

POLICY AND PROCEDURES ON REASONABLE ACCOMMODATION AND PERSONAL ASSISTANCE SERVICES FOR INDIVIDUALS WITH DISABILITIES

Effective: June 1, 2021

Utah Reclamation Mitigation and Conservation Commission

PURPOSE

This policy establishes the practices and procedures, including the allocation of responsibilities, for providing Reasonable Accommodation (RA) for qualified individuals with disabilities at the Utah Reclamation Mitigation and Conservation Commission (URMCC). This policy also applies to requests for Personal Assistance Services (PAS). This document will be made available to job applicants and employees in written and accessible formats. An accessible format is a format that meets an individual's particular need, including braille, large print, audio files, etc. 29 C.F.R. § 1614.203(d)(3)(i).

1. SCOPE

This policy applies to all URMCC employees, full- and part-time, and any applicants with disabilities for positions at URMCC.

2. POLICY AND PROCEDURES

A. URMCC Policy:

- (i) URMCC will provide Reasonable Accommodation (RA) for employees and applicants to permit a qualified individual with a disability to be considered for a job, enable a qualified individual with a disability to perform the essential functions of the job, and enable individuals with disabilities to enjoy the benefits and privileges of employment, unless the accommodation is an undue hardship to the agency. The employee or applicant need not have in mind or request a particular RA before making the request.

(ii) URMCC will provide Personal Assistance Services (PAS) to employees with *targeted disabilities* requiring assistance with performing activities of daily living that an individual would typically perform if they did not have a disability, and that is not otherwise required as a reasonable accommodation. If granted, PAS must be performed by a Personal Assistance Services Provider.

(iii) A request for RA will be processed in the same manner as a request for PAS. Eligibility Criteria for RA are different from those required for PAS, as further explained in this policy and procedures.

B. Reasonable Accommodation Request and Personal Assistance Services Request Procedures for URMCC Employees and Applicants for Employment with URMCC:

(i) A URMCC employee, or an individual acting on their behalf, or a medical professional at any time may make a request for RA/PAS. It must state a need for an adjustment at work for reasons related to a medical condition. The RA/PAS request may be made orally or in writing to the Executive Director. If the employee makes a request to any other manager or individual, including his/her immediate supervisor, in lieu of the Executive Director, then such person must notify the Executive Director immediately. The Executive Director's contact information is set forth below:

Mark A. Holden
Executive Director
Tel: 801 524-3146

(ii) An applicant for a vacancy at URMCC, or an individual acting on their behalf, or a medical professional at any time may make a request for RA. The request may be made orally or in writing, to the HR representative listed on the vacancy announcement, who must promptly notify the Executive Director. If the request is made to a URMCC employee or to a Bureau of Reclamation HR representative other than identified in the vacancy announcement, that person must promptly notify the HR representative listed in the vacancy announcement. The HR's contact information is set forth below:

Theresa Michal
Human Resources Division Manager
U.S. Bureau of Reclamation
Tel: 801 524-3773

(iii) The Executive Director shall promptly acknowledge the request in writing and begin discussing the RA/PAS request with the requester. The Executive Director will continue to communicate as needed with the requester and other concerned individuals throughout the request process until the decision has been reached. The Executive Director will inform the requester that he or she may contact the Executive Director at the contact number listed above in Section 2.B.(i) to keep track of progress on the RA/PAS request.

- (iv) The Executive Director shall promptly establish a case file for each request. The following information will be recorded: (1) the specific reasonable accommodation or personal assistance services requested; (2) the job (occupational series, grade level, and agency component) sought by requesting applicant or held by the employee; (3) whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment; (4) whether the request was granted or denied; (5) the identity of the deciding official; (6) the number of days taken to process the request; and (7) the basis of the denial.
- (v) As soon as practical under the circumstances but no later than twenty (20) business days after receiving the initial request for an accommodation, the Executive Director will issue a decision on the RA/PAS request to either (1) grant the request and provide a RA/PAS to the qualified individual, (2) deny the request, or (3) propose an alternative reasonable accommodation. This deadline to respond to the requester may be extended in limited situations due to extenuating circumstances, in which case the Executive Director must notify the requester in writing as to why the time frame needs extension. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation or the granting of such request. Examples include circumstances such as where special equipment or furniture must be back-ordered or the vendor typically used by URMCC is unable to provide the accommodation. The requester may file a claim with EEOC if a decision is not made within twenty (20) business days.
 - (1) When it is reasonably likely that a requester will be entitled to a reasonable accommodation but the accommodation is not immediately available, the Executive Director may provide an interim accommodation, subject to the requester's approval, which allows the requester to perform some or all of the essential functions of the job in the interim, or assist an applicant with the application process if that alternative accommodation does not impose an undue hardship to the agency.
 - (2) In certain circumstances, a request for RA/PAS may require an expedited review by the Executive Director. Processing of RA/PAS requests will be expedited in appropriate cases. Expedited processing might be necessary where: (a) the requested RA is needed to enable an individual to apply for a job; or (b) the RA/PAS is needed for a specific agency activity that is scheduled to occur shortly.
 - (3) The URMCC will not be expected to adhere to its usual timelines if a requester's health professional fails to provide needed documentation in a timely manner.
 - (4) A requester may contact the Executive Director at the contact number listed above in Section 2.B.(i) to keep track of progress on the RA/PAS

request. The timeline for making a decision on a request and for providing a reasonable accommodation if approved, begins to run when the RA or PAS is first requested.

C. Approval of a Request for Reasonable Accommodation/Personal Assistance Services:
The process for requesting RA or PAS is identical. However, there are some differences in criteria between RA and PAS.

- (i) Anyone can request reasonable accommodation; however, to receive it, two conditions must be met:
- He/she must be a person with a disability, that is neither transitory nor minor, as defined by the Rehabilitation Act of 1973
 - He/she must be otherwise qualified (have the necessary skills, knowledge, license, degree, etc.) to do the job. Qualification is determined as though the person has reasonable accommodations in place.

Generally, a disability refers to:

- A physical or mental impairment that substantially limits one or more of the major life activities of the individual
- A record of such an impairment
- Being regarded as having such an impairment

See Section 3. Definitions, below for full definitions.

- (ii) Anyone can request PAS; however, to receive it, the following conditions must be met. The agency is required to provide *an employee* with, in addition to professional services required as a reasonable accommodation, personal assistance services during work hours and job-related travel if –
- an employee requires them because of a "targeted disability"
 - provision of these services would, together with any reasonable accommodations required, enable an employee to perform the essential functions of a position the individual holds or desires
 - provision of such services would not impose an undue hardship on the Agency

Personal Assistance Services (PAS) must be performed by a Personal Assistance Service Provider.

See Section 3. Definitions, below for full definitions.

- (iii) The decision will be provided by written notice, in accessible format.
- (iv) If a request for RA/PAS is approved, the URMCC will provide the accommodation/services as soon as practical under the circumstances but no later than forty (40) business days after receiving the initial request, barring extenuating circumstances.

- (v) If a particular RA/PAS can be provided in less than the maximum amount of time permitted under paragraph 2(C)(iv) herein, failure to provide the RA/PAS in a prompt manner may result in a violation of the Rehabilitation Act.

D. Denial of a Request for Reasonable Accommodation/Personal Assistance Services: As soon as practical under the circumstances but no later than twenty (20) business days after receiving the initial request for an RA/PAS, the Executive Director will issue a decision on the request. Any denial of a request for RA/PAS shall be in writing in accessible format if requested. Such denial shall specifically state the reasons for the denial, the reasons an alternative RA or PAS would not be effective, and the employee's or applicant's right to file an EEO complaint pursuant to 29 C.F.R. § 1614.106, or other statutory processes, as applicable. The written notice of denial will include instructions on how to file an EEO complaint and explain that the individual must initiate contact with an EEO Counselor within 45 days of the denial, regardless of whether the applicant or employee participates in an informal dispute resolution process. The denial shall inform the requester of the right to Request Reconsideration of the denial and include instructions on how to submit a Request for Reconsideration.

Reasons for denying a request for RA/PAS include but are not limited to the following circumstances:

- The requester cannot establish that he/she has a disability, or a "targeted disability" if applying for PAS, as defined by the Rehabilitation Act
- The requester cannot establish that he/she is otherwise qualified
- The requester cannot establish that an RA/PAS is necessary
- The requester cannot establish that the requested RA/PAS would be effective
- The agency determines the requested RA/PAS would cause undue hardship

The URMCC shall take specific steps to ensure that requests for RA/PAS are not denied for reasons of cost, and that individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, if the resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship.

E. Request for Reconsideration: An applicant for RA/PAS can seek reconsideration of a decision by the Executive Director denying a request for RA/PAS or a proposal for an alternative accommodation. The Request for Reconsideration should specifically state the reasons the applicant believes the decision is wrong, inappropriate, or otherwise inconsistent with this Policy and should be reconsidered. Any such request for reconsideration of the Executive Director's decision must be submitted in writing to the Reviewing Official appointed by the Executive Director under this Policy within ten (10) business days of receiving a denial or proposal for an alternative accommodation. URMCC shall encourage voluntary Alternative Dispute Resolution.

F. Medical Documentation:

- (i) The Executive Director may request supporting medical documentation needed to process and evaluate a RA/PAS request. The Executive Director will not require medical documentation except where needed to fully evaluate the request, such as where the disability and/or need for accommodation or PAS is not obvious or already known.
- (ii) The Executive Director may not request medical information where (a) both the disability and the need for reasonable accommodation or PAS are obvious; or (b) the individual has already provided the agency with sufficient information to document the existence of the disability and his/her functional limitations.
- (iii) The Executive Director has the right to request relevant supplemental medical information if the first submission is insufficient.
- (iv) The Executive Director may only request information pertaining to the disability that requires RA/PAS. URMCC will specify what type of information is being sought regarding the disability, which may include information sufficient to explain the nature of the individual's disability, his or her need for reasonable accommodation or PAS, how the requested RA, if any, will assist the individual to apply for a job, and how the requested RA/PAS, if any, will assist the individual to perform the essential functions of a job, or enjoy the benefits and privileges of the workplace. URMCC may also request information necessary to determine what type of RA/PAS is appropriate under the circumstances.
- (v) URMCC may require that the documentation regarding the disability and functional limitations come from an appropriate health care or vocational care professional. Medical or vocational professionals include but are not limited to, medical doctors, psychiatrist, psychologists, nurses, physical therapists, physical therapists, speech therapists, and vocational rehabilitation specialists.
- (vi) URMCC may have such documentation reviewed by an appropriate third-party health care or vocational care professional at its own expense, if determined necessary and appropriate.
- (vii) All medical information shall be kept confidential. This means that all medical information which URMCC obtains in connection with a request for RA/PAS shall be kept separate from the requester's personnel file. In addition, individuals who have access to information necessary to make a decision about whether to grant a requested RA/PAS shall not disclose this information except as follows:
 - A. Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s).
 - B. First aid and safety personnel may be told *if* the disability might require emergency treatment.

- C. Appropriate officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.
- D. Confidential medical information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers.
- E. URMCC Records Officer may be given the information to maintain records and evaluate and report on MCC's performance in processing RA/PAS requests.
- F. Information may in certain circumstances be disclosed to EEO officials to maintain records and evaluate and report on the agency's performance in processing RA/PAS requests.
- G. Where medical information is disclosed to any of the foregoing officials, URMCC must inform those individuals about the confidentiality requirements that attach to the information.

G. Reasonable Accommodations: The following types of accommodations may be available:

- (i) Provision of Auxiliary Aids and Services. URMCC may provide auxiliary aids and services, as necessary.
- (ii) Job restructuring. Job restructuring includes modifications such as: (A) reallocating or redistributing marginal job functions that an employee, or applicant is or would be unable to perform because of a disability; and (B) altering when and/or how a function, essential or marginal, is performed. URMCC is not required to reallocate essential functions of a job as a reasonable accommodation.
- (iii) Leave. URMCC may permit the use of sick leave, annual leave, administrative leave, or leave without pay, in accordance with applicable laws and guidance, as well as related URMCC policies.
- (iv) Reallocation of Marginal Functions or Temporary Transfer. An accommodation that requires the individual to remain on the job and allows for a reallocation of marginal functions or temporary transfer.
- (v) Modified or Part-Time Schedule. An employee may work a modified or part-time schedule as a reasonable accommodation, absent undue hardship to the agency. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, alternating when certain functions are performed, or allowing an employee or PSC to use paid leave, leave without pay, or administrative leave.
- (vi) Reassignment. URMCC will exhaust all other reasonable accommodation options prior to considering reassignment. Reassignment is required only after it is determined either that:
 - A. There are no effective accommodations that will enable the employee to perform the essential functions of his/her current position; or

B. Other accommodations would impose an undue hardship.

Reassignment is an accommodation that applies only to URMCC employees, not applicants.

URMCC may reassign the individual to a vacant position that is equivalent in terms of pay, status, promotion potential, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position.

If there is no vacant equivalent position, URMCC may reassign the employee to a vacant lower level position for which the individual is qualified, subject to the employee's approval. If there is more than one vacancy for which the employee is qualified, URMCC will place the individual in the position that comes closest to the employee's current position in terms of responsibilities, pay, status, etc.

Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation.

The Executive Director will coordinate with HR and the employee's supervisor in the processing of reassignments.

- H. Personal Assistance Services: Employees do not need to determine if what they need is a reasonable accommodation or PAS; they should simply contact the Executive Director and explain what they need. The Executive Director will determine whether the request is for reasonable accommodation or PAS and proceed accordingly. PAS generally is applicable to services not otherwise required as a reasonable accommodation.
- I. Confidentiality: Except as may be necessary to make a determination on a request for reasonable accommodation, or to implement a reasonable accommodation, the Executive Director will maintain the confidentiality of any personal information (including medical documentation or other information) obtained in connection with the reasonable accommodation process.

3. DEFINITIONS

As used in this policy, the following terms shall have the definitions provided below in this Section.

Accessible: Enter, operate, participate in, or use safely, independently by a person with a disability (i.e., site, facility, work environment, service or program).

Alternative Dispute Resolution (ADR): Procedures for settling disputes by means other than litigation, which may include a discussion between the parties mediated by a third-party neutral.

Deciding Official (DO): The Executive Director of URMCC has oversight program responsibilities for this RA/PAS policy and related Standard Operating Procedures. This individual is the Deciding Official and has the authority to grant or deny requested RA/PAS. The DO carries out the processing of RA and PAS requests, including engaging in the interactive process and informing the requester regarding the outcome of requests. The DO also makes decisions concerning interim accommodations. The DO can be reached at urmcc@usbr.gov.

Denial: The Executive Director (the DO) makes an informed decision to deny the individual's specific RA/PAS request and does not offer an alternative in its place, or an alternative accommodation is offered and is declined by the individual.

Disability/Individual with a Disability: For purposes of this policy, "disability" means, with respect to an individual, (1) a physical or mental impairment that substantially limits one or more major life activities of such individual ("actual disability"); (2) a record of such an impairment ("record of disability"); or (3) being subjected to an action prohibited under the Rehabilitation Act because of an actual or perceived physical or mental impairment that is not both transitory and minor ("regarded as disability"). For purposes of being "regarded as" having a disability, an impairment is "transitory" if it has an actual or expected duration of six months or less. Individuals who are *only* "regarded as" having a disability are protected from discrimination but are not entitled to reasonable accommodations under the law or this policy. The Americans with Disability Act (ADA) Amendments Act of 2008 (ADAAA), which is incorporated by reference into the Rehabilitation Act of 1973 and thus applies to Agency actions as an employer, construes the statutory term "disability" broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA and the Rehabilitation Act.

EEO: Equal Employment Opportunity

EEOC: Equal Employment Opportunity Commission

Essential Functions of the Job: These are the fundamental job duties of the position in question. A function can be "essential" if among other things: (1) the position exists specifically to perform that function; (2) there are a limited number of other employees who could perform the function if assigned to them; and/or (3) the function is specialized and the incumbent is hired based on their expertise or ability to perform it. The term "essential function" does not include the marginal functions of the position.

Episodic or Remission: A disability that would substantially limit major life activities when active. Examples of impairments that may be episodic or in remission include epilepsy, hypertension, multiple sclerosis, asthma, diabetes, major depression, bipolar disorder, schizophrenia, and cancer.

Extenuating Circumstances: Factors that delay processing and that could not reasonably have been anticipated or avoided in advance of the request or processing of the request for PAS. Examples include, but are not limited to, requests for an evaluation of medical documentation, purchase of equipment, architectural barrier removal, and job reassignment.

Impairment: An impairment is a physiological disorder, condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic, lymphatic, skin and endocrine; or a mental or psychological disorder, organic brain syndrome, emotional or mental illness and specific learning disabilities

An impairment that is episodic or in remission (e.g., epilepsy), but would substantially limit a major life activity if active, qualifies as a disability; however, if the condition only rarely occurs, it might not qualify as a disability. Such determinations are made on a case-by-case basis.

The EEOC identified certain types of impairments that should easily be assessed as substantially limiting a MLA: deafness, blindness, partially or completely missing limbs, mobility impairments requiring use of a wheelchair, multiple sclerosis, muscular dystrophy, cerebral palsy, epilepsy, autism, cancer, diabetes, HIV, intellectual disability, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, schizophrenia.

Individual with a Disability: *See Disability/Individual with a Disability* definition above.

Interactive Process: The next step following a request for RA or PAS. This means that the individual requesting the RA/PAS and the RAPM (defined below) must communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting the need for an RA (or a targeted disability is prompting the need for PAS), and alternative accommodations that may be effective in meeting an individual's needs. The interactive process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. The interactive process is also an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed. The Executive Director will also communicate with the individual's supervisor or the selecting official, when appropriate, to determine whether a particular accommodation would be effective or specific PAS will meet an eligible employee's needs.

Major Life Activity: In general, a major life activity includes, but is not limited to, 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, working, and major bodily functions (e.g., normal cell growth, immune, digestive, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions).

Personal Assistance Services (PAS): PAS provide employees with *targeted disabilities* assistance with performing activities of daily living that an individual would typically perform if they did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom. PAS must be performed by a personal assistance service provider. PAS do not include

medical services, such as performing medical procedures (e.g., administering shots) or medical monitoring (e.g., monitoring blood pressure). Also, PAS must be provided to employees who need them when they telework under an agency's telework policy or telework as a reasonable accommodation.

PAS also must be provided when needed because of job-related travel. An employee receiving PAS in the office or while teleworking must still request PAS for job-related travel. The EEOC will not necessarily know that PAS is required for travel simply because an employee regularly receives PAS while at the worksite or while teleworking. It is also possible that an employee may require different PAS for travel than usually required. Since PAS for job-related travel are also considered a form of reasonable accommodation, requests for these services will be handled as requests for reasonable accommodation.

Employees do not need to determine if what they need is a reasonable accommodation (RA) or PAS; they should simply contact the EEOC's Disability Program Manager (see below) and explain what they need. The Executive Director will determine whether the request is for reasonable accommodation or PAS and proceed accordingly.

Personal Assistance Service Provider: An employee or independent contractor whose primary job functions include provision of PAS.

Physical or Mental Impairments: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Qualified: “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 the individual holds or desires and, with or without RA, can perform the essential functions of the position.

Reassignment: In general, reassignment should be considered as a RA only when there are no other accommodations available to enable the individual to perform the essential functions of his or her current position, or if the only other effective accommodation within the individual's current position would pose an undue hardship. Where appropriate, the agency could reassign an individual as a RA to an equivalent position, in terms of pay, status, etc., if the individual is qualified, and if the position is vacant and funded. “Vacant” positions include positions that are available when the employee asks for RA and positions that the agency knows will become available within a reasonable amount of time. A “reasonable amount of time” should be determined on a case-by-case basis considering relevant facts, such as whether the employer, based on experience, can anticipate that an appropriate position will become vacant within a short period of time. A search for vacant positions will be conducted by the Agency, in consultation with the requester and other relevant Agency officials (as necessary), for a minimum of 30 days. The Agency may reassign an individual to a lower graded position for which he or she is qualified if there are no accommodations that would enable the employee to

remain in the current position and there are no vacant, funded equivalent positions for which the individual is qualified with or without RA. The Agency is not required to promote an individual with a disability as a RA and is not required to create a new position as a RA.

Reasonable Accommodation (RA): An employer's adjustment or alteration to the work environment or in the way things are customarily done that enables a qualified individual with a disability to enjoy equal employment opportunities. There are three broad categories of RA: (1) modifications or adjustments to a job application process that permit an individual with disability to be considered for a job; (2) modifications or adjustments to workplace rules (to include leave, telework and/or alternative work schedules) regarding how or when the job is performed that will enable an otherwise qualified individual with a disability to perform the essential functions of the job; and (3) modifications or adjustments such as the removal of a physical barrier to enable a qualified individual with a disability to enjoy equal benefits and privileges of employment.

Reasonable Accommodation Coordinator or RAC: The URMCC employee (or employees) designated by URMCC to fulfill the identified responsibilities set forth in this policy. This employee is the Executive Director.

Reconsideration: A voluntary mechanism through which an individual can request reconsideration of denial of RA/PAS, regardless of whether the person has started the EEO complaint process.

Request for Reasonable Accommodation: An oral or written request for an adjustment or change in the application process, at work, or related to a benefit or privilege of employment that the individual needs due to a medical condition. Such requests can be made in plain English, need not use any specific words such as "reasonable accommodation" or "disability," and may be made by the individual, a family member, a health professional, or another representative who is acting on the individual's behalf. An accommodation can be requested at any time and is not time-limited based on the point where a disability first affects work performance. An individual does not need to have a specific accommodation in mind before making a request. A request for RA may include a request for paid and/or unpaid leave, and/or telework as an accommodation. Leave and/or telework may not be an appropriate accommodation if the employee desires to report to work and there is an effective accommodation that would allow the employee to report to work, without undue hardship to the Agency.

Requester: An applicant or employee with a disability, or an individual acting on their behalf, who requests a RA, or an eligible employee with a targeted disability who requests PAS.

Substantially Limits: To have an actual or record of disability, an individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the general population. An impairment need not prevent or severely or significantly limit a major life activity to be considered substantially limiting. The determination requires an individualized assessment and will not usually require scientific, medical, or statistical evidence, although such evidence may be used if appropriate.

Nine Rules of Construction for “Substantially Limits”

1. The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard.
2. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent or significantly/severely restrict the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability.
3. The primary object of attention in cases brought under the ADA should be whether the agency has complied with its obligations and whether discrimination has occurred, *not* whether an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment "substantially limits" a major life activity should not demand extensive analysis.
4. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for "substantially limits" applied prior to the ADAAA.
5. The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical or statistical analysis. Nothing in this paragraph is intended, however, to prohibit the presentation of scientific, medical or statistical evidence to make such a comparison where appropriate.
6. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
7. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
8. 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.
9. The six-month "transitory" part of the "transitory and minor" exception to "regarded as" coverage does not apply to the definition of "disability" under the "actual disability" prong or the "record of" prong. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.

Targeted disabilities: Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehabilitation Act. The federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment, which for some people may include lack of access to PAS in the workplace, that are above and beyond the barriers faced by people with the broader range of disabilities. The federal government calls these “targeted disabilities.” A list of targeted disabilities can be found on the Office of Personnel Management’s [Standard Form 256](#). Targeted disabilities also include conditions that

fall under one of the first twelve (12) categories of disability listed in Part A of question 5 of the EEOC's Demographic Information on Applicant's form.

Undue Hardship: If a specific RA or PAS would cause significant difficulty or expense, URMCC is not required to provide it. This determination must be made on a case-by-case basis in consultation with the Bureau of Reclamation HR and legal counsel, considering (among other factors) the nature and cost of the reasonable accommodation/PAS in relation to the size, resources, nature, and structure of the URMCC's operation. Undue hardship refers not only to financial difficulty, but to RA/PAS that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the agency's business. URMCC will assess on a case-by-case basis whether a particular RA or PAS would cause undue hardship. Generally, requests for accommodation/PAS will not be denied for reasons of cost, and individuals with disabilities will not be excluded from employment due to the anticipated cost of a RA if the resources available to the URMCC as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable the URMCC to provide an effective RA without undue hardship. Reasonable accommodations/PAS are paid out of the URMCC's administrative budget. To arrange for the purchase of anything related to the provision of a RA or PAS, supervisors and hiring officials should work with the Executive Director.

6. EFFECTIVE DATE

This policy is effective as of the approval date referenced above. For the avoidance of doubt, this policy will remain in effect with respect to any successor position or office performing the functions of its predecessor until this policy is modified, revoked, or superseded. In addition, this policy supersedes any prior policy, guidance, and/or delegation of authority with respect to the subject matter hereof.

7. AMENDMENTS TO THIS POLICY

This policy may be modified or amended at any time in writing with the approval of the Executive Director. However, non-substantive, administrative updates may be made at any time without formally modifying or amending this policy. Such edits include updates to hyperlinks, changes to agency acronyms, names, or titles, or similar types of administrative updates (in each case, with OCEO and OEEO concurrence).

8. RESPONSIBILITIES

A. Executive Director:

- (i) Take appropriate steps to ensure adequate funding and staff to carry out this policy.
 - a. Designate a URMCC employee to serve as a Reviewing Official for purposes of reviewing accommodation requests that are denied and for which the requester (or an individual acting on the requester's behalf) is seeking reconsideration.

- b. Acknowledge receipt of an accommodation request in writing as soon as possible, so that requester is aware that request has been received by the proper official;
 - c. Initiate the interactive process (as described in Section 3. herein) with the requester and ensure compliance with all applicable timelines and requirements as set forth in this policy and in compliance with applicable laws and regulations;
 - d. Advise requesters, immediate supervisors, and other members of URMCC management, as appropriate, on the progress of the request, and coordinate as appropriate with supervisors; and
 - d. Issue a written decision on whether a request for RA/PAS is granted or denied, or an alternative RA is proposed.
 - e. For further information please contact the URMCC's Executive Director at 801-524-3146 or visit the URMCC website at www.mitigationcommission.gov.
- (ii) Ensure that job vacancy announcements contain a notice to applicants regarding the process for making a reasonable accommodation requests and the point of contact responsible for processing such requests, including appropriate contact information for accommodation related matters.
- (iii) Identify vacant positions for which an employee is qualified in cases where reassignment to a vacant position is being considered as a reasonable accommodation.
- (iv) Information Tracking. Pursuant to 29 C.F.R. § 1614.203(d)(8), the agency shall keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 of the Rehabilitation Act, and to make such records available to the Equal Employment Opportunity Commission (EEOC) upon the EEOC's request.

B. Human Resources Division (HRD), U.S. Bureau of Reclamation, U.C. Basin Office:

- (i) Under an Interagency Agreement between the U.S. Bureau of Reclamation's Upper Colorado Basin and the Utah Reclamation Mitigation and Conservation Commission, the Commission's assigned human resources office is the Bureau of Reclamation's Upper Colorado Basin's Human Resources Office. The phone number for that office is 801-524-3865. For further information please contact the URMCC's Executive Director at 801-524-3146 or the Upper Colorado Basin Human Resources Office at (801)-524-3865 or visit the URMCC website site at www.mitigationcommission.gov.

- (ii) Ensure that job vacancy announcements contain a notice to applicants regarding the process for making a reasonable accommodation request and the point of contact responsible for processing such requests, including appropriate contact information for accommodation related matters.

C. Equal Employment Office, U.S. Bureau of Reclamation, U.C. Basin Office:

- (i) Under an Interagency Agreement between the U.S. Bureau of Reclamation's Upper Colorado Basin and the Utah Reclamation Mitigation and Conservation Commission, the Commission's assigned equal employment opportunity office is the Bureau of Reclamation's Upper Colorado Basin's Equal Employment Opportunity. The phone number for that office is 801-524-3624. For further information please contact the Upper Colorado Basin Equal Employment Opportunity Office at (801)-524-3624 or visit the URMCC website site at www.mitigationcommission.gov.
- (ii) Advise the Executive Director, management officials, supervisors, and others as needed regarding laws and regulations pertaining to reasonable accommodation.

D. Office of Equal Employment Opportunity (OEEO):

- (i) Assist URMCC as needed with training and the provision of information materials regarding reasonable accommodation procedures and policies.
- (ii) Conduct periodic review of this policy to ensure compliance with laws, regulations, and other URMCC policies.
- (iii) Approve interpretations, and other materials outlining URMCC's Policy and Procedures for Reasonable Accommodation/Personal Assistance Services.
- (iv) Ensure that URMCC's systems of records keep track of requests for reasonable accommodation and PAS, and the following information:
 - A. the number of reasonable accommodations, by type, that have been requested for the application process and whether those requests have been granted or denied;
 - B. the jobs (occupational series, grade level, and agency component) for which RA/PAS have been requested;
 - C. the types of reasonable accommodations that have been requested for each of those jobs;
 - D. the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
 - E. the number of requests for RA/PAS, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;

- F. the reasons for denial of requests for RA/PAS;
- G. the amount of time taken to process each request for RA/PAS; and
- H. the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

9. AUTHORITIES

A. Acts and Executive Orders

- Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000).
- Rehabilitation Act of 1973, 29 U.S.C. 701 et seq.
- Title I of the Americans with Disabilities Act of 1990 (ADA), as amended.
- American's with Disabilities Amendments Act (ADAAA) of 2008, Public Law 110-325 ADAAA, effective 2009.
- Genetic Information Nondiscrimination Act of 2008, 42 U.S.C., Chapter 21F. Title VII of the Civil Rights Act of 1964, et seq.
- Privacy Act of 1974, 5 U.S.C. §552a.
- Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151-4156.

B. Federal Regulations and Guidance

- U.S. Equal Employment Opportunity Commission (EEOC) Management Directive 715 providing policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII (Part A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (Part B).
- EEOC Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate Provision of Reasonable Accommodation (October 20, 2000).
- EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999).
- Title 5 of the Code of Federal Regulations, Part 339, Medical Qualification Determinations.
- Title 29 of the Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity.

- Title 29 of the Code of Federal Regulations, Part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
- Title 29, Code of Federal Regulations, Part 1635, Genetic Information Nondiscrimination Act of 2008.

C. Other Sources of Information

Additional resource materials are available on EEOC's public website, <https://www.eeoc.gov>, including

- EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (July 27, 2000)
- Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002). 29 C.F.R. § 1614.203(d)(3)(i)(W).

Mark A. Holden
Executive Director