

**Equal Opportunity & Equal Employment Opportunity**  
**Reasonable Accommodation and Personal Assistance Services**  
**Standard Operating Procedure**

**1. Purpose.** To establish responsibilities, guidelines, and procedures that will support the prompt, fair, and efficient processing of reasonable accommodation (RA) and personal assistance services (PAS) requests in compliance with statutory and regulatory requirements.

**2. Applicability.** All Title 32 military technicians and Title 5 National Guard Employees of the North Dakota National Guard, and prospective applicants for employment.

**3. General.** The RA and PAS program will ensure qualified individuals with disabilities have the same rights and opportunities as everyone else. RA and PAS are case-specific and fact-specific processes. These operating procedures do not establish guidance of medical requirements for North Dakota National Guard military members.

**4. Responsibilities.**

a. The Adjutant General (TAG) establishes an effective RA and PAS program that meets the statutory and regulatory requirements of the Equal Employment Opportunity Commission's Enforcement Guidance under the Americans with Disabilities Act.

b. The Director Human Resources (DHR) provides oversight of the RA and PAS program, and ensures the statutory and regulatory requirements of this plan are followed. The DHR is the approving authority for RA and PAS requests.

c. Disability Program Manager / State Equal Employment Manager (DPM/SEEM) administers the program in accordance with the procedures outlined in this SOP; and

1) Provides guidance, training, and technical assistance to supervisors, employees, and applicants concerning their responsibilities under the RA and PAS program;

2) Processes, tracks and maintains all RA and PAS requests and records.

**5. Information Tracking and Reporting.**

a. The DPM/SEEM will utilize the Reasonable Accommodation or Personal Assistance Services Information Tracking Form for tracking and processing of RA and PAS requests. Records related to an RA and PAS request will be maintained at a minimum for the duration of the employee's tenure, and secured in the DPM/SEEM office. This will ensure that the employee is not asked to provide medical information

previously submitted. For applicants who are not selected, the records will be maintained for one calendar year after the selection date.

b. RA and PAS requests may be used to report general information, such as total number of requests for accommodations/services, types of accommodations/services requested, and the length of time taken to process requests.

**POC:** DHR-State Equal Employment Manager, 701-333-3293

**References:**

- 1 – Americans with Disabilities Act of 1990 (ADA)
- 2 – Americans with Disabilities Amendments Act of 2008 (ADAA)
- 3 – Rehabilitation Act of 1973, as amended
- 4 – Executive Order (EO) 13164
- 5 – EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act dated October 17, 2002
- 6 – EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act dated July 27, 2000
- 7 – EEOC’s Questions and Answers: Federal Agencies’ Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act dated September 18, 2017

**Forms:**

- 1 – Confirmation of Request for Reasonable Accommodation or Personal Assistance Services
- 2 – Recommendation for Reasonable Accommodation or Personal Assistance Services
- 3 – Reasonable Accommodation or Personal Assistance Services Decision Form

**Enclosures:**

- Enclosure A – Definitions
- Enclosure B – Reasonable Accommodation
- Enclosure C – Personal Assistance Services

## **Enclosure A Definitions**

1. **Reasonable Accommodation** may include, but is not limited to:

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

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 an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

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

a. The position exists specifically to perform the function;

b. There are a limited number of employees available among whom the performance of that job function can be distributed; or

c. The function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

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

4. **Individual with a Disability** has one or more of the following:

a. A physical or mental impairment that substantially limits one or more major life activities of the individual;

b. A record of such an impairment; or

c. Being regarded as having such an impairment.

5. **Major Life Activities** include, but are not limited to, the following:

a. In general, care for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing,

learning, reading, concentrating, thinking, communicating, interacting with others, and working;

b. The operation of a major bodily function, including functions of the immune system, special sense organs and the skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

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

7. **Undue Hardship** is an action requiring significant difficulty or expense incurred by the North Dakota National Guard. In determining whether an accommodation would impose an undue hardship, factors to be considered include:

a. The nature and net cost of the accommodation needed;

b. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number or persons employed at such facility, and the effect on expenses and resources;

c. The overall financial resources of the North Dakota National Guard, the overall size of the organization with respect to the number of its employees, and the number, type, and the location of its facilities;

d. The type of operations, including the composition, structure and functions of its workforce and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question; and

e. The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

8. **Targeted Disability** is 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, that are above and beyond the barriers faced by people with a broader range of disabilities. A list of targeted disabilities can be found at [https://www.opm.gov/Forms/pdf\\_fill/sf256.pdf](https://www.opm.gov/Forms/pdf_fill/sf256.pdf).

9. **Personal Assistance Services** are services that help individuals who, because of a targeted disability require assistance to perform basic activities of daily living, like eating and using the restroom, during work hours and job-related travel.

## **Enclosure B**

### **Reasonable Accommodation**

#### **1. Requesting Reasonable Accommodation.**

a. A reasonable accommodation (RA) may be requested at any time, either verbally or in writing, for an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition.

b. Requests may be made by a designated representative (e.g. family member, medical professional); for example, a doctor's note outlining medical restrictions may be submitted as a request for RA.

c. A request does not have to include any special words, such as reasonable accommodation, disability, or Rehabilitation Act. A request is any communication that lets the agency know that an adjustment or change at work is needed for a reason related to a medical condition.

d. The RA process begins as soon as the verbal or written request for an accommodation is made to any supervisor or leader in the employees chain of command, and it is imperative that the request be submitted by the supervisor or leader, directly to the DPM/SEEM. If requests are submitted to someone other than the DPM/SEEM, ensure they are forwarded to the DPM/SEEM within 5 business days of receipt of the request. Upon receipt, the DPM/SEEM will log in the request using the Confirmation of Request for Reasonable Accommodation/Personal Assistance Services Form.

#### **2. Interactive Process.**

a. The DPM/SEEM will make contact within 5 business days after the RA request is made to begin discussing the request. Discussions will include the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations.

b. If a designated representative makes the RA request, the DPM/SEEM will, if possible, confirm that the RA is needed by the applicant or employee before proceeding. Where this is not possible, for example, because the employee has been hospitalized in an acute condition, the DPM/SEEM will process the request if it seems appropriate (e.g. by granting immediate leave) and will consult directly with the individual needing the accommodation as soon as practicable.

c. The DPM/SEEM may need to consult with other North Dakota National Guard personnel (e.g. chain of command, State Judge Advocate, IT dept) or outside sources to obtain information necessary to make a determination about the request. All parties must give high priority to responding quickly to a request for information or assistance in order to meet mandatory time lines.

d. The DPM/SEEM will forward the request to the Occupational Health Nurse/Nurse Practitioner who will determine if the impairment qualifies as a disability under the ADAA of 2008, and coordinate with all parties to identify an effective accommodation. This information will be recorded on the Recommendation for Reasonable Accommodation/Personal Assistance Services Form.

e. A reassignment to another position may be an effective accommodation if no other accommodations are available to enable performance of the essential functions of the job, or if the only effective accommodation would cause undue hardship.

1) The DPM/SEEM will work with DHR to identify vacant positions, or positions identified as becoming vacant within 60 days from the date the search is initiated, within the agency for which the employee may be qualified, with or without RA.

2) Reassignment may be made to a vacant position outside of the local commuting area if the employee is willing to commute the extra distance or relocate at their own expense.

## **10. Time Limits.**

a. The time frame for processing an RA request, including providing the accommodation if the request is approved, is as soon as possible but not later than 45 business days from the date the request is made.

b. The DPM/SEEM will process requests and, when appropriate, provide accommodations in as short a period as reasonably possible. Where there is a delay in either processing a request or providing a RA, the DPM/SEEM will notify the applicant/employee of the reasons for delay, including any extenuating circumstances that justify the delay. Unnecessary delays in processing RA requests can result in a violation of the Rehabilitation Act.

c. The time frame begins when an oral or written request for RA is made, and not necessarily when it is received by the DPM/SEEM. Therefore, all parties involved in processing a request should respond as quickly as possible. This includes referring a request to the Occupational Health Nurse/Nurse Practitioner, contacting a doctor if medical information or documentation is needed, and providing technical assistance to the DPM/SEEM regarding issues raised by a request (e.g. information regarding the essential functions of the job; information regarding compatibility of certain adaptive equipment).

d. In the event the Occupational Health Nurse/Nurse Practitioner needs to request medical information from a healthcare provider or other appropriate medical professional, the time frame will stop the date the request for medical information was made. The time frame will resume on the day the medical information is received by the Occupational Health Nurse/Nurse Practitioner.

e. If the disability is obvious or already known to the Occupational Health Nurse/Nurse Practitioner, and an accommodation can be provided quickly, then the Occupational Health Nurse/Nurse Practitioner should not require the full 45 business days to process the request. The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame:

1) An employee with insulin-dependent diabetes may request three breaks a day to test his/her blood sugar levels in private.

2) An employee with clinical depression who takes medication that makes it hard for them to be at work by 9:00 a.m. may request an alternate work schedule with a later start time.

3) An employee with a serious learning disability may ask for meeting agendas to be distributed ahead of time because their disability makes it difficult to read quickly and they need more time to prepare prior to the meeting.

**11. Expedited Processing of a Request.** In certain circumstances, an RA request will require an expedited review and decision. This includes an accommodation needed to enable an applicant to apply for a position or to enable an employee to attend a short notice event. Cases that require expedited processing will be adjudicated as soon as possible.

**12. Interim Accommodations and Extenuating Circumstances.** When a RA cannot be provided immediately, an interim accommodation will be identified in order to avoid, for example, a worsening of symptoms or exacerbation of a medical condition. Under extenuating circumstances, the time for processing an RA request and providing an accommodation will be extended as reasonably necessary. An extension will be limited to circumstances where it is absolutely necessary and only for as long as required to manage the extenuating circumstance.

**13. Request for Medical Information.**

a. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition meets the Rehabilitation Act definition. If the need for accommodation is not obvious or already known, the Occupational Health Nurse/Nurse Practitioner is authorized to request medical information identifying the covered disability that requires a RA. It is the responsibility of the applicant/employee to provide appropriate medical information requested by the Occupational Health Nurse/Nurse Practitioner where the disability and/or need for accommodation are not obvious or already known.

b. Generally, the RA request will include appropriate medical documentation. If the medical documentation provided with the request is insufficient to make a

determination, the Occupational Health Nurse/Nurse Practitioner may request additional information from the requestor and/or the appropriate health professional in order to substantiate the existence of a disability and/or need. The Occupational Health Nurse/Nurse Practitioner may also give the individual a list of questions to give the health care provider or other appropriate professional to answer.

c. The Occupational Health Nurse/Nurse Practitioner may have the medical information reviewed by a doctor of the agency's choosing, at the agency's expense to help determine whether the disability meets the Rehabilitation Act definition. The ADAA directs that the definition of disability be construed broadly and that the determination of whether an individual has a disability generally should not require extensive analysis. Notwithstanding, the Occupational Health Nurse/Nurse Practitioner may require medical information in order to design an appropriate and effective accommodation.

#### **14. Confidentiality.**

a. Under the Rehabilitation Act, medical information obtained in connection with the RA process must be kept confidential. This means that all medical information that the Occupational Health Nurse/Nurse Practitioner and DPM/SEEM obtains in connection with a request for RA must be kept in files separate from personnel files. This includes the fact that an accommodation has been requested or approved and information about functional limitations. All parties involved in RA requests are bound by these confidentiality requirements.

b. The DPM/SEEM may share certain information with agency officials as necessary to make appropriate determinations on a RA request. Under these circumstances, the DPM/SEEM will inform the recipients about the confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the DPM/SEEM will not necessarily need to reveal any identifying information (e.g. requester's name, disability, workplace location).

c. In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

1) Supervisors are entitled to whatever information is necessary to implement job duty restrictions or provide a reasonable accommodation.

2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance in evacuation. Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.

#### **15. Resolution of the RA Request.**

a. The Occupational Health Nurse/Nurse Practitioner will review the RA request form, position description, and medical documentation if necessary, then make a



recommendation to the DHR on the Recommendation for Reasonable Accommodation or Personal Assistance Services Form.

1) If the Occupational Health Nurse/Nurse Practitioner determines that there is a different and effective accommodation from the one requested, the Occupational Health Nurse/Nurse Practitioner will provide written recommendation both for the reasons for the modification of the specific requested accommodation and why the Occupational Health Nurse/Nurse Practitioner believes that the chosen accommodation will be effective.

2) If the Occupational Health Nurse/Nurse Practitioner recommends denial of the RA request, a written explanation will be provided clearly stating the specific reason(s) for the recommended denial. Requests for accommodations will not be denied for reasons of cost if the resources available to the agency as a whole, excluding those designed by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship. The written explanation will specifically address why the accommodation would result in undue hardship or why it would be ineffective. If the denial is for reasons of undue hardship or the RA is not required by the Rehabilitation Act, alternate accommodations will be explored.

b. The DHR is the approving authority for RA requests. The DHR will use the recommendation from the Occupational Health Nurse/Nurse Practitioner to guide the final decision. All decisions regarding the approval, modification, or denial of the request for RA will be documented on the Reasonable Accommodation or Personal Assistance Services Decision Form. The DPM/SEEM will coordinate the decision to all interested parties to assist with implementation of the accommodation, or requesting reconsideration.

c. Denial of an accommodation does not prevent making another request at a later time if circumstances change and an accommodation is needed due to limitations from a disability (e.g. the disability worsens or assignment of new duties require an additional or different RA). Additionally, the DPM/SEEM may not refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g. during the application process).

## **16. Implementation of Accommodation.**

a. It is the responsibility of the applicant/employee and supervisor to ensure the approved accommodation or modification is implemented within the allotted time limits. If an assistive device or equipment needs to be purchased, it is the agency that the employee is assigned to that would be obligated to pay for any expenses for the accommodation. Supervisors should ensure they follow appropriate policies and regulations prior to procuring equipment.

b. An annual review will be conducted of all approved RA requests to determine if there is a continuing need for the accommodation. The review will be conducted on or about the anniversary date of the initial approval of the RA request. The employee and supervisor will work together to conduct the review. The review will be documented as a memorandum for record (MFR) by the employee's supervisor, and a copy will be sent to the DPM/SEEM. The MFR will be filed with the DPM/SEEM along with the rest of the RA documentation.

#### **17. Informal Dispute Resolution.**

a. Whenever possible and in accordance with the desires of the complainant, the matter will be resolved in an informal setting. Informal resolution may include mediation when the parties agree. These mediation services may include consultation with the complainant and any other parties involved, either separately or jointly. Confidentiality in mediation shall be maintained.

b. An individual dissatisfied with the resolution of a RA request can ask the DHR to reconsider that decision. Reconsideration must be requested within 10 business days of receiving a written denial. A request for reconsideration will not extend the time limits for initiating administrative, statutory, or collective bargaining claims. Submit request to:

Director of Human Resources  
Joint Forces Headquarters  
P.O. Box 5511  
Bismarck, North Dakota 58506-5511

c. An applicant or employee has the right to file an informal complaint if they believe the denial of the RA or PAS request was discrimination or harassment based on disability. A complaint should be filed with an EEO Counselor, within 45 calendar days after the date of the most recent alleged unlawful practice or discriminatory act, or within 45 calendar days after the date the complainant was notified or became aware of the alleged violation.

## **Enclosure C**

### **Personal Assistance Services**

#### **1. Requesting PAS.**

a. The process for requesting PAS, the process for determining whether such services are required, and the agencies right to deny such requests when provision of the services would pose an undue hardship, are the same as for RA process.

b. The North Dakota National Guard is only required to provide PAS if:

1) An individual is an employee of the North Dakota National Guard;

2) An individual has a targeted disability;

3) An individual requires the services because of his or her targeted disability;

4) An individual will be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any required RA have been provided; and

5) Providing PAS will not impose an undue hardship on the North Dakota National Guard.

c. Personal assistance services will be provided by a PAS provider. The North Dakota National Guard may require PAS providers to perform services to more than one individual, and PAS providers may perform tasks unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide PAS in a timely manner.

d. If the North Dakota National Guard is utilizing a PAS provider who will be assigned to a single individual, and if that individual prefers a particular provider (e.g. because the provider has worked with the individual in the past), the North Dakota National Guard will give primary consideration to the employee's choice to the extent permitted by law.

e. The North Dakota National Guard is prohibited from taking adverse actions against job applicants or employees based on their need for, or perceived need for PAS.