
Fresno USD DIVISION OF HUMAN RESOURCES
HR 4104
AMERICANS WITH DISABILITIES ACT

Title I of the ADA protects "qualified individuals" with a disability who can perform the essential functions of a position with or without reasonable accommodation." Therefore, Fresno Unified School District will comply with the Americans With Disabilities Act of 1990 (ADA) that makes it unlawful to discriminate against a qualified individual with a disability in regard to job application procedures, hiring, advancement, or discharge, compensation, job training, and other terms, conditions, and privileges of employment. The ADA requires employers to consider whether a qualified individual applicant or employee with a known physical or mental disability can perform the essential functions of his/her position with or without reasonable accommodation. Except when undue hardship would result to the District, the Superintendent or designee shall provide reasonable accommodation:

1. In the job application process, to any qualified job applicant with a disability;
2. To enable any qualified employee with a disability to perform the essential functions of the position he/she holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities.

The Director of Benefits/Risk Management is the District's designated employee (i.e., coordinator) responsible for coordinating efforts to comply with and carry out its responsibilities under this Act (*see Title 28 CFR Sec. 35-107*).

Definitions:

1. A **qualified individual with a disability** means a job applicant or employee with a disability who:
 - a. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he/she holds or desires;
 - b. Who can perform the essential functions of the position with or without reasonable accommodation;
 - c. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to himself/herself or others in the job he/she holds or desires.
2. **Disability** with respect to an individual is defined as any of the following:
 - a. A physical or mental impairment that limits one or more of the major life activities;
 - b. A record of such an impairment;
 - c. "Being regarded as having such an impairment" if the individual establishes that he/she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

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3. **Essential functions** are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position.
4. **Reasonable accommodation means:**
 - a. For a qualified job applicant with a disability, modifications or adjustments to the job application process that enable him/her to be considered for the position he/she desires.
 - b. For a qualified employee with a disability, modifications or adjustments to the work environment, or to the manner or circumstances under which the position the employee holds or desires is customarily performed, that enable him/her to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the District's other similarly situated employees without disabilities.
5. **Undue hardship** is a determination based upon an individualized assessment of current circumstances that shows that the provision of a specific accommodation would cause significant difficulty or expense to the District.

The ADA contains rules of construction that include (and are not limited to) the following:

- The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.
- An impairment is a disability if it substantially limits the ability of an individual to perform one or more of the individual's major life activities as compared to most people in the general population.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.
- Individuals covered only under the "regarded as" prong are not entitled to reasonable modifications.
- The primary issue in a case brought under the ADA should be whether an entity covered under the ADA has complied with its obligations and whether discrimination has occurred, not the extent to which the individual's impairment substantially limits a major life activity.

Requests for Reasonable Accommodation

When requesting reasonable accommodation, an employee shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition. The supervisor shall inform the coordinator or designee of the employee's request as soon as practicable.

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When requesting reasonable accommodation for the hiring process, a job applicant shall inform the coordinator or designee that he/she will need a reasonable accommodation during the process.

When the disability or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations, and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the coordinator to submit a list of specific questions to his/her health care provider or vocational professional.

If the documentation submitted by the employee does not indicate the existence of a qualifying disability or explain the need for reasonable accommodation, the coordinator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the coordinator may require him/her to submit to an examination by a health care professional selected and paid for by the District.

The District may make a medical or psychological inquiry of a job applicant or require him/her to submit to a medical or psychological examination after he/she has been given a conditional offer of employment but before the commencement of his/her job duties, provided the inquiry or examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification.

The coordinator shall not request any job applicant's or employee's genetic information except as authorized by law.

In accordance with law, the coordinator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, he/she shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment.

Granting Reasonable Accommodation is considered on a case-by-case basis. Consideration is made by staff under the direction of the coordinator which includes Workers' Compensation staff, Human Resources Executive Director & HR personnel, immediate supervisor, the individual, and Union Representative if applicable. Consideration includes determination of such factors as:

- Is this a qualified individual?
- Is this a disability?
- What are the essential functions of the position?
- What is reasonable accommodation?

Upon receiving a request for reasonable accommodation from a qualified individual with a disability, the coordinator and/or designee(s) shall:

1. Determine the essential functions of the job involved;

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2. Engage in an informal, interactive process with the individual to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential accommodations, and assess their effectiveness;
3. Develop a plan for reasonable accommodation which will enable the individual to perform the essential functions of the job or gain equal access to a benefit or privilege of employment without imposing undue hardship on the District.

A determination of undue hardship should be based upon several factors, including:

- a. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding;
- b. The overall financial resources of the facility making the accommodation, the number of person employed at this facility, and the effect on expenses and resources of the facility;
- c. The over financial resources, number of employees, and the number, type and location of facilities of the District;
- d. The type of orientation of the District, including the composition, structure and functions of the workforce and the geographic separateness and administrative or fiscal relationship of the facility making the accommodation to other District facilities;
- e. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employee to perform their duties and the impact on the facility's ability to conduct business.

The coordinator may confer with the site administrator, any medical advisor chosen by the District, and/or other District staff before making a final decision as to the accommodation.

Appeal Process

Any qualified individual with a disability who is not satisfied with the decision of the coordinator may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal; and
2. A statement of the specific remedy sought.

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The superintendent or designee shall give the individual his/her decision within 15 working days of receiving the appeal.

Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Governing Board in accordance with the District's procedure for such complaints.

Policy Fresno Unified School District
DIVISION OF HUMAN RESOURCES
Revised: January 17, 2017
Admin reviewed: March 22, 2017
Fresno, California