



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMORANDUM
HR#05-17

January 25, 2017

TO: DHRM Listserv Recipients

FROM: Peter Long, Administrator *Peter Long*
Division of Human Resource Management

SUBJECT: Reasonable Accommodation – New Reassignment Regulations

At a recent meeting of the Personnel Commission, several regulations were adopted to solidify the “reassignment” process for individuals with a disability who can no longer perform the essential functions of their position with or without accommodation. The Legislative Commission approved these regulations and they went into effect on November 2, 2016. The new regulations are available in the [Rules for State Personnel Administration](#) publication located on the Division’s website.

The purpose of the regulations is to bring the State’s practices into closer alignment with the Americans with Disabilities Act (ADA). The Equal Employment Opportunity Commission’s guidance advises that noncompetitive “reassignment” to a vacant position is the accommodation of last resort prior to terminating an employee’s employment. It is the responsibility of the agency with which the qualified employee with a disability is employed to first look at all reasonable accommodations that will allow an employee to remain in his or her current position. If there are no reasonable accommodations that will enable the employee to remain in his or her current position and for which there would not be an “undue hardship”, the agency must consider reassignment.

The term “undue hardship” is defined in the ADA federal regulations as “...significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth...” The factors that are used when determining if an accommodation would be an “undue hardship” are outlined in [29 CFR § 1630.2\(p\)](#) and are also located for reference in the [Rules for State Personnel Administration](#) and [The Americans with Disabilities Act](#)

[*\(ADA\) & The ADA Amendments Act \(ADAAA\) Employment Provisions Guide for State of Nevada Executive Branch Agencies.*](#) If management of an agency feels that an undue hardship exists due to the fiscal impact, management is advised to discuss this with their Governor's Office of Finance Budget Analyst.

If a qualified employee with a disability cannot be reasonably accommodated in his or her current position, the employee's agency shall determine if there is another position which the agency is planning on filling, within the agency, at the same grade level and for which the employee can perform the essential functions with or without accommodation. If such a position exists and there is not an employee eligible for the position as a result of being laid off, the qualified employee with a disability shall be reassigned to the position without competition if it would not result in an undue hardship.

If there is an open position at the same pay grade in another "geographical location" (see [NAC 284.612](#)), the employee shall be offered the position. However, if the employee refuses to accept a position in another "geographical location", it will not affect his or her ability to continue with the reassignment process.

If an agency is unable to place the employee in an open position at the same pay grade for which the employee meets the minimum qualifications, the agency shall contact the Division of Human Resource Management (DHRM) for assistance in determining if there are open positions at the same pay grade in other agencies to which the employee may be reassigned. A [*Reassignment Request form*](#) should be completed by the employee's appointing authority and submitted to DHRM's Recruitment Unit. The [*Reassignment Request form*](#) is linked in this document and is also accessible through [DHRM's website Forms page](#). The form outlines the steps that must be taken by the agency prior to requesting DHRM's assistance with a reassignment.

Upon receipt of the completed form, DHRM's Recruitment Unit shall, for at least 30 days, identify open positions at the same pay grade for which the employee meets the minimum qualifications and the employee has expressed an interest in the job class. The Recruitment Unit will notify the agency with the vacancy that there is the possibility that an employee may be eligible for reassignment and request up-to-date [*Position Functions*](#) and the [*Physical & Cognitive Characteristic Inventory*](#) for the position. These forms are linked in this document and are also accessible through [DHRM's website Forms page](#).

DHRM's Consultation & Accountability Unit is responsible for coordinating DHRM's assistance with the reassignment process. The agency will provide the completed [*Position Functions form*](#) and [*Physical & Cognitive Characteristics Inventory form*](#) for the position to the Consultation & Accountability staff within 5 business days and the Consultation & Accountability Unit staff will provide the information to the eligible employee in need of reassignment for evaluation of whether he or she can perform the essential functions with or without reasonable accommodation.

As [*Position Functions*](#) and the [*Physical & Cognitive Characteristic Inventory*](#) are a critical component to this process, agencies are encouraged to review and keep current the essential functions for their positions. The [*Position Functions form*](#), previously entitled the Essential

Functions form, has been revised to better communicate what tasks and duties a position performs. Additionally, the [Physical & Cognitive Characteristic Inventory](#) is a form that has been developed to work in conjunction with the [Position Functions form](#) to address the characteristics (e.g., walking, lifting, communication) related to the essential and marginal functions of a position. DHRM offers the Essential Functions Development workshop to provide training on developing and revising essential functions, see the [NEATS](#) Training tab for open sessions.

If the employee cannot be placed in a position at his or her pay grade in another agency, the agency that employs the employee shall offer the employee an open position at a lower pay grade for which the employee meets the minimum qualifications and can perform the essential functions with or without reasonable accommodation.

If the employee cannot be placed in a position at a lower pay grade in the employee's current agency, DHRM shall again, for at least 30 days, contact agencies with open positions at a lower pay grade for which the employee meets the minimum qualifications.

Detailed information regarding the codes to be used to process a reassignment on an ESMT-A will be provided in a separate memorandum to those on the Central Records LISTSERV (see [DHRM's Email Subscription Management page](#)).

If you have any questions about ADA reassignment, please contact Carrie Hughes at cphughes@admin.nv.gov or (775) 684-0111.