

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SECRETARY'S POLICY AND PROCEDURE MEMORANDUM (PPM) NO. 18

SUBJECT: Americans with Disabilities Act (ADA)

EFFECTIVE DATE: August 15, 1994

INSTRUCTIONS: This memorandum supersedes all other memoranda and manuals.

1. POLICY

- A. The Americans with Disabilities Act (ADA) is a comprehensive federal law that addresses discrimination against disabled individuals in the areas of employment, public accommodations, public services, public transportation, and telecommunications. The Americans with Disabilities Act was amended in 2008 with an effective date of January 1, 2009; these amendments are referred to as the Americans with Disabilities Act Amendments Act (ADAAA).
- B. The Louisiana Department of Transportation and Development is fully committed to ensuring compliance with the requirements of the Americans with Disabilities Act and its Amending Act of 2008 (collectively ADA) to include:
 - (1) Title I - Prohibits employers from discriminating against qualified individuals with disabilities when making employment decisions such as recruitment, employment, advancement, compensation, fringe benefits, training, and other terms, conditions, and privileges of employment. Upon request, DOTD shall engage in an interactive process and may approve a reasonable accommodation unless the Requestor is not a qualified individual; doing so poses an undue hardship to the agency; or poses a direct threat to the health or safety of the individual with a disability or others.
 - (2) Title II – Ensures qualified individuals with disabilities have equal access to the full range of programs, services, activities, and facilities of the agency. Upon request, DOTD may provide a reasonable accommodation unless the Requestor is not a qualified individual; doing so would fundamentally alter the nature of the agency's service, program, or activity; or poses a direct threat to the health or safety of the individual with a disability or others.
 - (3) Title V - prohibits retaliation against any individual who files a claim under the provisions of the ADA.

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2. DEFINITIONS

- A. The Americans with Disabilities Act defines a disability as follows:
- (1) A physical or mental impairment that substantially limits one or more of the major life activities; or
 - (2) A record of a physical or mental impairment that substantially limits a major life activity; or
 - (3) Being regarded as having such a disability as described in item (1).
- B. Impairment is any physiological, mental or psychological disorder or condition, including those that are episodic or in remission, that substantially limits one or more major life activities when active.
- C. Substantially Limits is an impairment that prevents the ability of an individual to performing one or more major life activities as compared to most people in the general population when taking into consideration factors such as the nature, severity, duration and long-term impact of the condition. Such consideration must be regardless of any mitigating measures such as modifications, auxiliary aids or medications used to lessen the effects of the condition (except for use of ordinary eyeglasses or contact lenses).
- D. Major Life Activity
- (1) Generally, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others and working; and
 - (2) The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.
- E. Essential Job Functions are those job tasks that are fundamental and primary to the position. Considerations in determining whether a function is essential include such factors as the written job description; whether the reason the position exists is to perform that function; the limited number of employees available to perform that function; and the degree of expertise required to perform the function.

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F. Reasonable Accommodations

- (1) Under Title I, a modification or adjustment to a job, the work environment, or the manner in which duties are performed that enables a qualified individual with a disability to participate in the testing, application, and/or interview process, perform the essential functions of the job; or to provide equal opportunity to the benefits and privileges of employment. Examples of reasonable accommodations include:
 - (a) Facility accessibility.
 - (b) Modified work schedules.
 - (c) Reassignment of marginal job duties to others.
 - (d) Reassignment to a vacant position or demotion (if no comparable position is available) for which the employee qualifies.
 - (e) Provision of equipment, devices, or access to assist disabled individuals, such as Videophones, Video Remote Interpreter (VRI) units, telephone amplifiers, qualified interpreters or readers, Brailled materials, and physical modifications to the workplace.
- (2) Under Title II, a modification that permits an individual with a disability to effectively communicate with DOTD and/or ensure equal opportunity relative to DOTD's programs, services, activities and facilities.

G. Qualified Individual

- (1) Under Title I, an individual with a disability who satisfies the requisite skill, experience, education, and/or other job related requirements of the position and who can perform the essential functions of the position, with or without reasonable accommodation.
- (2) Under Title II, an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by DOTD, with or without reasonable accommodation(s).

H. Undue Hardship is an accommodation that would be unduly costly, extensive, substantial, or disruptive in light of factors such as the size of the agency, the resources available, the impact of the accommodation, and the nature of the operation.

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- I. Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.
 - J. ADA Coordinator is the DOTD representative responsible for facilitating the interactive evaluation process relative to any request for accommodation. (See the Attachment for the DOTD ADA Coordinator's name and contact information.)
 - K. Interactive Process is the means by which the agency and employee with a disability, who has requested an accommodation to perform essential job functions, work together to determine the appropriate accommodation. As part of this process, the employee may be required to provide medical documentation from their health care provider describing the nature of the disability and the functional limitations thereof.
3. EMPLOYMENT (TITLE I)
- A. Application/Testing Process

A qualified individual with a disability may address an accommodation request relative to the application and/or testing process to the following, dependent upon the Job Type indicated on the vacancy announcement:

 - (1) For Classified Jobs: Contact State Civil Service, Testing and Recruiting Office at (225) 925-1911. For more information regarding accommodations, applicants may go to <https://jobs.civilservice.louisiana.gov/TestInformation/Accommodations.aspx>.
 - (2) For Unclassified Jobs: Contact the DOTD representative identified in the vacancy announcement for the job being sought. The DOTD representative shall notify and collaborate with the DOTD ADA Coordinator to address the accommodation request.
 - B. Interview/Hiring Process
 - (1) If an applicant requires an accommodation to participate in the interview process, the applicant should notify the hiring manager when contacted to schedule the interview. If someone other than the hiring manager is scheduling the interview, it is the responsibility of that individual to ensure the hiring manager is made aware of the accommodation request. If necessary, the hiring manager should collaborate with the DOTD ADA Coordinator to address the accommodation request. (Sign language interpreters may be secured by contacting the Human Resources Section at

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Headquarters.)

- (2) Interview questions must focus on an applicant's ability to perform the job duties. Interviewers cannot ask questions regarding an applicant's disabilities or medical conditions. Interviewers may ask applicants to describe or demonstrate how they would perform all job-related duties, provided all applicants are asked the same questions.
- (3) Medical examinations may only be conducted after the conditional job offer is made. An individual may only be denied employment for a medical condition when the employment would pose a direct threat to the health or safety of others or would prevent the individual from performing the essential job functions and there is no reasonable accommodation available.
- (4) All new hires are required to complete a Voluntary Self Identification of Disability Form during the onboarding process and every five (5) years thereafter. An employee may update their disability status at any time by completing the Voluntary Self Identification of Disability Form, located on Forms and Job Aids on the HR Internet Webpage, and submitting it to the DOTD ADA Coordinator.

C. Benefits and Privileges of Employment

- (1) New and existing employees must enjoy the same employment benefits as others. Appointing Authorities will ensure that training opportunities and communications with disabled employees are equivalent to that offered to other employees. The DOTD training facilities, as well as any outside facility used for training, must be accessible.
- (2) An employee seeking accommodation related to the benefits and/or privileges associated with employment should notify the immediate supervisor. The immediate supervisor shall notify and collaborate with the DOTD ADA Coordinator to address the accommodation request. Such requests should include the benefits and/or privileges of employment in which the individual is unable to participate and the accommodation requested. Such accommodations may include restructuring work areas, lunchrooms, break rooms, training rooms, and restrooms to make them available and accessible to all employees.

NOTE: Guidelines that govern facility standards are based on the date of the original construction. Additional guidelines may apply when renovations or alterations are undertaken. DOTD shall coordinate construction and renovation in conjunction with

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appropriate state departments, as well as building code, regulatory, and leasing entities, as applicable.

D. Performance of Essential Job Functions

A qualified individual with a disability may request a reasonable accommodation to perform the essential job functions of their position by following the procedure outlined in Part 6 of this policy (Requesting a Reasonable Accommodation).

E. Pregnancy, Childbirth, or Related Medical Condition

In accordance with La. R.S. 23:341-342, an applicant or employee with limitations arising from pregnancy, childbirth, or related medical conditions may request accommodation to the immediate supervisor. The immediate supervisor shall notify and collaborate with the DOTD ADA Coordinator to address the accommodation request. Such accommodations may include but are not limited to: providing more frequent, compensated break periods; providing a private place, other than a bathroom stall, for purposes of expressing breast milk; modifying food or drink policy, and other accommodations that permit the individual to reduce or eliminate the need for leave.

4. EFFECTIVE COMMUNICATION (TITLE II)

A qualified individual with a speech, hearing, or vision impairment may request accommodation from the DOTD ADA Coordinator and shall be furnished with appropriate auxiliary aids and services so that the individual can participate equally in DOTD's programs, services, and activities. Such auxiliary aids may include qualified sign language interpreters, documents in Braille, and other ways of making information and communication accessible. Anyone who requires an auxiliary aid or service for effective communication should contact the Human Resources Section as soon as possible but no later than 48 hours before the scheduled event.

5. MODIFICATIONS TO POLICIES, PROCEDURES, OR FACILITIES (TITLE II)

A. With respect to Title II of the ADA governing the provision of services by public agencies, DOTD will take all steps necessary to ensure that the services provided are made accessible to disabled individuals. Architectural barriers will be removed in accordance with established regulations and budget. Additionally, Appointing Authorities are to ensure compliance with the following regulations:

- (1) Rest areas, ferry transportation, and other public services will provide the disabled with the same levels of service provided to the general public. Appointing Authorities, as well as any involved employee, will ensure

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that no disabled individual is excluded from participation in or is denied benefits of the services, programs, or activities of DOTD because facilities are inaccessible or unusable.

- (2) The existence and location of accessible services, activities, and facilities will be made known to individuals with impaired vision or hearing. Signage will be provided at all entrances and exits to facilities, directing users to accessible entrances, facilities, and equipment.
- (3) Disabled individuals will be provided with equal amenities, i.e., accessible entrances, restrooms, drinking fountains, parking and drop-off areas, elevators to reach upper floors, operable doors, public telephones, etc.

6. REQUESTING A REASONABLE ACCOMMODATION

It is the responsibility of the qualified individual with a disability to request reasonable accommodation(s) when needed. All accommodation requests should be submitted in writing via the Request of Accommodation Form (located under Forms and Job Aids on the HR Internet webpage). Individuals with disabilities are encouraged to suggest accommodations based on their life and/or work experiences. Such requested accommodations will be duly considered. Nonetheless, DOTD reserves the right to select an equally effective accommodation that may be less expensive or impactful on business operations. All accommodation requests will be evaluated thoroughly and objectively on a case-by-case basis.

- A. Applicants seeking accommodation may initiate a request prior to or at the time of hire by contacting the hiring manager or Appointing Authority. The contacted individual is responsible for providing the applicant a Request of Accommodation Form (located under Forms and Job Aids on the HR Internet webpage) to have completed by the applicant. Upon receipt of the completed form, the Appointing Authority shall forward it to the DOTD ADA Coordinator.
- B. Current employees seeking accommodation must submit a Request for Accommodation Form (located under Forms and Job Aids on the HR Internet webpage) along with any other supporting documentation to their supervisor. The supervisor will forward all documents to the Appointing Authority and DOTD ADA Coordinator.

7. EVALUATION OF ACCOMMODATION REQUESTS (INTERACTIVE PROCESS)

- A. The DOTD ADA Coordinator, the Appointing Authority, the employee's supervisor, and, if necessary, the Employment Attorney will:

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- (1) Discuss the accommodation request and determine the precise job-related limitations. (Depending upon the information provided, the employee may be required to have their medical provider complete a Medical Inquiry Form. If necessary, the Appointing Authority will provide the employee with the form and a copy of the employee's job description to have completed by the employees' health care provider. The employee should return the completed form to the Appointing Authority within ten (10) working days.)
 - (2) Determine if the accommodation request is possible to meet without the removal of an essential job function, lowering performance standards, or causing undue hardship to the agency.
 - (3) Identify potential accommodations and assess the effectiveness that each would have in allowing the employee to perform the essential job functions. Consultation with the employee and/or treating physician may be necessary to determine the most suitable or alternative accommodation.
- B. Once a determination has been made to approve or deny the request, the Appointing Authority will notify the employee, in writing, of the final decision. The written notification must include information regarding the internal complaint process.
- C. Documentation of the interactive process shall be maintained by the DOTD ADA Coordinator, including the accommodation requested and discussed; any equally effective accommodation(s) identified; business reasons for decisions made; and action taken on the accommodation request. This documentation is necessary in order to satisfy annual reporting requirements pursuant to La. R.S. 46:2596.

8. COMPLAINT PROCESS

- A. Complaints regarding the disposition of an accommodation request can be made using the grievance process outlined in PPM 34 (Grievance Procedure). Complaints of this nature should be elevated directly to Step 3.
- B. Employees who believe they have been discriminated against, harassed, or retaliated against due to a covered disability, or for their association with another individual with a known disability, may file a complaint with the Department's Headquarters Compliance Programs Section, the Equal Employment Opportunity Commission, or the Civil Service Commission. (Procedures for filing with the Department's Compliance Section are outlined in PPM 13, Sexual Harassment and Other Prohibited Conduct Policy and Complaint Procedure.)

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9. MISCELLANEOUS PROVISIONS

- A. Drug testing is for the purpose of detecting the use of illegal drugs, as defined by the Controlled Substance Act, is not considered medical examinations under ADA and is therefore permitted. Drug testing will be conducted in accordance with the provisions of the Secretary's PPM 21, Substance Abuse and Drug-Free Workplace Policy, and in accordance with federal laws regarding drug testing of transportation employees.
- B. La. R.S. 46:2595 requires all supervisors and agency ADA coordinators to complete one (1) hour of training within 90 days of hire or appointment to a supervisory position. To comply with this statute, supervisors are required to complete the "CPTP SCS ADA Compliance WBT" web-based training.

A handwritten signature in black ink, appearing to read "Shawn D. Wilson".

Shawn D. Wilson, Ph.D
Secretary

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**ATTACHMENT
DOTD ADA COORDINATOR'S NAME AND CONTACT INFORMATION**

The DOTD ADA Coordinator serves as the designee responsible for compliance with La. R.S. 46:2594 and 46:2596, to include policy implementation, documentation of the ADA process, and submission of annual reporting requirements.

Full Name: Jason Hooper

Job Title: Human Resources Employee Relations Specialist

Address: 1201 Capitol Access Road
Baton Rouge, LA 70802

Email Address: Jason.Hooper@la.gov

Phone #: 225-379-1241