



South Dakota
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OFFICE OF THE ADJUTANT GENERAL**
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NGSD-TAG

9 July 2021

MEMORANDUM FOR All South Dakota National Guard (SDNG) Employees, Personnel and Applicants for Employment in the SDNG.

SUBJECT: Reasonable Accommodation (RA) and Personal Assistance Services (PAS) Policy

1. The South Dakota National Guard's (SDNG) policy is to comply fully with all applicable statutory authorities in providing Reasonable Accommodations (RA) or Personal Assistance Services (PAS) to employees or applicants who require accommodation due to a disability. The SDNG is committed to providing RA and PAS to Persons with a Disability (PWD) or Persons with a Targeted Disability (PWTD) so they enjoy full access to equal employment opportunities, benefits and privileges of employment in the SDNG. The SDNG will provide RA and PAS when:

- an applicant with a disability needs an accommodation to have equal opportunity to compete for a job.
- an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g. details, training, office sponsored events).

Providing a RA is an employer's statutory requirement to eliminate workplace barriers so employees and applicants can perform the essential functions and duties of a position or meet the application and interview requirements of a vacancy announcement.

3. The SDNG prohibits unlawful discrimination against any PWD or PWTD. This includes, but is not limited to, discrimination with respect to the application process, the hiring process, promotion, awards, discharge, termination, compensation, benefits, training and all other aspects of employment. Employment opportunities shall not be denied because of the need for an RA or PAS for a PWD or PWTD.

4. The SDNG will provide RA and PAS to qualified PWD or PWTD unless it creates an undue hardship for the agency. The individual must request the RA or PAS through the process

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outlined in SDNG Reasonable Accommodation and Personal Assistance Services Standard Operating Procedures and their immediate supervisor. Sufficient medical information and an accommodation assessment may be required to support the request and/or need for the accommodation. Employee's requests may be staffed by the HRO, the Labor Relations Specialist (LRS), the Equal Employment Manager (EEM) and Union Representatives and Subject Matter Experts (SME), such as the Occupation Health Nurse or the Deputy State Surgeon, as necessary or required, to include the employee and the supervisor through an interactive process. The HRO, through the supervisor, will provide final decisions to employees within a reasonable amount of time or NLT 30 days after receipt of the request. Applicants seeking a RA or PAS will send their requests to the HRO POC listed in the USAJobs or Military vacancy announcement. Applicants will be notified by the HRO within 5 working days of receipt of their request of the agencies decision.

5. This policy applies to all employees of the SDNG and all applicants of SDNG vacancies announcements. This policy does not establish the medical requirements for service in the SDNG or for military members. When a dual status Technician or AGR is required, as a condition of employment by 32 U.S.C, section 709, or other regulatory statute, to be a military member of the SDNG, the dual status Technician or AGR applicant may be required to meet the physical standards and employment criteria of the SDNG. This policy does not apply to State or Contracted Employees.

6. Managers, supervisors and leaders will ensure the widest possible dissemination of these procedures to all employees, and post this policy on all unit/facility bulletin boards and websites. The policy will be posted to all agency public websites and incorporated into all vacancy announcements for SDNG vacancies.

7. This policy is effective immediately and will remain in effect until superseded or revoked.

8. Any questions regarding this policy should be directed to the SDNG Equal Employment Manager at 605-737-6635.



JEFFREY P. MARLETTE

MG, SDNG

The Adjutant General

Enclosure:

1 - References

2 - Definitions

Enclosure 1

References:

- a. Rehabilitation Act of 1973, as amended.
- b. Americans with Disabilities Act of 1990, as amended, to include the Americans with Disabilities Act Amendments Act of 2008.
- c. Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.
- d. 29 C.F.R. 1630 – Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
- e. The Equal Employment Opportunity Commission’s “Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation.”
- f. The Equal Employment Opportunity Commission’s “Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act.”
- g. 3 January 2017 EEOC Final Rule: Affirmative Action for Individuals with Disabilities in Federal Employment, Rehabilitation Act, 29 C.F.R. section 1614.203.
- h. Army Regulation 40-501, Standards of medical Fitness, DTD: 27 June 2019.
- i. ANGI 36-101, Air National Guard AGR Program, DTD: 13 August 2014.
- j. AFI 48-133, Duty Limiting Conditions, DTD: 7 August 2020.

Enclosure 2

Definitions:

Reasonable Accommodation. The term reasonable accommodation means: In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. There are three categories of reason accommodations:

- Modifications or adjustments to a job application process enabling a qualified applicant with a disability to be considered for the position such qualified applicant desires; Examples are providing application forms in alternative formats like large print or Braille;
- Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, enabling a qualified individual with a disability to perform the essential functions of that position. Example would be providing sign language interpreters; and
- Modifications or adjustments enabling an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. Example would be removing physical barriers to access building, cafeterias or office areas.

Qualified. The term qualified, with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.

Essential Functions. The essential functions of a job are those job duties so fundamental to the position the individual cannot do the job without being able to perform them. A function can be essential if, among other things:

- The position exists specifically to perform that function;
- There are a limited number of employees available among whom the performance of that job function can be distributed; and/or
- The function is highly specialized so the incumbent in the position is hired for their expertise or ability to perform the particular function.

Person With a Disability or Person With a Targeted Disability (PWD/PWTD). Any person, who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment or is regarded as having such an impairment. **Targeted Disabilities** are identified by the OPM Standard Form 256. Some targeted disabilities include deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness and distortion of limb and/or spine.

Interactive Process. The interactive process is the process by which an individual making an RA request and the individual receiving the RA request communicate with each other about the request, the precise nature of the problem generating the request, how a disability is prompting a

need for an accommodation, and alternative accommodations that may be effective in meeting the requestor's needs. The process is initiated by the employee, through the supervisor to HRO. HRO will continue the process with the employee, supervisor, DPM and any subject matter experts necessary to determine if the accommodation can be approved, disapproved, or if an alternative course of action is needed.

Major Life Activities. Major life activities include, but are not limited to, the following:

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and
- 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.

Physical disability per AR 40-501: Any manifest or latent impairment of function due to disease or injury, regardless of the degree of impairment that reduces or precludes an individual's actual or presumed ability to perform military duty. The presence of physical disability does not necessarily require a finding of unfitness for duty. The term "physical disability" includes mental diseases other than such inherent defects as behavior disorders, personality disorders, and primary mental deficiency.

Personal Assistance Services (PAS): Are services such as eating and using the restroom a Person With a Targeted Disability (PWTD) may need assistance with in order to perform for daily living type activities but the services are not related to their job performance.

Extenuating Circumstances. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the RA request.

Undue Hardship. In general, undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the agency, when considered in light of the following factors:

- the nature and net cost of the accommodation needed;
- the overall financial resources of the agency facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;
- the overall financial resources of the agency, the overall size of the agency with respect to the number of its employees, and the number, type, and location of its facilities;
- the type of operations of the agency, including the composition, structure and functions of its workforce and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the agency; and
- the impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the agency's ability to conduct business.

Duty Limitation per AFI 48-133. Duty limitations are a type of profile which will indicate what the member cannot do based on his/her current occupational duties with resultant mobility and/or fitness restriction (FR) if appropriate.

Duty Limiting Condition per AFI 48-133. A duty-limiting condition is the medical condition which impairs and/or prevents an Airman from performing at least some requirements of military service and/or duties expected to be a part of his/her air force specialty code (AFSC) and/or current assignment. DLCs may also affect additional duties, military details, volunteer service, recreational activity, and/or activities of daily living.