. An employee or applicant who is denied reasonable accommodation may file a discrimination complaint with the EEOO. To be timely, the individual must contact the EEOO within 45 calendar days of the receipt of the denial decision.
- B. An employee may also file an appeal with the Merit Systems Protection Board (MSPB) if the discrimination allegation is in conjunction with some other personnel action that is otherwise appealable.
- C. An employee may also file a negotiated grievance, if applicable, over the denied accommodation request in accordance with the local Collective Bargain Agreement (CBA). Employees not covered by the CBA may still request reconsideration of the decision to the decision maker. If the decision maker does not reverse the denial, the individual must then be informed of the appropriate senior management official, normally the executive staff member of the affected activity, to whom a request for review can be made.
- D. Employees seeking to redress the denial of their accommodation request through any of the avenues listed above also have the option of initiating and Alternative Dispute Resolution (ADR) through any applicable ADR process established by USIBWC that covers such disputes. However, employees must be aware that the ADR process does not affect the time limits governing the EEO complaint process, the MSPB appeal process, or the union grievance procedures. An individual's participation in the ADR procedures does not satisfy the requirements for pursuing one of the three options listed above.

11. Tracking Requirements: USIBWC EEOO is responsible for the Individuals with Disabilities (IWD) Program. On an annual basis, activities and individuals will report the following information to USIBWC EEOO:

A. HRO:

- (1) The number and types of reasonable accommodation requests received by HRO in the application for employment process and whether those requests were granted or denied.
- (2) The jobs (occupational series, grade level, and organization) for which reasonable accommodations were requested.
- (3) The types of reasonable accommodations that were requested for each of those jobs.
- (4) The number and types of reasonable accommodation for each job, by department, that were approved, and the number and types that were denied.

B. Supervisors:

- (1) The number and types of request for reasonable accommodations received by supervisors that relate to the benefits or privileges of employment and whether those requests were granted or denied.
- (2) The reasons for denial of any requests for reasonable accommodation.
- (3) The amount of time taken to process each reasonable accommodation request.
- (4) The sources of technical assistance consulted in trying to identify possible reasonable accommodations.

C. Each department serviced by the EEOO will submit the Reasonable Accommodation Annual Tracking Information data, detailed above, to the EEOO upon receiving a RA request.

12. Disposition of Reasonable Accommodation Request Data, to Include Medical

- A. Documentation related to a particular individual who has requested reasonable accommodation must be filed apart from other personnel records, safeguarded regarding confidentiality requirements, and maintained for the duration of that employee's employment.
- B. The tracking information data should be maintained for a period of three years. This data will assist management in evaluating its performance regarding the

adequate and timely processing of reasonable accommodation requests and to take corrective action, is required.

13. Disability Retirement Application

A. The Disability Retirement Process

- (1) An employee who meets the timeline criteria established by their retirement system and has become disabled shall be retired on the employee's own application or on application by USIBWC. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management (OPM) to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by OPM, to a vacant position which is in the agency same grade or level and in which the employee would be able to render useful and efficient service.
- (2) An employee must fill out the appropriate forms according to their retirement (FERS or CSRS) in order to apply for disability retirement. An employee should consider applying for disability retirement only after they have provided the agency with complete documentation of their medical condition and the agency has exhausted all reasonable attempts to retain the employee in a productive capacity, through accommodation or reassignment.
- (3) An employee who selects to complete the written forms for disability retirement may seek assistance from the HRO Benefits Officer.
- (4) After the forms are submitted to, and reviewed by, the HRO Benefits Officer, they will be forwarded to EEOO for further review and signature. After the EEOO reviews the documentation, they will return to HRO who will forward them to OPM.

B. FERS Requirement for Disability Retirement

- (1) An employee who is subject to the FERS must meet all of the following conditions to be eligible for disability retirement:
 - (a) The employee must have completed at least 18 months of Federal civilian service which is creditable under FERS.
 - (b) The employee must, while employed in a position subject to the retirement system, have become disabled, because of disease or injury, for useful and efficient service in your current position.
 - (c) The disability must be expected to last at least one year.

- (d) USIBWC must certify that it is unable to accommodate the employee's disabling medical condition in the employee's present position and that it has considered the employee for any vacant position at the same grade or pay level, within the same commuting area, for which the employee is qualified for reassignment.
 - (e) The employee, or their guardian or the interested person, must apply before the employee's separation from service or within one year thereafter. The application must be received by either OPM or the employee's former employing agency within one year of the date of separation. This time limit can be waived only if the employee was mentally incompetent on the date of separation or within one year of this date.
 - (f) The employee must apply for social security disability benefits. Application for disability retirement under FERS requires an application for social security benefits. If the application for social security disability is withdrawn for any reason, OPM will dismiss the FERS disability retirement application upon notification by the Social Security Administration.
- (2) The employee must complete SF3107, Application for Immediate Retirement, and SF3112, Documentation in Support of Disability Retirement. Both forms are available electronically at the Office of Personnel Management's website (<http://opm.gov/forms/html/sf.asp>) and in the HRO office.
- (3) If the employee is under age 62, they must also provide documentation that they have applied for social security disability benefits after separation from USIBWC.

C. CSRS Requirement for Disability Retirement

- (1) An employee who is subjected to the CSRS must meet all of the following conditions to be eligible for disability retirement:
- (a) The employee must have completed at least five years of creditable Federal civilian service.
 - (b) The employee must, while employed in a position subject to CSSR, have become disabled, because of disease or injury, for useful and efficient service in the current position. "Useful and efficient service" is defined as fully successful performance of the critical or essential elements of the position or the ability to perform at that level and satisfactory conduct and attendance.
 - (c) The disability must be expected to last at least one year.

(d) The agency must certify that it is unable to accommodate the disabling medical condition in the employee's present position and that it has considered the employee for any vacant position in the same agency, at the same grade or pay level, and within the same commuting area, for which the employee is qualified for reassignment.

(e) The employee, or their guardian or other interested person, must apply before the employee's separation from service or within one year thereafter. The application must be received by OPM within one year from the date of separation. This time limit can be waived only in instances involving incompetency.

(2) The employee must complete the SF 2801, Application for Immediate Retirement, and SF 3112, Documentation in Support of Disability Retirement. Both forms are available electronically at the Office of Personnel Management's website (<http://opm.gov/forms/html/sf.asp>) and in HRO.

14. **Supersession:** This Directive supersedes Volume 1, Chapter 730 Procedures for Facilitating the Provision of Reasonable Accommodations, dated 25 June 2002 with all changes.

Approved:

///ORIGINAL SIGNED///
Edward Drusina, P.E.
Commissioner

07/17/14
Date

Appendix A
SD.I.07027

Forms

EEOC Form 557a	Resolution of Reasonable Accommodation Request
EEOC Form 557b	Reasonable Accommodation Information Reporting Form
SF 2801	Application for Immediate Retirement
SF 3107	Application for Immediate Retirement
SF 3112	Documentation in support of Disability Retirement

Send a signed copy of all forms to: USIBWC; ATTN: EEO, 4171 N. Mesa St, Building C 100, El Paso, TX 79902; e-mail to: frances.castro@ibwc.gov, or fax (915) 613-3599.