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Office of Compliance Issuance

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Family and Workforce Centers of America (FWCA) is the fiscal agent and workforce support organization for Saint Louis County Workforce Development.

SUBJECT:

Reasonable Accommodations

ATTACHMENTS (if any): (N/A)

This Issuance is an official policy of St. Louis County Workforce Development.

This Issuance Affects:

- Workforce Innovation and Opportunity Act (WIOA) Programs
Title I: Adult
Title I: Dislocated Worker
Title I: Youth

FOR THE ATTENTION OF:

All applicable WIOA staff or subcontractors—Implementation of this policy is immediate and continuous.

RESCISSIONS: N/A

REFERENCES:

Section 188 of WIOA
29 CFR Part 1630
29 CFR 38
29 CFR 32 subparts B & C, and appendix A
Missouri Nondiscrimination Plan

## **SUMMARY**

St. Louis County Workforce Development (STLCOWD) policy is to provide requirements for reasonable accommodation and modification for individuals, applicants, workforce staff, and registrants.

## **BACKGROUND**

### Definitions

1. Reasonable accommodation. The term reasonable accommodation means:

- Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- 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 an individual with a disability who is qualified to perform the essential functions of that position; or
- 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.

Reasonable accommodation may include but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
- A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong<sup>1</sup>, or “record of” prong<sup>2</sup>, but is not required

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<sup>1</sup> A physical or mental impairment that substantially limits one or more of the major life activities of such individual

<sup>2</sup> A record of such an impairment

to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong.<sup>3</sup>

## 2. Disability<sup>4</sup>

In general. Disability means, with respect to an individual—

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment as described in [paragraph \(I\)](#) of this section. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”
- Being regarded/proven as having such impairment.

## 3. Essential functions

The term *essential functions* means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position.

A job function may be considered essential for any of several reasons, including but not limited to the following:

- The function may be essential because the reason the position exists is to perform that function;
- The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
- The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Evidence of whether a particular function is essential includes, but is not limited to:

- The employer's judgment as to which functions are essential;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;
- The terms of a collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs.

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<sup>3</sup> Establishing that an individual is “regarded as having such an impairment” does not, by itself, establish liability. Liability is established under title I of the ADA only when an individual proves that a covered entity discriminated on the basis of disability within the meaning of section 102 of the ADA, [42 U.S.C. 12112](#).

<sup>4</sup> Refer to 29CFR 1630.3 for exceptions to this definition.

#### 4. Major Life Activities

- Functions such as caring for oneself, performing manual tasks, walking seeing, hearing, speaking, breathing, learning, and working.
- Major life activities are those functions that are important to most people's daily lives. Examples of major life activities are breathing, walking, talking, hearing, seeing, sleeping, caring for one's self, performing manual tasks, and working. Major life activities also include major bodily functions such as immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

### **SUBSTANCE**

The purpose of this policy is to assist the STLCOWD staff and its service providers (sub recipients) in establishing programmatic and physical accessibility practices as well as processing accommodation requests. This policy and procedure guide is to provide a framework for serving individuals with disabilities and handling accommodation requests, not to replace the policies of the service provider's organization. It is the policy of the STLCOWD to comply with the Americans with Disabilities Act and **Section 188 of WIOA, 29 CFR 38**, providing program accessibility and reasonable accommodations to qualified individuals with disabilities to enable them to:

- Be considered for the aid, benefits, services, training, or employment as desired; and/or
- Perform the essential functions of their jobs; or receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; and/or
- When receiving aid, services, training, or employment, it is equal to those individuals without disabilities, unless providing such accommodation would impose an undue hardship.

#### **A. WHAT ACCOMMODATIONS ARE REASONABLE?**

The reasonableness of accommodation will depend upon the circumstances of each case.<sup>5</sup>

The providers are not required to provide personal items to individuals with disabilities. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet needs that are related to the program or activity in which the person is participating, or the job the person is performing. For example, eyeglasses designed to enable the individual to view a computer monitor, but which are not otherwise needed outside of the program or activity in which the person is participating, or the job the person is performing, may constitute reasonable accommodation.

Where more than one possible reasonable accommodation exists, the provider should give primary consideration to the individual's preference in determining what accommodation it will provide.

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<sup>5</sup> [eCFR :: 29 CFR 32.13 -- Reasonable accommodation.](#)

Accommodations may be considered “unreasonable” only if they impose an undue hardship for the specific program/job in question. For example, shifting tasks among clerical employees to accommodate an employee with a disability may be reasonable where a sufficient number of employees exist among whom the tasks can be distributed; however, such accommodation may be unreasonable in a very small office with few employees.

Where the service provider determines that the accommodation requested by the individual would impose an undue hardship, or the modification requested would result in a fundamental alteration, the service provider must propose an alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the program.

Accommodations can be simple, but most importantly, should be offered in response to any request or Individual identified need. Examples of simple accommodations might include holding a spot in line for an Individual who has difficulty standing for long periods, taking notes for an Individual during a Job Center workshop, adjusting table height for an Individual with physical disability, or providing a quiet work area. In many cases, accommodations may require staff to “think outside the box” or research accommodation resources. Because there are sometimes multiple options for a reasonable accommodation, the individual making the request and Job Center staff should work together to identify the most effective accommodation using the “interactive process”. Through informal discussion, individuals are provided the opportunity to articulate their needs, and staff are able to determine how best to meet those needs. It is important to note that an Individual request can be made in “plain language” and need not mention the Americans with Disabilities Act, the Rehabilitation Act, or even use the phrase “reasonable accommodation”. As such, the request does not have to be in writing, and may be made by a family member, friend, or other representative on the Individual’s behalf.

## **B. EFFECTIVE COMMUNICATION & OTHER ASSISTANCE**

Workforce Innovation and Opportunity Act (WIOA) Title I-financially assisted programs and activities must be programmatically accessible. This includes providing reasonable accommodations for individuals with disabilities and communicating as effectively as with others. Recipients must provide appropriate auxiliary aids or services, including Assistive Technology devices and services, upon request, where necessary to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the program or activity.

Assistive Technologies are mitigating measures to aid people with disabilities that substantially limit their abilities to receive or communicate information about themselves, programs, or services. Assistive Technologies usually take the form of auxiliary aids or services but also may include modifications to the physical environment related to the use of devices.

Each service provider shall be responsible for establishing a procedure that ensures effective communication between the qualified individual with a disability and service provider staff throughout the service provision and accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. In addition, the service provider shall also be responsible for providing such other reasonable assistance as is requested throughout the accommodation process, as well as through the process of any necessary appeals.

The definition of auxiliary aids or services includes:

- Communications accessibility for individuals with hearing impairments
- Qualified interpreters, on-site or through video remote interpreting (VRI) services;
- Note takers;
- Real-time computer-aided transcription services;
- Written materials;
- Exchange of written notes;
- Telephone handset amplifiers;
- Assistive listening devices;
- Assistive listening systems;
- Telephones compatible with hearing aids;
- Closed caption decoders;
- Open and closed captioning, including real-time captioning;
- Voice, text, and video-based telecommunications products and systems, including TTY;
- Videophones, captioned telephones, or equally effective telecommunications devices
- Videotext displays; or
- Accessible electronic and information technology.
- Staff will use the “Sign Language Interpreter Desk Aid and Checklist” to further assist individuals with hearing impairments.
- Communications for individuals who are blind or have low vision
- Qualified readers;
- Taped texts;
- Audio recordings;
- Brailled materials and displays;
- Screen reader software;
- Magnification software;
- Optical readers;
- Secondary auditory programs (SAP);
- Large print materials; or
- Accessible electronic and information technology.

### **C. PROCESS FOR INDIVIDUALS & GENERAL PUBLIC**

Individuals and members of the general public may request accommodation(s) through any staff member of the service provider. Signage notifying Individuals and the general public of the availability of accommodations shall be posted prominently in the reception area of each service provider. Literature (in the appropriate format) shall be provided to Individuals by the service provider as part of the registration process.

Individuals desiring accommodation shall meet with a member of the service provider staff to discuss their need for accommodation. Requests for accommodation can be made verbally or in writing.

Each service provider shall designate a staff member responsible for reviewing accommodation requests.

Within ten (10) business days of receipt, the designated staff person shall either grant or deny the request in writing. Provisions for this accommodation should commence immediately, once the request is granted.

Where the request is denied based on undue hardship or fundamental alteration, the program must propose alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the program.

Recipients must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of "undue hardship" in § 38.4(rrr)(1). The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

Individuals and members of the general public who are not satisfied with the final decision/outcome of a service provider of STLCOWD may file a complaint by following the non-discrimination complaint and grievance policies set forth by the Board and OWD.

#### **D. PROCESS FOR SERVICE PROVIDER STAFF**

It is the responsibility of each service provider's organization to disseminate to their employees, their respective reasonable accommodation policy. Each service provider's reasonable accommodation policy shall include an internal appeals process.

Employees shall also be made aware that if they are not satisfied with the final decision/outcome of their employer, they may file a complaint by following the non-discrimination complaint and grievance policies set forth by STLCOWD and OWD.

#### **E. PROCESS FOR STLCOWD STAFF**

The staff of STLCOWD will follow the policy as set forth. STLCOWD staff shall also be made aware that if they are not satisfied with the decision of STLCOWD, they may file a grievance by following the non-discrimination complaint and grievance policies set forth by STLCOWD and OWD.

#### **F. CONFIDENTIALITY**

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means all medical information obtained by the Job Center, subcontracted, partner or STLCOWD staff in connection with a request for reasonable accommodation must be kept in a separate file from the individual's participant or personnel files. This includes the fact that reasonable accommodation has been requested, approved, and information about functional limitations. All instruction and guidance regarding confidentiality and record keeping provided by the Office of Workforce Development (OWD) will be followed.

### **TIMELINE**

Immediate and continuous

### **INQUIRIES**

Please direct all questions or comments regarding this Issuance document to [stlcowd@fwca-stl.com](mailto:stlcowd@fwca-stl.com). All active, expired, or rescinded Issuances are available upon request.