

**NORTH DAKOTA
OFFICE OF VOCATIONAL REHABILITATION
POLICY FOR JOB SITE ACCOMMODATION**

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PURPOSE:

The mission of the North Dakota Office of Vocational Rehabilitation is to provide opportunities for eligible individuals with disabilities to achieve integrated, competitive employment and increased independence through rehabilitation services.

The North Dakota Office of Vocational Rehabilitation Policy on Job Site Accommodation is developed in accord with the Americans with Disabilities Act (Public Law 101-336), the North Dakota Human rights Act (North Dakota Century Code 14-02.4) and the Rehabilitation Act of 1973, as amended, (Public Law 102-569). In the implementation of this policy, the Office of Vocational Rehabilitation will follow the state or federal law which is the most stringent.

The policy addresses three areas related to job accommodations: Employer Responsibility, Office of Vocational Rehabilitation Responsibility, and Informal Consultation for Vocational Rehabilitation staff on Claims of Undue Hardship.

EMPLOYER RESPONSIBILITIES FOR JOBSITE ACCOMMODATIONS:

Throughout the Americans with Disabilities Act (ADA), signed July 26, 1990, employers are identified as having the primary responsibility for accommodating qualified workers who have a disability. An employer must make a **Reasonable Accommodation** to the known physical or mental limitations of a qualified applicant or employee with a disability unless it is shown that the accommodation would cause an **Undue Hardship** on the operation of his or her business. Reasonable accommodations are required to enable a person with a disability to participate in the application process, to perform **Essential Functions** of the job and to receive equal benefits and privileges of employment.

ESSENTIAL FUNCTIONS:

Essential functions are the fundamental job duties of the position the current employee or applicant will be required to perform. Equal Employment Opportunity Commission (EEOC) regulations and technical assistance materials identify various factors to consider in determining whether a function is essential. Evidence that a particular function is essential includes, but is not limited to:

- the position exists to perform the function;
- there are a limited number of other employees available to perform the function; or among whom the function can be distributed;
- a function is highly specialized, and the person in the position is hired for special expertise or ability to perform it;
- the employer's judgment that the function is essential;

- a written job description prepared before advertising or interviewing;
- the amount of time spent performing the function;
- the consequences of not requiring a person to perform the functions;
- the terms of a collective bargaining agreement;
- the work experience of past incumbents in the job; and/or
- the current work experience of incumbents in similar jobs.

REASONABLE ACCOMMODATIONS:

Reasonable accommodations are any changes in the work environment that result in an equal employment opportunity for an individual with a disability.

Examples of reasonable accommodations include, but are not limited to:

- making existing facilities used by employees readily accessible to, and usable by, an individual with a disability. Accessibility must be in accordance with the Americans with Disabilities Act Access Guidelines (ADAAG);
- job restructuring;
- modifying work schedules;
- acquiring or modifying equipment or devices;
- adjusting or modifying examinations, training materials, or policies;
- providing qualified readers or interpreters; and
- in some instances, reassignment to a vacant position.

When a person with a disability needs accommodation(s) to perform the essential functions of a job, the employer is not expected to lower the performance standard for that job. Rather, the employer is being asked to consider alternate means to achieve those performance standards. In addition, an employer is not obligated to provide personal use items, such as glasses or hearing aids, as accommodations. In the event there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement, as long as the selected accommodation provides equal employment opportunity.

UNDUE HARDSHIPS

Four factors are considered in determining whether an accommodation is reasonable or constitutes an undue hardship:

- the nature and cost of the accommodation;
- the overall financial resources of the facility (i.e. a particular location), the number of people employed, and the impact of the accommodation on the operation;
- the overall financial resources of the employer (i.e. considering all locations); and
- the type of operation, including the type of workforce.

All employers claiming undue hardship must submit to the Vocational Rehabilitation counselor written documentation addressing each factor identified above.

OFFICE OF VOCATIONAL REHABILITATION RESPONSIBILITIES AS RELATED TO JOB SITE ACCOMMODATIONS:

The primary goal of the North Dakota Office of Vocational Rehabilitation is employment for persons with disabilities. To meet that goal, several services are available through Vocational Rehabilitation related to job accommodation. These services must be in accord with the Individual Written Rehabilitation Program (IWRP) and may include, upon request by the client and/or employer:

1. Assistance with job analysis to identify essential and marginal functions of the job;
2. Assessments to determine, with the employer, how the disability limits performance of essential functions;
3. Evaluations needed to plan accommodation services, including task analysis, physical evaluations and psychological evaluations;
4. Identification of accommodations to overcome limitations including assessment of the effectiveness and feasibility of the accommodation;
5. Personal equipment which includes orthotic and/or prosthetic devices or other assistive devices such as wheelchairs, hearing aids, glasses and mobility aids;
6. Job coaching, on-the-job evaluation, or on-the-job training programs (and accommodations necessary for the client to participate in these activities) when they are not provided for all employees in a particular job category;
7. Tools that all employees in a class are required to provide as a condition of employment (and any modification needed to these tools);
8. All or a portion of the cost of a reasonable accommodation that would constitute an undue hardship; and
9. Accommodation services needed for the client's participation in the initial interview process (e.g. interpreter services).

The North Dakota Office of Vocational Rehabilitation will not authorize the purchase of equipment or services for which the employer may obtain a tax credit or tax deduction unless the employer can substantiate a claim of undue hardship. Attachment A describes several of the available credits and deductions.

CONSIDERATIONS FOR PURCHASE OF COMPUTERS/COMPUTER EQUIPMENT IF EMPLOYER SUBSTANTIATES AN UNDUE HARDSHIP:

1. The employer always has first responsibility in the purchase of computers and adaptive equipment. The Office of Vocational Rehabilitation will not purchase a personal computer or adaptive equipment if the computer would otherwise be available for any employee expected to perform the essential job functions.

However, if adaptive equipment is not compatible with the existing computer system, Vocational Rehabilitation may participate in the purchase of a computer which may include an upgrade and/or adaptations if: the use is required to perform essential functions of the job and the employer can demonstrate undue hardship.

2. Vocational Rehabilitation may utilize consultants with appropriate experience and expertise to advise the client, agency, and employer of the best equipment for a particular application. Consultants would also be appropriately used to install a system and to train a client in the use of the equipment for a particular job.

UPGRADING EQUIPMENT:

The Office of Vocational Rehabilitation will not upgrade equipment unless it is specifically required for the modification or adaptive device. The client or employer will be responsible for any upgrade. If an updated version of the equipment is preferred, and the client and/or employer wish to trade the original equipment in for the updated version, the Office of Vocational Rehabilitation may elect to turn ownership of the original equipment over to the client. The client may then use the equipment as a trade-in and pay the additional costs of obtaining the upgraded equipment. If the client or employer wish to purchase upgraded equipment without a trade-in, the original purchased equipment must be returned to Vocational Rehabilitation.

TRANSFER OF EQUIPMENT TO CLIENTS:

The Office of Vocational Rehabilitation will transfer ownership of equipment in accordance with the current Office of Vocational Rehabilitation equipment policy.

EQUIPMENT AGREEMENT WITH EMPLOYERS:

The Vocational Rehabilitation counselor will write the agreement with the client and employer delineating responsibility for purchase, maintenance, training, and future needs of major equipment. Ongoing consumable supplies are the responsibility of the employer. One copy of the agreement will be filed in the client's case file; a second copy mailed to the client; and a third copy mailed to the employer.

INFORMAL CONSULTATION FOR VOCATIONAL REHABILITATION ON CLAIMS OF UNDUE HARDSHIP

It is expected that the Vocational Rehabilitation (VR) counselor will work closely with the client and employer to resolve matters related to reasonable accommodations and undue hardship.

In those instances when an employer claims an accommodation is an undue hardship and the counselor is uncertain whether the claim is justified, the counselor may request the opinion of a Review Team. The Review Team, established as a resource to the counselor, is comprised of the State ADA Coordinator, the VR administrator in the counselor's region, and a third party selected by the VR administrator and/or counselor. Emphasis will be placed on securing representation from the business community to fill the third team slot. The process for counselor consultation with the Review Team is identified below.

- STEP 1: The VR counselor will notify the employer that claims of undue hardship must be supported by the written documentation identified in Undue Hardship, page 2, of this policy.
- STEP 2: The VR counselor will schedule the meeting and present the case to the Review Team. The team will review the case and issue an opinion. If the opinion is not unanimous, majority rule will prevail.
- STEP 3: The State ADA Coordinator will provide written documentation of the opinion of the Review Team. Copies will be sent to Review Team members, the State VR Director and the appropriate Human Service Center Director (if the latter is not a member of the Review Team).
- STEP 4: The State ADA Coordinator will arrange to meet with the state VR Director, or appointee within five working days in order to respond to questions, comments or disagreement with the opinion of the Review Team.
- STEP 5: The State ADA Coordinator will inform the VR counselor, in writing, of the final opinion after review by the VR Director. The opinion of the Review Team on the claim of undue hardship is a recommendation only, and is not legally binding.

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CLIENT ALTERNATIVES BEYOND THE PURVIEW OF THIS POLICY:

If justification was not found for the employer's claim of undue hardship and the employer will not provide the reasonable accommodations, the Vocational Rehabilitation counselor will advise the client of his/her right to contact the Department of Labor/Equal Employment Opportunity Commission.

The client will also be advised of his/her right to contact the Client Assistance Program if dissatisfied with Vocational Rehabilitation's decision not to purchase the accommodation.

In addition, the client will be advised of the following formal avenues of appeal:

Department of Human Services Appeals Supervisor

Department of Human Services Office Civil Rights

Department of Health and Human Services in Denver

FILING A TITLE I ADA CLAIM WITH THE DEPARTMENT OF LABOR PROCEDURES AND TIME FRAMES

If a claim is filed with the Department of Labor, the Department of Labor will do an initial intake and the case is filed simultaneously with the Equal Employment Opportunity (EEOC).

General procedures will be followed in accord with the Department of Labor's guidelines. Expected timeframes, including intake, filing, onsite review and recommendations are from 2 ½ to 3 months.