


Americans with Disabilities Act

	Louisiana Department of Health (LDH)	
	Policy Number	81.2
	Content	Provides guidelines for implementation and enforcement of the Americans with Disabilities Act
	Effective Date	July 10, 2019
	Inquiries to	Office of Management and Finance Division of Human Resources, Training and Staff Development P. O. Box 4818 Baton Rouge, Louisiana 70821-4818 (225)342-6477 FAX (225) 342-6892

If there is a discrepancy between an LDH Policy and a Program Office or facility policy, the LDH policy shall govern/overrule/supersede the conflicting section within the Program Office or facility policy.

I. POLICY STATEMENT

It is the policy of the Louisiana Department of Health (LDH) to comply with the requirements of the Americans with Disabilities Act of 1990 (ADA) and regulations prohibiting discrimination on the basis of disability, and any amendments thereto.

II. APPLICABILITY

This policy applies to all employees and applicants for employment within LDH.

III. DEFINITIONS

- A. **Appointing Authority:** The officers and employees authorized by statute or by lawfully delegated authority to make appointments to positions in the State Service.
- B. **Direct Threat to Health or Safety:** A significant risk of substantial harm to the health or safety of the individual or others that is likely to occur and cannot be eliminated or reduced by reasonable accommodation.

- C. **Disability:** An individual with a disability is one who:
1. Has a physical or mental impairment that substantially limits one or more major life activities,
 2. Has a record of such impairment, or
 3. Is regarded as having such an impairment.
- D. **Essential Job Functions:** Those activities of a job that are core to performing the job duties and that cannot be modified. A function is essential if the job exists to accomplish the function; only a limited number of employees can perform the function; and/or the function is highly specialized and employees are hired for their expertise in performing the function. Other factors that may be considered in determining whether a function is essential are the amount of time an employee spends performing the function and the consequences if the employee were not required to perform the function.
- E. **Impairment:** Any physiological, psychological or cognitive disorder that substantially limits major life activities, even if the individual uses mitigating measures to eliminate or reduce the effects of an impairment.
- F. **Interactive Process:** The process which the employer and individual requesting accommodation engage in to discuss physical or mental abilities and limitations as they relate to the job's essential functions in order to identify possible job accommodations, if any.
- G. **Major Life Activities:** Major life activities include, but are not limited to, caring for one's self, performing manual tasks, walking, sitting, standing, seeing, hearing, eating, breathing, speaking, sleeping, reproducing, working, learning, thinking, concentrating, interacting with others and the operation of major bodily functions.
- H. **Mitigating Measure:** Medication, an assistive device or compensating behaviors developed to control or eliminate symptoms or limitations of an impairment.
- I. **Qualified Individual:** A person who meets legitimate skill, experience, education and other requirements for employment in a position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodations.
- J. **Reasonable Accommodation:** 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, or to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities, provided that it meets the requirements established within this policy. Examples of reasonable accommodations may include, but are not limited to: making facilities readily accessible, job restructuring, modifying work schedules, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting or modifying tests or training materials, and providing qualified readers or interpreters.

- K. **Substantially Limited:** An individual's major life activity is substantially limited if he or she is unable to perform a major life activity that most people in the general population can perform.

IV. RESPONSIBILITIES

- A. The Secretary of LDH has the overall responsibility for LDH's compliance with Title I of the ADA and has the ultimate authority to approve/deny requests for accommodation within LDH. (The Secretary may delegate this authority as he/she deems appropriate).
- B. The Division of Human Resources, Training and Staff Development is responsible for reviewing/investigating requests for accommodation under the provisions of the ADA. This section is also responsible for submitting recommendations for approval/denial of requested accommodations to the Secretary of LDH or designee.
- C. The Bureau of Legal Services is responsible for providing legal consultation and advice to the Division of Human Resources, Training and Staff Development; the LDH Secretary; and other management staff in all matters related to the ADA.
- D. Appointing Authorities (both statutory and delegated) or their designees are responsible for:
 - 1. Identifying the essential functions, physical demands and work environment of all positions under their jurisdiction;
 - 2. Recording the essential functions, physical demands and work environment of all positions under their jurisdiction on the Physical Requirements and Conditions form;
 - 3. Attaching a completed Physical Requirements and Conditions form to each Position Description (SF-3) for the positions under their jurisdiction;

4. Submitting requests for accommodation to the Division of Human Resources, Training and Staff Development;
5. Participating in the interactive process related to requests for accommodation.

V. MEDICAL EXAMINATIONS

- A. Applicants - **Prior to making a job offer**, the hiring manager shall not require an applicant to submit to a medical examination, nor shall he or she make any inquiries regarding an applicant's supposed disability or the nature or severity of the supposed disability. All applicants for LDH positions are protected from disability-related inquiries that could potentially screen them out of the application process, including but not limited to the following:
 1. Applicants may not be asked questions that are likely to elicit information about a disability, including whether an applicant has a particular disability.
 2. Questions regarding an applicant's medical or workers' compensation history may not be asked.
 3. Applicants may not be asked to describe or demonstrate how they would perform the essential functions of the job **unless all applicants for the same job are asked to do so.**

- B. Conditional Offer of Employment – Medical Examination
 1. Once an applicant has been selected as the prospective candidate for a job, a Conditional Offer of Employment may be made to the candidate pending the results of a medical examination as long as all individuals in the same category have to undergo a medical examination. (For more information regarding Conditional Offers of Employment please see LDH Policy #32 – Vacancy Announcements).
 2. If the existence of a disability is revealed during the medical examination, the offer of employment may not be withdrawn unless:
 - a. The reason is job-related and consistent with business necessity and no reasonable accommodation can be made; or

- b. The disability poses a direct threat to the health or safety of the candidate, other employees or the general public, and the direct threat cannot be eliminated by reasonable accommodation.
- C. Medical examinations and inquiries for current employees must be job-related and consistent with business necessity and requested only in the following circumstances:
 - 1. When an employee is having difficulty performing the essential functions of the job and/or likely poses a direct threat to the health or safety of the employee, other employees or the general public.
 - 2. A medical examination is necessary for determining reasonable accommodations.
 - 3. A medical examination is required by law.
 - 4. Tests for illegal drugs are not medical examinations and are not subject to these restrictions (for information concerning drug testing, please refer to Policy #48 – LDH Employee Drug Testing Policy).

VI. CONFIDENTIALITY OF MEDICAL RECORDS

- A. The ADA imposes very strict limitations on the use of information obtained from medical examination and inquiries. Therefore, all such information acquired by LDH employers must be collected and maintained by Human Resources in confidential files apart from the personnel files.
- B. Specific Human Resources staff shall be designated as having access to the medical files.
- C. Exceptions to medical confidentiality are as follows:
 - 1. Managers and supervisors may be informed about necessary restrictions on the work or duties of an employee and necessary accommodations, but not the underlying disability.
 - 2. First aid and safety personnel may be informed, when appropriate, if the employee might require emergency treatment or if any specific procedures are needed in the case of fire or other emergency evacuations.
 - 3. Government officials (including Human Resources and Legal staff) investigating compliance with the ADA and other federal or state laws.

VII. REASONABLE ACCOMMODATIONS

LDH is committed to making reasonable accommodations in job duties, the work environment and the application process to enable qualified individuals to enjoy equal employment opportunities in all aspects of employment, as long as such accommodations are reasonable and do not constitute an undue hardship on LDH (see Section IX of this policy - Undue Hardship). Employment opportunities shall not be denied to qualified individuals because of the need to provide reasonable accommodations.

The ADA prohibits discrimination in employment based on concerns about the disability of a family member of an applicant or employee, or anyone else with whom the applicant or employee has a relationship or association. In any case, the Secretary of LDH shall not be required to provide an accommodation to a non-disabled individual because this person has a relationship or association with a disabled individual.

VIII. REQUESTS FOR ACCOMMODATION

- A. Applicants - In accordance with the ADA, all applicants for LDH positions must have accessibility to all steps in the application process. It is the responsibility of an applicant to inform LDH in writing of his/her need for an accommodation to participate in the interview process. LDH will provide reasonable accommodations to qualified applicants. For example, reasonable accommodations may include making an interview room accessible or supplying an interpreter or reader.
- B. Current employees
 1. A current employee seeking an accommodation should notify his/her immediate supervisor of the need for an accommodation. The supervisor must respond to the employee as follows: "How can I assist you?" Official accommodation requests must be submitted in writing and detail the duties the employee is unable to perform without the requested accommodation. The supervisor shall promptly submit all documentation of the request to the Human Resources office and the Bureau of Legal Services, who will begin the interactive process. Alternatively, the employee may choose to send his/her request for accommodation directly to the Human Resources office and the Bureau of Legal Services.
 2. Interactive Process – A Human Resources representative may meet with LDH management and the employee requesting an accommodation to determine what, if any, accommodation can be made. The Human Resources representative may request documentation of the disability. Reasonable

accommodations will be provided to qualified individuals unless the requested accommodation presents an undue hardship to the agency. While an individual's preference will be given consideration, LDH is free to choose among equally effective accommodations and may choose one that is less expensive and/or easier to provide.

- C. Approval/denial of requests for accommodation – Only the Secretary of LDH or his/her designee may approve or deny a request for an accommodation. All requests must be reviewed by the Bureau of Legal Services and the Division of Human Resources, Training and Staff Development prior to action by the Secretary or designee.

IX. UNDUE HARDSHIP

According to the ADA an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. For purposes of the ADA, LDH is considered the employer.

Undue hardship is determined on a case-by-case basis. **The structure and overall resources of LDH must be considered when determining whether a proposed accommodation poses an undue hardship as defined by the ADA.**

If it is determined that a proposed accommodation would create an undue hardship, the employer and employee should work together as part of the interactive process to see whether they can come up with an alternative reasonable accommodation that will be effective. For example, rather than purchasing a van fully outfitted to be driven by an employee who uses a wheelchair, an employer might offer to reimburse the employee for using his/her own vehicle when it is necessary to drive for business. In any case, LDH will determine the accommodation to be approved and implemented.

X. ENFORCEMENT AND REMEDIES

The U.S. Equal Employment Opportunity Commission (EEOC) has responsibility for enforcing compliance with Title I of the ADA. The procedure for filing and processing complaints is the same as those under Title VII of the Civil Rights Act of 1964.

Complaints of discrimination may also be filed at the LDH office/facility level, or with the LDH Division of Human Resources, Training and Staff Development. (Refer to Policy #34: Equal Employment Opportunity).

XI. POSTING REQUIREMENTS

Employers must post notices concerning the provisions of ADA. The notices must be accessible, as needed, to persons with visual or other reading disabilities. Equal Employment Opportunity (EEO) posters, containing ADA provisions may be obtained by writing EEOC at 1801 L Street N.W., Washington, D.C., 20507, or calling 1-800-669-EEOC or 1-800-800-3302 (TDD).

XII. DISCIPLINARY ACTIONS

Any employee who violates this policy may be subject to disciplinary action up to and including dismissal from employment.

XIII. REVISION HISTORY

Date	Revision
September 1, 1993	Policy created
June 5, 2001	Policy revised
June 21, 2016	Policy reviewed
July 10, 2019	Policy revised