



# Reasonable Accommodation

*MnDOT Policy HR009*

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*Replaces Policy 3.2, "Reasonable Accommodation," Established 3-9-1999, Updated 7-26-2002*

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## Policy Statement

It is the policy of MnDOT to adhere to all state and federal laws that prohibit discrimination against qualified persons with disabilities in all employment practices.

MnDOT shall provide reasonable accommodation to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of the job, applying or competing for a job, or enjoying equal benefits and privileges of employment; unless MnDOT can demonstrate that a particular accommodation would impose an undue hardship on the operations of its programs or pose a direct threat to safety.

## Reason for Policy

- To ensure compliance with all applicable state and federal laws.
- To establish a written and readily accessible procedure regarding reasonable accommodation, including providing notice of this policy on all job announcements and on the MnDOT website.
- To provide guidance and resources to all employees to ensure timely and appropriate response to all employees regarding accommodation.
- To provide a positive and supportive interactive process regarding accommodations.
- To provide a timely and thorough review process for individuals prior to the denial of accommodation.

## Who Needs to Know this Policy

- Senior Leadership Team, office directors, district engineers, managers and supervisors shall ensure that employees comply with the policy.
- All employees must follow the policy and support MnDOT efforts and strategies to integrate this policy as it relates to MnDOT employment practices.
- All applicants for MnDOT employment must be informed of this policy.

## Procedures

### ***Individuals who may request reasonable accommodation***

- Any MnDOT employee with a qualifying disability who needs a reasonable accommodation to perform the essential functions of his or her position.
- Any applicant for MnDOT employment with a qualifying disability who needs assistance with the job application procedure, interview or selection process.
- A family member, friend, health professional or other representative, on behalf of an employee or applicant with a qualified disability, when an individual is unable to make the request for accommodation. In this case, the applicant or employee will be contacted to confirm that he or she wants a reasonable accommodation.

MnDOT must comply with the [Government Data Practices, Chapter 13](#), in obtaining or sharing information related to the accommodation. The applicant or employee has the discretion to accept or reject the proposed accommodation.

### ***Submitting a reasonable accommodation request***

MnDOT employees or applicants may make a reasonable accommodation request to any or all of the following:

- The immediate supervisor or manager in his or her chain of command;
- Affirmative Action Officer (AAO) and/or;
- Disabilities Program Coordinator and/or;
- Human Resources Office and/or;
- Any agency official with whom applicant has contact in the processing of their employment application.

### ***Time of the request***

An individual may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability.

### ***Form of the request***

An employee and/or applicant needing the accommodation is the person responsible for requesting an accommodation or providing sufficient notice or information to MnDOT that an accommodation is needed.

- A request for accommodation may be made in writing, in person or verbally.
- The individual requesting accommodation can use "plain English" and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."
- When a supervisor or manager receives information indicating that an employee is experiencing difficulty performing his/her job due to a medical condition or disability, further inquiry will be required.

### ***The interactive process***

- The interactive process is a collaborative endeavor between the employee and/or applicant and MnDOT to explore and identify specific reasonable accommodation(s). See link: [Interactive Process \(Job Accommodation Network\)](#). The interactive process is required:
  - When the need for the accommodation is not obvious.
  - Where the medical condition changes or fluctuates.
  - Where there are questions about the reasonableness of the requested accommodation.
- The interactive process should begin as soon as possible after a request for accommodation is made or the need for accommodation becomes known.
- The process should ensure a full exchange of relevant information and communication between the employee and MnDOT. An individual may request that the Affirmative Action Officer, the Disability Programs Coordinator or a union representative be present.
- The Affirmative Action Officer shall be consulted when:
  - There are issues, conflicts or questions that arise in the interactive process.
  - Prior to denying a request for accommodation.

### ***Denial of request for reasonable accommodation***

The supervisor must contact the Affirmative Action Officer for assistance and guidance prior to denying any request for reasonable accommodation. MnDOT may deny a request for reasonable accommodation when:

- The accommodation results in undue hardship or would pose a direct threat to the individual or others.
- After a thorough interactive process no accommodation, including reassignment to a vacant position, will enable the employee to perform the essential functions of the job.

### ***Review in the event of denial***

- Employees or applicants who are dissatisfied with the decision(s) pertaining to an accommodation request may ask for a review with the Affirmative Action Officer. If the Affirmative Action Officer was the individual handling their accommodation request, he/she may request review from the Corporate Services Division Director within a reasonable period of time.
- If the individual believes the decision is based on discriminatory reasons, he/she may file a complaint internally with the Affirmative Action Officer or externally with an enforcement agency such as the Equal Employment Opportunity Commission (EEOC) or the Minnesota Department of Human Rights.

### ***Agency request for medical information in connection with a request for reasonable accommodation***

The disability and need for accommodation will be reasonably evident or already known. In these cases, further medical information will not be sought. However, AAO or HR staff may request medical information when:

- The need for accommodation is not reasonably evident.
- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation.
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation.
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

**Supervisors and managers should not** request medical information or documentation from an applicant or employee seeking an accommodation. Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the job will be required. When medical documentation or information is requested, an employee must provide it in a timely manner, or MnDOT may deny the reasonable accommodation request. Requesting genetic information is prohibited, as stipulated by the [Genetic Information Nondiscrimination Act \(GINA\) of 2008](#).

### ***Confidentiality***

All medical information obtained in connection with a request for reasonable accommodation, must be kept in confidential secure files which are separate from all other employment files. Employees who obtain or have access to medical records or information are strictly bound by these confidentiality requirements and the [Government Data Practices, Chapter 13](#), Minnesota Government Data Practices Act (MGDPA). If a dispute arises about the confidentiality or the legality of disclosing or refusing to disclose information under the state MGDPA or under federal law, practitioners should consult with the Office of the Chief Counsel.

- Medical information may be disclosed on a "need-to-know" basis to AAO or HR staff in compliance with applicable law, court order and/or with the employee's written consent.
- Information regarding the employee's disability, medical records or the need for accommodation will not be disclosed to other employees.
- A supervisor or manager of the employee requesting the accommodation may be told about necessary restrictions regarding the work or duties of the employee and about necessary accommodations but not information about the medical condition or treatment.
- MnDOT must maintain records related to an applicant or employee who has requested reasonable accommodation in compliance with applicable law and the MnDOT records retention schedule.

### ***Reassignment as an accommodation***

Reassignment to a vacant position is an accommodation that must be considered if there are no other effective accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other possible accommodations would impose an undue hardship.

The supervisor shall work with AAO and HR and the requestor, in accordance with collective bargaining agreements to identify vacant MnDOT positions for which the employee may be qualified, with or without reasonable accommodation. Positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, MnDOT will consider vacant lower level positions for which the individual is qualified.

### ***Consideration of undue hardship***

A thorough interactive process will be initiated prior to MnDOT making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the Affirmative Action Officer. In determining whether there would be an undue hardship to grant a reasonable accommodation, the following factors will be considered:

- Nature and cost of the accommodation in relation to the office size and budget
- Nature and structure of the operation

### ***Funding for reasonable accommodation***

The cost for accommodations is generally paid for by the office or district where the requestor works. Questions regarding funding for reasonable accommodation should be directed to the Affirmative Action Officer.

## **Forms/Instructions**

[Add link](#)

## **Definitions**

### **Direct Threat**

*Direct Threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.

This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

- Duration of the risk
- Nature and severity of the potential harm
- Likelihood that potential harm will occur
- Imminence of potential harm

### **Essential Functions**

The essential functions of a position 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 the position exists specifically to perform that function, there are a limited number of other employees who could perform the function if it were assigned to them, or the function is specialized and the employee is hired based on his or her ability to perform them.

### **Interactive Process**

The interactive process by which the individual requesting an accommodation and the supervisor communicate with each other about the request for accommodation to identify,

- The process for determining whether an accommodation will be provided
- The communication options which are available
- The date a decision will be made regarding the accommodation request(s)

### **Qualified Employee or Applicant with a Disability:**

- An individual with a physical and/or mental disability that substantially limits one or more major life activities (e.g., caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working).
- An individual who has a record or history of such impairment, or who is regarded as having such impairment.
- An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

### **Reasonable Accommodation**

A reasonable accommodation is an adjustment or alteration that enables a qualified person with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. There are **three categories** of reasonable accommodations:

- 1) Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille).
- 2) Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job, such as providing sign language interpreters.
- 3) Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

### **Undue Hardship**

An undue hardship is an action that is unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of MnDOT. The Affirmative Action Officer will determine undue hardship based upon:

- The nature and cost of the accommodation in relation to the size, the financial resources, and the nature and structure of the operation, and
- The impact of the accommodation on the nature or operation of MnDOT.

## **Responsibilities**

### **Joint Responsibilities of Human Resources, Supervisors, Managers and Directors**

- Actively promote and support MnDOT efforts to foster awareness, acceptance and appreciation for inclusion, diversity, affirmative action and reasonable accommodation requirements for qualified persons with disabilities in MnDOT recruitment, employment, selection, promotion and training opportunities.
- Ensure that all applicants and employees have ready access to this policy and to timely assistance, resources and an interactive process for their accommodation requests.
- Ensure confidentiality of private or sensitive data relative to requests for reasonable accommodations.
- Seek guidance from AAO when questions or issues arise about reasonable accommodation requests, confidentiality, the interactive process and the requirements of this policy.
- Promptly notify AAO whenever a request for a reasonable accommodation is received and/or approved. Respond promptly to requests for background data and information as requested by the Affirmative Action Officer or Disability Programs Coordinator.

### **Affirmative Action Officer (AAO) and Disability Programs Coordinator**

- Ensure understanding of and proper implementation of this policy through ongoing communication, training and guidance so that reasonable accommodation requests are responded to in a timely and appropriate manner.

- Ensure that all applicants and employees have ready access to this policy and to timely assistance, resources and an interactive process for their accommodation requests.
- Review and recommend changes to internal policy, practice and procedures, consistent with best practices and applicable law.
- Ensure compliance with [Minnesota Statutes 43A.191](#) and [Executive Order 96-9](#), which require annual reporting documenting compliance with the [Americans with Disabilities Act \(1990\)](#), the [ADA Amendments Act of 2008](#) and the [Minnesota Human Rights Act \(MHRA\)](#).
- Ensure confidentiality of private data, including medical records and medical information received in response to reasonable accommodation requests. Such records are to be kept in a separate, confidential and secure location.

**Office of Human Resources**, in addition to the joint responsibilities listed above

- Utilize recruitment and selection measures which are flexible, job-related and consistent with business necessity to ensure consideration of qualified employees with disabilities in recruitment and appointment decisions.
- Ensure that reasonable accommodation requests received in association with the application, interview, and selection processes are responded to promptly and appropriately.

**Applicants or Employees who want to be considered for reasonable accommodations**

- Make request for accommodation as set forth in the Procedures section of this policy, to any of the following:
  - The immediate supervisor or manager in the chain of command;
  - Affirmative Action Officer (AAO) and/or;
  - Disabilities Program Coordinator and/or;
  - Human Resources Office and/or;
  - Any MnDOT employee or staff member with whom applicant has contact in the processing of their employment application.
- Where additional information is needed to consider the request for accommodation, respond in a timely manner to requests for supporting documentation from the Affirmative Action Officer or the Disability Programs Coordinator.
- Actively participate in the interactive process, if applicable.

## Appendices

Not applicable

## Frequently Asked Questions (FAQs)

**Q:** *I am an applicant with a disability and will need a sign language interpreter for the job interview. Will MnDOT provide one for me?*

**A:** Yes. MnDOT will provide a sign language interpreter for your interview. MnDOT will not refuse to consider you or evaluate you less favorably because you require an interpreter.

**Q:** *What are some examples of other “reasonable accommodations” that may be needed during the hiring or interview process?*

**A:** Examples of reasonable accommodations include:

- Providing written materials in accessible formats such as large print, Braille, or audiotape
- Ensuring that recruitment, interviews and tests are held in accessible locations
- Providing or modifying equipment or devices
- Adding a reader for visually impaired persons

**Q: Will MnDOT ask me questions about my mental or physical health during the job interview or on the job application?**

A: No. Questions that are “disability-related” are strictly prohibited during the pre-offer stage.

**Q: I am a MnDOT employee. How do I request a reasonable accommodation?**

A: Contact the Disability Programs Coordinator to request an adjustment or change at work for a reason related to a medical condition. You may use “plain English” and need not mention the ADA or use the phrase “reasonable accommodation.”

**Q: I am a supervisor of an employee who told me that he has a back condition that makes it painful for him to sit for long periods of time at the receptionist desk. Should I consider this a request for a reasonable accommodation?**

A: Yes. Your employee has identified that his medical condition is interfering with his ability to do his job. You should begin an interactive process with him to identify possible accommodations to address the problem. Below are additional examples of employee requests that should be treated as a request for accommodation:

- An employee tells you, “I’m having trouble getting to work at my scheduled starting time because of medical treatments I am undergoing.”
- An employee tells you, “I need six weeks off to get treatment for a back problem.”

**Q: I am a supervisor of an employee who has requested a reasonable accommodation that doesn’t seem appropriate or necessary. What do I do next?**

A: You and the employee should engage in a timely interactive process so the employee can tell you how the accommodation will assist him/her. This process may need to be ongoing or periodic if the need for or type of accommodation changes. If you have questions as to whether the accommodation requested is appropriate or necessary, you should immediately contact the Affirmative Action Officer or the Disability Programs Coordinator for assistance.

**Q: How quickly does a supervisor or manager need to respond to an employee’s request for reasonable accommodation?**

A: You should respond expeditiously to a request for reasonable accommodation. If you and the employee need to engage in an interactive process, this should proceed as quickly as possible. The Affirmative Action Officer or the Disability Programs Coordinator can provide guidance and/or assistance for this. Once the appropriate accommodation is identified it should be provided without unnecessary delays.

Examples:

- A new employee, who uses a wheelchair, informs you that her wheelchair cannot fit under her office desktop. You should take immediate steps to ensure that her desk is adjusted to the appropriate height, so she is fully able to perform her job duties.
- A long-time employee informs you that his hearing has deteriorated to the point where he cannot hear callers on his work phone but that he knows of audio equipment that will correct this. You and the employee should begin an immediate interactive process to identify and secure the equipment.

**Q: I have granted an employee with a disability a flex schedule because she is undergoing chemotherapy treatments. Co-workers are complaining that she is getting favorable treatment. Can I tell them that she is receiving a reasonable accommodation?**

A: No. You may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to disclosure that the individual has a disability. State and federal laws specifically prohibit the disclosure of medical or disability-related information except in very limited situations, which do not apply here.

**Q: Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?**

A: No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

**Q:**     ***Should I disclose my disability?***

**A:**     The decision to disclose a disability is a dilemma many people are faced with when seeking employment or even after he/she are employed. For more information on disclosure, see [How to Disclose a Disability](#).

## **Related Information**

[Rehabilitation Act of 1973, Title 29 USC 701](#)

[Americans with Disabilities Act ADA \(1990\)](#)

[Title 29, C.F.R., Part 1630 "Regulations to Implement the Equal Employment Provisions of ADA"](#)

[U.S. Equal Employment Opportunity Commission](#)

[Genetic Information Nondiscrimination Act \(GINA\) of 2008](#)

[Minnesota Human Rights Act \(MHRA\)](#)

[Family and Medical Leave Act](#)


## **History of Policy Updates or Amendments**

### **Supersedes**

*Policy 3.2 – Reasonable Accommodation policy, established 3-9-1999, updated 7-26-2002*



**Policy Owner**

  
Lynnette Geschwind  
Director, Affirmative Action

Date Signed March 13, 2014

**Governance Council** has reviewed this policy and recommends approval



Sue Stein (*on behalf of the Council*)  
Director, Corporate Services Division

Date Signed 3-21-14

**Responsible Senior Officer**



Tracy Hatch  
Deputy Commissioner/COO/CFO

Date Signed 3.24.14