

Dutchess County Manual of Policies and Procedures	Americans with Disabilities Act (ADA) Policy
Applies to: All Employees & Applicants	Policy 00.22
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Policy Statement:

Dutchess County has a strong commitment to assuring that equal employment opportunity and reasonable accommodation(s) are provided to qualified employees with disabilities. The purpose of this policy is to enable qualified employees with disabilities to seek and be provided with reasonable accommodation(s) that enable them to perform the essential functions of their job. It is the aim of this policy that providing such reasonable accommodations will enhance workplace productivity and provide equal employment opportunity to applicants and employees with disabilities. This includes, but is not limited to, equal access to employment opportunities, training and education programs, equal access to upward mobility and promotion of qualified employees with disabilities, and equal access to this policy and process to ensure swift resolution of complaints or requests pursuant to this policy.

References:

1. Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et seq.), as amended.
2. New York State Executive Law, Article 15 (“The New York State Human Rights Law”)

Definitions:

1. **ADA Committee:** The ADA Committee’s task shall be to review requests for accommodation under this policy, and to participate in the interactive process with the employee. The Committee shall be comprised of a designee from the Office of Risk Management, the Commissioner of Human Resources or his/her designee, the County Attorney or his/her designee, and one or two senior management employees of the County Department or Division within which the employee or applicant seeking accommodation works. The Department of Human Resources, or his/her designee, shall act as the Chairperson of the ADA Committee.
 - A. The Chairperson of the ADA Committee shall be responsible for:
 - i. scheduling committee meetings,
 - ii. maintaining custody of employee records kept pursuant to this policy,
 - iii. initiating the interactive process with the person who requested an accommodation,
 - iv. involving only those who are necessarily involved to ensure an effective and timely accommodation is provided, and
 - v. notifying the employee or applicant of the outcome of their request.
2. **Disability:** (1) The term “disability” means, with respect to an individual— (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.
3. **Employee:** A person employed by the County of Dutchess.
4. **Essential Job Function:** Those functions of the job which an employee must be able to perform, with or without a reasonable accommodation. Factors which determine whether a job function is essential is: the amount of time spent on that task, consequences of error, the skill involved in performing the task, and whether it is included in the job description.
5. **Interactive Process:** A good faith, collaborative effort between the employee and the County to discuss the need for a reasonable accommodation, as well as to identify effective accommodation solutions. The interactive process begins when an employee or applicant discloses a disability/health condition and requests an accommodation, when a supervisor or Human Resources representative recognizes an obvious challenge of an applicant or employee due to a disability, or when an employee returns to work and requests an accommodation for an on-going health care condition or disability.

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6. Qualified Individual: An employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the job.
7. Reasonable Accommodation: Any change or adjustment to a job or work environment which allows an employee with a disability or pregnancy-related condition to perform the essential functions of the job. Some examples may include:
 - A. job restructuring/elimination or amendment of non-essential job duties
 - B. changes to the physical layout of a work environment to eliminate or reduce barriers
 - C. modified work equipment (speech recognition software, noise cancelling headset, screen or LED light filters, partitions or barriers, etc.)
 - D. modified work or break schedule
 - E. On-site mentoring, written instructions, job coaching, recorded directives, or as a last resort, reassignment to a vacant position for which the employee already qualifies
8. Undue Hardship: An accommodation which would be unduly costly, expensive, disruptive, or would substantially alter operations.

Standards:

1. All County employees or applicants with physical or mental conditions that substantially limit one or more life activities, or persons with a record of such a substantially limiting condition, may request reasonable accommodation pursuant to this policy, regardless of title, salary grade, or bargaining unit.
2. This policy prohibits disability-related inquiries or medical examinations of applicants before a conditional offer of employment is made. After a conditional offer of employment, but before an individual begins working, disability-related inquiries or medical examinations are permitted if all entering employees in the same job category are subject to the same inquiries or medical examination.
3. This Policy applies to both temporary and permanent disabilities.
4. Disability Discrimination/Harassment Prohibited: Dutchess County considers any type of disability discrimination/harassment, or retaliation to be a particularly destructive form of employee misconduct. The County shall investigate any alleged act of disability discrimination, harassment, or retaliation pursuant to the Dutchess County Discrimination and Harassment Policy, and if the conduct is substantiated, offenders will be subject to disciplinary sanctions as appropriate under the circumstances. Any supervisor or manager who, having been made aware of such conduct, knowingly allows such acts to continue, will also be subject to disciplinary sanctions as appropriate under the circumstances.
5. Retaliation Prohibited: Retaliation against an employee who has, in good faith, sought reasonable accommodation pursuant to this policy or who has complained about disability discrimination and harassment is a violation of Federal and/or State law, and it is a violation of this Policy. Retaliation against an employee who participates in an investigation of disability discrimination, or against a person who participates in the interactive process pursuant to this policy is also illegal and a violation of this policy.
6. Violations of Policy: Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips or meetings, off-site work or business-related social events.
7. Confidentiality: All documentation will be held in the strictest of confidence throughout the interactive process. Any medical documentation shall be secured in the custody of the Chairperson of the ADA Committee, separate and apart from any employment records or personnel records. They shall not be accessible to any person other than the employee, the employee's designees, the ADA Committee, or the Appeal Officer, except in limited circumstances, such as a) supervisors and managers may be informed regarding necessary restrictions on the work

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or duties of the employee and necessary accommodations, b) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment, c) government officials investigating compliance shall be provided relevant information on request; and d) workers' compensation offices and insurance carriers.

8. Timing: Requests for accommodation will be reviewed in the most expedient manner possible. The employee or applicant seeking an accommodation shall receive notice of the outcome of their request within 30 business days after the ADA Committee receives all information, including medical documentation, needed to make a final determination. If such outcome takes longer than 30 days, then the ADA Chairperson shall contact the requesting employee or applicant and explain the delay.
9. Other Remedies: Nothing in this policy should be construed as in any way limiting an employee's right to utilize the grievance procedure under an applicable collective bargaining agreement, or to file a complaint with the New York State Division of Human Rights, the Federal Equal Employment Opportunities Commission, or to take any legal action which he/she deems advisable.
10. Training: The County will conduct training on the ADA and this policy. All County employees shall attend any mandatory in-service training or participate in any self-guided training, or any follow-up or refresher course, on the ADA and this policy.
11. Publication of Policy: The County shall promulgate and publish this policy as follows: A copy of this policy shall be given to each new employee at the time of hire, a copy of this policy shall be published on the County intranet and internet, and a hard copy will be made available at the Dutchess County Department of Human Resources upon request.
12. Individual Review: Because each individual's abilities and needs are different, each accommodation request will be handled on a case-by-case basis. No employee or applicant shall expect to be treated "the same" as any other employee or applicant who has requested accommodation under this policy.
13. Obvious Disability With Associated Need for Accommodation: In rare instances where it is obvious that not only is an employee or applicant a person with a disability, but that he/she also requires a reasonable accommodation, a supervisor may initiate the reasonable accommodation process by referring the employee or applicant to the Department of Human Resources to obtain an Request for Accommodation Based on Disability Form - #1. (E.g.: An applicant is blind and cannot access an applicant tracking system; an employee who uses a wheelchair cannot access a restroom. DO NOT assume that because an individual has a physical or mental disability that he or she will necessarily require or want an accommodation. It must also be obvious that he/she requires an accommodation.)

Procedures:

1. Procedure for Job Applicants: A job applicant may request an accommodation applicable in the workplace by verbally making the County aware that he/she needs an adjustment or change at work for a reason related to a medical condition in "plain English." Information on how an applicant can apply for accommodations they may need can be found on the Dutchess County Internet Human Resources web page. An applicant need not mention the ADA or use the phrase "reasonable accommodation." An applicant may voluntarily request an accommodation at any time, from interview to post-offer. As explained above, this Policy prohibits pre-offer medical examinations or disability-related inquiries unless all applicants are subject to the same medical examination or disability-related inquiry. After an accommodation has been requested, the applicant will be provided a Request for Accommodation Based on Disability Form to submit it to the Office of Risk Management. (See Form #1).

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- A. Upon receipt of the form, the ADA Committee will determine whether an accommodation may be made, and if so, will enter into the interactive process with the applicant concerning what reasonable accommodation may be made.
 - B. If there is an expense associated with providing the accommodation which does not cause an undue burden, such cost shall be an expense of the Department within which the applicant is being hired to.
 - C. The responsibility for requesting or initiating a request for reasonable accommodation during the application process lies with the applicant.
2. Procedure for Current Employees: An employee may request an accommodation under this policy by verbally requesting an accommodation in “plain English” or by obtaining and completing a Request for Accommodation Based on Disability Form, the Medical Provider Form (Form #3) and the Authorization for Limited Release of Medical Information Form (Form #4) from the County Intranet or from the Department of Human Resources, and submitting it directly to Risk Management. If a request is made verbally, the Employee will be requested to fill-out a Request for Accommodation Based on Disability Form.
 - A. Upon receipt of the form, the ADA Committee will determine whether an accommodation may be made, and if so, will enter into the interactive process with the applicant concerning what reasonable accommodation may be made.
 - B. If there is an expense associated with providing the accommodation which does not cause an undue burden, such cost shall be an expense of the Department within which the applicant is being hired to.
 - C. The responsibility for requesting or initiating a request for a reasonable accommodation under this policy lies with the employee with a disability.
3. More Information Needed: If upon initial review, the ADA Committee determines that the Request for Accommodation Based on Disability Form lacks the information necessary for making a decision about the request, then the applicant shall be notified of the need for additional information, using the Request for Accommodation Status Form (Form #2), and may be requested to provide additional information or forms.
4. Pending Review: Pending a determination by the ADA Committee, the requesting employee may receive a temporary accommodation as may be determined by the ADA Committee, which temporary accommodation shall not exceed 30 calendar days.
5. Notification: After a decision is made by the ADA Committee as to what is and is not an appropriate accommodation under the policy, the employee will receive a written notification from the ADA Committee using the Request for Accommodation Status Form. Such notification shall be provided to the employee within 30 calendar days of the ADA Committee having received all necessary information to support the request for accommodation, including medical documentation, if appropriate.
6. Undue Hardship: During the ADA Committee’s review of the request for accommodation, the Department’s representative at the Committee meeting may provide input concerning whether the Employee or Applicant’s request cannot be accommodated due to undue hardship. Undue hardship means an action requiring significant difficulty or expense. The following shall be considered before a final determination is made: a) the nature and cost of the accommodation, b) the overall financial resources of the Department providing the accommodation, the number of employees in the Department, the effect of the accommodation on the expenses and resources of the Department, and its impact on the operations of the Department c) the overall financial resources of the County, the size of its operations, and the number of its employees, and business locations, d) the type of operations of the County (its composition, structure, and functions of the County workforce)The Department may consider the impact of an accommodation on the ability of other employees to do their jobs, however, a Department may not claim undue hardship solely due to the following: (1) Providing an accommodation has a

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negative impact on the morale of other employees, (2) providing an accommodation would “disrupt” the office or its current procedures.

7. **Appeal:** The employee or applicant shall have the opportunity to appeal a decision of the ADA Committee regarding a reasonable accommodation by submitting a written appeal to the Department of Human Resources using the Appeal Form (#5). The appeal should include an explanation as to why the accommodation offered is not appropriate or why the accommodation should not have been disapproved. The Department of Human Resources shall investigate the complaint on appeal and make a recommendation to the County Executive’s designee. The County Executive’s designee will make the decision on appeal. The County Executive’s designee on appeal must not have participated as a member of the ADA Committee upon initial review.

Forms:

1. Request for Accommodation Based on Disability Form - #1
2. Request for Accommodation Status Form #2
3. Medical Provider Form to Supplement Employee Request for Accommodation Pursuant to ADA Form- #3
4. Authorization for Limited Release of Medical Information Form - #4.
5. Appeal Form for Request for Accommodation #5