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CITY OF CINCINNATI

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Americans with Disabilities Act Manual

# Policies & Procedures

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# Table of Contents

## **Chapter 1**

### ***City of Cincinnati Americans with Disabilities Act***

I.	Purpose	1
II.	Definitions	2
III.	Roles & Responsibilities	7
IV.	Determining Disabilities under the ADA	16
V.	Documentation	17
VI.	Reasonable Accommodation Request Funding	18

## **Chapter 2**

### ***General Guidelines for Assessing Reasonable Accommodations***

I.	Reasonable Accommodation Request Assessment	21
II.	Requests for Reasonable Accommodations	23
	By Applicants	23
	By Current Employees	25
III.	Appeal Process	29

## **Chapter 3**

### ***ADA – Coordination with other Laws and Programs***

I.	ADA & Family Medical Leave Act (FMLA)	32
II.	ADA & Workers' Compensation	36

**Table of Contents continued**

III.	ADA & Return to Work Program	38
IV.	ADA & Disability Retirement	39
V.	ADA & Separation from Payroll	40
VI.	ADA & Parking Accommodations for Applicants & Employees with Disabilities	43
VII.	ADA & Training Accommodations	46

**Chapter 4**  
***Resources***

Resources	47
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# City of Cincinnati Americans with Disabilities Act Manual

## I. Purpose

**T**O provide direction to departments regarding the steps to follow upon the receipt of a Request for Reasonable Accommodation from a qualified applicant or City employee who meets the definition of disabled under the Americans with Disabilities Act (ADA).

- ensure equal opportunity in the application process.
- perform the essential functions of the job.
- enjoy equal benefits and privileges of employment.

## II. Definitions

As necessary, definitions are referenced from the Equal Employment Opportunity Commission's Technical Assistance Manual of the Americans with Disabilities Act (ADA), Title 1:

**Americans with Disabilities Act (ADA)** – A Federal law enacted on July 26, 1990. The ADA prohibits discrimination on the basis of disability in employment, public services, public transportation, public accommodations and in telecommunications and relay services. The law consists of five major sections and prohibits discrimination against qualified individuals with disabilities as well as individuals regarded as or having a record of being disabled.

**Citywide ADA Review Team** – A committee which will, as needed, assist a Departmental ADA Review Team in clarifying recommendations on Reasonable Accommodation Requests. These requests may have outstanding medical, legal, or ADA eligibility issues remaining even after a thorough review by the Department. The committee members include the City Physician, a representative from the City's Law Department, and the Citywide ADA Coordinator.

**Departmental ADA Review Team** – Designated individuals who assist the Departmental ADA Coordinator in reviewing injury or illness cases to determine whether the ADA protection applies and to identify possible reasonable accommodations. The committee members may include the Departmental ADA Coordinator, Human Resources manager or specialist, Departmental Workers’ Compensation representative, Employee Safety specialist and designated Law Department attorney.

**Direct Threat** – A significant risk of substantial harm to the health or safety of the individual or others.

**Disability** – The ADA has a three part definition of disability. As defined by the ADA, an individual with a disability is a person who:

- has a physical or mental impairment that substantially limits one or more of his/her major life activities; or
- has a record of such impairment; or
- is regarded as having such an impairment.

**Equal Employment Opportunity** — An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability.

**Essential Functions** – Essential functions are fundamental duties of a position. In identifying essential functions, the Title I of the Americans with Disabilities Act EEOC’s Technical Assistance Manual indicates considering whether employees in the position are actually required to perform the function. Reasons why a function could be considered essential are:

- the position exists to perform the function;
- there are a limited number of other employees available to perform the function;  
or
- a function is highly specialized.

**Major Life Activities** – These are activities that an average person can perform with little or no difficulty. Examples are:

✓ Walking	✓ Speaking
✓ Breathing	✓ Performing manual tasks
✓ Seeing	✓ Hearing
✓ Learning	✓ Caring for oneself
✓ Working	

These are examples only. Other activities such as sitting, standing, lifting or reading are also major life activities.

**Mental Impairment** – As defined by the ADA, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and designated learning disabilities.

**Physical Impairment** – As defined by the ADA, any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, hernic and lymphatic, genito-urinary, skin and endocrine.

**Qualified Individual With a Disability** – To be protected by the ADA, a person must not only be an individual with a disability but must be *qualified*. The ADA regulations define *a qualified individual with a disability* as a person with a disability:

- who satisfies the necessary skill, experience, education and other job related requirements of the employment position held or desired.
- who, with or without reasonable accommodation, can perform the essential functions of the position.

**Reasonable Accommodation** – A modification or adjustment to a job, the work environment, or the way things usually are done which enables a *qualified* individual with a disability to enjoy an equal employment opportunity. Providing a reasonable accommodation is not required if it imposes an undue hardship.



**Substantially Limiting** – A term defined by the ADA as an impairment or condition under which an individual must be unable to perform, or be significantly limited in the ability to perform, a major life activity compared to an average person in the general population. Factors to consider in determining whether a person’s impairment substantially limits a major life activity include:

- the nature and severity of the impairment;
- how long the impairment will last or is expected to last;
- permanent or long term impact, or expected impact, of the impairment.

The determination as to whether an individual is substantially limited must always be based on the effect of an impairment on the individual’s life activities, and must be determined on a case-by-case basis.

**Undue Hardship** – As defined by the ADA, an action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business. Undue hardship relates to the ADA’s reasonable accommodation component. In determining undue hardship, factors to consider include:

- the nature and net cost of the accommodation needed;
- the financial resources of the organization making the accommodation, the number of employees at the organization, and the effect on expenses and resources of the organization;
- the overall financial resources, size, number of employees, and type and location of facilities of the organization covered by the ADA;
- the impact of the accommodation on the operation of the program that is making the accommodation.

### III. Roles & Responsibilities

**City Manager responsibilities include :**

1. Evaluating Department Heads on ADA compliance and performance.
2. Reviewing programs designed by the Human Resources Department to ensure success of the implementation of the Americans with Disabilities Act.
3. Providing the final authority on appeal recommendations received from the Equal Employment Opportunity Advisory Review Board (EEOARB).

**Citywide ADA Coordinator responsibilities include :**

1. Distributing information to Departmental ADA Coordinators regarding ADA issues and the City's reasonable accommodation policy.
2. Conducting meetings and training sessions with Departmental ADA Coordinators to educate and update them on the ADA issues.
3. Coordinating the response to requests for information from citizens and employees regarding the City's ADA policy and grievance procedures.
4. Issuing bulletins regarding the City's reasonable accommodation policy for posting within City departments.
5. Maintaining database information pertaining to the outcome of reasonable accommodation requests submitted to the City.
6. Serving as a member of the Citywide ADA Review Team.
7. Acting as a resource when a Departmental ADA Coordinator or Test Analyst needs clarification or information on ADA issues.
8. Assisting Departmental ADA Coordinators, as needed, in identifying whether an employee meets the definition of disabled under the ADA as well as assisting in identifying community resources for reasonable accommodations.
9. Serving as a member of the Citywide Return to Work Committee.

10. Providing training sessions in the area of the Americans with Disabilities Act through the Human Resources Department's Human Resources Development Academy.
11. Processing requests submitted by departments for the citywide Reasonable Accommodation Request Funding initiative.
12. Providing technical assistance to departments and being available for consultation with the employee during any stage of the ADA eligibility/reasonable accommodation process.
13. Providing staffing to the Equal Employment Opportunity Advisory Review Board (EEOARB).

**City Physician responsibilities include :**

1. Assisting in determining the ability of an applicant/employee to perform the essential functions of a position.
2. Requesting written documentation, as needed, from a medical or healthcare professional with knowledge of the person's functional limitations.
3. Providing applicable medical information and expertise to the Citywide ADA Review Team.

**Citywide ADA Review Team responsibilities include :**

1. As requested by the Departmental ADA Coordinator and/or Departmental ADA Review Team, assisting the department in clarifying issues or providing recommendations on ADA or Reasonable Accommodation Requests.
2. Has the authority to over rule the Departmental ADA Review Team in determining whether an employee or applicant is a qualified individual with a disability under the ADA and/or the denial of a Request for Reasonable Accommodation.

**Departmental ADA Coordinator responsibilities include :**

1. Assisting applicants who request an accommodation with their application that cannot be readily performed by regular intake personnel (for departments which accept employment applications onsite).
2. Assisting an employee experiencing illness or injury when the employee indicates that he/she can no longer perform the essential function(s) of the current job and requests an accommodation.
3. Coordinating departmental efforts to determine whether an employee meets the definition of disabled under the ADA.
4. Consulting with the employee, Citywide ADA Coordinator and other applicable resources, such as the Job Accommodation Network, regarding potential accommodations for qualified individuals with disabilities who have requested accommodations.
5. Convening and coordinating the Departmental ADA Review Team meetings when reasonable accommodation(s) must be considered for a qualified individual with a disability.
6. Providing the Department Director with the team's determination as to whether an accommodation can be made without undue hardship.
7. Providing information to the Citywide ADA Coordinator within five working days of departmental determination regarding the Request for Reasonable Accommodation Form.
8. Attending training sessions and ADA Coordinator meetings offered by the City regarding employment and reasonable accommodation processes.
9. Providing information on other resources that may be available such as the Bureau of Vocational Rehabilitation, or Clovernook Center for the Blind, that can be of assistance to the employee at work as well as at home.

10. Preparing and sending final reports regarding ADA determination to the City wide ADA Coordinator.
11. Providing copies of completed ADA forms and correspondence to the employee or applicant upon request.
12. Serving as a member of the Departmental Return to Work Committee.
13. Providing support to the Citywide ADA Coordinator on appeals to the Equal Employment Opportunity Advisory Review Board (EEOARB).

**Departmental ADA Review Team responsibilities include :**

1. Assisting the Departmental ADA Coordinator, as necessary, in determining whether an individual is covered under the ADA.
2. Reviewing and helping reach determinations on reasonable accommodation requests when the Departmental ADA Coordinator identifies such a need.

**Department Director responsibilities include :**

1. Designating a Departmental ADA Coordinator to assist in reviewing and effectively resolving requests for accommodation.
2. Posting in a conspicuous, designated area any information provided by the Human Resources Director regarding the City's Reasonable Accommodation policy, as well as the name and phone number of both the Departmental ADA Coordinator and the Citywide ADA Coordinator. Information will be provided in an accessible format upon request.
3. Notifying employees who have made a request for Reasonable Accommodation of the decision reached by the Department regarding that request.

4. Ensuring that supervisors and managers are aware of the Reasonable Accommodation Procedure and the City's commitment to consider and act upon requests for accommodations when qualified disabled applicants or employees with disabilities make such requests known.
5. Ensuring that supervisors and managers attend mandatory training sessions required by the City regarding employment and reasonable accommodation processes, as well as other appropriate training seminars .
6. Ensuring that the Departmental ADA Coordinator conducts a department-wide review when necessary to determine:
  - a. Whether a qualified individual with a disability who cannot perform the essential functions of the current position can be reasonably accommodated without undue hardship in that position; or
  - b. Whether a qualified individual with a disability who cannot perform the essential functions of the current position can be reasonably accommodated without undue hardship in any other vacant position within the department for which that employee is qualified.
7. Consulting with managers/supervisors who indicate that they are unable to provide requested accommodations, thereby ensuring that a thorough investigation was conducted.
8. When necessary, discussing with the Citywide ADA Review Team those cases in which the department determines that a requested reasonable accommodation is not possible.
9. With the Director of Human Resources, jointly reviewing departmental reasonable accommodation decisions appealed by an employee.
10. As requested by the EEO Office, conducting investigations and submitting reports of findings regarding complaints of discrimination on the basis of disability.

**Director of Human Resources responsibilities include :**

1. Reviewing and approving bulletins/updates regarding the City's Reasonable Accommodation policy for posting within City departments.
2. As requested by a Department Director, discussing whether or not a reasonable accommodation poses an undue hardship within that department.
3. Reviewing appeals from employees contesting a departmental reasonable accommodation decision.
4. In cases in which an appeal has been made to the Director of Human Resources, notifying the employee in writing of the appeal determination.
5. Serving as a liaison to the Equal Employment Opportunity Advisory Review Board (EEOARB) regarding appeals to ADA requests for reasonable accommodation.

**Employee (or Representative for the employee whose disability prevents compliance with this section) responsibilities include :**

1. Contacting the employee's Departmental ADA Coordinator and reporting his/her need for an accommodation to perform essential job functions or to receive equal benefits of employment; requests must be submitted in writing using the City's *Request for Reasonable Accommodation Form*.
2. As requested, providing the City with information and/or documentation needed to determine whether any accommodation is required and, if so, the nature of the accommodation.
3. Offering suggestions to the Departmental ADA Coordinator regarding possible accommodations.
4. Consulting with the Department and/or Citywide Coordinator regarding any questions that arise during the ADA eligibility/accommodation process.
5. Submitting timely appeals, when applicable.

**Applicant responsibilities include :**

1. Informing the Human Resources Department application staff and/or the employing Department's ADA Coordinator whether the applicant needs an accommodation to access the application process.
2. Providing the City with information or required medical documentation to determine whether any accommodation is required during the testing process and, if so, the nature of the accommodation.
3. Offering suggestions to the employing Department's ADA Coordinator regarding potential accommodations.
4. Submitting timely appeals, when applicable.

**“Return to Work” Case Manager\* responsibilities include :**

1. Identifying situations in which case management interventions (rehabilitative, medical, vocational) may assist in decreasing an employee's lost time from work.
2. Serving as a resource for departmental requests regarding the City Physician's review or recommendation.
3. Making requests for functional capacity evaluations or job-site analyses, when appropriate.
4. Assisting departments, as needed, with interpretation of functional capacity evaluations so that the departments can effectively evaluate the need for reasonable accommodations.

**\* To contact the “Return To Work” case manager call Risk Management at (513) 352-3791**



**Supervisor responsibilities include :**

1. Informing employees who request accommodations that the Departmental ADA Coordinator will be their point of contact for requesting accommodations.
2. Providing the name of the Departmental ADA Coordinator to the employee making the request, and contacting the Departmental ADA Coordinator to inform him/her that the employee may require an accommodation.
3. Upon request, assisting the Departmental ADA Coordinator by providing details of essential functions/work environment which may be necessary to evaluate potential accommodations for qualified individuals with disabilities.
4. Informing the Departmental ADA Coordinator and/or Department Director if the supervisor believes that a proposed accommodation cannot be provided because of undue hardship.
5. Ensuring that pre-employment interviews with a job applicant address solely the ability of the applicant to perform job-related functions. During such interviews, no questions are to be asked regarding the nature and severity of such disability.

**Equal Employment Opportunity (EEO) Office responsibilities include :**

1. Reviewing and investigating complaints by applicants and/or employees who believe they have been discriminated against based on a disability.
2. Reporting the results of complaints filed and investigations conducted to the appointing authority.

**Equal Employment Opportunity Advisory Review Board (EEOARB)  
responsibilities include :**

1. Hearing appeals regarding requests for reasonable accommodations.
2. Submitting written recommendations to the Director of Human Resources.

## IV. Determining Disabilities under the ADA

It is recommended that departments seek advice from their Departmental ADA Review Team regarding the determination of disabilities under the Americans with Disabilities Act. To decide whether an applicant or employee has a disability as defined by the ADA, the following factors should be considered:

1. Does the person have a physical or mental impairment? Is there a record of a disability? Is the individual regarded as having a disability?
2. If “yes” to any of the questions in number 1, does the impairment substantially limit a major life activity? A major life activity includes, but is not limited to, walking, hearing, speaking, learning, breathing, caring for oneself, performing manual tasks, working, or seeing.
3. In determining whether an impairment substantially limits one or more major life activities, the following factors must be considered:
  - a. What is the nature and severity of the impairment?
  - b. How long will it last or is it expected to last?
  - c. What is the permanent or long-term impact?

The City of Cincinnati will continue to informally accommodate, at management’s discretion within existing policies, the accommodation needs of City employees for a variety of personal reasons, including some physical or mental limitations that might not otherwise qualify for accommodation under the ADA. The fact that an employee is informally accommodated does not necessarily establish a continuing right to the particular accommodation. Likewise, an informal accommodation does not imply that the City regards such an individual as being disabled in that regard. Disabled individuals who seek accommodations under the ADA are required to make a written request for such an accommodation to their Departmental ADA Coordinator or to the Citywide ADA Coordinator.

## V. Documentation

- A. To determine whether and what kind of accommodation may be reasonable, management or other designated staff may require applicants or employees claiming a disability and in need of reasonable accommodation to provide medical or other documentation showing:
- the existence and nature of the disability;
  - the appropriateness of any accommodation proposed by the applicant or employee;
  - if an alternate accommodation is proposed by management, to establish whether such an accommodation would meet the employee's need;
  - a medical opinion as to when an applicant or employee suffering from a temporary disability may be expected to recover from the disability.
- B. The applicant or employee will have ten working days to provide documentation from the time the City requests it. The applicant or employee will be given the opportunity to explain why documentation is not available or why a document request is not appropriate under the circumstances. Time extensions may be granted under appropriate circumstances. If an employee or applicant declines to provide requested medical or other documentation, the analysis for accommodation generally cannot continue to be acted upon by the City.

## VI. Reasonable Accommodation Request Funding

### **Employee Accommodations**

#### 1. Purpose and Use of Funding

- A. The purchase of assistive devices or adaptive equipment for City employees is intended to facilitate effective performance of assigned duties and responsibilities.
- B. Equipment purchased with Reasonable Accommodation Request funding should not be used in any way to support non-job-related activities.
- C. Reasonable Accommodation Request funding will not be used to purchase equipment or devices for the personal use of employees, for example, walking canes, hearing aids, and glasses, except when required as personal protective equipment on the job.
- D. Equipment, supplies, maintenance work, or monthly rental fees will be the responsibility of the department receiving the equipment.

#### 2. Property/Ownership of Equipment

- A. All equipment or devices purchased are the property of the City. Such equipment or devices are on loan to the department and assigned to that particular employee.

- B. If an employee is promoted, transferred, or in any way assumes new job assignments or responsibilities within the City, the equipment purchased on behalf of that employee may continue to be used by that employee as long as a clear need for the equipment remains.

### 3. Request Procedures

- A. All requests for funds must be processed through the Citywide ADA Coordinator.
- B. All requests will be reviewed on a case-by-case basis and are subject to the availability of funds.
- C. Departments will be required to provide justification for the funding request utilizing the Request for Reasonable Accommodation and Employee Request for Disability Services Funding forms. This information includes:
  - i. A summary of the individual's specific job and level of responsibility. A job description should be attached to this request.
  - ii. Documentation establishing the extent and impact of the disability upon the essential functions of the job. This will be required of individuals with visible and non-visible disabilities. Documentation may be provided by a statement from a medical practitioner, a representative from the Bureau of Vocational Rehabilitation, or the Human Resources Department. This statement must be included with the request.
  - iii. Other sources of funding should be investigated prior to any departmental request for City funding.

- D. The employee's department is responsible for the funding of all Requests for Reasonable Accommodation, unless it can be proven that funding within the department is not available. These funds include, but are not limited to, departmental funds, Workers' Compensation, auto insurance, and medical insurance. Funds from the Bureau of Vocational Rehabilitation, Goodwill Industries or Clovernook Center for the Blind should also be evaluated if there is an active relationship established.

### **Applicant Accommodations**

Applicant accommodations will be provided through the Human Resources Department-Testing/Classification Section. The Citywide ADA Coordinator will serve as a resource to the Test Analyst .

## General Guidelines for Assessing Reasonable Accommodations

### I. Reasonable Accommodation Request Assessment

- A. The City is committed to act upon reasonable accommodation requests for the known physical or mental limitations of a qualified applicant or employee with a disability.
- B. The ADA requires reasonable accommodation in three aspects of employment:
  - to ensure equal opportunity in the application process;
  - to enable a qualified individual with a disability to perform the essential functions of the job; and
  - to enable an employee with a disability to enjoy equal benefits and privileges of employment.
- C. The need for accommodation will be determined on a case-by-case basis.



- D. Departments are to designate an individual or individuals to assess and identify potential accommodations.
- E. To assess accommodation requests the following must be considered:
- i. What are the essential functions of the particular job?
  - ii. What are the individual's specific physical or mental abilities and limitations as they relate to the essential job functions?
  - iii. What potential modifications or reasonable accommodations can be considered to overcome the identified barrier? Consult with the individual requesting the accommodation.
  - iv. Assess how effective the potential accommodation would be in enabling the individual to perform the essential job functions. Consult with the individual with the disability.
  - v. Select the accommodation that best serves the needs of the individual and the City's business operations or explain why the potential accommodation causes an undue hardship. Reasonable accommodations as indicated in Section III 3.10, of the EEOC Technical Assistance Manual include:
    - making facilities accessible and usable;
    - job restructuring;
    - modified work schedules;
    - flexible leave policies;
    - reassignment to a vacant position;
    - acquisition or modification of equipment and devices;
    - adjusting and modifying examinations, training materials, and policies;
    - providing qualified readers.

- F. In all cases, the applicant or employee should be consulted before an accommodation is made. The concept of reasonable accommodation applies not only to selection and placement, but is considered in recruitment, training, promotions, reassignments, and all other terms and conditions of employment.
- G. Undue hardship factors should be explored prior to an undue hardship determination being made by a department. If an accommodation appears to be excessively costly, extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business, consultation should take place with the Citywide ADA Coordinator and/or the Law Department.

## II. Requests for Reasonable Accommodations

### **By Applicants**

1. Duties of the City of Cincinnati Human Resources Department:
  - a. The Human Resources Department staff shall communicate to applicants that reasonable accommodations may be requested during the application, examination, and interview process. This communication is presented in the City of Cincinnati's Job Bulletin announcement, the Reasonable Accommodation for Qualified Individuals with Disabilities Information Sheet provided with all job applications, on the City of Cincinnati web-site, and in poster form within the Human Resources Department lobby.
  - b. Applicants must request accommodations in writing using the City's Request for Reasonable Accommodation Form. If any impairment should prevent applicants from filling out the form, they may request assistance from the Human Resources Department staff or the Citywide ADA Coordinator. If easily achievable, the Human Resources staff will determine, with input from the applicant, what accommodation is necessary to complete the employment application.

- c. Should the accommodation not be easily achievable by the Human Resources staff, the applicant will be referred to the Citywide ADA Coordinator. The Coordinator will follow the process set forth in this policy for evaluating whether the individual meets the definition of a qualified individual with a disability under the ADA. If so, what accommodation(s) is reasonable and necessary for the applicant to access the application and selection process will be explored.
  - d. Undue hardship will be determined by the Citywide ADA Coordinator and/or the Departmental ADA Review Team members reviewing the request.
  - e. Should the applicant require an accommodation in the examination/interview process, the Test Analyst assigned to the exam will make the determination, in consultation with the applicant. If the Test Analyst determines that the requested accommodation is not achievable, then he or she will consult with the Citywide ADA Coordinator. Appeals of the final determination should be made to the Civil Service Commission
  - f. The Human Resources Department is responsible for paying for accommodations such as sign language interpreters.
2. Duties of the Departmental Human Resources Office or Human Resources Coordinator:
- a. For those departments that take applications for seasonally posted vacancies, the employing department is responsible for determining, with input from the applicant, what accommodation is reasonable and necessary to ensure an accessible application and selection process.
  - b. Applicants must request an accommodation in writing using the City's Request for Reasonable Accommodation Form, which can be provided by the Departmental ADA Coordinator or from the City's web-site. If any impairment should prevent an applicant from filling out the Request

for Reasonable Accommodation Form, he/she may seek assistance from the Departmental ADA Coordinator. The applicant will be referred to the Departmental ADA Coordinator, who will follow the process set forth in this policy to evaluate whether an individual meets the definition of disabled under the ADA and, if so, what accommodation is reasonable and necessary based upon that request. The department's designated staff and/or the Departmental ADA Review Team will determine if the accommodation imposes an undue hardship.

- c. Hiring supervisors or their staff responsible for contacting applicants for interviews will refer requests for accommodations to their Departmental ADA Coordinator. The Departmental ADA Coordinator will speak with the interviewee to explain the reasonable accommodation process, and ensure that the request for reasonable accommodation is reduced to writing using the City's form and copied to the Citywide ADA Coordinator.

#### **By current employees (Workplace Accommodations)**

- If an employee makes a request for reasonable accommodation known to his/her supervisor, the supervisor will inform the employee that the City has a procedure in place. Requests are to be made to the Departmental ADA Coordinator using the City's Request for Reasonable Accommodation Form. The Supervisor refers the employee to the Departmental ADA Coordinator for additional information.
- The Departmental ADA Coordinator will meet with the employee to review the Request for Reasonable Accommodation Form. The employee will be informed of information needed for evaluating whether the employee meets the definition of disabled under the ADA and whether the Request for Reasonable Accommodation Form and supporting documentation are sufficiently complete.
- The Departmental ADA Coordinator will accept the completed Request for Reasonable Accommodation Form and documentation. Then the appropriate Departmental ADA Review Team members will convene.

- The Departmental ADA Review Team will assist in determining whether the individual meets the definition of disabled under the Americans with Disabilities Act (ADA).
- Proceed next to I, II, III, or IV, whichever is appropriate.

***I. Employee does not meet the definition of disabled under the ADA (Eligibility Issue):***

- A. The Departmental ADA Review Team will make a decision regarding eligibility within ten working days from the date that all documentation has been received regarding ADA eligibility and/or accommodation requests. If the Departmental ADA Review Team determines that the employee does not meet the definition of disabled under the ADA, the team will notify the Citywide ADA Coordinator to convene the Citywide ADA Review Team. The Citywide ADA Review Team has the authority to overrule the Departmental ADA Review Team.
- a. The Departmental ADA Coordinator will inform its chain of command up to the Department Director of the Departmental and/or Citywide ADA Review Team's decision regarding eligibility.
  - b. The Department Director or designee will notify the employee in writing of the decision within five working days of the receipt of the Departmental or Citywide ADA Review Team's decision on eligibility.
- B. If the employee does not agree with the decision regarding whether the employee meets the definition of disabled under the ADA, he or she may appeal to the Director of Human Resources. (***Reference: Chapter 2, Section II – Appeal Process***).

***II. Employee does meet the definition of disabled under the ADA and the City is able to provide the accommodation in the employee's current position:***

- A. The Department Director or designee will notify the employee in writing of the decision within five working days of the proposed accommodation.
- B. If the employee does not agree with the Department Director's selected accommodation, he or she may appeal to the Director of Human Resources. ***(Reference: Chapter 2, Section III – Appeal Process).***
- C. The department will coordinate all necessary equipment purchases and/or modifications for approved accommodations.

***III. Employee does meet the definition of disabled under the ADA and the City is not able to provide the accommodation in the employee's current position: Note - Time frame for this step in the process must be flexible.***

- A. If reasonable accommodations are not possible for the ADA qualified employee to perform his or her current job, the Citywide ADA Coordinator will investigate reassignment to lateral departmental/citywide vacancies with the assistance of the Departmental ADA Coordinator.
  - a. The employee must meet the minimum qualifications of any vacant departmental/citywide job identified for reassignment.
  - b. The employee must be able to perform essential functions of the job with or without reasonable accommodations.
- B. Should lateral departmental/citywide vacancies not be available, or, if the ADA qualified employee does not meet the minimum qualifications for lateral departmental/citywide vacancies, reassignment to vacant positions in a lower pay grade will then be investigated as an accommodation by the Citywide ADA Coordinator.
- C. The Departmental ADA Review Team may request assistance from one or more members of the Citywide ADA Review Team if unresolved ADA eligibility or

accommodation issues still exist after a thorough review of the case. The joint group will then review and determine final recommendations on medical, legal, and ADA aspects of the particular case.

- D. The Departmental ADA Coordinator will inform his/her appropriate chain of command up to the Department Director regarding:
  - a. Final recommendations identified by the Departmental ADA Review Team or the joint review team.
  - b. The accommodation(s) investigated.
  - c. The cost of modifications or equipment involved.
  - d. The inability to provide a reasonable accommodation.
- E. The Department Director will inform the employee of the accommodation request outcome.
- F. If the employee does not agree with the Department Director's decision regarding the request for reasonable accommodation, he or she may appeal to the Director of Human Resources within five working days of receiving the decision. (*Reference: Chapter 2, Section III – Appeal Process*)
- G. The department will coordinate all necessary equipment purchases and/or modifications for approved accommodations. Paperwork and any orientation meetings for the new supervisor and employee will be coordinated by the Departmental ADA Coordinator.

***IV. Employee does meet the definition of disabled under the ADA and the City is not able to accommodate the employee in the employee's current position or in an alternate position: Note - Time frame for this step in the process must be flexible.***

- A. The Department Director or designee will inform the employee that no accommodation could be found within the City and inform the employee of separation from payroll procedures listed in the HRP & P. (**Reference: Chapter 3, Section V – ADA & Separation from Payroll**)
- B. If the employee does not agree with the Department Director or designee’s decision to medically separate, he or she may appeal to the Civil Service Commission.

### III. Appeal Process

- A. Any affected employee who disagrees with the Department’s decisions regarding ADA applicability or reasonable accommodation may file a request for appeal with the Director of Human Resources. The appeal must be written and received by the Director of Human Resources within ten working days of the employee’s receipt of the Department’s decision. The written appeal must provide the basis for the appeal which includes any new information not provided earlier.
- B. Upon receipt of the appeal and any new information, the Director of Human Resources or his/her designee will conduct a review of the case. As part of the review, the Director of Human Resources or the designee shall consult with the employee and any appropriate Departmental personnel.
- C. Within ten working days of the appeal receipt, the Director of Human Resources or designee will generate a decision and notify the employee and Department Director in writing.
- D. Any employee who disagrees with the decision of the Director of Human Resources may file an appeal with the Equal Employment Opportunity Advisory Review Board



(EEOARB). (The EEOARB was established under the City's Affirmative Action Program in 1988 and is comprised of three members who are appointed by the City Manager.) The appeal must be received by the EEOARB within ten days from the date of receipt of the decision by the Director of Human Resources. Appeals should be submitted to EEOARB, c/o Director of Human Resources, Centennial II, Suite 200, 805 Central Avenue, Cincinnati, Ohio 45202. The appeal should contain a brief account of the issue being contested along with supporting documentation.

Once the notice of appeal is received by the Director of Human Resources, a hearing will be scheduled, with written notice of the date, time, and location to be provided to the employee and the Department Director. The employee and the designated departmental or Citywide ADA Coordinator representative shall each have the opportunity to present no more than two witnesses at the hearing, along with supporting documentation. Upon written request by the employee, witnesses for the employee must be made available to attend the hearing, if scheduled during City work hours. At the hearing, the employee shall present his or her request first and present his or her witnesses, followed by the designated departmental or Citywide ADA Coordinator representative and witnesses for the Department. At the discretion of the party on whose behalf a witness is called, witnesses may be asked questions by that party or may be allowed to make a statement regarding the issue for which he or she was called to testify. Members of the EEOARB may ask questions of any person present at the hearing at any time.

Following the hearing, the EEOARB members shall meet in private to discuss the case and issue a decision, which must be reached by majority vote of the three members. Upon reaching a decision, the EEOARB shall submit a written recommendation to the Director of Human Resources who shall provide the recommendation to the City Manager. The City Manager or his or her designee shall then make the final decision regarding the request, and a copy of that decision shall be provided to the employee and the Department Director by the Director of Human Resources.

## ADA – Coordination with other Laws and Programs

Interpreting how the ADA, Family Medical Leave Act (FMLA), and Workers' Compensation laws affect each other may be one of the greatest challenges. There is a need to identify where each law overlaps the others and which one has precedence. Internal processes and procedures need to be established and followed.

## I. ADA & FMLA (Family Medical Leave Act)

FMLA and ADA both address serious health conditions and disabilities. They differ in purpose and protection.

### **What are the purposes of these laws?**

**ADA:** to provide equal opportunity in the workplace for people with disabilities.

**FMLA:** to promote family stability and economic security, balancing the demands of the work place with the needs of families.

### **Which individuals are covered?**

**ADA:** an applicant/employee who

- has a disability *and*
- is qualified to perform the essential functions of the job.

**FMLA:** an employee who

- has been employed for at least one year *and*
- worked at least 1,250 hours during the preceding twelve months.

### **When does protection apply?**

**ADA:** when an applicant/employee has a disability, defined as

- having a physical or mental impairment that substantially limits a major life activity *or*
- having a record of such an impairment *or*
- being regarded as having such an impairment.

**FMLA:** when an employee gives birth or adopts a child or is unable to work because of his/her own or a family member's serious health condition. The term "Serious Health Condition" is defined as illness, injury, impairment, or physical or mental condition that requires

- inpatient care in a hospital, hospice, or residential care facility *or*
- continuing treatment by a health care provider.

### **What medical leave benefits are available?**

**ADA:** Unpaid leave that does not cause undue hardship may be an appropriate reasonable accommodation. A maximum time period is not specified in the law.

**FMLA:** Maximum twelve weeks leave per twelve month period for an employee with a serious health condition that makes the person unable to perform the job duties; an employee who qualifies for leave cannot be denied such leave.

### **What family leave benefits are available?**

**ADA:** None. The ADA prohibits discrimination against an employee who has a relationship with a person with a disability, but does not require an employer to provide accommodation (e.g., leave) for the employee simply because of that relationship.

**FMLA:** Maximum of twelve weeks leave per twelve month period for an employee for the birth or adoption of a child or to care for an immediate family member with a serious health condition; an employee who qualifies for leave cannot be denied such leave.

### **What are the limits on employers obligations?**

**ADA:** Undue hardship is defined as a reasonable accommodation that would be too expensive or too disruptive to the organization's operation. An employer may take into consideration any unpaid leave already taken under the FMLA in determining hardship under the ADA. A maximum time period is not specified in the law.

**FMLA:** Maximum of twelve weeks leave per twelve month period. There is no undue hardship limitation.

### **What are the reinstatement requirements?**

**ADA:** Entitled to position held before leave (assuming employee is still qualified). If the job is not vacant because holding it open would have been an undue hardship or if the person can no longer perform the essential functions of the job, the employer must consider reassignment to another position, including a lower level position.

**FMLA:** Entitled to position held before leave OR to an equivalent or comparable position with equivalent benefits and pay. An employer does not have to show undue hardship in order to transfer an employee to an equivalent position.

### **What if the laws conflict?**

The FMLA does not modify or affect any law prohibiting discrimination on the basis of disability, including the ADA. Thus, a qualified person with a disability under the ADA may also be eligible for leave under the FMLA. When this is the case, the employer must analyze the situation under both statutes and follow the one that provides the greatest benefit to the employee.

### **Who is responsible for enforcement?**

**ADA:** Equal Employment Opportunity Commission

**FMLA:** Department of Labor

Questions regarding the ADA should be directed to the Citywide ADA Coordinator – Human Resources Department - Employee Relations/ADA Section at 352-2400.

Questions regarding the FMLA should be directed to the Human Resources Department – Labor Relations Section at 352-2400.

## II. ADA & Workers' Compensation

Workers' compensation laws provide wages and medical care for injured employees. The right to benefits depends only on whether the injury was work-related, regardless of negligence or fault.

ADA and Workers' Compensation information to consider:

ADA	Workers' Compensation
Federal Law	State Law
Prohibits employers from conducting preliminary medical examinations of job applicants or asking about the existence, nature, or severity of a disability. However, employers may ask applicants (1) whether they are able to perform a job-related function and (2) how they would do so, with or without a reasonable accommodation.	ADA regulations prohibit employers from asking about an applicant's workers' compensation history <i>before</i> making a job offer.
A person with a disability who can perform the essential functions if accommodated will be a qualified individual with a disability who is entitled to ADA protection.	Neither receiving workers' compensation benefits nor being classified as permanently disabled for workers' compensation purposes will automatically establish coverage under the ADA.
Accommodation into a position in which the salary range is equal to or less than the position currently held. Cannot be a promotion.	If the employee has an injury on the job, then Workers' Compensation will offer wage loss compensation for up to 2/3 the difference of pay received for up to 200 weeks.

Questions regarding Workers' Compensation should be directed to the Risk Management Office at 352-2418.

For more information:

<http://www.eeoc.gov>

EEOC Notice Number 915.002 Subject: EEOC Enforcement Guidance:  
Workers' Compensation and the ADA.



### III. ADA & Return to Work Program

The Return to Work Program (RTW) was jointly developed by management and unions to assist City employees with injuries, illnesses, or disabilities to continue employment while reducing unnecessary lost time from work. This program can benefit any employee having a workers' compensation claim or non-work related injury or disability.

Whenever possible, the RTW Case Managers will assist employees with disabilities in:

- getting the right treatment at the right time
- explaining employee rights and responsibilities
- understanding disabled workers' protection under the Americans with Disabilities Act
- accommodating work restrictions through modified or alternate work, as well as adjustments to the work-site, equipment, or job processes
- reducing the length of absence and minimizing income loss

Questions regarding the City's Return to Work program may be directed to Risk Management at 352-2418.

## IV. ADA & Disability Retirement

Whenever an employee applies for Disability Retirement, that employee will be referred to the Return to Work Program and offered all protection under the Americans with Disabilities Act.

***Reference Chapter 3, Section V – ADA & Separation from Payroll***

## V. ADA & Separation from Payroll

An individual with a serious health condition that might otherwise separate the employee from payroll for medical reasons may qualify for a reasonable accommodation under the ADA. The individual would be required to request a reasonable accommodation upon receiving a notification letter.

### **Separation For Medical Reasons:**

#### **1. An employee may be separated for medical reasons under any of the following three circumstances:**

- A. If the treating physician states that the employee will not be able to return to work and perform the full range of duties due to medical reasons.
- B. If the treating physician does not know and cannot give any estimate as to when the employee may be able to perform the job again.
- C. If the City Physician does not feel that the employee will be able to return to work and perform the full range of duties within the foreseeable future.

#### **2. Notification Procedure:**

- A. The employee must be notified in writing by registered mail, return receipt requested, that effective on a particular date they will be separated from the payroll for medical reasons. The letter must also inform him/her of his/her reinstatement rights, and the ability to apply for disability retirement or accommodation under the ADA, as outlined on the next page.

- B. Reinstatement Rights:** Non-uniformed employees are entitled (under state civil service law) to reinstatement to their former classification within three (3) years of their date of separation if the City Physician verifies that they are once again medically able to perform the full range of duties.
- C. Disability Retirement:** The letter must state that the employee contact the City Retirement Office if he/she has enough years of retirement service credit to qualify for disability retirement (a minimum of five (5) years service for non job related disability). If after talking with the Retirement Office he/she decides to pursue this possibility, he/she must be advised to notify his/her employing agency so that the agency can delay the medical separation until a decision is made by the Retirement Board. The Retirement Office will also notify the employing agency that the person has applied for disability retirement.

Employees in the State of Ohio Public Employees Retirement System must be instructed to contact the PERS Office in Columbus. Uniformed employees must contact designated individuals within their own agency rather than the City Retirement Office.

- D. Americans With Disabilities Act (ADA):** The letter must include information that the employee may contact the Citywide or Departmental ADA Coordinator regarding the possibility of reasonable accommodation under the provisions of the ADA. The employee should be informed of this option as early in the process of medical separation as possible. Timely notification will ensure that adequate time is available to find a suitable accommodation. If the employee chooses to pursue this ADA accommodation, no action should be taken to medically separate the employee until the ADA review has been completed.

Note: If the application for disability retirement is not approved or the employee cannot be accommodated under the provisions of the ADA, the agency may proceed to medically separate the employee for medical reasons. The employee will retain rights to appeal the medical separation to the Civil Service Commission. Please see the Commission rules regarding this issue.

No action should be taken to separate the employee until the issues of disability retirement and ADA accommodation have been resolved.

### **3. Separation from Payroll:**

Correspondence from the agency head to the employee notifying the employee of separation must be prepared. This correspondence must include an approval line for the Director of Human Resource's signature. Once approved by the Director of Human Resources the correspondence must be sent via registered mail to the employee. Separation from the payroll will be initiated by the payroll clerk in CHRIS.

## VI. ADA & Parking Accommodations for Applicants & Employees with Disabilities

### **POLICY**

The City of Cincinnati embraces the concept that accessible parking based on individual need is one of the rights of ADA qualified applicants and employees. Furthermore, the City of Cincinnati will make reasonable efforts to accommodate applicants or employees with short-term mobility issues.

Our goal is that neither applicants nor employees be precluded from applying, interviewing, testing, attending meetings, or attending work due to mobility limitations and lack of accessible parking.

For ADA qualified applicants, the Citywide ADA Coordinator or the Testing Analyst will be responsible for providing accessible parking upon request.

For ADA qualified employees, the Departmental Training Registrar will be responsible for contacting the registrar in Human Resources or the Office of Environmental Management regarding the need for a parking accommodation for an employee attending a training session for the respective department.

For ADA qualified employees, the Departmental ADA Coordinator will process Parking Accommodation requests as he/she would any other ADA accommodation request. The employee is responsible for making these needs known to his/her supervisor and to the Departmental ADA Coordinator. The employing department is responsible for arranging appropriate accessible parking and shall pay any additional cost required to provide such parking for that work/testing/meeting location.

Example:

The employee's work location is City Hall and the general employee parking location is Towne Center for \$20.00 per month. Accessible parking is more costly. The employee would pay \$20.00 and the department would pay the remainder.

## **INFORMATION**

Accessible parking spaces for cars should have at least a 60 inch wide access aisle located adjacent to the designated parking space. The access aisle should be just wide enough to permit a person to enter or exit a car. These parking spaces are identified with a sign and located on ground level. Van accessible parking spaces should have the same designation as accessible parking spaces for cars except for three features needed for vans:

- A wider access aisle (96") to accommodate a wheelchair lift;
- Vertical clearance to accommodate van height at the van parking space, the adjacent access aisle, and on the vehicular route to and from the van accessible space; and
- An additional sign that identifies the parking spaces as "van accessible".

The City of Cincinnati has the following disability parking spaces in the downtown area:

Renaissance Lot has 3 parking spaces and 3 temporary parking spaces.

Uptown Towers has 9 parking spaces.

Towne Center has 11 parking spaces.

City Hall Courtyard has 3 parking spaces.

Some Departments may have additional spaces available in the Renaissance Lot that may be used as an accommodation for an employee of that department.



## VII. ADA & Training Accommodations

To request reasonable accommodations please contact your Departmental Training Registrar for HRDA courses. HRDA courses conducted in City Hall, Room 312, include assistive listening devices. Please contact the Office of Environmental Management/Employee Safety Division – Training Section for Employee Safety courses. Questions on reasonable accommodation may be directed to the Citywide ADA Coordinator at 352-2400. Assistive listening devices are available in the following City of Cincinnati facilities:

- City Hall – Council Chambers – Room 300
- City Hall – Room 312
- City Hall – Dennis Rogers Hearing Room – Room 307
- Health Department Auditorium - Burnet Avenue
- ✓ MSD – Division of Industrial Waste (DIW) - Woodard Avenue

### **Contact Person:**

- City Hall – Clerk of Council at 352-3246
- Health Department – Steve Toon – Municipal Facility Management at 357-7465
- ✓ MSD – Karen L. Jones – DIW at 557-7046

Upon request written training materials will be provided in alternate format.

## Resources

### **ADA-Ohio Information Project**

Voice:(800) ADA-OHIO

TTY: (800) ADA-ADA1

E-Mail: [ada-ohio@ix.netcom.com](mailto:ada-ohio@ix.netcom.com)

### **Department of Justice**

Voice:(800) 514-0301

TTY: (800) 514-0383

Internet: <http://www.usdoj.gov/crt/ada/adahom1.htm>

### **Department of Labor**

Voice: (202) 693-6000

TTY: (877) 889-5627

Internet: <http://www2.dol.gov>

## **Equal Employment Opportunity Commission**

Voice:(800) 669-4000

TTY: (800) 669-6820

Internet: <http://eeoc.gov>

## **Inclusion Network**

Voice:(513) 345-1330

TTY: (513) 345-1336

Internet: <http://inclusion.org>

## **Job Accommodation Network**

Voice:(800) 526-7234

TTY: (800) 526-7234

Internet: <http://janweb.icdi.wvu.edu>

## **President's Committee on Employment of People with Disabilities**

Voice:(202)376-6200

TTY: (202) 376-6205

Internet: <http://www.dol.gov/odep/>

**U.S. Federal Programs, Services & Resources for Americans with Disabilities and Their Families**

Internet: <http://www.disability.gov>

**Clovernook Center for the Blind**

7000 Hamilton Avenue

Phone: (513) 522-3860

**Jewish Vocational Services**

4300 Rossplain Rd.

Phone: (513) 985-0515

**Ohio Valley Goodwill Industries**

10600 Springfield Pike

Phone: (513) 771-4800

**Radio Reading Services of Greater Cincinnati**

2045 Gilbert Ave.

Phone: (513) 221-8558

**Hearing, Speech & Deaf Center of Greater Cincinnati**

2825 Burnet Avenue

Phone: (513) 221-0527

**Ohio Relay Service**

Phone: (800) 758-0750

**Rehabilitation Services Commission, Ohio**

400 East Campus View Blvd

8176 Beechmont Avenue

Columbus, Ohio 43235

Cincinnati, Ohio

Phone: (614) 438-1210 or (800) 282-4536 or (513) 474-4140

**Bureau of Services for the Visually Impaired**

617 Vine Street, Suite 905

Phone: (513) 852-3223