



DEPARTMENT OF DEFENSE
Defense Commissary Agency
Fort Lee, VA 23801-1800

MANUAL

Procedures for Providing Reasonable Accommodation for Individuals with Disabilities

DeCAM 55-3.1
March 8, 2013

Equal Employment Opportunity
OPR: DeCA/CCE

- 1. POLICY.** Users of this Manual will comply with the policies defined in Defense Commissary Agency Directive (DeCAD) 55-3, (Reference (a)), March 8, 2013, Department of Defense (DoD) Directive 5105.55, "Defense Commissary Agency (DeCA)," March 12, 2008, (Reference (b)) and is in compliance with other references listed within this document.
- 2. PURPOSE.** This Manual implements policy, assigns responsibilities, provides guidance and procedures for processing requests for reasonable accommodation(s).
- 3. APPLICABILITY.** This Manual applies to DeCA activities.
- 4. MANAGEMENT CONTROL SYSTEM.** This Manual includes internal management control provisions that are subject to evaluation and testing as required by Defense Commissary Agency Directive (DeCAD) 70-2, "Internal Control Management," (Reference (c)).
- 5. RELEASABILITY – UNLIMITED.** This Manual is approved for public release and is located on DeCA's Internet Web site, www.commissaries.com.
- 6. EFFECTIVE DATE.** This Manual is effective immediately.

A handwritten signature in black ink that reads "Marcus G. Lashley".

Marcus G. Lashley
Director, Equal Employment Opportunity

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REFERENCES

- (a) DeCA Directive 55-3, "Request for Reasonable Accommodation," March 8, 2013
- (b) DoD Directive 5105.55, "Defense Commissary Agency (DeCA)," March 12, 2008
- (c) DeCA Directive 70-2, "Internal Control Program," December 17, 2007
- (d) Section 3406 of Public Law 110-325, "Americans with Disabilities Act Amendments Act of 2008," September 25, 2008
- (e) Chapter 126 of Title 42, United States Code, Americans with Disabilities Act of 1990
- (f) Section 702 of Public Law 88-352, "Title VII of Civil Rights Act of 1964, as amended"

CHAPTER 1

OVERVIEW

1-1. Introduction. This manual implements a Reasonable Accommodation program for individuals with disabilities as defined in DeCA Directive 55-3, reference (a). This Manual is in compliance with Section 3406 of Public Law 110-325, “Americans with Disabilities Act of 2008,” September 25, 2008, (Reference (d)).

1-2. Reasonable accommodation (RA). “Chapter 126 of Title 42, United States Code, Americans with Disabilities Act of 1990,” (Reference (e)) requires an employer to provide RA to qualified individuals with disabilities who are employees or applicants for employment, unless doing so would cause undue hardship. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of RA:”

a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position the applicant desires; or

b. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

c. Modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities:

(1) The duty to provide RA is a fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities. Although many individuals with disabilities can apply for and perform jobs without any RAs, there are workplace barriers that keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). An RA removes workplace barriers for individuals with disabilities.

(2) An RA is available to qualified applicants and employees with disabilities. An RA must be provided to qualified employees regardless of whether they work part-time or full-time or are considered “probationary.” Generally, the individual with a disability must inform DeCA that an accommodation is needed.

(3) There are a number of possible reasonable accommodations that DeCA may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- making existing facilities accessible;

- part-time and modified work schedules
- acquiring or modifying equipment;
- changing tests, training materials, or policies;
- providing qualified readers or interpreters; and
- reassignment to a vacant position.

d. A modification or adjustment is “reasonable” if it seems reasonable on its face, i.e., ordinarily or in the run of cases,” this means it is “reasonable” if it appears to be “feasible” or “plausible.” An accommodation also must be effective in meeting the needs of the individual. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally a reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

e. There are several modifications or adjustments that are not considered forms of RA. An employer does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without RA, is not a “qualified” individual with a disability within the meaning of the Americans with Disabilities Act (ADA). Nor is DeCA required to lower production standards—whether qualitative or quantitative—that are applied uniformly to employees with and without disabilities. DeCA may have to provide RA to enable an employee with a disability to meet the production standard. While DeCA is not required to eliminate an essential function or lower a production standard, the agency may do so if it wishes.

f. DeCA does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, DeCA, is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, DeCA is not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as RAs where they are specifically designed or required to meet job-related rather than personal needs.

1-3. Undue Hardship. The only statutory limitation on DeCA’s obligation to provide RA is that no such change or modification is required if it would cause undue hardship to DeCA. Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to RAs that are unduly extensive, substantial, disruptive, or those that would fundamentally alter the nature or operation of business. DeCA must assess, on a case-by-case basis, whether a particular RA would cause undue hardship.

CHAPTER 2

ROLES AND RESPONSIBILITIES

2-1. DeCA Director. The DeCA Director has overall responsibility for the development, implementation, and maintenance of a Reasonable Accommodation Program that operates in accordance with (IAW) all applicable rules and regulations.

2-2. Director of Equal Employment Opportunity (EEO). The Director of EEO is delegated the responsibility for developing, implementing, and maintaining a Reasonable Accommodation Program that operates IAW all applicable rules and regulations.

2-3. EQUAL EMPLOYMENT OPPORTUNITY OFFICE (EEO). EEO serves as the focal point on all matters relating to RA requests and is responsible for generating policy and procedures pertaining to providing reasonable accommodation for individuals with disabilities, which includes providing assistance with requests for accommodations, assistive technology and official correspondence.

2-4. DISABILITY PROGRAM MANAGER (DPM). The DPM is the primary contact with EEO and shall:

- a. Advise supervisors on employees' requests for RA.
- b. Be the point of contact for applicants with requests for RA.
- c. Research options for RA and make recommendations.
- d. Provide information on RA procedures to employees, applicants, and supervisors.
- e. Participate in the interactive process (IP) with all parties involved in processing requests for RA.
- f. Ensure confidentiality of medical information collected to support RA requests.
- g. Work with the appropriate staff person or, when necessary, outside resources to obtain equipment and/or services approved for RA.
- h. Communicate to all involved parties, approval and denial decisions on requests for RA.
- i. Coordinate the reconsideration process
- j. Track the status of the requests for RA.

k. Conduct an annual evaluation of the Reasonable Accommodation Program to ensure continued efficiency and effectiveness.

l. Ensure this Manual is communicated and promoted within DeCA.

m. Oversee compliance with the policies outlined in this Manual, and with the processes, procedures, best practices, and standards related to this Manual.

n. Ensure participation of the EEO office personnel.

2.5. First Line Supervisors and Interviewing Officials. First-line supervisors and interviewing officials shall:

a. Communicate to the DPM, as soon as practical, but not later than 5 work days, of an employee's request for RA, all relevant information regarding the request.

b. Communicate to all involved parties approval, modification, and denial decisions on requests for RA.

2-6. Second Line Supervisors. Second-line supervisors are responsible for addressing employees' requests for reconsideration of denied or modified RAs.

2-7. Managers of Field Activities. Managers of field activities such as store directors and managers of central distribution centers, central meat processing plants, and similar organizations, shall ensure that subordinate managers, department managers and other subordinate supervisors are complying with the requirements of this directive. In some cases (e.g., newly assigned supervisors awaiting training) it will be necessary for a senior manager to closely monitor the RA process.

2-8. Human Resource (HR) Specialists. HR Specialists shall:

a. Ensure cases involving requests for RA (e.g., inquiries by supervisors and employees) are communicated to the DPM.

b. Advise management on the essential functions of jobs and assist with modifications to job requirements and conditions of employment.

2-9. Employees and Applicants. Employees and applicants shall:

a. Make requests for RA or designate a third party to initiate a request when they are unable to do so.

- b. Provide the necessary medical documentation to support requests for RA.
- c. Participate in the IP with their first-line supervisors or, for applicants, HR, EEO, General Counsel (GC), and other appropriate parties involved in processing their request for RA.

CHAPTER 3

PROCESSING REQUESTS FOR ACCOMMODATION

3-1. Analyzing and Acting on Request. The Agency will use the following process to analyze and act upon requests for accommodation.

a. The request for accommodation begins an interactive and flexible process between the requestor and the first-level supervisor. This process may include communicating with the requestor to clarify the request, obtaining and exchanging information with the requestor to the extent necessary regarding needs and alternatives, searching for solutions, consulting the Agency, and outside resources, and evaluating possible accommodations, and additional information, if needed.

b. If the person receiving the request for reasonable accommodation does not have the authority to approve the request, the request must be forwarded promptly to the appropriate official, with a copy to the DPM.

c. If a supervisor does not immediately grant a requested accommodation, they should consult directly with the DPM. The DPM will coordinate, as needed, with GC prior to providing a supervisor with any recommendations in connection with a request for accommodation. Legal reviews must be conducted for all proposed denials of a reasonable accommodation.

d. As soon as the supervisor determines that an accommodation will be provided they shall immediately communicate the decision orally or in writing to the individual. If the supervisor initially communicates the determination orally, they must follow-up in writing.

e. A supervisor granting a request is responsible for following through and making any necessary arrangements to ensure that the accommodation is provided within the applicable time limit. Each activity will determine how funding will be provided to support the provision for reasonable accommodation not covered through the Computer/Electronic Accommodations Program (CAP).

f. Information that must be kept confidential includes the fact that someone is receiving an accommodation or has a disability. Should questions arise from coworkers about what is perceived as “different” or “special” treatment of an accommodated employee, managers should explain the policy of assisting any employee who encounters difficulties in the workplace. The manager may also find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the Agency’s policy to respect employee privacy.

g. Any EEO Office staff member, who has any involvement in processing a request for Reasonable Accommodation, should recuse themselves from participating in the processing of any subsequent formal or informal complaint challenging the Agency’s handling of the accommodation request. The EEO Director should also take steps to safeguard against actual or apparent conflicts of interests arising with respect to formal or informal complaints where the DPM and EEO counselors are co-located in the same EEO Office.

3-2. Time Limits. The following time limits apply to the processing of requests for accommodation.

a. The Agency will process requests for reasonable accommodations and provide accommodations, when appropriate, as soon as reasonably possible. All parties, however, should recognize that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information and or medical documentation.

b. A supervisor receiving a request for reasonable accommodation may be able to grant the request immediately. Absent extenuating circumstances, the requested accommodation should be granted, modified, or denied within 30 calendar days from the date the supervisor receives the initial request. The 30-day time period is tolled while waiting to receive information from the requester or a health care provider. Once the medical information has been received, however, the time period begins to run again.

c. Extenuating circumstances are very limited and include only such situations as waiting for information/documentation from an individual's health care provider or factors that could not reasonably have been anticipated or avoided in advance or the request for the accommodation, such as where equipment must be back-ordered or where reassignment is being explored as an accommodation.

d. Where there is a delay in either processing a request for or providing a reasonable accommodation, the supervisor must notify the individual of the reason for the delay. If there is a delay, the supervisor must consider, for example, a temporary job restructuring or the use of equipment that might permit the individual to perform some of the functions of the job.

3-3. Medical Information. The following procedures apply to the use and control of medical information.

a. When the disability and/or need for accommodation is not obvious, the employee or applicant seeking accommodation may be asked to provide appropriate medical information related to the functional impairment and/or limitations at issue and the requested accommodation. The supervisor must seek the assistance of the DPM prior to obtaining any medical documentation. The DPM, in coordination with GC and HR, as needed, will assist in obtaining medical documentation. Medical information will only be requested to the extent reasonably necessary to establish that the requester is an individual with a disability and/or needs the requested accommodation, such as:

(1) The past, present, and expected future nature, severity, and duration of the impairment (e.g. functional limitations, symptoms, side effects of any treatments, etc.);

(2) The activity or activities the impairment limits;

(3) The extent to which the impairment limits the individual's ability to perform the activity or activities; and/or

(4) Why the individual requires the particular accommodation requested, and how the accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

b. Based on the medical documentation provided, the supervisor may elect to approve the request for reasonable accommodation. On a case-by-case basis, the DPM may submit medical documentation to the Agency's medical expert (Occupational Health) for assistance in assessing functional abilities.

c. In most cases, entire medical records may not be requested or furnished because they are likely to contain information unrelated to whether an applicant or employee can perform the essential job functions.

d. If supplemental medical documentation request does not result in sufficient information, the Agency may require the employee requesting the accommodation to be examined by a health care professional of the Agency's choice at the Agency's expense.

3-4. Denial of Requests. The following procedures apply when a request for accommodation is denied.

a. The supervisor must consult directly with the DPM prior to denying a request for accommodation or the particular accommodation requested. Legal reviews must be conducted for all proposed denials of a reasonable accommodation or the particular accommodation requested.

b. When an individual's request for accommodation is denied, the individual must be notified in writing of the denial and the specific reasons for the denial (e.g., why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation, why the requested accommodation would not be effective, or why the accommodation would pose an undue hardship). The denial letter must include the following:

(1) The name of the manager who made the decision.

(2) If a specific requested accommodation has been denied, and another offered in its place, the reasons for the denial and the reasons the supervisor believes the offered accommodation will be effective.

(3) Information about the individual's right to request EEO counseling and to invoke other statutory processes, and

c. In determining whether a proposed reasonable accommodation poses undue hardship, the overall resources and options available to the Agency must be considered, not just the budget or resources of an individual sub-component within the Agency.

GLOSSARY

DEFINITIONS

applicant. An individual who has applied for a current employment opportunity with DeCA.

disability. Means, with respect to an individual, (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such impairment; or (3) being regarded as having such an impairment.

employee. An individual who has completed the entrance on duty process through HR.

essential functions. Those job duties that are so fundamental to the position of record to which an employee is assigned; or, in the case of an applicant, the position applied for, that the individual cannot do the job without performing those duties.

first-line supervisor. For employees, generally, the person who signs their position description as the supervisor and performance appraisal documents as the rating official.

equal employment opportunity. The office located at Fort Lee, VA, managing Reasonable Accommodation Program.

qualified individual with a disability. A person with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of a position, and who can perform the essential functions of the position with or without RA.

reasonable accommodation. An adjustment or alteration that enables a qualified individual with a disability to apply for a job or perform job duties.

second-line supervisor. For employees, generally, the person who signs their performance appraisal documents as the reviewing official.

undue hardship. When an accommodation would cause significant expense or disruption to DeCA operations. In situations of undue hardship, DeCA is not required to provide a requested accommodation.

GLOSSARY

ACRONYMS

ADA Americans with Disabilities Act

CAP Computer/Electronic Accommodations Program

DD Form Department of Defense Form

DeCA Defense Commissary Agency

DeCAD Defense Commissary Agency Directive

DM Decision Maker

DoD Department of Defense

DPM Disability Program Manager

EEO Equal Employment Opportunity

EEOC Equal Employment Opportunity Commission

GC General Counsel

HR Human Resources

IAW In accordance with

IP Interactive Process

RA Reasonable accommodation