



Administrative Policies and Procedures: 4.18

Subject:	Americans with Disabilities Act (ADA) Request for Accommodations and Complaint Process
Authority:	TCA 37-5-105; 37-5-106; Americans with Disabilities Act, 42, U.S.C.A, Section 12101, et. al; Sections 503 and 504 of the Rehabilitation Act of 1973
Standards:	ACA: 4-JCF-6D-07; COA: PA-HR 1.01; PA-HR 1.02; PA-HR 5.01
Application:	To All Department of Children's Services Employees, Qualified Disabled Employees and Qualified Disabled Applicants for Employment with Department of Children's Services and All Qualified Disabled Persons Seeking Access to Programs, Services or Facilities of the Department of Children's Services
Policy Statement:	
<p>The Department of Children's Services (DCS) prohibits discrimination or harassment against any qualified individual with a qualifying disability, as defined under Titles I and II of the Americans with Disability Act (ADA), with regards to its hiring and employment practices or in the admission or accessibility to its programs, services or activities by reason of such disability. The Department of Children's Services shall also comply with applicable requirements of Section 504 of the Rehabilitation Act of 1973, the Department of Human Resources Rules and Regulations, and any other applicable laws pertaining to disability non-discrimination. Furthermore, DCS shall provide for prompt and equitable resolution of complaints and/or requests for ADA accommodations filed under this policy.</p>	
Purpose:	
<p>To outline the complaint and accommodation procedures to ensure prohibition of discrimination or harassment against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment, and the exclusion from participation in or be denied the benefits of the services, programs, or activities provided by the Department of Children's Services.</p>	
Procedures:	
A. Requests for accommodations and accessibility	<p>1. Requests for a Reasonable Accommodation or Accessibility must be addressed to the Americans with Disabilities (ADA) Coordinator at:</p> <p style="text-align: center;"> Department of Children's Services Director of Diversity Initiatives ADA Coordinator 436 6th Avenue North Cordell Hull Building, 7th Floor Nashville, TN 37243 Phone: (615) 532-5552 Fax : (615) 532-7602 </p>

2. Individuals requiring **TTY** or **TB** access must contact the **Tennessee Relay Center** at **1-800-848-0299** to be relayed to the above office.
3. A request for a reasonable accommodation must be submitted to Division of Diversity Initiatives (DDI) by completing form **PR-0333, ADA Accommodation/ Complaint Datasheet** and any supporting documentation (e.g. doctor's statement, email request).
 - a) Individuals making a request should complete the above form and submit to their supervisor, DCS official, appropriate field HR representative or DDI.
 - b) It is the responsibility of the person receiving the request to make sure that the above form is appropriately completed with all necessary information and signed by the individual making the request (not mandatory) and submitted to appropriate field HR representative or DDI.
 - c) The completed form must be submitted to DDI within five (5) working days from the initial request.
4. Any DCS official, employee or supervisor receiving a request for accessibility to a DCS occupied facility, work area, program or service because of a disability should complete form **PR-0333, ADA Accommodation/ Complaint Datasheet** and submit to the appropriate HR Representative or to DDI within five (5) working days from the request. It may be necessary to contact DDI for guidance regarding accessibility request before submitting.
5. Upon receipt of request, DDI will contact individual making request for accommodation or accessibility within five (5) working days of receipt for additional information in determining if appropriate to proceed under ADA policy.
6. If not appropriate under ADA policy, an attempt to resolve the non-ADA accommodation will be initiated and/or individual will be counseled and directed to appropriate venue. Follow-up letter will be sent to requesting individual with copies to the appropriate field HR representative.
7. If determined an appropriate consideration under ADA, the requesting individual will sign the release section of **Americans with Disabilities Act Medical Information Request Memo** and return to DDI. The memo will be forwarded to requesting individual's medical doctor or provider along with a list of essential job functions.
8. **Essential Job Functions** will be determined in accordance with ADA principles by Supervisor over position in question, field HR Representative, and the DDI ADA Coordinator with input from the individual requesting the accommodation.
9. Upon receipt of the **American with Disabilities Act Medical Information Request Memo** from the medical provider, the following determinations will be made:
 - a) If further information needed;
 - b) If **Qualifying Disability** under ADA;
 - c) Reasonableness of accommodation requested;
 - d) Explore other accommodations.
10. If qualifying disability under ADA and **reasonable accommodations** determined, a letter to accommodate will be issued by the ADA Coordinator.
11. If not qualifying disability under ADA or individual fails to accept reasonable

	<p>accommodation, the individual will be counseled regarding ADA and their obligation to perform the essential functions with or without accommodations. A follow-up letter will be issued to the requesting individual with copies to the appropriate field HR representative.</p> <p>12. If the Requestor is not satisfied with the determination and/or the remedial action taken regarding accommodation then an appeal may be filed for the Commissioner of DCS or Designee's review. The appeal must be in writing within thirty (30) days of being notified of the determination and/or remedial action.</p> <p>13. The Commissioner/Designee will make a determination within 30 days of receipt of the appeal. The Commissioner/Designee's determination will be final within DCS.</p>
<p>B. Filing an ADA complaint</p>	<p>All ADA complaints should be filed on form <i>PR-0333, ADA Accommodation/Complaint Datasheet</i> and submitted to DDI within five (5) working days of receiving the complaint.</p>
<p>C. Investigation of a complaint</p>	<p>Complaint processing, supervisory responsibility and reporting of findings will be in accordance with the DCS policy 4.20, Workplace Harassment and consistent with the Tennessee Department of Human Resources policy on Workplace Harassment.</p>
<p>D. Record retention</p>	<p>ADA complaint files and records will be maintained on file for two (2) years.</p>
<p>E. Rights under ADA</p>	<ol style="list-style-type: none"> 1. The right of a person to a prompt and equitable resolution of the complaint filed hereunder may not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible federal department or agency. Use of this grievance procedure is not a pre-requisite to the pursuit of other remedies. 2. This policy protects the substantive rights of interested persons, to meet appropriate due process standards and to assure that the Department of Children's Services complies with the ADA and implementing regulations.

<p>Forms:</p>	<p>PR-0333, ADA Accommodation/Complaint Datasheet</p>
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<p>Collateral documents:</p>	<p>Tennessee Department of Human Resources Policy on Workplace Harassment <i>Americans with Disabilities Act Medical Information Request Memo</i></p>
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<p>Glossary:</p>	
<p>Term</p>	<p>Definition</p>
<p>Accessibility:</p>	<p>Having access to structures, facilities, telecommunications, work area, or equipment that would otherwise present a barrier to an individual with a disability or not allow the individual to enjoy equal employment opportunities.</p>

Glossary:	
Term	Definition
Americans with Disabilities (ADA) Coordinator:	The Executive Director of Human Resource Development or his/her designee, who has been designated by the Commissioner to coordinate compliance with the non-discrimination requirements of Americans with Disabilities Act of 1990 (ADA), and applicable federal regulations.
Essential functions:	The basic job duties that an employee must perform, with or without reasonable accommodation. Determining factors: Whether the position exists to perform that function; Number of other employees available to perform the function or among whom function can be distributed; and the degree of expertise or skill required to perform the function. Other factors that maybe considered: the actual work experience of present and past employees in the job; time spent performing the function; and consequences of not performing the function.
Major Life Activities:	Major life activities include but not limited to: Caring for oneself, performing manual task, walking, seeing, hearing, speaking, breathing, learning, and working. Others include sitting, standing, lifting, and mental and emotional processes such as thinking, concentrating, and interacting with others.
Qualifying disability:	Substantially limits a major life activity of the individual with a disability because of his/her disability and can perform the essential functions of the job with or without an accommodation.
Qualified employee or applicant:	An individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.
Reasonable accommodations:	In general, any change in the work environment or in the way things are customarily done that enables an individual to enjoy equal employment opportunities. Reasonable accommodations may include, but is not limited to: <ul style="list-style-type: none"> ◆ Making existing facilities used by employees readily accessible to and usable by persons with disabilities; ◆ Job restructuring, modifying work schedules, reassignment to a vacant position; ◆ Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.
Time division duplex (TDD):	TDD is a text message system that is used by speech and/or hearing impaired individuals to communicate via phone lines with other TDD users. Each end of a TDD call must have a TDD device.



POLICY

Approved by: Deborah E. Story, Commissioner	Policy Number: 11-009
Signature: 	Supersedes: 10-021
Application: Executive Branch Agencies, All Employees	Effective Date: January 12, 2011
Authority: T.C.A. §4-3-1703, T.C.A. §4-21-101, T.C.A. §8-30-202, T.C.A. §8-50-104	Rule: Chapter 1120-07

Subject:

Workplace Discrimination and Harassment¹

The State of Tennessee is firmly committed to the principle of fair and equal employment opportunities for its citizens and strives to protect the rights and opportunities of all people to seek, obtain, and hold employment without being subjected to illegal discrimination and harassment in the workplace. It is the State's policy to provide an environment free of discrimination and harassment of an individual because of that person's race, color, national origin, age [40 and over], sex, pregnancy, religion, creed, disability, veteran's status or any other category protected by state and/or federal civil rights laws.

In the absence of an agency-specific policy, employees or applicants for employment who believe they have been discriminated against or harassed on any of these bases should lodge a complaint using the procedures set forth in this policy.

Definitions of Discrimination and Harassment in the Workplace

A. Workplace Discrimination and Harassment

This policy prohibits unequal and unlawful treatment of an individual on the basis of a person's race, color, national origin, age [40 and over], sex, pregnancy, religion, creed, disability, or veteran's status or any other category protected by state and/or federal civil rights laws. This policy further prohibits any unwelcome verbal, written, physical conduct, or electronic communication that either degrades or shows hostility or aversion towards a person because of that person's race, color, national origin, age [40 and over], sex, pregnancy, religion, creed, disability, or veteran's status or any other category protected by state and/or federal civil rights laws.

¹ While the State of Tennessee is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract between the State and its employees, applicants for employment, or parties who do business with the State. This policy supersedes all policies that conflict with the terms of this policy.

Furthermore, this Statement constitutes ONLY the policy of the State of Tennessee. A finding violation of this policy does not mean that the conduct violates state and/or federal laws.

Mission – providing innovative Human Resources leadership and solutions through people, for people.

Values – Communications * User-Friendly * Respect * Excellence * Integrity * Teamwork

To aid employees in identifying prohibited behavior, the following specific examples of workplace discrimination and harassment are provided. These examples are not exhaustive; they illustrate, however, the types of conduct that violate this policy:

- Undermining a person’s authority or work performance because of the person’s protected characteristics, such as age or religion;
- Using stereotypes or assumptions to guide decision-making about a person’s career;
- Unwelcome touching or near-touching, which can encompass leaning over, cornering, hugging, or pinching, sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted courting and sexist put-downs;
- Slurs and jokes about a class of persons, such as disabled persons or a racial group;
- Distributing via electronic means epithets, slurs, jokes or remarks that are derogatory, demeaning, threatening or suggestive to a class of persons or a particular person or that promote stereotypes of a class of persons;
- Display of explicit or offensive calendars, posters, pictures, drawings or cartoons that are sexually suggestive or that reflect disparagingly upon a class of persons or a particular person; or
- Derogatory remarks about a person's national origin, race, language, or accent.

B. Hostile environment

Hostile environment harassment occurs when a victim is subjected to comments based on race, color, national origin, age [40 and over], sex, pregnancy, religion, creed, disability, veteran’s status or any other category protected by state and/or federal civil rights laws. A hostile work environment may also be created by innuendoes, touching, electronic communications or other conduct.

C. Sexual Harassment

Sexual harassment involves any unwelcome sexual advance, request for sexual favors, or verbal, written, electronic, or physical conduct of a sexual nature by a manager, supervisor, co-worker, or non-employee [third party]. Managerial harassment occurs when a manager or a supervisor gives or withholds a work-related benefit in exchange for sexual favors from the victim or takes an adverse action against an employee for refusing a request for sexual favors. In some circumstances, threatening to take such actions may also be a violation of this policy. Certain actions may also create a hostile work environment. [See the definition for “hostile work environment” above.]

D. Retaliation

Retaliation is *any* act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals exercising rights under this policy.

E. Third Parties

Third parties are individuals who are not state employees but who have business interactions with state employees. Such individuals include, but are not limited to, customers, such as applicants for state employment or services, vendors, contractors, or volunteers.

Conduct Prohibited by the State of Tennessee

The State of Tennessee strictly forbids and will not tolerate discrimination or harassment of any employee, applicant for employment, or third party on the basis of an individual's race, color, national origin, age [40 and over], sex, pregnancy, religion, creed, disability, veteran's status or any other category protected by state and/or federal civil rights laws. The fact that an alleged offender meant no harm or was teasing will not excuse conduct that violates this policy.

The State of Tennessee strictly forbids and will not tolerate any form of retaliation directed against an employee, applicant for employment, or third party who either complains about discrimination or harassment or who participates in any investigation concerning discrimination or harassment.

How to Report Incidents of Discrimination or Harassment

If an employee, applicant for employment, or third party believes he/she has been subjected to discriminatory or harassing conduct that violates this policy, he/she must report those incidents as soon as possible after the event occurs.

Employees and applicants for employment may file a complaint with their department's human resources' director, the department head, their supervisor[s], or any individual designated by the department to receive such reports. Under no circumstances is the individual alleging workplace discrimination or harassment required to file a complaint with the alleged harasser. If an employee or applicant believes he/she cannot file a complaint within his/her agency, that person should contact the Department of Human Resources, Equal Employment Opportunities [EEO] Division at 615-741-2958.

Individuals who wish to file a complaint are encouraged, but are not required, to submit the complaint in writing and to include a description of the incident[s] as well as the date[s], time[s], place[s] and any witnesses.

If a complaint involves an executive director, assistant commissioner, deputy commissioner, or the commissioner, an employee or applicant for employment may file the complaint directly with the Department of Human Resources, EEO Division.

How to Report Retaliation Incidents

If an employee, applicant for employment, or third party believes he/she has been subjected to retaliation for engaging in protected conduct under this policy, he/she must report those incidents as soon as possible after the event occurs.

Any employee, applicant for employment, or third party who makes complaints of workplace discrimination or harassment or provides information related to such complaints will be protected against retaliation. If retaliation occurs, the employee, applicant for employment, or third party should report the retaliation in the same manner as he/she would report a workplace discrimination or harassment complaint.

How Complaints are Investigated and Resolved

The department will conduct a thorough and neutral investigation of all reported complaints of workplace discrimination, harassment or retaliation as soon as practicable. Generally, an investigation will include an interview with the complainant to determine if the conduct in issue violates this policy. If the department determines that the conduct falls within the terms of this policy, the department will interview the alleged offender and any other witnesses who have direct knowledge of the circumstances of the allegations.

The department retains the sole discretion to determine whether a violation of this policy has occurred and to determine what level, if any, of disciplinary action is warranted.

If a complaint involves an executive director, assistant commissioner, deputy commissioner, or the commissioner, the Department of Human Resources, EEO Division will investigate the complaint on behalf of the department and report the results to the appropriate agency or authority.

How Confidentiality is Treated

To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in a workplace harassment investigation, complaint or charge, provided it does not interfere with the department's ability to investigate the allegations or to take corrective action. However, state law may prevent the state from maintaining confidentiality of investigations. Therefore, the State does not guarantee confidentiality.

Directive to Supervisory Personnel

Supervisory personnel who receive a complaint alleging workplace discrimination or harassment or learn by any means of conduct that may violate this policy must immediately report any such event to the department's human resources' director, EEO officer or to the person designated by the agency to receive the information.

Corrective Action for Violation of this Policy

Any employee who engages in conduct that violates this policy or who encourages such conduct by others will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

Supervisory personnel who allow workplace discrimination, harassment or retaliation to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

Questions regarding this policy may be directed to the Equal Employment Opportunities Division.