

## DEPARTMENT OF NATURAL RESOURCES

**HUMAN RESOURCES POLICY NO.: 32**

**EFFECTIVE DATE: MAY 17, 2019**

**SUBJECT: AMERICANS WITH DISABILITIES ACT**

**AUTHORIZATION: THOMAS F. HARRIS, SECRETARY**

### **I. POLICY**

It shall be the policy of the Department of Natural Resources (DNR) to comply with the requirements of the Americans with Disabilities Act (ADA) and its Amending Act of 2008 (ADAAA).

### **II. PURPOSE**

DNR prohibits discrimination against qualified individuals with disabilities in all employment practices, including hiring, advancement, evaluations, discharge, compensation, fringe benefits, job training, and other terms, conditions and privileges of employment. Moreover, DNR will provide reasonable accommodation(s) to qualified individuals, upon request, to ensure equal opportunities to the aforementioned. Applicants and employees should know, however, that the ADA does not interfere with DNR's right nor obligation to hire or promote the best qualified individuals.

### **III. APPLICABILITY**

This policy applies to all DNR employees, regardless of status or position, as well as applicants for employment.

### **IV. DEFINITIONS**

- A. Disability** – Under the ADA, an individual with a disability is a person 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 ***impairment*** with an actual or expected duration lasting longer than six months.
- B. Impairment** – Any physiological, mental, or psychological disorder or condition, including those that are episodic or in remission, that ***substantially limits major life activities*** when active.

- C. **Substantially Limits** – An *impairment* that prevents the ability of an individual to perform one or more *major life activities* as compared to most people in the general population when taking into consideration factors such as the nature, severity, duration, and long-term impact of the condition. Such consideration must be regardless of any mitigating measures such as modifications, auxiliary aids or medication used to lessen the effects of the condition (except for use of ordinary eyeglasses or contact lenses).
- D. **Major Life Activities** -
1. Generally, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others and working; and,
  2. The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

NOTE: For purposes of working as a major life activity, an individual must be unable to perform either a class of jobs or a broad range of jobs in various classes as compared to a person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working and thus, the ADA would be inapplicable.

- E. **Essential Functions** – The fundamental and primary job duties of a position. Considerations in determining whether a function is essential include such factors as the written job description; whether the reason the position exists is to perform that function; the degree of expertise or skill required to perform the function; the time spent performing the function; and the consequence of not requiring that an employee perform the function.
- F. **Qualified Individual** - An individual with a *disability* who can perform the *essential functions* of the position he/she holds or for which he/she is applying, with or without *reasonable accommodations*.
- G. **Reasonable Accommodations** – Modification or adjustment to a position or the work environment that will enable a *qualified individual* with a *disability* to participate in the application/interview process or to perform the *essential functions* without placing an *undue hardship* on DNR. Reasonable accommodations also include adjustments to assure that a *qualified individual* with a *disability* has equal opportunity to the benefits and privileges of employment as those employees without disabilities.

- H. **Undue Hardship** - An accommodation that would be unduly costly, extensive, substantial or disruptive, in light of factors such as the size of the Department, the resources available, and the nature of the operations.
- I. **Direct Threat** - A significant risk of substantial harm to the health or safety of an individual with a disability or others that cannot be eliminated or reduced by reasonable accommodation.
- J. **ADA Coordinator** – The Human Resources Director, who is responsible for facilitating the interactive, evaluation process relative to any requests for accommodation.

## V. **PROCEDURE FOR REQUESTING AN ACCOMMODATION**

It is the responsibility of the applicant/employee to request an accommodation(s) when needed. In so doing, the applicant/employee is required to:

- Submit the accommodation request in writing to the appropriate entity/person as specified below;
- Provide the ADA Coordinator, if instructed, with medical documentation from their treating health care provider describing the nature of the disability, functional limitations thereof, and how the effects of the disability may be accommodated; and,
- Timely and cooperatively participate in the interactive process as further described therein.

### A. **Accommodations for Application/Testing Process**

Applicants requesting an accommodation relative to the application and/or testing procedure must contact the Department of State Civil Service at (225) 925-1911 or refer to the following for more information: <https://jobs.civilservice.louisiana.gov/TestInformation/Accommodations.aspx>.

### B. **Accommodations for Interview Process**

If contacted for an interview, an applicant must notify the hiring manager at that time if he/she needs an accommodation in order to participate in the interview and, if so, the nature of the accommodation requested.

NOTE: As part of the interview process, regardless of whether an applicant has requested an accommodation, the hiring manager is prohibited from inquiring about the existence and/or extent of an apparent disability. Questions must be phrased in terms of the applicant's ability to perform job-related functions, such as those identified in the position description (SF-3) and

Physical Requirements Inventory for the vacancy. It is best practice to utilize behavioral interview questions whereby the applicant is asked to describe past performance/behavior in order to determine whether he/she is suitable for the position.

**C. Accommodations for Performance of Essential Functions**

An applicant and/or employee seeking an accommodation related to the performance of essential functions must do so in writing to the immediate supervisor. Such requests must include the duties the individual is unable to perform and the accommodation requested. Such accommodations may include job restructuring, modifying work schedules, acquiring or modifying equipment, etc.

**D. Accommodations Related to the Benefits/Opportunities of Employment**

An employee seeking an accommodation related to the benefits and/or opportunities associated with employment must do so in writing to the immediate supervisor. Such requests should include the benefits and/or opportunities of employment in which the individual is unable to participate and the accommodation requested. Such accommodations may include restructuring work areas, lunchrooms, break rooms, training rooms and restrooms to make them available and accessible to all employees. Note that accommodations related to the accessibility of a State building require approval and coordination through the Office of State Buildings (OSB).

**VI. INTERACTIVE PROCESS FOR EVALUATION OF ACCOMMODATION REQUESTS**

Upon receipt of an accommodation request, the hiring manager and/or immediate supervisor must immediately notify the ADA Coordinator. The ADA Coordinator shall:

- Engage in an interactive process involving consultation with the applicant/employee, the treating physician, and/or DNR management (i.e., supervisors, managers, division directors), respectively;
- Treat all medical documentation obtained as part of this process as confidential records subject to disclosure only as allowed by law or with the applicant's/employee's permission;
- Confer with the Louisiana Rehabilitation Services, as deemed appropriate, to help evaluate availability of accommodation options and any resources related thereto;
- Recommend to, and secure approval from, the Appointing Authority as to the final determination of the accommodation request; and,
- Notify all involved parties accordingly.

Applicants/employees are encouraged to suggest accommodations based upon their own life and/or work experiences. Such preferred accommodations will be duly considered. Nonetheless, DNR reserves the right to choose from among equally effective accommodations and may choose one that is less expensive and/or easier to provide. All accommodation requests will be evaluated and addressed on a case-by-case basis.

## **VII. OTHER PROTECTIONS**

In addition to not discriminating against qualified individuals with disabilities, DNR will not exclude nor deny equal jobs or benefits to a qualified individual because of that individual's relationship or association with a disabled individual. For example, DNR will not deny employment to an applicant who is the spouse of a disabled individual based upon the belief that the applicant will use excessive leave to care for his/her disabled spouse.

DNR will not discriminate against an individual because he/she has opposed any act or practice made unlawful by the ADA or because that individual filed a charge, testified, assisted or otherwise participated in an investigation, proceeding or hearing to enforce any provision of the ADA. Further, no individual will be coerced, intimidated, threatened, harassed or interfered with because that individual aided or encouraged another individual in the exercise of any right granted or protected by the ADA.

## **VIII. EXCLUSIONS FROM ADA PROTECTION**

- A. Alcoholism/Drug Addiction:** Alcoholism and drug addiction are classified as disabilities under the ADA. The protection and accommodation requirements of the ADA, however, do not apply to current abusers of drugs or alcohol. For example, an employee's work schedule will be modified to allow him/her to attend treatment or AA meetings, but that employee will be disciplined, like any other employee, for drinking on the job, possessing illegal drugs, being impaired on duty, failing to report for duty on time, etc.
- B. Disability Poses Direct Threat/Significant Risk:** The protection of the ADA does not apply when an individual poses a "direct threat" to the safety of himself or others. Such a determination is based upon an individualized assessment of the individual's present ability to safely perform the essential functions of the job and reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence. The factors to be considered include: the duration of the risk; the nature and severity of the potential harm; the likelihood that the harm will occur; and the imminence of the potential harm.

**C. Conditions Not Considered Disabilities:** Applicants/employees must recognize that not all medical ailments or conditions qualify as "disabilities" under the ADA. Examples of non-qualifying conditions include but are not limited to: homosexuality; transvestism; exhibitionism; voyeurism; gender identity disorders not resulting from physical impairments; compulsive gambling; kleptomania; pyromania; or temporary impairments which heal within normal timeframes, such as sprains and broken limbs.

**IX. ENFORCEMENT**

The Equal Employment Opportunity Commission enforces the provisions of the ADA, which prohibit job discrimination. An applicant or employee who believes he/she has been discriminated against on the basis of disability is free to file a charge of discrimination with the EEOC. Strict time limitations apply and the administrative investigative process through EEOC must be satisfied prior to instituting litigation. Applicants and employees should also be aware that the State of Louisiana prohibits discrimination based upon disability (La. R.S. 23:323 et seq.). These statutes likewise provide strict time limits and procedures.

**X. QUESTIONS**

Given the complexity of this federal law and its implementing regulations, employees are encouraged to contact the Human Resources Director with any questions in order to gain a better understanding of the requirements and limitations of the ADA.



**THOMAS F. HARRIS, SECRETARY**

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**DATE**

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