

TITLE	POLICY NUMBER	
Implementation of the Americans with Disabilities Act – Title I	DCS 04-03	
RESPONSIBLE AREA	EFFECTIVE DATE	REVISION
Human Resources	12/15/17	3

I. POLICY STATEMENT

The Department of Child Safety (DCS) complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act of 2008. DCS provides qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. DCS prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and all other privileges of employment.

II. APPLICABILITY

The policy pertains to all qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

III. AUTHORITY

[Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 \(P.L. 110-325\)](#)

[Arizona Department of Child Safety Equal Employment Opportunity Policy](#)

[Arizona Department of Child Safety Non-Discrimination Policy Statement](#)

[Rehabilitation Act of 1973, as amended](#)

[Civil Rights Act of 1991](#)

[28 CFR 35](#)

Nondiscrimination on the Basis of Disability in State and Local Government Services

[28 CFR 41](#)

Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

[29 CFR 1630](#)

Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act

[42 U.S.C. 12101 through 12213](#)

Equal Opportunity for Individuals with Disabilities

[47 U.S.C. 225](#)

Telecommunications services for hearing-impaired and speech-impaired individuals

[A.R.S. § 41-1461](#) and [§ 41-1492](#)

Definitions

[A.R.S. § 41- 1463](#)

Discrimination; unlawful practices; definition

[A.R.S. § 41-1464](#)

Other unlawful employment practices; opposition to unlawful practices; filing of charges; participation in proceedings; notices and advertisements for employment

IV. DEFINITIONS

ADA Coordinator: The person responsible for coordinating implementation of ADA requirements within DCS, responding to technical questions from DCS employees related to DCS ADA policy, and coordinating DCS ADA activities.

Americans with Disabilities Act (ADA) Title I - Employment: A comprehensive federal law passed in 1990 and amended in 2008 that prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

Auxiliary aids and services: Include qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped text, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

Direct threat: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

Disability: With respect to an individual:

1. a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. a record of such impairment;
3. being regarded as having such impairment.

Employee: An individual employed by the state of Arizona. This includes full and part-time positions, regular and temporary employees. It does not include independent contractors or consultants.

Essential functions: Duties that are fundamental to a position, including, among others, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated.

Interactive process: A flexible process through which DCS management, the ADA Coordinator, and the employee or applicant with a disability discuss the request for accommodation in a good faith effort to identify the employee's or applicant's precise limitations and reasonable accommodations.

Major life activities: Include but are not limited to caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Major life activities also include the operation of major bodily functions, including but not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Mental impairment: A mental or psychological syndrome, emotional or mental illness, or specific learning disabilities.

Physical impairment: A physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following bodily systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

Qualified individual with a disability: An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position such individual holds or desires.

Reasonable accommodation: A term that may include:

1. making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Reassignment to a vacant position: A form of reasonable accommodation that, absent undue hardship, is provided to an employee who, because of a disability, can no longer perform the essential functions or the employee's job without reasonable accommodation, and DCS has determined that: (1) there are no other effective accommodations that will enable the employee to perform the essential function of the employee's current positions; or (2) all other accommodations would impose an undue hardship. If the employee is qualified for the position, the employee shall be reassigned to the job and shall not have to compete for it. Any position to which a reassigned employee is moved must be a pre-existing, vacant position; DCS is not obligated to create a new position.

Record of such an impairment: An individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Regarded as having such an impairment: An individual is regarded as having such an impairment if the individual establishes that the individual has been subjected to an action prohibited under this policy because of an actual or perceived physical or mental impairment whether or not the impairment substantially limits or is perceived to substantially limit a major life activity.

Substantially limits: An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. The term “substantially limits” shall be construed broadly in favor of expansive coverage. An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.

Undue hardship: Significant difficulty or expense incurred by the employer in relationship to the cost or difficulty of providing a specific accommodation that is unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business. Determination of undue hardship must be made on a case-by-case basis.

V. POLICY

- A. DCS shall not discriminate against a qualified individual because of that individual's disability. DCS is committed to equal opportunity in all aspects of employment practices for qualified individuals with a disability. Employment practices include actions related to hiring, advancement, and retention of an employee including job application procedures, promotion, compensation, training, and all terms, conditions, and benefits of employment.
- B. It is the policy of DCS to provide reasonable accommodation in employment to qualified individuals unless the accommodation would impose an undue hardship on the operation of DCS or would change the essential functions of the position. DCS shall not deny employment to anyone solely because of a disability or the need to make a reasonable accommodation for a disability. The hiring authority shall not use standards, tests, or other criteria that are likely to disqualify or screen out a candidate with a disability unless the use of such standards, tests, or other criteria is demonstrated to be necessary because of job-related reasons or required business necessity.

- C. DCS shall promptly place an employee on appropriate leave to ensure the safety of employees and the public when there is reasonable cause to believe that a qualified individual with disability poses a direct threat to self or others. DCS Human Resources shall verify that the employee truly poses a direct threat and determine if a reasonable accommodation will eliminate the threat.
- D. DCS shall make reasonable accommodations for physical and mental impairments resulting from a disability covered under the ADA and of which DCS is aware, provided that:
1. the accommodation does not cause undue hardship;
 2. the accommodation will remove any direct threat to the health and safety of the employee and others in the work place.
 - a. The determination that an individual poses a direct threat must be based on objective, factual evidence regarding the individual's present ability to perform essential job functions, and reasonable medical judgment that relies on the most current medical knowledge. Factors to be considered are:
 - i. the duration of the risk;
 - ii. the nature and severity of the potential harm;
 - iii. the likelihood that the potential harm will ever occur; and
 - iv. the imminence of the potential harm.
 - b. If an employee with a disability poses a direct threat to the health or safety of self or others, the employer must consider whether the risk can be eliminated or the threat can be reduced to an acceptable level with a reasonable accommodation.
- E. Employees who are qualified individuals with a disability, and who require an accommodation in order to perform the essential functions of their job, have the primary responsibility for advising their immediate supervisors of the need for reasonable accommodations and will provide information and documentation to facilitate provision of accommodations.
- F. A supervisor who observes an employee with a readily apparent disability may inquire whether the employee needs reasonable accommodations.

- G. The Department shall designate an ADA Coordinator.
- H. A supervisor shall refer the employee to the ADA Coordinator to initiate the interactive process to assess whether the disability can be reasonably accommodated.
- I. The ADA Coordinator, supervisor, and employee shall participate and cooperate in the interactive process of identifying whether, and to what extent, a reasonable accommodation can be made.
- J. Retaliation against an employee who has requested an accommodation or filed a discrimination grievance or complaint is strictly prohibited, and may be grounds for disciplinary action up to and including termination of employment.
- K. Information pertaining to a specific employee or case generated as result of compliance with this policy shall be treated as confidential information.
- L. All medical information maintained by the ADA Coordinator in the DCS Human Resources Office and/or other locations will be stored in a locked cabinet, treated as confidential information, and separated from employee personnel files.
- M. The following actions constitute violations of this policy:
 - 1. limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;
 - 2. participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this policy;
 - 3. using standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability and that perpetuate the discrimination of others who are subject to common administrative control;
 - 4. excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
 - 5. not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless DCS can demonstrate that the

accommodation would impose an undue hardship on the operation of DCS;

6. denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of DCS to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
7. using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by DCS, is shown to be job-related for the position in question and is consistent with business necessity;
8. failing to use employment tests in the most effective manner to measure actual abilities. Tests must accurately reflect the skills, aptitude, or other factors being measured, and not the impaired sensory, manual, or speaking skills of an employee or applicant with a disability (unless those are the skills the test is designed to measure).

VI. PROCEDURES

A. DCS is *required* to do *all* of the following:

1. comply with the provisions of the Act that prohibit discrimination against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job;
2. make reasonable accommodations for the known disability of a qualified applicant or employee if requested and if it does not impose undue hardship on the operations of DCS;
3. refrain from asking a job applicant about the existence, nature, or severity of a disability; however, a hiring supervisor may ask an applicant about the applicant's ability to perform specific job functions. A hiring supervisor may offer a job contingent on the applicant passing a medical exam, but only if the exam is required for all employees entering similar jobs. Medical exams must be job-related.

B. DCS is *not* required to do *any* of the following:

1. eliminate essential functions from positions;
 2. lower the quality or production standards to make an accommodation, as long as these standards are applied uniformly to employees with or without a disability;
 3. create a new position to accommodate an employee with a qualified disability;
 4. provide personal use items needed in accomplishing daily activities both on and off the job (e.g. eyeglasses, hearing aids, prosthetic limbs, or a wheelchair);
 5. provide personal use amenities, such as a refrigerator, if these items are not provided to employees without disabilities.
- C. The DCS Human Resources Office is responsible for the following:
1. assisting designated staff in determining essential functions of positions;
 2. advising designated staff about the methods for validating claims of disability and procedures for requesting or obtaining further medical documentation when determining if an employee is a qualified individual with a disability;
 3. maintaining employee medical information in a confidential medical file separate from personnel files.
- D. The Hiring Authority is responsible for the following:
1. notifying the Office of Real Estate of any facility modifications required prior to the start date of a newly hired employee;
 2. providing a [*Reasonable Accommodation Request*](#) form to a new employee who has indicated they will need an accommodation to perform the essential functions of the job;
 3. avoiding inquiries regarding a candidate's disability or the nature or severity of any disability. Hiring Authorities are prohibited from asking about:
 - a. mental or physical illness;
 - b. health conditions;

- c. disease;
 - d. hospitalization;
 - e. medication; and
 - f. prior claims for worker's compensation.
4. refraining from: modifying quality or production standards to make accommodations; providing personal use items such as eyeglasses or hearing aids as a form of accommodation; and retaliating against a candidate or any other person for asserting that individual's right under the ADA or for participating in ADA enforcement.
5. The Hiring Authority may do the following:
- a. inquire whether an applicant can perform an essential function with or without a reasonable accommodation;
 - b. extend a job offer contingent on the candidate passing a medical examination authorized by the Arizona Department of Administration (ADOA) Human Resources Division, Occupational Health Unit, but only if the examination is required for all candidates or employees entering similar jobs;
 - c. contact the ADA Coordinator when there is a question related to the requirements of a position. The ADA Coordinator may contact the ADOA Human Resources Division for assistance in determining the requirements of a position;
 - d. refuse to hire an individual with a disability after consultation with the ADA Coordinator if:
 - i. the individual cannot perform the essential functions of the position with reasonable accommodation;
 - ii. the individual will pose a direct threat to self or others and the threat cannot be reduced or eliminated through reasonable accommodation; or
 - iii. there are job-related reasons.

E. Request for Reasonable Accommodation

1. An employee may make a request for a reasonable accommodation using one of the following methods:
 - a. Submitting a [Reasonable Accommodation Request](#) form to their immediate supervisor or DCS Human Resources indicating that an accommodation is needed to perform the essential functions of the job;
 - b. making a verbal request to the immediate supervisor or DCS Human Resources indicating that an accommodation is needed to perform the essential functions of the job.
 - i. When an employee makes a verbal request, the supervisor shall contact the ADA Coordinator for assistance. The ADA Coordinator will provide the employee the [Reasonable Accommodation Request](#) form to complete.
 - ii. Upon receipt of the completed [Reasonable Accommodation Request](#) form, the ADA Coordinator shall make a copy for the employee's ADA file. The employee is not required to complete and submit this form in order for DCS to consider the request for reasonable accommodation.

Management may determine an accommodation may be needed based on observation of a readily apparent disability in the workplace and initiate a discussion with the ADA Coordinator prior to taking any action.
2. Upon receipt of a [Reasonable Accommodation Request](#) from an employee, the ADA Coordinator shall review it to determine if it is complete.
 - a. If complete, the ADA Coordinator shall, within three working days of receipt, work to schedule a meeting with the employee to begin the interactive process to discuss the request for reasonable accommodation.
 - b. If incomplete, the ADA Coordinator shall, within three working days of receipt, follow up with the employee for clarification and to provide guidance.
3. The ADA Coordinator shall, upon receipt of the completed [Reasonable Accommodation Request](#) form, determine if further medical

documentation is needed and whether an Essential Functions Questionnaire needs to be sent with the employee to his or her physician. If additional medical information is requested, it must be received prior to any determination that an employee has a disability in accordance with the ADA as amended.

- a. The ADA Coordinator shall review the medical documentation to determine if the employee has a disability in accordance with the ADA as amended.
- b. If the ADA Coordinator determines that the information on the [Reasonable Accommodation Request](#) form is complete, and there is a nexus between the disability and the requested accommodation, the ADA Coordinator shall do the following:
 - i. meet with the employee to discuss the reasonable accommodation request and begin the interactive process. This should also be documented on the [Reasonable Accommodation Request](#) form;
 - ii. meet with the employee's supervisor and management to discuss the accommodation(s) requested to determine if the accommodation(s) can be provided;
 - iii. research other cases to ensure consistency with providing or denying requests for reasonable accommodation;
 - iv. provide an interim accommodation, if possible, pending finalizing permanent approved accommodations;
 - v. note any interim accommodations to be provided on the [Reasonable Accommodation Request](#) form;
 - vi. coordinate the provision of the reasonable accommodation with the employee's supervisor and DCS Management;
 - vii. expedite the process if the employee, because of their disability, poses a direct threat to their own or another's health or safety.
- c. If the ADA Coordinator determines that the employee does not, as defined by the ADA, have a disability, does not have a record of having an impairment, or is not regarded as having an impairment,

the ADA Coordinator shall notify the employee and the employee's supervisor, and work with both in providing available assistance to the employee consistent with Department procedures for non-ADA requests, such as providing ergonomic assistance.

F. Standard Process

1. If an employee has identified a disability that does not pose a direct, imminent threat to their own or others' health or safety, the ADA Coordinator shall schedule a meeting with the employee to discuss their request for reasonable accommodation.
 - a. If management has cause to believe that a qualified person with a disability poses a direct threat to their own or others' health or safety in the workplace, the supervisor shall do the following:
 - i. notify the ADA Coordinator by email as soon as possible;
 - ii. if the direct threat to the health or safety of the employee or others is imminent, the ADA Coordinator will immediately contact DCS Management to determine and implement the appropriate type of leave on which to place the individual.
 - b. Upon receipt of the concern brought forward by management, the ADA Coordinator shall determine whether a direct threat exists and whether the threat can be eliminated or reduced to an acceptable level with a reasonable accommodation via the interactive process. Factors to be considered include:
 - i. the duration of the risk;
 - ii. the nature and severity of the potential harm;
 - iii. the likelihood that the potential harm will occur; and
 - iv. the imminence of potential harm.
 - c. If the ADA Coordinator determines that providing a reasonable accommodation would eliminate or reduce a direct threat to an acceptable level, the ADA Coordinator shall:
 - i. coordinate an interim accommodation with the supervisor;
and

- ii. implement, if possible, a more permanent reasonable accommodation.
 - d. If it is verified that the qualified person with a disability poses a direct threat to their own or others' health or safety, the ADA Coordinator will contact DCS Risk Management and will assist the employee's supervisor, if needed, in completing an [Unusual Incident Report](#) form.
 - e. If the ADA Coordinator determines there is not a reasonable accommodation available to successfully mitigate the direct threat, the ADA Coordinator shall notify the supervisor and consult with DCS Management and the Office of General Counsel to determine the course of action to take regarding the employment of the qualified person with a disability.
2. The employee shall provide any documentation needed to support their request for a reasonable accommodation. Though a [Reasonable Accommodation Request](#) form is not required in order to review a reasonable accommodation request, the ADA Coordinator shall utilize the form as a tracking mechanism to ensure the Department clearly understands the employee's request.
3. The ADA Coordinator shall record the date of the receipt of the [Reasonable Accommodation Request](#) form and update the request as they proceed with processing the request.
4. The ADA Coordinator may request medical documentation of the individual's physical or mental limitations to support the request. Human Resources shall maintain any medical documentation collected in accordance with appropriate confidentiality procedures.
5. The ADA Coordinator shall enter into the interactive process with the employee.
6. The ADA Coordinator shall research the accommodations requested and may consider an interim accommodation if it is achievable at minimal or no fiscal impact. Any interim accommodation provided, or the inability to provide one, will be documented on the [Reasonable Accommodation Request](#) form. The interactive process will continue throughout the pendency of any interim accommodation.

7. The ADA Coordinator shall meet with the employee's management to determine if the request can be implemented based on the essential functions of the employee's position. This will be accomplished by taking the following steps:
 - a. reviewing the position description;
 - b. discussing the job tasks with the supervisor;
 - c. determining the accommodations that can be provided, if possible.
8. The ADA Coordinator will follow up with the employee to discuss the accommodations that will be provided and work with the employee and the supervisor to provide interim accommodations, if needed, until permanent accommodations are provided.

While maintaining ongoing communication with the employee regarding the status of progress, the ADA Coordinator will explore appropriate resources to determine the cost/timelines/feasibility of the request, enter the request into the appropriate system for processing, and coordinate the procurement of approved items.

9. Once the permanent accommodations have been provided, the ADA Coordinator will notify the employee in writing of all the accommodations that have been approved and provided.

G. Reassignment

1. When the ADA Coordinator has determined that a qualified employee is unable to perform the essential functions of the job with or without a reasonable accommodation, the ADA Coordinator shall seek reassignment for the employee. The ADA Coordinator shall complete the following when attempting to reassign the qualified employee:
 - a. within 30 calendar days, identify and document all positions within DCS to which a reassignment would be appropriate for the employee. The 30 calendar days begins on the date DCS determines that the employee can no longer perform the essential functions of the current position with or without a reasonable accommodation.
 - b. consider reassignment to a position which should be as equivalent as possible to the employee's current position in terms of pay,

status, benefits, location and level of work; when there is no equivalent vacancy for which the employee is qualified, the employee may be reassigned to a vacant lower level position in an effort to maintain employment when feasible, but this is not guaranteed;

- c. include positions throughout the employee's current administration.
2. After exhausting all efforts and determining that the requested accommodation (including reassignment) is not available, or has been rejected by the employee, the ADA Coordinator shall promptly consult with the Chief Human Resources Officer and the Office of General Counsel to review the decision to separate the employee.

VII. FORMS INDEX

[*DCS-1164A Employee Complaint*](#)

[*DCS-1086A Reasonable Accommodation Request*](#)

[*DCS-1125A Unusual Incident Report*](#)