

CITY OF REDMOND	
Americans with Disabilities Act (ADA) Policy	Number: HR 104
Effective Date: July 26, 1992 Revisions: November 1, 2002, January 1, 2007	Approval: Human Resources Director

I. POLICY:

The City of Redmond does not discriminate on the basis of disability in the admission or access to, or treatment, or employment in, its programs or activities.

An Americans with Disabilities Act (ADA) Coordinator has been designated to coordinate compliance with the non-discrimination requirements contained in section 35.107 of the Department of Justice regulations. Information concerning the provisions of the American with Disabilities Act is available from the City of Redmond ADA Coordinator by calling (541) 923-7738.

II. PURPOSE:

The purpose of this policy is to outline the Americans with Disability Act and the responsibilities of City Management and staff under the Act. All procedures and clarifications of this policy must involve the ADA Coordinator.

III. DEFINITIONS:

Disability under the Act is defined as: 1) a physical or mental impairment that substantially limits a major life activity; 2) a record of impairment; or 3) being regarded as having such an impairment. Under this definition, a physical or mental impairment is not a disability unless its severity is to the extent that it substantially limits one or more major life activities such as walking, seeing, hearing, speaking, etc. Also included in the definition is anyone who has a record of or has been misclassified as having a mental or physical impairment which substantially limits one or more major life activities. Under this Act, the term disability is in regards to having a covered impairment. This means that the impairment itself may not substantially affect a major life activity; however, if the law views the impairment as substantially affecting a major life activity, then the person with the impairment is covered. The Act also specifically excludes an individual who currently uses illegal drugs from coverage. However, someone who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated and no longer uses illegal drugs, may be covered under the Act.

IV. PROCEDURES:

A. Key Elements of the Act:

1. The Act was adopted to ensure that individuals with covered disabilities do not experience discrimination in the employment process. In addition, it seeks to ensure that individuals with covered disabilities are not denied receipt of public programs, activities or services due to a qualified disability.
2. Disability is defined under the Act as: a) a physical or mental impairment that substantially limits a major life activity; b) a record of impairment; or c) being regarded as having such an impairment.
3. Prior to opening a recruitment for a position, essential job functions should be determined.
4. Pre-employment inquiries may not address an applicant's disabilities in any way. Pre-employment inquiries must be limited to the applicant's ability to perform essential job related functions without inquiring as to why the person may or may not be able to perform those job functions.

5. An applicant or employee may only be requested to undergo an employment related physical after a contingent job offer has been made. The job offer must first be made, and it should be contingent upon the applicant's successful completion of an employment related physical.
6. Medical records and results of employment related physicals must be kept separate from other employee files. If an applicant or employee initiates a discussion regarding reasonable accommodation then the employer should discuss with the applicant/employee what reasonable accommodation can be made. In all instances, the Human Resources Department should be consulted to discuss what would constitute appropriate and reasonable accommodation in any particular situation.
7. Threatening, coercing, intimidating, or otherwise interfering with someone's rights under the Act is prohibited.

B. The Americans with Disabilities Act:

The Americans with Disabilities Act (ADA) requires businesses to take specific steps to ensure that individuals with disabilities do not experience discrimination in the employment process. In addition, the ADA provides that no individual with a covered disability shall be denied receipt of public programs, activities, or services.

All state and local government agencies are covered whether or not they receive federal funds. Employers with 25 or more employees will be covered by the Act effective July 26, 1992. The Equal Employment Opportunity Commission has been granted enforcement authority for the employment provisions of the Americans with Disabilities Act. Remedies available to individuals seeking relief under the ADA are the same as set forth in Title VII of the Civil Rights Act.

All supervisors of the City of Redmond should become familiar with the provisions of the Act and are expected to adhere to it when making employment decisions.

C. Obligations Under the Act:

1. Prohibition of Employment Discrimination

Discrimination based on a person's disability with respect to any term, condition, or privilege of employment including hiring is prohibited under the Act. Included under this would be the following:

- a. Classifying disabled applicants or employees in any way that adversely affect their opportunities or status.
- b. Participating in any arrangement with another organization that has the effect of discriminating against disabled applicants or employees. This would include entering into service contracts or collective bargaining agreements when such contracts include arrangements which discriminate against a particular group of applicants or employees.
- c. Using standards or methods that have the effect of discriminating or perpetuating discrimination.
- d. Denying equal jobs or benefits because of a relationship or association with a disabled person. This would include the situation of not hiring a person who has a sick dependent that would tap benefit resources or refusing to hire someone who is known to do volunteer work with someone who is disabled such as a person who has AIDS, epilepsy, etc.
- e. Refusing to make reasonable accommodations unless the accommodation would impose undue hardship. Also denying employment opportunities to an otherwise qualified individual with a disability to avoid making a reasonable accommodation would be prohibited.
- f. Using standards or tests that tend to screen out disabled individuals unless they are job related and consistent with business necessity.
- g. Failing to select and administer tests in the most effective manner to ensure that the results accurately reflect skills, aptitude, etc. An example of this would be a situation where the standard recruitment procedure for a position includes a written test. If, due to

a disability, as defined under the Act, someone could not read the instructions and questions, then the test should be read to them.

2. Reasonable Accommodation

As an employer we have an obligation to make reasonable accommodations. An employer cannot base an employment decision on an individual's need for reasonable accommodation. Reasonable accommodation includes making physical modifications to the facilities and providing equipment to assist in the performance of job duties. Also non-physical accommodations such as job restructuring, modifying work schedules, and reassignment to vacant positions would be included in types of accommodations. If an applicant or employee discloses a disability and requests accommodation, a dialogue should take place with the applicant or employee to determine what would be an appropriate and reasonable accommodation.

In determining what is reasonable, the standard "undue hardship" is used. Undue hardship refers to an action that is unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature of the program. When considering cost of an accommodation, the employer cannot consider a cost that is borne by another agency or organization. In some instances a disabled person may already have equipment which could be used at the work site or may have access to grants from another agency to purchase such equipment. Also, if two options for accommodation are available, it is the employers right to choose the least expensive option. However, advancement of the person on the job and future needs as the person develops in the position should be taken into consideration.

3. Health Insurance Benefits

The Act specifically states that an employer may not deny health insurance benefits to a person covered under the Act.

4. Employment Related Physical and Psychological Examinations

The Americans with Disabilities Act will substantially change how employment related physical and psychological examinations are handled. Under the Act, any **pre-offer** physical or psychological examination is prohibited.

A job offer can be made on the condition that the applicant pass a physical/psychological examination if all entering employees in the same job category are subjected to such an examination and/or inquiry regardless of disability. **The job offer must first be made and it is essential to clearly state that the offer is contingent upon results of the exam.** Under any circumstance, an examination must meet the test of job relatedness and be consistent with business necessity. Physical agility tests used in screening for public safety positions are not considered physical exams. The City of Redmond requires emergency services Police and Fire complete a DPSST physical and psychological exam. Required DOT CDL holders will complete the DOT requirements which includes a physical examination.

Medical inquiries must be made on separate forms from other application materials. **Medical information must also be kept confidential and separate from other employee files.** Under the ADA it will be critical that results of physical/psychological exams and drug testing be accessible only to individuals on a need-to-know basis. Results of employment related physical and psychological examinations will need to be forwarded to the Human Resources department where they will be maintained separate from the employee's personnel file and secured so that they can be accessed only on a need-to-know basis.

5. Pre-Employment Inquiries/Determination of Essential Job Functions

An employer may inquire as to an applicant's ability to perform essential job related functions. Further, an employer may ask an applicant to describe or demonstrate how with or without reasonable accommodation the applicant will be able to perform essential job related functions.

Determining essential job functions requires an analysis of the position to determine what functions are essential as a matter of business necessity. **Determining essential functions of a position should be completed before a recruitment is opened for a position.** Those fundamental or essential job functions should then be documented. A job function may be considered essential for any of several reasons. The primary reasons a job function would be considered essential are as follows: 1) A function may be essential because the reason the position exists is to perform that function; 2) A function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or 3) A function may be highly specialized so that the incumbent in the position is hired to perform the particular function.

For example, if lifting 50 lbs. is an essential function of a position, it would be appropriate to ask an applicant, "Can you lift 50 lbs. ten times an hour?" However, it would be inappropriate to inquire, "Do you have any disabilities which would prohibit you from lifting 50 lbs. at a time?" The first manner of inquiry does not solicit information as to why the person may not be able to perform the functions merely whether they are able to perform the essential functions of the position. Note that if the inquiry is being made about lifting, then it must be an essential function of the job. If there is a way to easily modify the job so repetitive lifting is not required then lifting may not be an essential function and inquiries on the subject may be inappropriate.

6. Alcohol and Illegal Drug Usage

Current use of an illegal substance is not considered a disability under the Act. However, if someone currently uses illegal drugs and has another covered disability, that person would be covered under the Act based on the other covered disability. Under the ADA, an employer still has the right to prohibit the use of alcohol or illegal drugs at the work place and may still prohibit employees from being under the influence of alcohol or illegal drugs at the work place. A drug user or alcoholic may be held to the same qualification standards for employment or job performance and behavior standards as other employees. If someone's substandard work performance is related to alcohol or illegal drug usage, that person may still be disciplined for the work performance and held to the same standards as other employees.

7. Prohibition Against Retaliation and Coercion

Threatening, coercing, intimidating, or otherwise interfering with someone's rights under the Act is prohibited. The ADA specifically protects from retaliation individuals who oppose any act made unlawful by the ADA. In addition, anyone who makes a charge, testifies, or participates in any investigation covered under ADA is protected from retaliation, intimidation, and harassment.

8. Physical Barriers

New buildings must be built so that they are readily accessible to disabled individuals. Architectural barriers must be removed from existing buildings if such removal is "readily achievable." Readily achievable is a standard which allows organizations to determine if the changes can be made without great difficulty or expense. If a facility is undergoing renovation, then the renovated area must be made accessible.

Another aspect of being accessible to disabled individuals is providing TDD phone service for the hearing impaired. The City should be accessible to hearing impaired individuals. The TDD/TRS number needs to be published in local phone directories, on letter head, etc.

In all instances, the HR Manager/ADA Coordinator is available to assist departments in working through individual issues surrounding ADA such as determining what reasonable accommodation would be for a particular position, defining the essential functions of a position, or determining appropriate pre-employment inquiries.

PROCESS FOR PROVIDING REASONABLE ACCOMMODATION

The process of identifying whether and to what extent a reasonable accommodation is required should be flexible, and involve both the employer and the individual with the disability. Determinations as to a particular individual's qualifications must necessarily be made on a case-by-case basis.

To determine the appropriate reasonable accommodation, it will be necessary for the employer to initiate an interactive process with the qualified individual once the individual has disclosed a disability or requested accommodation. This interactive process is helpful as the individual seeking the accommodation may not be familiar enough with the employer's equipment or work site to suggest an appropriate accommodation, and the employer may not know enough about the disability or its limitations on the job at issue to suggest an accommodation. The Equal Employment Opportunity Commission suggests that an employer faced with a request for a reasonable accommodation from a qualified individual with a disability take the following analytical approach:

1. Prior to opening a recruitment for a position, analyze a particular job to determine its purpose and essential functions.
2. Consult with the disabled individual to ascertain the precise job-related limitations imposed by the disability and how those limitations can be overcome.
3. With the disabled individual's assistance, identify potential accommodations and assess the effectiveness of each in enabling the individual to perform the essential functions of the job.
4. Consider the disabled individual's accommodation preferences and select and implement the accommodations most appropriate for both the employee and the employer.

"Undue Hardship" Exception from the Reasonable Accommodation Requirement

The failure to provide reasonable accommodation may be justified where the covered entity can demonstrate that the accommodation would impose undue hardship on the operation of its business. This must be determined on a case-by-case basis, since what may pose an undue hardship for one employer may not pose a hardship for another employer or in another setting.

"Undue hardship" is defined as any action requiring significant difficulty or expense, taking into count such factors as:

- The overall financial resources of the facility involved in the provision of the reasonable accommodation.
- The number of persons employed at the facility.
- The effect of the reasonable accommodation on expenses and resources.
- The impact of the accommodation on the operation of the facility.
- The overall financial resources of the covered entity.
- The overall size of the covered entity's business with respect to the number of employees.

- The number, type, and location of its facilities.
- The type of operation of the covered entity, including the composition, structure, and function of its work force.
- The geographic separateness of the facility.
- The administrative or fiscal relationship of the facility to the covered entity.

All of the factors should be considered in determining whether providing an accommodation would impose an undue hardship on the covered entity. The weight given to each factor will vary depending on the facts of the particular situation.

GRIEVANCE PROCEDURE COMPLAINTS OF ALLEGED DISCRIMINATION BASED ON DISABILITY

1. Submit complaint in writing to the City Manager. An investigation shall follow a filing of complaint. A decision by the City Manager will be rendered within 15 working days. A written determination and description of the resolution, if any, will be forwarded to the complainant within 30 days of the filing date. A record of the complaint and action taken will be maintained.
2. If the complaint cannot be resolved to your satisfaction by the City Manager, a request of reconsideration should be made within 10 days.
 - a. It will be forwarded to a committee appointed by the ADA Coordinator. This committee's membership, ground rules and procedures for hearing complaints, and how the committee can be contacted will be available to the public. The committee will be directed to hear such complaints in an objective, public manner, and after adequate public notice. A written decision will be made within 30 working days. Proceedings of the committee will be recorded and maintained.

OR

- b. The complaint will be heard by the City Council and discussed at an open, public meeting of the elected body. A written decision will be made within 30 working days. The decision of the City Council is final.
3. A record of action taken on each complaint will be maintained as a part of the records or minutes at each level of the grievance process.

Adopted this 22nd day of October, 2002

Jo Anne Sutherland
City Manager

Attest: *Patricia I. Leymaster*
City Recorder