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POLICY/PROCEDURE 70-23

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Policy Approved By \_\_\_\_\_ Date \_\_\_\_\_

Procedure Approved By \_\_\_\_\_ Date \_\_\_\_\_

*[Handwritten signature]*  
*Judy Johnson* 5/27/09

**REASONABLE ACCOMMODATION OF PERSONS WITH A DISABILITY**

SEE ALSO: Americans With Disabilities Act (ADA) of 1990; 29 CFR Part 1630; Rehabilitation Act of 1973; RCW 49.60; WAC 162-22; WAC 162-26; WAC 357-26; Agency Affirmative Action Plan; Parks Pol/Pro 70-41; Collective Bargaining Agreement

This policy and procedure applies to all applicants to, and employees of, the Washington State Parks and Recreation Commission.

1. **Purpose**

The purpose of this policy is to affirm State Parks' commitment of equal access to employment programs, facilities, programs and services offered by the agency to individuals with disabilities and to ensure against discrimination because of a disability. It also sets forth provisions for meeting reasonable accommodation requirements of State and Federal law. This policy shall not be construed as providing rights or obligations not provided by applicable laws or applicable Collective Bargaining Agreement(s).

Temporary impairments due to industrial injury are not covered under this policy. Such situations are covered under RCW 51.32 and WAC 296.18

2. **Definitions**

**Conditional Job Offer** - An offer for employment conditional upon the candidate's ability to perform the essential functions of the position in question, with or without reasonable accommodation.

**Direct Threat** – A significant risk of substantial harm to the health or safety of himself/herself or others, and that the risk cannot be eliminated or reduced below the direct threat level through reasonable accommodation.

**Essential Functions** - The fundamental or necessary job duties of the position that the individual with the disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

**Individual with a Disability** – An individual who has a sensory, mental, or physical impairment that is medically cognizable or diagnosable; exists as a record or history; or is perceived to exist. A disability exists whether it is temporary or permanent, common or



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uncommon, mitigated or unmitigated, whether or not it limits the ability to work generally or work at a particular job, or whether or not it limits any other activities.

**Qualified Individual with a Disability** - A person with a disability who meets the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.

**Reasonable Accommodation** - Changes or adjustments to the job or work environment that permit a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. This may include, for example, providing readers, sign language interpreters, adaptive equipment, making changes to work schedules, job structure or job assignment.

For the purposes of qualifying for reasonable accommodation in employment, the impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or the employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

**Undue Hardship** - An excessively costly, extensive, substantial, or disruptive modification, or one that would fundamentally alter the nature or operation of the agency. With respect to the provision of a reasonable accommodation, an undue hardship is an action that requires significant difficulty or expense incurred by the employer as described on a case by case basis.

As set forth in the Equal Employment Opportunity Commission regulations, an employer is not required to provide an accommodation if it will impose an undue hardship on the operation of its business. If the cost or administrative burdens of a requested accommodation are concerns for the agency, the following factors, as applicable, will be analyzed to determine whether an undue hardship exists:

- The nature and net cost of the accommodation.
- The overall financial resources of the facility involved, the number of persons employed at such facility, and the effect on expenses and resources.
- The total operation of the agency, including the composition, structure and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the work facility.
- The impact of the accommodation on the operations of the facility, including its impact on the ability of other employees to do their duties and its impact on the facility's ability to conduct business.



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- The existence of a job vacancy for which the employee is qualified.
- The availability of other resources to provide for or pay for the accommodation.
- Applicable collective bargaining agreements.

3. **Policy**

- A. Individuals with disabilities (applicants seeking reasonable accommodation, selected candidates, and employees) have the right to request and receive reasonable accommodation, unless the accommodation would impose an undue hardship. Parks will not discriminate because of a disability in any term or condition of employment, or in access to programs, facilities and services offered by the agency.
- B. Parks shall provide an opportunity for qualified individuals with disabilities to request and receive reasonable accommodations so that they may enjoy the benefits, rights and privileges of equal employment opportunities afforded to other candidates and employees, and access to programs, facilities, and services offered by the agency consistent with applicable laws and regulations, unless the accommodation would impose an undue hardship.
- C. The need for a reasonable accommodation shall not adversely affect the consideration of an individual with a disability for employment, training, travel, committees, developmental work assignments, promotions, or opportunity to enjoy equal terms, benefits, privileges, and conditions of employment equal to those enjoyed by similarly situated non-disabled employees, selected candidates and applicants.
- D. Parks encourages individuals with a disability (employees, selected candidates, or applicants seeking reasonable accommodation) to make the agency aware of the need, or potential need, to accommodate. When making a request for a reasonable accommodation, and the disability is not readily apparent (and has not been previously documented if the individual is an employee), State Parks may require that the requesting individual provide verification from a health care professional that (a) s/he has a disability as claimed and (b) it has the effect of necessitating the reasonable accommodation requested.
- E. Reasonable accommodations shall be provided in every stage of the recruitment, application, and selection process to enable a qualified applicant with a disability to have an equal opportunity to be considered for a job. In applying this policy, the following provisions shall be followed:
  - Notification of the right to make an accommodation request and information on how to initiate such a request will be included on all job bulletins.



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- Qualification standards, employment tests, or other selection criteria will not screen out an individual with a disability unless they are job-related and necessary for the position.
  - No disability related questions or medical examinations will be conducted during the pre-offer stage of the selection process.
  - When no accommodations can be identified to enable a candidate to perform the position's essential job functions, a conditional job offer may be withdrawn. (This includes withdrawing a conditional job offer if there is current and objective medical documentation that an applicant's condition presents a direct threat to the health and safety of oneself and/or others.)
- F. In all cases, the employee and supervisor, in consultation with the Human Resources Office, shall participate in the interactive reasonable accommodation process before an accommodation is made. In determining reasonable accommodation, the Executive Leadership Team member (if applicable), the direct supervisor, and the Human Resource designee must evaluate the request, taking into consideration if the individual has a disability and if so, what job-related limitations result from this disability (as defined by a health care professional, the essential functions of the position, the work environment, and the reasonableness of the proposed accommodation). If there are two or more effective accommodations, after considering the preference of the individual with a disability, State Parks will select the accommodation to be provided. If a specifically requested accommodation would impose an undue hardship, State Parks will consider whether there are alternative accommodations that would not impose such hardship.
- G. Reasonable accommodation will be made only after careful consideration of all factors. The agency may consult with appropriate sources of technical expertise on accommodations, such as but not limited to, the Department of Personnel, the Human Rights Commission, the Equal Employment Opportunity Commission, or the Job Accommodation Network. Additionally, it may be necessary to obtain information from the individual's physician(s), licensed mental health professional(s), or other health care professional(s). In some cases, an Independent Medical Examination (IME) may be required. State Parks may obtain an Independent Medical Examination, at its own expense, from a health care professional of the agency's selection. The agency reserves the right to make the determination whether an IME is necessary in order to: (1) implement an employee's request for accommodation, (2) respond to a job related accident or injury, or (3) address concerns relative to a position's health and safety requirements.
- H. Parks will first attempt to reasonably accommodate an employee in their present position. When unable to reasonably accommodate the employee in their current position, State Parks will attempt to reasonably accommodate the employee



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through reassignment to another vacant position within the agency. The vacant position must be at the same salary range or lower. The employee must meet the minimum qualifications and job competencies for the position and be able to perform the essential job functions, with or without reasonable accommodations. If an employee is reassigned to a position at a lower pay range, the employee's salary will be adjusted downward to the pay range for the new position.

- A qualified individual with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential functions of the job without the accommodation, s/he will not be considered to be an otherwise qualified individual with a disability after refusing the accommodation.
- If State Parks is unable to accommodate an employee in his or her present position, and is also unable to locate a vacant position within the agency to reassign the employee, State Parks may Disability Separate the employee.

- I. All medical information regarding the presence or nature of an employee's or applicant's disability will be treated as a confidential medical record. Disability related information shall be collected on separate forms and shall be maintained in a secure manner apart from personnel files at Headquarters Human Resources. Access to this information will be restricted to the Human Resources designee and other appropriate management staff, including supervisors, on a need-to-know basis only.

4. **Roles/Responsibilities/Process**

A. **Employees, Selected Candidates, or Applicants seeking Reasonable Accommodation**

1. If an individual is seeking reasonable accommodation, the individual shall inform the Human Resources designee, supervisor, or manager of the need for reasonable accommodation (i.e. – an adjustment or change at work for reasons related to a medical condition.) Thereafter, an applicant shall participate in the interactive reasonable accommodation process by identifying the physical or mental limitations as they relate to the application process. An employee shall participate in the interactive reasonable accommodation process by identifying the precise limitations resulting from his/her disability and by identifying potential reasonable accommodations that could remove workplace barriers to the performance of the essential functions of the position.
2. The individual shall cooperate and assist the Human Resources designee in obtaining the necessary documentation, which may include signing a release of information for purposes of communicating with the treating health care provider and follow-through on agreed upon activities. Such information will be obtained on the individual's own time, and at their own expense. (See 3.G.



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for Parks' directed Independent Medical Exams.)

3. The individual shall continue to maintain communication with the supervisor or the Human Resources designee to ensure that the reasonable accommodation that was implemented was effective at removing workplace barriers that were preventing accomplishment of essential functions. If reasonable accommodation is not effective; or circumstances change, the individual may re-enter the interactive process with the agency. (If the individual chooses not to do so, he/she will be expected to perform the essential functions of the position without accommodation at the present time. (The employee may choose to later re-enter the interactive process.))

**B. Supervisor or Manager**

1. Before recruiting, creating a new position, or upon a change of duties to a position, the supervisor and/or manager will create/update the job description and essential functions for individual positions.
2. If received directly from the employee, the supervisor shall contact the Human Resources designee of the reasonable accommodation request. Working with the Human Resources designee and the employee, the supervisor and/or manager shall participate in the interactive reasonable process to explore (and then implement, as necessary) reasonable accommodations that could remove workplace barriers to performance of the essential functions of the position.
3. The supervisor or manager shall maintain confidentiality of medical information, during and after the process, as well as forwarding all medical documentation to Human Resources designee.
4. Unless responsibilities are formally assumed by the Human Resources designee, the supervisor or manager shall document in the supervisory file all efforts, agreements, decisions, and meetings related to reasonable accommodation requests. However, no medical documentation (i.e. – diagnosis, symptoms, medications, or medical treatment) will be kept in the supervisory file. All medical information shall be forwarded to Human Resources, preferably by the requesting employee.
5. The supervisor or manager shall implement and then ensure the reasonable accommodation is effective at removing workplace barriers that were preventing accomplishment of essential functions. If reasonable accommodation is not effective, or circumstances change, the supervisor or manager shall notify the Human Resources designee and re-enter into interactive process with employee.



**C. Human Resources Designee**

1. Upon directly receiving an accommodation request, or being contacted for assistance by the supervisor/manager, the Human Resources designee will enter into the consulting role to ensure verification of a disability; identification of specific physical or mental abilities and limitations as they relate to the application process and/or performance of essential job functions; clarification of essential functions, if necessary; identification of the barriers to job performance; and problem solving on how a reasonable accommodation can overcome these barriers. If applicable, the Human Resource designee shall obtain a signed medical release from the person seeking accommodation and will directly correspond with the medical providers, including arranging for and coordinating an IME when necessary.
2. The Human Resources designee shall maintain appropriate and timely communication with the individual and supervisor during the reasonable accommodation process.
3. The Human Resources designee shall recommend a response to the accommodation request after evaluating all information gathered and ensuring that the interactive reasonable process was followed. When it appears that granting an accommodation would be an undue hardship, the Human Resources designee shall refer the matter to the Deputy Director (or designee).
4. As agreed upon with the supervisor/manager (depending on complexity of case), the Human Resources designee documents agency efforts, offers, agreements, decisions, and meetings related to reasonable accommodation requests.
5. The Human Resources designee shall maintain the confidential medical file separate from personnel files.

**D. Deputy Director (or designee)**

1. The Deputy Director (or designee) shall review and make the final determination on a request for accommodation when questions exist concerning undue hardship, direct threat, or reasonableness of the requested accommodation. After collaboration with the employee regarding their preference for the type of accommodation, the Deputy Director (or designee) will select and implement the accommodation that is most appropriate for both the employee and the employer, including a disability separation. Written justification, signed by the Deputy Director (or designee) will be provided for any decision not to provide an accommodation because of undue hardship.
2. When there is a concern about a direct threat, the Deputy Director (or



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designee) shall review and make a final determination regarding whether the individual poses a direct threat, and if so, whether providing reasonable accommodation can reduce the risk below the direct threat level.

The determination that an individual poses a direct threat is to be based on an assessment of the individual's present ability to safely perform the essential functions of the position. The assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best objective evidence. In determining whether there is a direct threat, the facts to be considered include:

- The duration of the risk.
- The nature and severity of the potential harm.
- The likelihood that the potential harm will occur.
- The imminence of the potential harm.
- Whether a reasonable accommodation exists that could mitigate or eliminate the risk.

**5. Complaint Procedures**

Parks Pol/Pro 70-41, Anti-Harassment and Discrimination, has been established to handle discrimination complaints and may be pursued by persons who wish to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provisions of service, activities, programs, or benefits by the agency. Complaints may also be filed with the Washington State Human Rights Commission, Federal Equal Opportunity Commission, or the Federal Office for Civil Rights, where appropriate. Represented employees may also reference their applicable Collective Bargaining Agreement.

circumstances warrant otherwise. The confidentiality and security of supervisory files will be maintained to the extent allowed or required by law.

### **31.6 Removal of Documents**

- A. Adverse material or information related to alleged misconduct that is determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing will be removed from the employee's personnel file. The Employer may retain this information in a legal defense file and it will only be used or released when required by a regulatory agency (acting in their regulatory capacity), in the defense of an appeal or legal action, or as otherwise required by law.
- B. Written reprimands will be removed from an employee's personnel file after three (3) years if:
  - 1. Circumstances do not warrant a longer retention period; and
  - 2. There has been no subsequent discipline; and
  - 3. The employee submits a written request for its removal.
- C. Records of disciplinary actions involving reductions-in-pay, suspensions or demotions, and written reprimands not removed after three (3) years will be removed after six (6) years if:
  - 1. Circumstances do not warrant a longer retention period; and
  - 2. There has been no subsequent discipline; and
  - 3. The employee submits a written request for its removal.
- D. Performance evaluations will be removed from an employee's personnel file after six (6) years if:
  - 1. Circumstances do not warrant a longer retention period; and/or
  - 2. There have been no documented performance deficiencies in a subsequent performance evaluation; and
  - 3. The employee submits a written request for its removal.
- E. Nothing in this Section will prevent the Employer from agreeing to an earlier removal date, unless to do so would violate RCW 41.06.450.

## **ARTICLE 32**

### **REASONABLE ACCOMMODATION AND DISABILITY SEPARATION**

- 32.1** The Employer and the Union will comply with all relevant federal and state laws, regulations and executive orders providing reasonable accommodations to qualified individuals with disabilities.

- 32.2** An employee who believes that he or she suffers a disability and requires a reasonable accommodation to perform the essential functions of his or her position may request such an accommodation by submitting a request to the Employer. The Employer will acknowledge receipt of the request for reasonable accommodation or disability separation. The Employer will begin processing a reasonable accommodation request within thirty (30) calendar days.
- 32.3** Employees requesting accommodation must cooperate with the Employer in discussing the need for and possible form of any accommodation. The Employer may require supporting medical documentation and may require the employee to obtain a second medical opinion at Employer expense. Medical information disclosed to the Employer will be kept confidential.
- 32.4** The Employer will determine whether an employee is eligible for a reasonable accommodation and the final form of any accommodation to be provided. The Employer will attempt to accommodate the employee in his or her current position prior to looking at accommodations in alternative vacant positions.
- 32.5** An employee with permanent status may be separated from service when the agency determines that the employee is unable to perform the essential functions of the employee's position due to a mental, sensory or physical disability, which cannot be reasonably accommodated. Determinations of disability may be made by the agency based on an employee's written request for disability separation or after obtaining a written statement from a physician or licensed mental health professional. The agency can require an employee to obtain a medical examination, at the agency's expense, from a physician or licensed mental health professional of the agency's choice. Evidence may be requested from the physician or licensed mental health professional regarding the employee's limitations. The Employer will conduct a diligent review and search for possible accommodations within the agency.
- 32.6** The agency may immediately separate an employee when the agency has medical documentation of the employee's disability and has determined that the employee cannot be reasonably accommodated in any available position, or when the employee requests separation due to disability.
- 32.7** An employee separated due to disability will be placed in the General Government Transition Pool Program if he or she submits a written request for reemployment in accordance with WAC 357-46-090 through -105 and has met the reemployment requirements of WAC 357-19-475.
- 32.8** Disability separation is not a disciplinary action. An employee who has been separated because of a disability may grieve his or her disability separation in accordance with Article 29, Grievance Procedure, unless the separation was at the employee's request.