

# Manager Fact Sheet: Reasonable Accommodations and Equal Access Policy

February 2012

## Introduction:

This fact sheet provides executive branch managers and human resource (HR) professionals an overview of the Reasonable Accommodations and Equal Access. Policy located in ARM 2.21.4101 et seq.

## Who is subject to the policy?

This policy covers all agencies in Montana's executive branch except the Montana university system, the Montana State Fund, elected officials, personal staff of elected officials, and any other position specifically excluded under Section [2-18-103](#) and [-104](#), Montana Code Annotated (MCA). (See [rule 2.21.4102](#).)

## Do agency managers have responsibilities under the policy?

Yes. Agency managers responsibilities include:

- 1) providing reasonable accommodations,
- 2) modify policies, practices, and procedures to remove potential barriers,
- 3) providing effective communication,
- 4) posting public notice statements,
- 5) including reasonable accommodation statements in all job listings, and
- 6) providing the policy to all employees.

## Does the policy describe the reasonable accommodation process?

Yes. Rules 2.21.4105 through 4112 explain the reasonable accommodation process but basically, it includes :

- 1) receiving a request for accommodation from an employee or an applicant,
- 2) notifying the agency's ADA coordinator of the request,
- 3) entering into interactive dialog, and
- 4) approving or denying the request within 30 working days.

## Does the policy describe the interactive process?

Yes. [Rule 2.21.4112](#) provides a detailed description of the interactive process, including responsibilities of designated personnel, the content of the discussion, and a caution about "probing questions" to prevent a violation of the Genetic Information and Nondiscrimination Act (GINA). Refer to [ARM 2.21.4009](#) for more information on GINA.

## Do agency managers have documentation responsibilities when they receive a reasonable accommodation request?

Yes. Agency managers should document:

- the accommodation requested and discussed,
- the impact of the employee or applicant's impairment on their ability to perform the essential functions or to compete in the selection process,
- follow-up with the employee or applicant and designated personnel, and
- decisions made and actions taken.

### **May agency managers request proof of a disability and need for the requested accommodation?**

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Yes within certain guidelines. [Rule 2.21.4114](#) addresses when and how agency managers may request medical documentation to establish the employee or applicant has a disability, as defined by the ADA, and needs the requested accommodation.

### **Does the agency need to provide the accommodation if an employee or applicant fails to provide sufficient documentation?**

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No. Agency managers are not required to provide the accommodation unless extenuating circumstances prevented the individual from providing information in a timely manner.

Agency managers must document the time exhausted while waiting on medical documentation.

### **Who approves reasonable accommodation requests?**

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Agency managers serve as approval authority for reasonable accommodation requests. [Rule 2.21.4115](#) provides guidance on approving requests.

### **What should agency managers do if they cannot provide a reasonable accommodation?**

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Agency managers must consider reassigning an employee to a vacant position, or a position that will become vacant in a reasonable amount of time.

[Rule 2.21.4116](#) provides guidance on what actions agency managers must take when reassigning an employee who can no longer perform the essential functions of their position.

### **What if agency management cannot provide a reassignment as an accommodation?**

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Agency managers may discharge an employee who can no longer perform the essential functions of their position or a vacant position with or without a reasonable accommodation.

[Rule 2.21.4118](#) addresses discharge and options for appealing.

### **Is anyone else required to review an agency manager's decision to deny a reasonable accommodation request?**

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Yes. Agency managers must forward their recommendation to deny the request to their supervisor. If the supervisor concurs with the recommendation, they must notify the employee or applicant in writing within 30 days of the initial request.

[Rule 2.21.4117](#) addresses denials of reasonable accommodation requests.

### **Is there an appeal process if agency management denies a reasonable accommodation request?**

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Yes. The agency head serves as the appeal authority for all denials. Employees and applicants have 15 working days from the time they receive their denial letter to submit their appeal to the agency head.

[Rule 2.21.4119](#) provides guidance on notifying employees and applicants of the decision.

### **Are there confidentiality requirements under the policy?**

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Yes. [Rule 2.21.4120](#) requires agency managers to treat all disability-related information as confidential and maintain the information in accordance with [ARM Title 2, chapter 21, subchapter 66](#).

### **Does the policy require tracking and reporting of reasonable accommodation requests?**

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Yes. Agency ADA coordinators must track and report all reasonable accommodation requests to State HR no later than the fifteenth day of each quarter – based on a calendar year. State HR has provided a template for tracking and reporting accommodation requests. The template can be found under the policy on <http://hr.mt.gov/hrpp/policies.mcp.x>.

### **Is there a difference between a reasonable accommodation and a reasonable modification?**

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Yes. Title I of the ADA requires employers to provide reasonable accommodations to employees and applicants, while Title II requires state and local governments to modify policies, practices, and procedures, with certain exceptions, to ensure equal access to the programs, services, or activities they offer.

### **Are agency managers responsible to provide reasonable modifications?**

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Yes. [Rule 2.21.4127](#) requires agency managers to modify policies, practices, or procedures that deny or have the potential to deny equal access for people with disabilities, with certain exceptions.

### **What does equally effective communication mean?**

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Equally effective communication means oral and written communications must be as clear and understandable to people with disabilities as for people without disabilities.

### **Are agency managers responsible for providing auxiliary aides?**

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Yes. Title II requires government entities to provide, at no cost, auxiliary aids and services to promote effective communication.

### **What are auxiliary aids and services?**

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Auxiliary aids and services are devices or services to enable effective communication for people with disabilities and promote equal access to programs, services, and activities offered by a state or local government.

Examples of auxiliary aids and services include, but are not limited to:

- qualified interpreters
- screen readers
- written materials or note takers
- audio recordings
- Brailled or large print materials
- open or closed captioning

[Rule 2.21.4128](#) provides guidance on requesting and providing auxiliary aids and services.

### **Closing:**

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For additional information, please contact your agency's HR manager, EEO officer, or ADA coordinator. You can also contact John Pavao, State Diversity Program Coordinator, at 444-3984 or by email at [jpavao@mt.gov](mailto:jpavao@mt.gov), if you need additional clarification.

*Alternative accessible formats of this Fact Sheet will be provided on request. Persons who need an alternative format should contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.*