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SME Author: Mark Duncan  
Approved: James Trujillo

## POLICY REFERENCE

Focus Area:  
Site and Member Services

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See Also: POL-140; RCW 49.60; Member Service Agreement; Member Placement Contract;  
Position Description

# POL – 140REF

### DEFINITIONS: REASONABLE ACCOMMODATION FOR MEMBERS

#### DEFINITIONS

*Under Washington state law, [RCW 49.60.040\(7\)](#):*

- (a) "Disability" means the presence of a sensory, mental, or physical impairment that:
  - (i) Is medically cognizable or diagnosable; or
  - (ii) Exists as a record or history; or
  - (iii) Is perceived to exist whether or not it exists in fact.
  
- (b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.
  
- (c) For purposes of this definition, "impairment" includes, but is not limited to:
  - (i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or
  - (ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  
- (d) Only for the purposes of qualifying for reasonable accommodation in a position, impairment must be known or shown through an interactive process to exist in fact and:
  - (i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her position, or the individual's ability to apply or be considered for a position; or

- (ii) The member must have put the program on notice of the existence of impairment, and medical documentation must establish a reasonable likelihood that engaging in position functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

Under federal law, the Americans with Disabilities Amendments Act of 2008:

(1) Disability

The term “disability” means, with respect to an individual:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

- (A) In general. For purposes of paragraph (1), major life activities are activities an average person can perform with little or no difficulty and include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- (B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment For purposes of paragraph (1) (C):

- (A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
- (B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability. The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

- (A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.
- (B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

- (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- (E) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:
  - (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
  - (II) use of assistive technology;
  - (III) reasonable accommodations or auxiliary aids or services; or
  - (IV) learned behavioral or adaptive neurological modifications.
- (ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
- (iii) As used in this subparagraph:
  - (I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
  - (II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

**Essential Task Functions:**

The term “essential task functions” means the fundamental tasks of the position, and does not include marginal functions. Essential functions tend to be necessary or integral. Marginal functions tend to be incidental or peripheral.

All tasks have essential and marginal functions. Identifying the essential functions is crucial to determining whether a candidate or member is a qualified individual with a disability. Decisions about an individual’s need for accommodation must be based on the essential functions. Essential tasks are the key responsibilities which, if removed, would fundamentally alter the nature of the position. They may not include tasks that would be helpful, tasks that were done once, or a wish list of future tasks.

A project site/sponsoring organization is not limited in its ability to establish or change the essential functions of a position, and should review them regularly. This review may occur when a position is first established or at the time a position is vacated. It also is recommended that a collaborative review occurs during the member’s evaluation when adjustments can be made accordingly.

**Fundamental Alteration:**

“Fundamental alteration” is defined as a change in the essential nature of a program or activity, aid, benefit, service or training. A cost that the program can demonstrate would result in an undue burden.

**Health Care Professional:**

Under WAC 162-22-022(6), "health care professional" means a person whose license to practice includes diagnosis and assessment of the particular disability for which she or he issues a health care opinion.

**Qualified Individual With A Disability:**

With respect to service: a person who meets the requisite skill, experience, education and other service-related requirements of the position they hold or desire, and who, with or without reasonable accommodation of his/her disability, can perform the essential functions of the position for which he/she is considered;

With respect to programs and services: a person who, with or without a reasonable accommodation of his/her disability, meets eligibility requirements.

With respect to service: modifications or adjustments to a task, work environment, policies, practices, or procedures that enable a qualified individual with a disability to perform the essential functions of the service or to enjoy benefits and privileges of service equal to those enjoyed by similarly situated non-disabled members. Examples of benefits and privileges include equal access to training as well as to lunchrooms, restrooms, meeting rooms, and program-provided social events.

Examples of reasonable accommodations in the term of service include, but are not limited to: task restructuring; reassigning nonessential functions and modifying architectural barriers. Examples of reasonable accommodations or reasonable modifications for services include, but are not limited to: providing readers, interpreters, assistive listening devices, or other auxiliary aids; modifying architectural barriers; and, modifying policies, procedures or practices unless it causes a fundamental alteration of the program or activity.

**Undue Hardship:**

In general, “undue hardship” means accommodations that are excessively costly, difficult or disruptive, or would fundamentally alter business operations of the organization when considered in light of the following factors:

- The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding, for the accommodation;
- The overall financial resources of the office or facilities involved in providing the reasonable accommodation, including: (1) The number of people aided, benefited, served, trained by or employed at the facility or facilities, and (2) the effect the accommodation would have on the expenses and resources of the facility or facilities;

- The overall financial resources of the program, including: (1) The overall size of the program, (2) the number of people aided, benefited, served, trained, or employed by the program, and (3) the number, type and location of the programs facilities;
- The type of operation or operations of the program, including: (1) The geographic separateness and administrative or fiscal relationship of the office or facilities in question to a possible parent organization, and (2) if the individual is seeking a service-related accommodation, the composition, structure and functions of the program’s workforce;
- The effect of the accommodation upon the operation of the office or facilities, including: (1) the effect on the ability of other participants to receive aid, benefits, services, or training, or of other members to perform their duties, and (2) the effect on the facility's ability to carry out its mission;
- Other resources; and
- If the accommodation would impose an undue hardship on the program, the program must provide any level of accommodation that would not result in an undue hardship, when possible.

**LAWS/RULES/REGULATIONS:**

- Americans with Disabilities Act (ADA) of 1990, as amended (Pub. L. No. 101-336 and Pub. L. No. 110-325), 29 CFR Part 1630 and 28 CFR Part 35.
- Rehabilitation Act of 1973, as amended, Section 504 (Pub. L. No. 93-516) 29 U.S.C. §794 and 29 CFR Part 32.
- Washington State Law RCW 49.60
- Washington Administrative Code (WAC) Chapters 162-22 and [357-46](#).