

## DEPARTMENT OF NATURAL RESOURCES

### Human Resources Policy No. 32

**EFFECTIVE DATE:** APRIL 1, 2015  
**SUBJECT:** AMERICANS WITH DISABILITIES ACT  
**AUTHORIZATION:** STEPHEN CHUSTZ, SECRETARY

#### I. POLICY

Society historically has tended to isolate and segregate individuals with mental and physical limitations and disabilities. Despite improvements, discrimination against individuals with physical or mental disabilities continues to be a serious and pervasive social problem. The Americans with Disabilities Act (ADA), and its Amending Act of 2008, are intended to assure quality of opportunity, full participation, independent living and economic self-sufficiency for such individuals.

#### II. PURPOSE

This policy serves to implement the requirements of the ADA and provides a reference document for use by employees of the Department of Natural Resources (DNR). Given the complexity of this federal law and its implementing regulations, employees are encouraged to contact the Human Resources Division for a better understanding of the requirements and limitations of the ADA.

#### III. APPLICABILITY

This policy applies to all DNR employees, regardless of status or position.

#### IV. DEFINITIONS

1) **"Qualified Individual":**

An individual with a disability who satisfies the requisite skill, experience, education, training and other job-related requirements, including licensures and certifications, for the position that he/she holds or desires and who, with or without reasonable accommodation, can perform the essential functions of the position.

2) **"Physical or Mental Impairment":**

a) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more major body systems, such as

neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine; or

- b) Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- 3) **"Substantially Limits"**: Refers to an impairment which substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population, when taking into consideration factors such as the condition, manner or duration it takes one to perform a major life activity, the difficulty, effort or time required to perform the major life activity, the pain experienced when performing the major life activity, the length of time the major life activity may be performed and/or the way an impairment affects the operation of a major bodily function.
- 4) **"Major Life Activities"**:
- a) 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
  - b) 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.
- 5) **"Job-Related Requirements"** include educational background, employment experience, skills, licenses and other job-related requirements.
- 6) **"Essential Functions"** of a position are the basic job duties that an employee must be able to perform. Considerations in determining whether a function is essential include:
- a) The written job description;
  - b) Whether the reason the position exists is to perform that function;
  - c) The number of other employees available to perform the function;
  - d) The degree of expertise or skill required to perform the function;
  - e) Actual work experience of present or past employees in the job;
  - f) The time spent performing the function; and

- g) The consequence of not requiring that an employee perform the function.
- 7) **"Reasonable Accommodations"** are alterations to the work environment or changes in customary work practices which are not significantly difficult nor expensive, and which enable an individual with a disability to perform the essential functions of the job. In identifying reasonable accommodations, consideration is given to the nature of the operation or facility, geographic location, impact of the accommodation on the operation of the facility, and the effects of accommodation on the ability to conduct business.
- 8) **"Undue Hardship"** means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business. DNR is not required to create a new position, bump another employee or promote an individual with a disability in order to satisfy the "reasonable accommodation" requirement.
- 9) **"Direct Threat"** is a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

## **V. NON-DISCRIMINATION**

DNR will not tolerate discrimination, because of a disability or perception thereof, against any individual in any employment practice or decision, including hiring, continued employment, discipline, evaluations, wages, promotions, assigned duties, recruitment, training, leave, layoffs and all other employment related decisions. Additionally, DNR will ensure that disabled employees are not isolated nor segregated from the rest of the workforce because of their disabilities, and also that they have equal access to employment benefits and facilities. 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.

## **VI. WHO IS PROTECTED**

The ADA protects qualified individuals with disabilities. A person has a disability, as defined by the ADA, if:

- 1) The individual has a physical or mental impairment which substantially limits a major life activity; or
- 2) The individual has a record or history of a substantially limiting impairment or has been misclassified as having such an impairment; or

- 3) The individual is regarded as having such an impairment when he or she is perceived to have a physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity.

## **VII. CLARIFICATIONS**

### **1) The Individual has a Physical or Mental Impairment which Substantially Limits a Major Life Activity:**

- a) Whether an individual is substantially limited in a major life activity is determined without taking into account the effect of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (devices that magnify, enhance or otherwise augment a visual image), prosthetics, including limbs and devices, hearing aids and cochlear implants, other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, assistive technology, reasonable accommodation or auxiliary aids or services (i.e. qualified interpreters and/or readers or other effective methods of making aurally and/or visually delivered materials available to people with hearing and/or visual impairments, taped texts, acquisition or modification of equipment or devices and other similar services and actions) or learned behavioral or adaptive neurological modifications. However, an employer must take into consideration the mitigating effect of common eyeglasses or contact lenses which are intended to fully correct visual acuity or eliminate refractive error.
- b) With respect to the major life activity of working, "substantially limited" means significant restriction in the ability 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.
- c) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- d) Examples of substantially limiting impairments include: deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV, multiple

sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia.

**2) The Individual has a Record or History of a Substantially Limiting Impairment or has been Misclassified as having such an Impairment:**

This provision covers educational, medical, employment and other such records. Under this provision, it is discriminatory to base employment decisions solely upon an individual's record or known history of disability. For instance, an employer cannot refuse employment to an applicant because the employer knows that the employee has a history of back surgeries.

**3) The Individual is Regarded as having such an Impairment when he or she is Perceived to have a Physical or Mental Impairment, whether or not the Impairment Limits or is Perceived to Limit a Major Life Activity:**

For example, an employer cannot refuse employment to an applicant with high blood pressure because the employer believes that the individual will be unable to handle stress or will require time off from work for doctor's appointments.

A person is not "regarded as having such an impairment" if the perceived impairment is transitory and minor. Transitory impairments are those with an actual or expected duration of six months or less.

**4) Exclusions from 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.

- 5) **Conditions which are not Considered Disabilities:** Employees must recognize that not all medical ailments or conditions qualify as "disabilities" under the ADA. Examples of non-qualifying conditions include: environmental, cultural and economic disadvantages; homosexuality; bisexuality; normal pregnancy not accompanied by an impairment which limits a major life activity; physical characteristics; common personality traits which are not symptoms of a mental or psychological disorder; normal deviations in height, weight or muscle tone not resulting from a physiological disorder; transvestism; transsexualism; pedophilia; exhibitionism; voyeurism; gender identity disorders not resulting from physical impairments; sexual behavior disorders; compulsive gambling; kleptomania; pyromania; psychoactive substance use disorders resulting from current illegal use of drugs; and temporary impairments which heal within normal timeframes, such as colds, sprains and broken limbs.

## VIII. REQUIREMENTS

- 1) **Application Process:** DNR will not use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless such criteria is truly job-related for the position in question and consistent with business necessity. Any required tests will be selected and administered in the most effective manner to ensure that the test results accurately reflect the skills, aptitude or other qualities of the individual the test is intended to measure.

Pre-employment tests will be administered in accordance with standardized, established procedures. If doubt exists regarding an applicant's ability to test, the person responsible for administering the examination will ask if the applicant has taken a test of the nature proposed before or if anything hinders his/her ability to achieve a score accurately representing his/her ability. If standard testing procedures cannot be utilized, modifications will be considered. For instance, if the applicant is hard of hearing, the usual verbal questions could be reduced to writing. Alternatively, the applicant's

experience, training and education could be considered in lieu of the customary testing procedure.

- 2) **The Interview Process:** The interviewer cannot inquire regarding the applicant's disability or extent of an apparent disability. The applicant can be questioned regarding his/her ability to perform job-related functions such as getting to work on time, lifting, climbing, standing, driving, etc. The applicant may likewise be required to describe or demonstrate how, with or without reasonable accommodation, he/she will be able to perform job-related functions. Questions must be phrased in terms of the applicant's ability to perform the required function.
- 3) **Medical Examinations and Inquiries:**
  - a) **Pre-employment:** If all applicants in the same job category are subject to a medical examination or inquiry, regardless of disability, a medical examination and/or inquiry may be required after an offer of employment is made and before the applicant begins employment. The offer of employment may be conditioned on the results of such examination and/or inquiry. Any criteria which causes an applicant with a disability to be screened out must be job-related and consistent with business necessity, and reasonable accommodations must be considered in determining the applicant's ability to perform the job's essential functions.
  - b) **Employee medical examinations:** DNR may require an employee to submit to a medical examination or inquiry that is job-related, tests the employee's ability to perform job-related functions and is consistent with business necessity.
- 4) **Confidentiality:** Information obtained regarding the medical condition or history of an applicant or employee must be collected and maintained on separate forms and in separate medical files. This information must be treated as a confidential medical record subject to disclosure only as allowed by law or with the applicant's/employee's permission.
- 5) **Job Descriptions:** To ensure consistency and to protect against after-the-fact analysis, DNR maintains job descriptions which clearly define the essential functions of each position.
- 6) **Accommodations:** Accommodations usually fall into one of three categories:

- a) **Accommodations in the selection process:** DNR's duty under the ADA begins with the hiring process. Job descriptions should be examined and updated to classify functions as "essential" and "marginal". If necessary, applicants should be assisted in completing the application or allowed to take it home. Interviewers must confine questions to job-related functions and criteria. An inquiry on an application form or during an interview about the existence and/or extent of a disability is strictly prohibited.
  - b) **Accommodations which enable an employee to perform the essential functions of a job:** Such accommodations may include job restructuring, modifying work schedules, acquiring or modifying equipment, providing qualified readers or interpreters, reassigning a current employee to a vacant position or modifying examinations, training or other programs. Accommodations required to facilitate an applicant's/employee's performance of the essential functions of the position must be addressed on a case-by-case basis.
  - c) **Accommodations to allow a disabled employee to enjoy the benefits and opportunities of employment afforded other employees:** Such accommodations may include restructuring work areas, lunch rooms, break rooms, training rooms and restrooms to make them available and accessible to all employees. Note that physical plant accommodations of this nature must be reasonable and are not required if they would impose undue financial hardship.
- 7) **Identifying Appropriate Accommodations:** Employees/applicants are responsible for requesting reasonable accommodations when needed. Employees/applicants requiring accommodation are encouraged to suggest reasonable accommodations based upon their own life and/or work experiences. If particular requests are not made and the appropriate accommodation is not obvious, DNR will make a reasonable effort to identify the appropriate accommodation. This will be accomplished through an interactive process involving consultation with the employee/applicant, the treating physician and other individuals with significant knowledge relative the employee's/applicant's condition, the essential functions of the job and other relevant factors.

## **IX. 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.

**X. 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.

**XI. QUESTIONS**

Questions regarding the ADA should be addressed to the Human Resources Director.

  
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**STEPHEN CHUSTZ, SECRETARY**  
  
3/30/15  
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**DATE**

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