

## Reasonable Accommodations and Equal Access

Resource: Administrative Rules of the State of Montana (ARM)

State Human Resources Division

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### 2.21.4101 SHORT TITLE

(1) This subchapter may be cited as Reasonable Accommodations and Equal Access Policy.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### 2.21.4102 POLICY AND OBJECTIVES

(1) The rules in this subchapter establish the minimum requirements for providing reasonable accommodations, reasonable modifications, and equally effective communication for persons with disabilities as for person without disabilities consistent with:

- (a) the Americans with Disabilities Act of 1990 (ADA);
- (b) ADA Amendments Act of 2008;
- (c) Genetic Information Nondiscrimination Act of 2008 (GINA);
- (d) Montana Human Rights Act, [Title 49](#), MCA;
- (e) Governmental Code of Fair Practices provided in [Title 49, chapter 3](#), MCA; and
- (f) Rights of Persons with Disabilities provided in [Title 49, chapter 4](#), MCA.

(2) This subchapter covers all agencies in Montana's executive branch except:

- (a) the Montana University System;
- (b) the Montana State Fund;
- (c) elected officials;
- (d) personal staff of elected officials; and
- (e) any other position specifically excluded under [2-18-103](#) and [2-18-104](#), MCA.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-2-101](#), [49-2-303](#), [49-3-101](#), [49-3-201](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### 2.21.4103 DEFINITIONS

(1) The department adopts and incorporates the definitions in Title I and Title II of the ADA, as amended by the ADA Amendments Act of 2008 (P.L. 110-325), effective January 1, 2009, 42 USC 12102, 12103, 12111, and 12131, which set forth all definitions applicable to the law, except those defined under this rule. A copy of these definitions may be obtained by contacting the department at the address provided in ARM 2.21.4121 or at <http://www.ada.gov/pubs/adastatute08.htm>.

(2) The following definitions also apply to this subchapter:

(a) "Designated personnel" means agency representatives identified this subchapter as those responsible for processing reasonable accommodation requests including agency managers (as defined by the agency in policy or rule to promote consistency

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with internal policies and procedures), ADA coordinators, Equal Employment Opportunity (EEO) officers, human resource staff, and individuals involved in the hiring process.

(b) "Extenuating circumstances" means circumstances beyond management's control and may include time spent waiting for medical documentation, special equipment, modifications to a work area, or other factors.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4104** RESPONSIBILITIES

(1) The Department of Administration shall:

(a) periodically review and update, as needed, reasonable accommodation and equal access rules, processes, and procedures; and

(b) design and develop training for employees that includes reasonable accommodations, reasonable modifications, and effective communication processes and procedures.

(2) Agency managers shall:

(a) provide reasonable accommodations to known physical or mental limitations of otherwise qualified employees or applicants with disabilities unless doing so would create an undue hardship;

(b) make reasonable modifications to policies, practices, or procedures unless doing so would create an undue financial or administrative burden or fundamentally alter the nature of a service, program, or activity;

(c) offer equally effective communications to people with disabilities and post public notice statements in areas frequented by employees and the public and on the agency's website to increase awareness of individual rights and the state's responsibilities under the ADA;

(d) include a reasonable accommodation statement in all job listings; and

(e) provide a copy of these rules to all employees.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-3-201](#), [49-3-205](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4105** REASONABLE ACCOMMODATIONS

(1) Agency managers shall provide reasonable accommodations to qualified individuals with disabilities in all aspects of employment unless doing so would cause undue hardship.

(2) Agency managers shall encourage employees and applicants with disabilities to

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request reasonable accommodations at any time they identify a barrier to employment. A barrier may include a policy, procedure, or workplace arrangement preventing applicants from effectively competing for a position and employees from performing essential functions of their position or receiving benefits of employment.

(3) The obligation to provide reasonable accommodations applies to all aspects of employment. This responsibility is ongoing and a reasonable accommodation may become necessary any time a person's disability or job changes.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-2-101](#), [49-3-101](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4106** REQUESTING REASONABLE ACCOMMODATIONS

(1) Employees or applicants with a disability may request reasonable accommodations through any one of the designated personnel.

(2) Reasonable accommodation requests may be oral or in writing and do not have to include the words "reasonable accommodation" or "disability." Employees may simply indicate they are having difficulty performing their job or applying for a position because of a disability.

(3) Family members, friends, health care professionals, or other representatives may request reasonable accommodations on employees' or applicants' behalf.

(4) There are no time limits for requesting an accommodation; however, employees should not wait for an impairment to affect their job performance before requesting an accommodation. Employees are encouraged to communicate with agency management about performance issues as soon as they realize the need for an accommodation.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4107** RESPONDING TO REASONABLE ACCOMMODATION REQUESTS

(1) Designated personnel who receive reasonable accommodation requests shall promptly notify their agency ADA coordinator of the request.

(2) If the request comes from someone other than an agency manager, the ADA coordinator shall inform the appropriate manager and provide assistance throughout the reasonable accommodation process. With assistance from the ADA coordinator, the agency manager shall:

(a) participate in an informal dialogue (known as the interactive process) with the employee or applicant;

(b) periodically follow up with the employee or applicant on all reasonable

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accommodation requests; and

(c) approve or deny the request within 30 working days following the initial request, unless extenuating circumstances exist.

(3) Designated personnel shall always consider an employee's or applicant's requested accommodation; however, they may elect another reasonable accommodation if it would effectively allow the employee to perform the essential functions of the job or allow an applicant to compete for a position.

(4) Employees may refuse the elected accommodation; however, if the employee cannot perform the essential functions of the job, with or without the accommodation, the refusal may limit the employee's qualifications for the position.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4112 PARTICIPATING IN THE INTERACTIVE PROCESS**

(1) Agency managers shall participate in the interactive process until they identify an effective accommodation or determine a reasonable accommodation is not possible. Failure to participate in the interactive process could result in a delay or failure to provide a reasonable accommodation.

(2) When an employee or applicant requests a reasonable accommodation, the dialogue between designated personnel and the employee may include the following:

(a) a discussion of the employee's specific limitations;

(b) how the limitation affects the employee's performance;

(c) specific job tasks or selection procedures that are or may be problematic for the employee;

(d) possible accommodations; and

(e) if implemented, whether the accommodation was effective.

(3) The extent of the dialogue between designated personnel and the employee or applicant may vary because of the nature of an individual's disability or their specific request. If the disability and the need for an accommodation are obvious, the discussion may be brief. In some cases, the agency manager may need to ask questions about the nature of the individual's disability and the individual's functional limitations in an effort to identify an effective accommodation.

(4) Designated personnel shall limit discussion with applicants to the individual's specific request, their inability to participate in a particular selection process, and possible accommodations.

(5) Designated personnel may not ask probing questions likely to disclose genetic information in compliance with [ARM Title 2, chapter 21, subchapter 40](#), Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy.

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History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4113** DOCUMENTING REASONABLE ACCOMMODATION REQUESTS

(1) Agency managers shall document all reasonable accommodation requests and their contact with designated personnel. Documentation must include the following:

- (a) accommodation requested and discussed;
- (b) impact of the impairment on the employee's ability to perform their job or an applicant's ability to participate in the selection process;
- (c) follow-up discussions with employees, applicants, or their representative; and
- (d) decisions made and actions taken.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4114** REQUESTING MEDICAL DOCUMENTATION

(1) Medical examinations must be job-related and consistent with business necessity.

(2) Agency managers may request documentation from an appropriate health care professional when the need for a reasonable accommodation is not known or obvious. If an agency manager requests medical documentation, the manager:

- (a) shall provide the request to the applicant or employee in writing;
- (b) shall explain the need for documentation and limit the request to information about the individual's disability, functional limitations, and the need for a reasonable accommodation to perform the essential functions of the job;
- (c) shall include a statement to the applicant, employee, or health care provider to not provide genetic information as specified under [ARM Title 2, chapter 21, subchapter 40](#), Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy;
- (d) may not request more information than required to support the need for a specific type of accommodation; and
- (e) may not request documentation when the disability and the need for a reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate their need for a reasonable accommodation.

(3) If the individual does not provide the requested documentation, agency managers are not required to provide an accommodation. Agency managers may make exceptions if extenuating circumstances prevent the individual from providing the

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documentation.

(4) Agency managers shall document the time exhausted while waiting for documentation. This time does not count against the agency's 30-working day timeline to process the request.

(5) If an individual provides insufficient documentation, the agency manager shall explain why the documentation was insufficient and allow additional time to provide sufficient documentation.

(6) Agency management may require an individual to go to a health care professional of the agency's choice when the individual fails to provide sufficient documentation. If management requires an individual to go to a health care provider, the agency shall pay costs associated with the visit.

(7) If an employee chooses not to see a health care professional of the agency's choice and fails to provide sufficient documentation, agency managers are not required to provide an accommodation.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4115** APPROVING REASONABLE ACCOMMODATION REQUESTS

(1) Agency managers shall serve as the approval authority for all reasonable accommodation requests.

(2) If agency managers determine the request is reasonable, they shall:

(a) grant the request and notify the employee or applicant in writing of their decision;

(b) implement the accommodation as soon as practical;

(c) follow up with the employee or applicant to ensure the accommodation is effective;

(d) continue the interactive process if the accommodation is not effective, the need for the accommodation has changed, or the job has changed; and

(e) continue the interactive process until they find an alternative or determine it is not possible to provide a reasonable accommodation.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4116** REASSIGNING AN EMPLOYEE AS A REASONABLE ACCOMMODATION

(1) When an employee with a disability can no longer perform the essential functions of their position with or without a reasonable accommodation, the agency manager shall consider reassigning the employee to an equivalent vacant position

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unless doing so would create an undue hardship. The employee shall concur with the reassignment.

(2) When reassigning an employee to a vacant position as a reasonable accommodation, agency managers shall:

(a) do so without a competitive process;

(b) consider any implications under a seniority system of a collective bargaining agreement;

(c) attempt to reassign a qualified employee to a vacant position equivalent in pay, status, and other relevant factors (e.g., benefits, geographical location); and

(d) continue the interactive process after reassigning an employee to ensure the employee is able to perform the essential functions of the job, with or without a reasonable accommodation.

(3) If reassigning an employee would violate a seniority system or collective bargaining agreement, is not reasonable to reassign an employee.

(4) If an equivalent vacant position is not available, management may reassign the employee to a lower-pay position, provided the employee is qualified and agrees to the transfer.

(5) "Vacant" means the position is available when the employee asks for an accommodation, or the employer knows a position is to become available within a reasonable amount of time. Agency managers shall determine a reasonable amount of time on a case-by-case basis.

(6) Agency managers are not required to create a new position as a reasonable accommodation.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4117 DENYING REASONABLE ACCOMMODATION REQUESTS**

(1) If agency managers determine they cannot reasonably accommodate a request or an accommodation would create an undue hardship, they shall forward the recommendation to their division administrator. If the division administrator is the manager receiving the request, the administrator shall make the recommendation to their supervisor.

(2) If the division administrator or higher-level manager concurs with the recommendation, the administrator or manager shall notify the employee or applicant in writing within 30 working days of the initial request.

(3) The written notification must include an explanation for the denial and the appeal process.

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History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4118 DISCHARGING EMPLOYEES WITH DISABILITIES**

(1) Agency managers may discharge an employee with a disability when the employee is no longer able to perform the essential functions of their job with or without a reasonable accommodation, and managers have ruled out all possible options.

(2) If denial of a reasonable accommodation results in the discharge of an employee, the appeal process outlined in ARM Title 2, chapter 21, subchapter 65, Discipline Policy or applicable collective bargaining agreement supersedes the reasonable accommodation appeal process.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4119 APPEALING DENIAL OF REASONABLE ACCOMMODATION REQUESTS**

(1) The department head shall serve as the appeal authority for all denials.

(2) Employees and applicants wishing to appeal a denial shall submit a written request, along with supporting documents, to the department head within 15 working days from the time they receive the denial letter.

(3) The department head shall work with the appropriate agency manager, the ADA coordinator, and human resources manager to review pertinent information and the rationale for denial.

(4) Upon completion of the review, the department head shall:

(a) deny the request, approve the request, or refer it back to management for further action; or

(b) notify the employee or applicant of their decision in writing within 15 working days of receiving the appeal.

(5) If the department head denies the appeal, the written notification must include an explanation for the denial and information on the right to file a complaint with the Montana Human Rights Bureau, Department of Labor and Industry.

(6) Employees and applicants may contact the Montana Human Rights Bureau at (406) 444-2884 or (800) 542-0807 or the federal Equal Employment Opportunity Commission at (800) 669-4000 to file a complaint.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-2-101](#), [49-2-501](#), [49-3-102](#), [49-3-301](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

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### 2.21.4120 CONFIDENTIALITY REQUIREMENTS

(1) Agency managers shall:

(a) treat all information related to an employee's or applicant's disability as confidential; and

(b) maintain disability-related information according to the requirements of ARM [Title 2, chapter 21, subchapter 66](#), Employee Records Management Policy.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### 2.21.4121 TRACKING AND REPORTING REASONABLE ACCOMMODATION REQUESTS

(1) Agency ADA coordinators shall track reasonable accommodation requests using the Reasonable Accommodation Tracking Sheet at the State Human Resources Division web site: <http://hr.mt.gov/hrpp/policies.mcp> and also available from the State Human Resources Division, Department of Administration, Room 125 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

(2) ADA coordinators shall provide a quarterly summary of all reasonable accommodation requests to the State Human Resources Division no later than the fifteenth day of each quarter.

(3) The report must include the following information:

(a) total number of requests;

(b) whether requests were by employees or applicants;

(c) types of accommodations requested and approved;

(d) cost of accommodations;

(e) effectiveness of the accommodations;

(f) number of days to process the requests (including extenuating circumstances);

and

(g) if denied, the reason for denial and whether the employee or applicant appealed.

(4) Data are for tracking purposes only and must not include confidential information such as names or references to medical conditions or impairments.

(5) The State Human Resources Division shall collect and analyze data to:

(a) assess program effectiveness;

(b) develop or modify existing policies, procedures and guides; and

(c) promote compliance with applicable laws, regulations, and policies.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-3-205](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

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### **2.21.4122** DISABILITY RETIREMENT

(1) Employees with disabilities may be eligible for disability retirement benefits under 19-3-1002, MCA. Employees may contact the Montana Public Employee Retirement System at (877) 275-7372 (toll free) or (406) 444-3154 for more information.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4127** REASONABLE MODIFICATION PROCEDURES

(1) Agency managers shall make reasonable modifications to policies, practices, and procedures that deny, or have the potential to deny, equal access to programs, services, or activities to individuals with disabilities, unless doing so would result in an undue burden or fundamentally alter a program, service, or activity.

(2) Anyone requesting to modify a policy, practice, or procedure may contact the office responsible for providing the program, service, or activity, including agency management, ADA coordinator, EEO officer, or human resources staff.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-3-201](#), [49-3-205](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11

### **2.21.4128** EFFECTIVE COMMUNICATION PROCEDURES

(1) Agency managers shall furnish auxiliary aids and services, upon request, to promote equally effective communication for people with disabilities, unless doing so would result in an undue burden or fundamentally alter the program, service, or activity.

(2) Anyone requiring auxiliary aids and services may contact the department directly responsible for providing the program, service, or activity, including agency management, ADA coordinator, EEO officer, or human resources staff.

(3) Agency managers may not charge individuals with disabilities to offset costs associated with providing required auxiliary aids and services.

(4) Agency managers are not required to provide personal use items such as wheelchairs, prescription eyeglasses, hearing aids, or personal services such as eating, toileting, or dressing.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), [49-3-201](#), [49-3-205](#), [49-4-202](#), [49-4-211](#), [49-4-503](#), MCA; [NEW](#), 2011 MAR p. 1668, Eff. 8/26/11