
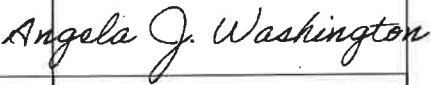



## SECRETARY'S DIRECTIVE

	<b>Title:</b> Americans With Disabilities Act of 1990, Title I - Disability Discrimination Prohibited	<b>Directive Number:</b> DPSCS.050.0011
	<b>Number of Pages:</b> 12 <b>Number of Appendices:</b> 5 <b>Number of References:</b> 5	<b>Rescinds and Replaces:</b> OSPS.050.0011, dated August 21, 2015
<b>Related Statutes and Regulations:</b>  Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102, et seq.; Section 504 of the Rehabilitation Act of 1973 as amended, 34 C.F.R. § 104.12; Pregnant Workers Fairness Act, Pub. L. 117-328.; Title VII of the Civil Rights Act of 1964  State Personnel and Pensions Article, Title 5, Subtitle 2, Annotated Code of Maryland; State Government Article, Title 20, Annotated Code of Maryland; Executive Order 01.01.2007.16 (Code of Fair Employment Practices)		<b>Issued Date:</b> 12/28/2023  <b>Effective Date:</b> 1/1/2024  
<b>Standards:</b> ACA: 5-ACI-1C-06; 5-ACI-1C-07; 1-CORE-7B-02 & 04; 1-CORE-7E-01 NIC: Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act of 1973, or the Americans with Disabilities Act Accessibility Guidelines (ADAAG), published in 1991 and adopted by the Department of Justice.		<b>Angela J. Washington</b> Executive Director Office of Equal Employment Opportunity
<b>Related Directives:</b> DPSCS.200.0007 – Americans with Disabilities Act (ADA) Title II Non-discrimination and Accommodations for Persons with Disabilities OEEO.050.0024 – Sexual Harassment Prohibited OEEO.050.0031 – Discrimination, Harassment, Retaliation, and Unfair Employment Practices OPS.050.0001 – Sexual Misconduct Prohibited		
<b>Variance: No division, agency, or facility directive is permitted.</b>		<b>Carolyn J. Scruggs</b> Secretary

### .01 Purpose.

- A. The purpose of this directive is to establish and maintain Department of Public Safety and Correctional Services' (Department) policy concerning the implementation of Title I of the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 U.S.C. § 12102, et seq.
- B. This directive addresses the procedures for requesting a reasonable accommodation under the ADA and discrimination, harassment, retaliation, and unfair employment practices on the basis of disability.

### .02 Scope.

This directive applies to job applicants and employees with a physical or mental condition that substantially limits one or more major life activities or has a record of a physical or mental condition that substantially limits one or more major life activities.

**.03 Policy.**

- A. In accordance with the ADA and the Pregnant Workers Fairness Act ("PWFA"), the Department prohibits discrimination against a qualified individual with a disability with regard to any term, condition, or privilege of employment.
- B. The Department is committed to providing individuals with a work environment free of discrimination and harassment based on an individual's disability as defined by federal and State disability laws.
- C. The Department shall enforce and ensure compliance with federal and State laws that prohibit discrimination and harassment based on an individual's disability or rights under the ADA, PWFA, or other federal and State disability laws.
- D. To the extent possible, and according to federal guidelines, the Department shall make reasonable accommodations to enable a qualified individual with a disability access to employment opportunities.

**.04 Definitions.**

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.
  - (1) "Applicant" means an individual who has applied for a job vacancy or received a conditional offer of employment.
  - (2) "Auxiliary aids and services" include:
    - (a) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
    - (b) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
    - (c) Acquisition or modification of equipment or devices; and
    - (d) Other similar services and actions.
  - (3) "Conditional offer of employment" means an offer of employment that is contingent on the satisfactory completion of an investigation, examination, or other essential job function.
  - (4) "Disability" means:
    - (a) A physical or mental impairment that substantially limits one or more of the major life activities of an individual, which may include temporary impairments or limitations that are related to pregnancy or short-term injuries;
    - (b) A record of such an impairment; or
    - (c) Being regarded as having such impairment.

- (5) "Employee" means an individual employed by the Department, including an intern or paid worker, whose work within the Department is controlled by the Department, including but not limited to:
  - (a) When, where, and how the individual performs a job;
  - (b) What resources, tools, materials, and equipment are made available; and
  - (c) Whether compensation or a benefit is conferred based on job performance (e.g. academic credit, stipend, future employment).
- (6) "Essential Job Function" means a fundamental duty or responsibility of the position, including but not limited to, the following:
  - (a) The purpose or reason that a job exists;
  - (b) There are only a limited number of employees among whom that function can be distributed; or
  - (c) The function is highly specialized and the individual in the position is hired for the individual's expertise or ability to perform the particular function.
- (7) "Intern" means an individual who has an employer-employee relationship with the Department that meets the criteria established in §.04B(5) of this directive.
- (8) "Major life activity" has the meaning stated in 42 U.S.C § 12102.
- (9) "Qualified individual with a disability" means an individual with a disability, or an individual who is regarded as or who has a record of having a disability, who also has the skill, expertise, education, or other qualification for the job and who can perform the essential functions of the employment position with or without an accommodation.
- (10) Reasonable Accommodation.
  - (a) "Reasonable accommodation" is an accommodation that allows a disabled employee to perform the essential job functions of their job without placing an undue hardship on the Department.
  - (b) "Reasonable accommodation" may include:
    - (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities (e.g. ramps, wider doorways, private space to pump breast milk);
    - (ii) Ensuring that recruitment, interviews, tests, and other components of the application process are held in accessible locations;
    - (iii) Job restructuring that involves the redistribution or exchange of the non-essential functions of the job;
    - (iv) Part-time or modified work schedules (e.g. light duty, meal breaks, bathroom breaks);

- (v) Reassignment to a vacant position or alternate location, which thereby includes reviewing an employee's ability to perform the essential functions of a job, not simply the job that the employee currently holds;
  - (vi) Acquisition or modification of auxiliary aids, equipment, or devices;
  - (vii) Appropriate adjustment or modifications of examinations, training materials, or policies; or
  - (viii) Provision of qualified readers or sign language interpreters.
- (c) "Reasonable accommodation" does not include recommended equipment, medical appliances, or prostheses that have general use both at work and outside of work (e.g. wheelchair, hearing aids, and eyeglasses).
- (11) "Undue Hardship" means:
- (i) A significant difficulty or expense incurred by the employer to provide an accommodation; or
  - (ii) An action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the Department or agency.
- (12) "Supervisor" means an Appointing Authority, Manager, or Supervisor.

## **.05 Responsibility.**

### **A. The Executive Director of Office for Equal Employment Opportunity (OEEO):**

- (1) Is the Secretary's delegated Title I ADA and PWFA Coordinator ("Coordinator");
- (2) Shall provide mandatory ADA, PWFA, and equal employment opportunity training to Department employees; and
- (3) Shall provide an annual report to the Secretary documenting the personnel actions taken regarding ADA and PWFA compliance.

### **B. To ensure compliance with federal and State disability laws, the Coordinator is:**

- (1) Responsible for the administration and coordination of requests for reasonable accommodations filed with the Department, and shall:
  - (a) Provide assistance to individuals seeking to file a request for a reasonable accommodation under on the basis of a disability;
  - (b) Receive, log, and track requests for accommodation;
  - (c) Coordinate accommodation efforts with the Human Resource Services Division ("HRSD"), Occupational Health unit, Employee Relations unit, State Medical Examiner, and other external agencies; and

- (d) Provide notification of a determination in accordance with the procedures established in [§.06C](#) of the this directive;
- (2) Responsible for administration of Title I ADA and PWFA complaints filed with the Department, and shall:
  - (a) Receive, log, and track complaints;
  - (b) Investigate complaints of disability discrimination or assign investigations to liaisons within the units of the Department;
  - (c) Ensure resolution of complaints; and
  - (d) Maintain and report data related to complaints.

### C. Supervisors Responsibilities.

- (1) Supervisors shall:
  - (a) Submit all requests for accommodation to the Department's OEEEO within 48 hours of receipt;
  - (b) Ensure that all employees assigned to them for supervision:
    - (i) Receive a copy of this directive;
    - (ii) Sign the *Acknowledgement of Receipt and Understanding for DPSCS.050.0011 form DPSCS.050-11Ar* (Appendix A); and
    - (iii) Return a signed a DPSCS.050-11Ar form to HRSD for placement in the employee's personnel file;
  - (c) Direct an employee or applicant requesting an accommodation to complete a *Request for Accommodation form DPSCS.050-11B(r)* in accordance with the procedures established in [§.06A](#) of this directive;
  - (d) Direct an employee or applicant requesting an accommodation to submit all requested and required medical documentation directly to the DPSCS OEEEO Coordinator;
  - (e) Treat women affected by pregnancy or related conditions in the same manner as other applicants or employees who are similar in their ability or inability to work;
  - (f) Engage in the interactive accommodation process as stated in [§.06B](#) of this directive;
  - (g) Report all verbal and written disability (ADA and PWFA) complaints to OEEEO within 48 hours of receipt in accordance with [§.06D](#) of this directive;
  - (h) Appropriately address discriminatory conduct that is in violation of this directive, through the procedures established in *DPSCS.050.0002 Standards of Conduct and Internal Administrative Disciplinary Process* ("Standards of Conduct");

- (i) Appropriately address retaliation against an individual who has asserted their rights under the ADA, PWFA, or other anti-discrimination law, through the procedures established in the *Standards of Conduct*;
  - (j) Cooperate with internal equal employment opportunity (EEO) investigations; and
  - (k) Attend mandated EEO and ADA related training.
- (2) Supervisors shall **not**:
- (a) Assume that an employee requires a reasonable accommodation based on the:
    - (i) Supervisor's perceived nature of the disability; or
    - (ii) Employee's past record of having a disability;
  - (b) Deny a request for a reasonable accommodation without going through the interactive process;
  - (c) Require an employee to accept a reasonable accommodation without a discussion about the reasonable accommodation between the employee and supervisor;
  - (d) Deny a job or other employment opportunities to a qualified employee or applicant based on the individual's need for a reasonable accommodation;
  - (e) Require an employee to take leave, at the conclusion of the interactive process, if another reasonable accommodation can be provided;
  - (f) Require an employee to take leave, prior to the conclusion of the interactive process, unless the employee's presence poses a direct threat, the employee cannot safely perform the job functions, or no temporary accommodation can be provided to allow the employee to perform the job functions and essential duties of the employee's position;
  - (g) Retaliate against an individual for reporting or opposing unlawful discrimination under the ADA, PWFA or participating in a proceeding (e.g. an investigation);
  - (h) Interfere with any individual's rights under the ADA or PWFA; or
  - (i) Receive completed medical documentation protected under the Health Insurance and Accountability Act of 1996 ("HIPAA") from an employee, medical professional, human resources officer, or other individual. All completed medical documentation shall be sent to OEEO at [publicsafety.oeo@maryland.gov](mailto:publicsafety.oeo@maryland.gov) in accordance with the procedures in §.06B(2) of this directive.

**D. Applicants and Employees.**

- (1) Applicants and employees have the responsibility to request a reasonable accommodation.
- (2) A request for a reasonable accommodation can also be made by an employee's representative (e.g. family member). If the request comes in through a third party, the request should be confirmed with the applicant or employee.

- (3) Applicants and employees shall send their request for a reasonable accommodation and completed medical documentation to [publicsafety.oeo@maryland.gov](mailto:publicsafety.oeo@maryland.gov).

## **.06 Procedures.**

### **A. Making a Request for Reasonable Accommodation.**

- (1) An applicant or employee may make a request for a reasonable accommodation in writing or verbally to the employee's supervisor, Coordinator or liaison, or a HRSD representative.
- (2) When an applicant or employee makes the initial request for a reasonable accommodation, the individual should complete a *Request for Reasonable Accommodation form* –DPSCS.05-11Br (Appendix B). The form is available on the Department's:
  - (a) SafetyNet (internal intranet) [OEEO Request for Reasonable Accommodation](#); and
  - (b) Public website at: <https://dpscs.maryland.gov/eeo/index.shtml>.
- (3) If an applicant or employee does not submit the request in writing (e.g. makes a request via telephone), OEEO shall document the employee or applicant's request and provide them with an electronic copy of the *Request for Reasonable Accommodation form* (Form # DPSCS.05-11Br) for submission.
- (4) When a verbal or written request is received, the supervisor and the Coordinator must engage in good faith communication through the interactive process as described in [§.06C](#) of this directive, with the:
  - (a) Applicant to provide an effective and reasonable accommodation for use during the application and hiring process; or
  - (b) Employee to explore effective and reasonable accommodations that would allow the employee to:
    - (i) Perform all of the essential functions of the job;
    - (ii) Access the work environment; and
    - (iii) Enjoy a benefit or privilege of the job.

### **B. Receipt of a Reasonable Accommodation Form from an Employee.**

- (1) Within 48 hours of receipt of a Request for Reasonable Accommodation Form from an employee, a supervisor, or HRSD employee, shall forward the request form to OEEO via the email address: [publicsafety.oeo@maryland.gov](mailto:publicsafety.oeo@maryland.gov).
- (2) Upon receipt of a Request for Reasonable Accommodation Form an OEEO employee shall:
  - (a) Contact the employee to confirm the completion of a Reasonable Accommodation Request Form;

- (b) Document the Request for Reasonable Accommodation within an electronic database for record-keeping purposes;
- (c) Send the Medical Inquiry Form to the employee for completion by a physician;
- (d) Receive the completed Medical Inquiry Form; and
- (e) Begin engaging in the interactive process.

**C. Receipt of a Request for a Reasonable Accommodation Form from an Applicant.**

(1) An HRSD employee shall:

- (a) Upon receipt of a Request for Reasonable Accommodation Form from an applicant contact the applicant to confirm the completion of a Reasonable Accommodation Request Form;
- (b) Contact OEEEO to:
  - (i) Confirm receipt of a request a reasonable accommodation for an applicant;
  - (ii) Provide detailed information about the applicant's reasonable accommodation request; and
  - (iii) Receive a letter of approval or denial from OEEEO for the Reasonable Accommodation Request; and
- (c) Provide the approval or denial letter to the applicant.

**D. Interactive Process.**

- (1) To help determine effective and reasonable accommodations, the Department shall use an "interactive process," which means that applicants and employees with disabilities who request accommodations work collaboratively with OEEEO, supervisors, occupational health and medical providers, and other professionals to develop solutions.
- (2) Frequently, the interactive process requires input from supervisors, facility managers, HRSD occupational health, specialized consultants, and the employee's physician.
- (3) In certain specific situations, the interactive process may not be required under the ADA or the PWFA. For example:
  - (a) If the disability or need for a requested accommodation is obvious or adequate medical documentation has already been provided to the Human Resource Services Division for other reasons (e.g. Family Medical Leave Act, Workers Compensation), additional medical documentation may not be required.



- (b) If an employee who uses a wheelchair requests that their desk be placed on blocks to elevate the desktop above the arms of the wheelchair and the employer complies, an appropriate accommodation has been requested, identified, and provided without the need for the interactive process.
- (4) When a disability or medical condition is not obvious or documented, a reasonable accommodation is best determined through a flexible, interactive process. As part of this process, OEEO and the supervisor shall:
  - (a) Analyze the particular job involved and determine its purpose and essential functions;
  - (b) Consult with the applicant or employee to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations can be overcome with a reasonable accommodation; and
  - (c) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.
- (5) Medical information shall be disclosed only on a "need to know" basis. Reasonable accommodations may be provided without disclosing the applicant or employee's diagnosis or disability to the hiring manager or the employee's supervisor.

**E. Determination.**

- (1) Elements considered when approving or denying a request may include, but are not limited to:
  - (a) The nature and net cost of the accommodation needed, taking into consideration the availability of outside funds;
  - (b) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at such facility and the effect on expenses and resources;
  - (c) The type of operation or operations of the employer including the composition, structure, and functions of the workforce of the employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer;
  - (d) Legitimate safety concerns; 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.
- (2) Undue Hardship.
  - (a) The appointing authority has the burden of proving that providing an accommodation would impose undue hardship on the Department.
  - (b) Undue hardships are determined on a case-by-case basis.

- (c) The appointing authority may choose among the available reasonable accommodations, even if it is not the accommodation the employee requested, as long as the chosen reasonable accommodation allows the employee to perform the essential functions of the job.

(3) Accommodation Request Approvals.

- (a) When a reasonable accommodation is granted, OEEO will provide the individual requesting the accommodation with a written *Notice of Accommodation Approval form* DPSCS.050-11Cr (Appendix C) and discuss implementation of the accommodation the applicant or employee and any necessary staff.
- (b) If the Department makes a decision to provide a reasonable accommodation other than the one specifically requested by the applicant or employee, the decision shall be considered an approval to grant a reasonable accommodation.
- (c) If the Coordinator offers a reasonable accommodation other than the one requested, but the alternative reasonable accommodation is not accepted by the applicant or employee, the Coordinator will record the individual's rejection of the alternative accommodation on the *Notice of Accommodation Approval form*.
- (d) On the *Notice of Accommodation Approval form*, the Coordinator shall indicate if the accommodation is a long-term solution, temporary solution, or trial accommodation. A temporary or trial accommodation may be needed in situations when:
  - (i) Time is needed to research a permanent accommodation solution, to acquire equipment, arrange a service, or identify an alternative vacancy;
  - (ii) It is necessary to test an accommodation to determine if it is effective;
  - (iii) The medical impairment is temporary, but sufficiently severe enough to entitle the employee to accommodation;
  - (iv) It is necessary to avoid temporary adverse conditions in the work environment; or
  - (v) An accommodation can currently be provided, but may eventually pose an undue hardship if provided long-term.
- (e) Accommodation Request Denials.
  - (i) If the Department denies a request for accommodation, the Coordinator shall give a *Notice of Accommodation Denial form* DPSCS.050-11Dr (Appendix D) to the applicant or employee, and discuss the reason for the denial.
  - (ii) The form explains both the reasons for the denial of the individual's specific requested accommodation and the process for appealing the denial.
  - (iii) The *Notice of Accommodation Denial form* shall identify the next steps that the individual needs to take in the process, if any.

- (f) Appeals. An employee dissatisfied with the resolution of a reasonable accommodation request can ask the Department's Coordinator or Department of Budget and Management's Office of the Statewide Equal Employment Opportunity to reconsider that decision. An individual must submit a written request for reconsideration within 10 business days of receiving the *Notice of Accommodation Denial form*.

#### F. Complaints.

- (1) An applicant or employee may file a complaint of alleged discrimination based on disability with:
- (a) The Department's OEEO;
  - (b) A HRSD accommodations liaison;
  - (c) The Office of the Statewide Equal Employment Opportunity Coordinator (OSEEOC);
  - (d) The Maryland Commission on Civil Rights; or
  - (e) The local U.S. Equal Employment Opportunity Commission ("EEOC") field office.
- (2) To file a complaint, an applicant or employee may:
- (a) Complete and electronically submit an EEO complaint form on the SafetyNet (internal intranet) Department's public website;
  - (b) Contact the Department's OEEO for a paper copy of the complaint form or download a copy of the form from the Department's public website at:  
<https://dpscs.maryland.gov/eo/Internal%20Complaint%20Form2022.pdf>; or
  - (c) Submit a complaint to the EEOC at: <https://publicportal.eeoc.gov/Portal/Login.aspx>.
- (3) An individual identified in §.06D(1)(b)—(d) of this directive shall report all complaints of discrimination to the Coordinator.

#### .07 Appendix.

- A. *Acknowledgement of Receipt and Understanding* of DPSCS.050.0011 Form # DPSCS.050-11aR
- B. *Request for Reasonable Accommodation* Form # DPSCS.050-11bR
- C. *Medical Inquiry* Form # DPSCS.050-11cR
- D. *Notice of Accommodation Approval* Form # DPSCS.050-11dR
- E. *Notice of Accommodation Denial* Form # DPSCS.050-11eR

#### .08 References.

- A. U.S. Equal Employment Opportunity Commission: <https://www.eeoc.gov/employees-job-applicants>
- B. The Job Accommodation Network: <https://askjan.org/index.cfm>

- C. Employment Rights as an Individual with a Disability: <https://www.eeoc.gov/laws/guidance/your-employment-rights-individual-disability>
- D. Pregnancy Discrimination Act <https://www.eeoc.gov/pregnancy-discrimination>
- E. Pregnant Worker's Fairness Act <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>

**.09 History.**

- A. This Secretary's Directive, DPSCS.050.0011, Americans With Disabilities Act of 1990, Title I, dated September 1, 2023, rescinds and replaces OSPS.050.0011, dated August 21, 2015.
- B. Executive Directive OSPS.050.0011, American With Disabilities Act of 1990, Titles I and II, dated August 21, 2015 rescinded and replaced OEO.050.0011, dated October 4, 2013.
- C. Secretary's Directive OEO.050.0011, Americans with Disabilities Act 1990, dated October 4, 2013 supersedes provisions of any other prior existing Department or unit communication with which it may be in conflict.

**.10 Distribution.**

A – Reference File

B – All DPSCS Employees

**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

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**Receipt and Acknowledgment of  
DPSCS.050.0011—ADA of 1990, Title I – Disability Discrimination in  
Employment Practices Prohibited**

My signature below acknowledges receipt of *DPSCS.050.0011—Americans with Disabilities Act (ADA) Title I - **Disability Discrimination in Employment Practices Prohibited***. I understand that I am responsible for reviewing and following the lawful requirements of the Directive.

Further, I understand that an investigation of allegations of discrimination resulting in a finding of probable cause against me may result in disciplinary action, up to and including, termination.

Date Directive Received by Employee: \_\_\_\_\_

Employee's Printed Name: \_\_\_\_\_

Employee's Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Supervisor's Printed Name: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_