



FEDERAL MARITIME COMMISSION
REASONABLE ACCOMMODATION

COMMISSION ORDER 58

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Section 1. Purpose and Authorities

This Order implements the provisions of Executive Order 13164 and pertinent Equal Employment Opportunity Commission (EEOC) policy guidelines establishing procedures to facilitate the provision of reasonable accommodation. The Executive Order implemented the requirement of the Rehabilitation Act of 1973 that agencies provide reasonable accommodation to qualified employees and applicants with disabilities.

(a) The Federal Maritime Commission (Commission) shall provide reasonable accommodation to qualified employees and applicants with disabilities, provided that these actions do not cause undue hardship on the Commission. The Commission is committed to providing reasonable accommodation to both its employees and applicants for employment in order to ensure that individuals with disabilities have full access to equal employment opportunity at the Commission. The Commission will make every effort to provide reasonable accommodation:

(1) When an applicant with a disability needs an accommodation in order to be considered for a job;

(2) When an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and

(3) When an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

(b) The Commission will process requests for reasonable accommodation and, if appropriate, will provide reasonable accommodation in a prompt, fair and efficient manner. In addition, the Director of the Office of Equal Employment Opportunity (OEEEO) will serve as the Commission's Reasonable Accommodation Coordinator (RAC), and has direct administrative responsibility for the program. The RAC will be responsible for determining whether an applicant or employee is a qualified individual with a disability. Decisions on whether to grant requests on reasonable accommodation requests will be made by the immediate supervisor for employees, and the Director of the Office of Human Resources (OHR) for job applicants. Employees may refer to the *EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (EEOC Enforcement Guidance)* (available on EEOC's Internet site, www.eeoc.gov) for additional information on the rights and responsibilities of applicants and employees requesting reasonable accommodation, and the responsibilities of Commission personnel in charge of responding to those requests.

Section 2. Definitions

(a) **Reasonable Accommodation:** Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation:

(1) Modifications or adjustments to the job applicant process that will enable a qualified applicant with a disability to be considered for the position the applicant desires; or

(2) Modifications or adjustments to the work environment, and/or to the manner or circumstances under which the position held or desired is customarily performed, that will enable a qualified individual with a disability to perform the essential functions of that position; or

(3) Modifications or adjustments that enable a Commission employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated Commission employees without disabilities.

(b) **Qualified Individual with a Disability:** An individual with a disability is qualified if (1) he/she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) he/she can perform the essential functions of the position, with or without reasonable accommodation.

(c) **Essential Functions:** Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing them. A function may be categorized as essential if, among other things: the position exists specifically to perform that function; there are a limited number of Commission employees who can perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position will be done on a case-by-case basis so each function will reflect the specific job as actually performed, and not simply reflect components of a general position description.

(d) **Reassignment:** Reassignment is a form of reasonable accommodation that, absent undue hardship on the Commission, is provided to employees (not applicants) who, because of a disability, are no longer able to perform the essential function(s) of their jobs, with or without reasonable accommodation. Reassignments are made only to vacant positions for which employees are qualified and that have no greater promotion potential than the positions to which currently assigned.

(e) **Undue Hardship:** If a specific type of reasonable accommodation causes significant difficulty or financial expense to the Commission or is unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the Commission, then the Commission is not obligated to provide the particular accommodation. Determination of undue hardship will be made on a case-by-case basis, considering factors that include the nature and cost of the accommodation and the impact of the accommodation on the operations of the Commission.

Section 3. Procedures

(a) The reasonable accommodation process begins when an individual with a disability makes an oral or written request to any agency official, stating the need for an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. The agency official receiving the request will forward it to the employee's immediate supervisor and the immediate supervisor will notify the RAC that a request has been made. The RAC will ensure that an expeditious decision is made whether the employee or applicant is a qualified individual with a disability. See *EEOC Enforcement Guidance* for reasonable accommodation resources.

(1) A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. Any Commission employee or applicant may consult the RAC for further information or assistance in connection with requesting or processing a request for reasonable accommodation. A request is made by:

(i) An employee orally or in writing to any agency official or to the RAC.

(ii) An applicant orally or in writing to any agency official, to any OHR staff member, or to any selecting official with whom the applicant has contact in connection with the application process.

(iii) A family member, health professional, or other representative on behalf of the employee or applicant. The request should be submitted to any agency official.

(2) The immediate supervisor, the RAC, or the OHR will explain to the employee or applicant the process as soon as possible and, barring extenuating circumstances, this will occur no later than five days following receipt of the request.

(3) To enable the Commission to keep accurate records regarding requests for accommodation, employees seeking a reasonable accommodation must follow up an oral request by completing Form FMC-195, *Confirmation of Request for Reasonable Accommodation* (available on FMC Intranet at home.fmc.gov). For applicants seeking a reasonable accommodation, an OHR staff member or other management official will provide the individual with the *Confirmation of Request* form to be completed and returned.

(4) Although the written confirmation should be made as soon as possible following the request, it is not a requirement for the reasonable accommodation process to begin. The Commission will begin processing a request as soon as it is made, whether or not written confirmation has been provided. A written confirmation is not required every time an individual needs a reasonable accommodation on a repeated basis, *e.g.*, obtaining assistance of sign language interpreters or readers. In these circumstances, the written form is required only for the initial request; however, advance notice must be given each time the accommodation is needed.

(b) Following a request properly made, the requesting individual, the immediate supervisor, and the RAC will discuss the request, the process for determining whether an accommodation will be provided, and potential accommodations.

(1) The immediate supervisor and the RAC will have the principal responsibility for identifying possible accommodations and will take a proactive approach in seeking out and considering possible accommodations, which includes consulting appropriate resources for assistance. The employee requesting the accommodation should also participate, to the extent it is possible, in helping to identify an effective accommodation.

(2) When a request for accommodation is made by a third party, the immediate supervisor, the RAC, or the OHR will, when possible, confer with the applicant or employee with a disability to determine that he/she wants a reasonable accommodation. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the Commission will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.

(3) Ongoing communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation which should be provided are clear, extensive discussions are not necessary. However, even when extensive discussion is not necessary, the immediate supervisor, the RAC, and the requesting individual will always ensure that there is a full exchange and understanding of relevant information.

(4) The immediate supervisor or the OHR who receives information in connection with a request for reasonable accommodation may share information connected with that request with other Commission officials only when the information is necessary to make a determination on a reasonable accommodation request. For example, the Office of Information Technology (OIT) will typically be consulted in connection with requests for adaptive equipment for computers. However, OIT shall not be informed about the medical condition of the person seeking the accommodation. It only needs to know his or her functional limitations insofar as these limitations affect technology needs.

(5) There are specific considerations in the interactive process when responding to a specific request for reassignment:

(i) Reassignment will be considered only if no other accommodations are available to enable the individual to perform his or her current job.

(ii) In considering whether there are positions available for reassignment, the RAC will work with the Managing Director's Office, the OHR and the individual requesting the accommodation to identify: (1) all vacant positions within the Commission for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which the OHR has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The Commission will first focus on positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there are no vacant equivalent positions to which the individual may be reassigned, the Commission will consider vacant lower level positions for which the individual is qualified.

Section 4. Medical Information

The Commission is entitled to verify that an employee or applicant requesting a reasonable accommodation has a covered disability. In cases when the disability and need for accommodation are obvious or otherwise already known to the immediate supervisor, the RAC or the OHR, the Commission will not seek any further medical information. Otherwise, when it is necessary to substantiate a request, the Commission may request reasonable documentation regarding the disability and associated functional limitations.

(a) The RAC or the Managing Director will make a determination as to whether medical documentation is necessary. If it is, he/she will request the necessary medical information. If it is unnecessary, the request for accommodation will be processed.

(b) When requesting medical information to substantiate that the individual has a disability included in the Rehabilitation Act and needs the reasonable accommodation requested, only the necessary medical information will be requested. Unrelated documentation is unnecessary. The Commission's requests for medical information will follow the requirements set forth in the *EEOC Enforcement Guidance*.

(1) The Managing Director or the RAC shall request information or documentation about the disability and/or its functional limitations from the individual, and/or request that the individual obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. All requests for information will describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

(2) The Commission may request medical information or documentation regarding:

(i) the nature, severity, and duration of the individual's impairment;

(ii) the activity or activities that the impairment limits;

(iii) the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or

(iv) why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

(3) The Managing Director and the RAC shall evaluate the medical documentation in consultation with a physician chosen by the Commission, if necessary, at the agency's expense.

(4) The Commission may request that an individual be examined by its own physician only if the individual has provided insufficient documentation from his/her own health care provider or other appropriate professional to substantiate the existence of a disability and the need for reasonable accommodation.

(5) If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the Commission to determine whether an accommodation is appropriate, the RAC will request additional information.

(i) A specific explanation will be provided to the individual seeking the accommodation clarifying why the information is insufficient and what additional information is necessary for the Commission to make a determination.

(ii) The individual will ask the health care provider or other appropriate professional to provide the missing information or will sign a limited release for the Commission to obtain necessary information from health care professionals or the individual's personal physician.

(c) The Managing Director and the RAC may request that the individual be examined by a physician chosen by the Commission, if necessary, to make a determination, at the agency's expense.

(d) The RAC will notify the immediate supervisor as to whether the documentation demonstrates that a reasonable accommodation is appropriate. The RAC will provide, if necessary, any additional relevant information about the individual's functional limitations. In cases when the individual requesting the accommodation supplies medical information directly to the immediate supervisor, the immediate supervisor will consider such documentation and the need for additional information in concert with the Managing Director and the RAC. The failure to provide requested or appropriate documentation, or the failure to cooperate in the Commission's efforts to obtain such documentation, may result in a denial of the reasonable accommodation.

(e) Medical and related information obtained in connection with the reasonable accommodation process will be kept in a confidential file and will not be placed in an individual's Official Personnel Folder. All information obtained will be treated in a confidential manner and will be available only to those individuals identified below.

(1) The RAC will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records. All records will be maintained in accordance with the Privacy Act.

(2) This information may be disclosed only to the following:

(i) Managers who need to know (including the immediate supervisor) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information will only be disclosed if strictly necessary;

(ii) First aid and safety personnel may be informed, when appropriate, should the disability ever require emergency treatment;

(iii) Government officials may be given necessary information in order to investigate the Commission's compliance with the Rehabilitation Act; and

(iv) Workers' compensation offices or insurance carriers.

(f) Whenever medical information is disclosed, the individual disclosing the information will advise the recipients of the confidentiality requirements.

Section 5. Time Frames for Processing

The Commission will process requests for reasonable accommodation and provide any necessary accommodations in an expeditious manner. However, the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information.

(a) If a request for an accommodation can be processed by the requesting employee's immediate supervisor or the RAC without supporting medical information, and no extenuating circumstances apply, the request shall be processed. The accommodation, if granted, shall be provided to the extent administratively feasible, no more than 20 business days from the date the request was received. Failure to meet this time frame solely because an immediate supervisor or the RAC delayed processing the request is not an extenuating circumstance. (See Sections 5(c) and 5(d) for information on "extenuating circumstances.")

(1) If the immediate supervisor or Managing Director requests that the RAC obtain medical information, the 20-day period is frozen. If the RAC determines that medical information is not needed, the 20-day time period resumes as soon as the RAC notifies the immediate supervisor that he/she can continue processing the request.

(2) If the immediate supervisor or the Managing Director determines that medical documentation is needed, the decision shall be made and the accommodation, if granted, will be provided within 25 business days from the date that documentation is received.

(b) **Expedited processing:** A request for reasonable accommodation may require an expedited review and decision in less than the 20 or 25 business days prescribed in Sections 5(a)(1) and 5(a)(2). These are some examples when an expedited process shall occur when a reasonable accommodation is needed; other situations may also arise in which expedited processing is necessary:

(1) To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job.

(2) To enable an employee to attend a meeting scheduled to occur shortly. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in a short time.

(c) Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances exist, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the Commission's policy that extensions based on extenuating circumstances should be limited to situations where they are strictly necessary. All Commission staff are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:

(1) There is an outstanding initial or follow-up request for medical information; or the RAC or the Managing Director is evaluating medical information which has been provided;

(2) The purchase of assistive devices or other accommodative equipment may take longer than 20 or 25 business days because of contract or procurement requirements;

(3) Assistive devices or other accommodative equipment is out of stock, the vendor typically used by the Commission for these goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available; and

(4) The employee with a disability needs to work with equipment on a trial basis to ensure that it is effective before the Commission buys the equipment.

(d) Extenuating circumstances cover limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, the Commission may not delay processing or providing an accommodation because a particular staff member is unavailable. When extenuating circumstances are present as described in Section 5(c), the immediate supervisor must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes will be communicated promptly to the individual.

(1) If there is a delay in providing an accommodation, the immediate supervisor will determine whether temporary measures may be taken to assist the employee. This might include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the immediate supervisor or the RAC may provide measures that are not reasonable accommodations within the meaning of the law (*e.g.*, temporary removal of an essential function) if doing so does not interfere with the operations of the Commission, and the employee is informed that they are being provided only on a temporary, interim basis. For example, there may be a delay in receiving adaptive equipment for an employee with a vision impairment. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

(2) If a delay is attributable to the need to obtain or evaluate medical documentation and the Commission has not yet determined that the individual is entitled to an accommodation, the Commission may also provide an accommodation on a temporary basis. In such a case, the immediate supervisor will notify the individual in writing that the accommodation is being provided on a temporary basis, pending a decision on the accommodation request.

(e) Immediate supervisors who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

Section 6. Granting a Reasonable Accommodation

Following a determination by the Commission that a reasonable accommodation will be provided, the decision will immediately be communicated to the individual either verbally or by written notice. If the accommodation cannot be provided immediately, the individual will be advised of the projected time frame for providing the accommodation.

Section 7. Denial of Reasonable Accommodation

When a determination is made to deny a request for reasonable accommodation, the immediate supervisor will provide a completed Form FMC-196, *Denial of Reasonable Accommodation Request* (available on FMC Intranet), to the individual who requested the accommodation. The explanation for the denial will be written in plain language, clearly stating the specific reasons for the denial. Where a specific requested accommodation is denied, but a different accommodation is offered in its place which was not agreed to during the review process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the immediate supervisor or the OHR believes that the chosen accommodation will be effective. Reasons for the denial of a request for reasonable accommodation will include the following information:

(a) A statement that the requested accommodation would not be effective and why;

(b) The reason(s) why providing the requested accommodation would result in undue hardship for the Commission. When evaluating budgetary or administrative concerns to determine if undue hardship exists, the Commission will follow the standards enunciated in the regulations and in the *EEOC Enforcement Guidance*;

(c) The reason(s) why medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation;

(d) The fact that the requested accommodation would require the removal of an essential function; or

(e) The requested accommodation would require the lowering of a performance or production standard.

The written notice of denial will include information about the individual's right to file an EEO complaint, to invoke other statutory processes, as appropriate, as well as the availability of an Alternative Dispute Resolution (ADR) process.

Section 8. Requests for Reconsideration

An individual may request prompt reconsideration of a denial of reasonable accommodation. The individual may use the ADR process to obtain prompt reconsideration of a denial of reasonable accommodation. An individual with a disability also has the right to file a complaint under EEO, the Merit Systems Protection Board (MSPB), or other statutory procedures, if his/her request for reasonable accommodation is denied.

(a) If an individual wishes reconsideration, he/she should first ask the denying official to reconsider the decision. The individual may present additional information in support of his/her request. The immediate supervisor will respond to the request for reconsideration within ten business days. If the denying official does not reverse the decision, the individual may request that the Managing Director do so. The Managing Director will respond to this request within ten business days.

(b) Pursuing ADR procedures, including seeking reconsideration from the immediate supervisor or the Managing Director, will not affect the time limits for initiating statutory claims. An individual's participation in any or all reconsideration processes does not satisfy the requirements for bringing a claim under EEO, MSPB or other statutory procedures.

Section 9. Tracking and Reporting

(a) The immediate supervisor will complete Form FMC-197, *Reasonable Accommodation Information Reporting Form* (available on FMC Intranet), and submit it to the RAC within ten business days of the decision. The immediate supervisor will attach copies of all information, including medical information received as part of processing the request.

(b) The RAC will maintain these records for the remainder of the employee's tenure with the Commission or three years, whichever is longer. Cumulative tracking information and records will be retained for three years.

Section 10. Statutory Claims

This policy is in addition to statutory protection for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory claims, including time frames for filing such claims, remain unchanged.

(a) An individual who chooses to pursue statutory remedies for denial of reasonable accommodation must:

(1) For an EEO complaint: contact an EEO counselor in the OEEO within 45 days from the date of receipt of the written notice of denial, or

(2) Initiate an appeal to the MSPB within 30 days of an appealable adverse action as defined in 5 CFR § 1201.3.

(b) If a member of the OEEO staff has had any involvement in the processing of the request for reasonable accommodation, that staff member will recuse him or herself from any involvement in the processing of an EEO counseling contact or complaint in connection with that request.

Section 11. Applicability of Other Laws and Directives

The provisions of this issuance are subject to modifications by changes in pertinent statutes, regulations, and other controlling issuances by authorities outside the Commission. In such cases, the applicable provisions of this Order shall be considered automatically amended or superseded, effective on the date specified in such controlling issuances.

Section 10. No Right or Benefit

This Commission Order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, the Commission, its employees or any person.

Richard A. Lidinsky, Jr.
Chairman