

NEW CASTLE COUNTY

PERSONNEL POLICY

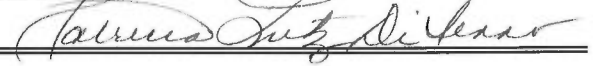
NUMBER 4.02

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DATE 05/15/01

SUBJECT: AMERICANS WITH DISABILITIES
ACT (ADA)

APPROVED:



OBJECTIVE: To explain the principles of the Americans with Disabilities Act (ADA) and provide compliance guidance.

STATEMENT: New Castle County Government fully supports the guidelines as enacted by the Americans with Disabilities Act of 1990 and prohibits discrimination against a qualified individual with a disability in any employment practice.

DEFINITIONS:

Essential Functions are the basic job duties that a person must be able to perform, with or without reasonable accommodation.

Major Life Activities are those basic activities that a person can perform with little or no difficulty. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

A Qualified Individual with a Disability is a person who meets legitimate skill, experience, education, and other job-related requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.

Reasonable Accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process, to perform essential job functions, and to enjoy equal benefits and privileges of employment. Examples of reasonable accommodation include restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs.

Undue Hardship is an action requiring significant difficulty or expense in relation to the size of the employer, the resources available, and the nature of the operation. Undue hardship is defined by the ADA as an action that is unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the business.

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Overview

The ADA makes it unlawful to discriminate against a qualified individual with a disability in job application procedures, hiring, firing, advancement, compensation, job training, and in other terms, conditions, and privileges of employment. Under the ADA, an individual with a disability is a person who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such an impairment; and
3. is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. This means that the applicant or employee must:

1. satisfy the position's job requirements for educational background, employment experience, skills, licenses, and other qualification standards that are related to the essential functions of the job; and
2. be able to perform those tasks that are essential to the job, with or without reasonable accommodation.

ACTIVITIES PROHIBITED UNDER THE ADA:

Under the ADA, the items listed below are unlawful.

1. Asking applicants if they are disabled or about the nature or severity of a disability.
2. Making pre-employment inquiries about the medical/psychological status of an applicant. This includes topics such as vision, blood pressure, previous injuries, or previous illnesses.
3. Requiring an applicant to take a medical examination (including any form of psychological examinations) before making a job offer.
4. Inquiring if an applicant has previously filed a workers' compensation claim.

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5. Refusing to hire a qualified applicant or retain an employee because a reasonable accommodation is required for the individual to perform the job. Exceptions may be made when hiring or retaining a person with a disability which would result in a direct threat to the employee or co-workers or cause an undue hardship as defined by the Act.
6. Failing to interview or test a qualified applicant because of his or her disability.
7. Rejecting a qualified applicant because he or she has a condition or illness which is likely to become a disability at some time in the future.

GENERAL GUIDELINES

1. A department general manager or row officer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequences of a disability.
2. There is no obligation to find a position for an applicant who is not qualified for the position sought. The County is not required to lower quality or quantity standards in order to make reasonable accommodation, nor is it obligated to provide personal use items such as glasses or hearing aids.
3. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and requirements of the job vary in each case. If an individual does not request an accommodation, the employing authority is not obligated to provide one. If a person with a disability requests an accommodation, but cannot suggest one, the employing authority and the individual should work together to find a suitable accommodation, if one is available (see the interactive process).
4. An individual requiring an accommodation must be otherwise qualified, and the disability made known to the employing authority.
5. The County may ask a job applicant if he or she can perform particular job functions. If an applicant has a disability known to the employer, the employer may ask how he or she can perform job functions that the employer considers difficult or impossible to perform because of the disability and whether accommodation is needed.

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6. A job offer through the Office of Human Resources may be conditioned on the results of a medical examination and/or a psychological examination, provided the examination is required for all employees in the same job category regardless of disability.
7. Under the ADA, position qualification standards may be established that will exclude individuals who pose a direct threat or significant risk to the health and safety of others, if the risk cannot be lowered to an acceptable level by reasonable accommodation.
8. The ADA does not prevent agencies from testing applicants for current illegal drug use or from making employment decisions based on verifiable results.
9. The ADA is intended to enable persons with disabilities to compete in the work place based on the same performance standards and requirements that the County expects of persons without disabilities.
10. All applicants determined to be qualified for testing for positions will be notified that testing arrangements to reasonably accommodate persons with disabilities may be made by contacting the individual responsible for establishing the eligible list. All test invitation letters will include a statement that New Castle County will make reasonable accommodations for testing individuals with disabilities who are qualified for positions within New Castle County Government. It is the applicant's responsibility to notify the Office of Human Resources if he/she requires an accommodation, and documentation of the disability may be requested.
11. Any employee who has reason to believe that his or her rights have been violated under the ADA must notify the Chief Human Resources Officer, in writing, within 10 working days after the individual becomes aware of such violation.
12. All discussion of reasonable accommodation must be documented and kept separate from the employee's personnel file.

THE INTERACTIVE PROCESS

Generally, it is the obligation of the individual with the disability to request a reasonable accommodation. An applicant or employee does not have to use the words "reasonable accommodation," but must only let the Chief Human Resources Officer, department

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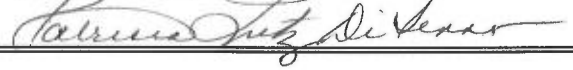
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general manager, or row officer know that some adjustment or change is needed. There may be some situations in which the conduct of the individual may suggest that he or she may require help to perform the essential functions of the job. As a general rule, one should not consider or treat that person as disabled. Individual departments or row offices should contact the Office of Human Resources for further information prior to making any type of accommodation which may appear to be reasonable.

Once an employee asks for a reasonable accommodation, the County must then enter into a dialogue with the employee to see what, if any, reasonable accommodation may be made. Department general managers and row officers should ask the person for suggestions of accommodations, but the County is not required to use only those that a person suggests.

The starting point in any such dialogue is, of course, to determine if the requested accommodation concerns an essential function of the job. If it does not, then no further discussion need take place. If the accommodation concerns one or more essential job functions, the dialogue must be made in order to assess the feasibility of making those changes that enable the employee to perform them at the minimum standards set for such duties.

Once potential accommodations have been identified, the department general manager or row officer should review them and determine if any of them will actually assist the individual with performing the essential functions of the job. If there are not accommodations that will serve this purpose, the department general manager or row officer should then go back and discuss this with the employee to determine if there are any other accommodations available. The discussion should not end until both the department/row office and the employee are satisfied that all avenues have been exhausted.

REQUIRED ACTION: The Office of Human Resources will review and monitor selection processes used by the County to ensure that they adhere to ADA requirements and will ensure that medical records retained by the County are maintained separately from other personnel files. Department general managers and row officers are responsible for compliance with this policy as it relates to personnel decisions.

Established: 07/01/92
Revised: 07/01/97
Revised: 05/15/01