



## OFFICE OF THE SECRETARY

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### SECRETARIAL DIRECTIVE

**SUBJECT:** Americans with Disabilities Amendments Act

**NUMBER:** 2021-17

**SUPERSEDES:** ADC AD 17-14

**APPLICABILITY:** All Department of Corrections Employees

**REFERENCE:** A.C.A. §§ 25-403-105, 25-43-108 and  
25-43-403

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**ISSUED BY:** Original Signature on File

**EFFECTIVE DATE:** 9/16/2021

#### I. POLICY:

As the executive head of the Arkansas Department of Corrections (DOC), it is the responsibility of the Secretary of Corrections (Secretary) to administer the various rules, orders, or directives issued by the Department. This directive is intended to ensure that a qualified person with a disability will not, on the basis of a disability, be discriminated in hiring, firing, advancement, compensation, and job training procedures pursuant to Title I of the Americans with Disabilities Act (ADA). Additionally, pursuant to Title II of the ADA, qualified persons with a disability will not be excluded from participating in, denied benefits of, or otherwise subjected to discrimination under any program, service, activity, or employment opportunity in violation of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Amendments Act of 2008.

The DOC will make reasonable accommodations for the known disabilities of otherwise qualified employees with diagnosed temporary or permanent disabilities, unless doing so, would cause undue hardship to the DOC or the operation of its programs. The DOC is, however, not required to alter essential functions of a job as a reasonable accommodation.

#### II. DEFINITIONS:

- A. Department ADA Employment Coordinator. The Secretary will designate the Central Human Resource Administrator or another management level employee, as the Department ADA Employment Coordinator.
- B. Complaint. Statement by the employee or the employee's representative containing the employee's name, address, telephone or TDD number, describing the alleged discriminatory act or violation in detail including the date, location, parties involved, the remedy sought and documentation of disability or documentation that the person is regarded as having a disability by the parties involved.
- C. Disability. A physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or is regarded as having such impairment. An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability. If the impairment is episodic or in remission, it is a disability if it would substantially limit a major life activity when active.
- D. Essential Job Functions. Duties or tasks that a qualified individual must perform, with or without accommodation.
- E. Major Life Activity. An activity that an average person can perform with little or no difficulty.

- F. Reasonable Accommodation. Any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities. Accommodations are considered “reasonable” if they do not create an undue hardship or a direct threat. Individuals who solely are “regarded as” having a disability but do not have a disability, are not qualified to receive reasonable accommodations.
- G. Undue Hardship. An action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. The concept of undue hardship includes any action that is unduly costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the DOC. Accordingly, whether a particular accommodation will impose an undue hardship must always be determined on a case-by- case basis.
- H. Unit Administrator. For purposes of this policy, refers to Warden, Superintendent, Center Supervisor, and Area Manager, or head of an administrative section.

### III. PROCEDURES:

#### A. Requests for Reasonable Accommodation

1. All requests for reasonable accommodations shall be sent to the Unit Human Resources Manager, who will then contact the Department ADA Coordinator. Locations without a Human Resources Manager can send the request directly to the Department ADA Coordinator’s office, or their designee.
2. If the need for an accommodation is not readily obvious, the employee may be required to provide medical documentation of a disability. The employee shall be provided an essential job functions questionnaire to be completed by his/her physician. This form must be completed and returned to the Unit Human Resources Manager within five (5) business days, who will immediately forward this information to the Department ADA Coordinator. No accommodation will be made unless and until this information is provided to the Department ADA Coordinator.
3. If the physician has indicated that any one of the essential functions cannot be performed for a temporary period, the employee will be provided FMLA paperwork and temporarily relieved of duty until it can be ascertained when they will regain their ability to perform all essential job functions. The DOC must engage in the interactive process with each individual who requests an accommodation to determine if the accommodation can be made in a particular case. Non-Security employees will be reviewed on a case-by-case basis.
4. If a physician determines that an employee is unable to perform one of the essential job functions of his/her current job due to a permanent disability, the employee should notify the Department ADA Coordinator.
  - a. The Department ADA Coordinator will ensure that the employee is notified of all current advertised vacant positions within the DOC. The employee must be able to satisfy the minimum qualifications and the essential job functions for positions of the same or lower grade. Provided the employee is qualified for the position, and the vacant position fits within their medical restrictions, the employee will be offered the vacant position. Promotions will not be awarded as ADA accommodations.
  - b. The employee will have two (2) business days to determine whether he or she will accept the applicable position.
5. The Department ADA Coordinator will issue a final response in writing to the employee and the Unit Administrator regarding the provision of the reasonable accommodation and the placement of the employee based on the employee’s ability to qualify for a vacant position within the DOC.

#### B. Criteria for Establishing Whether a Reasonable Accommodation Can Be Made.

The following criteria will be reviewed when determining whether a reasonable accommodation can be made:

1. The request made by the applicant or employee with a disability;
2. Whether or not an accommodation is reasonable;

3. The position the employee holds;
4. The manner in which a disability affects the employees ability to do the job;
5. Work environment;
6. The essential job functions of the particular position; and
7. Whether the proposed accommodation would create an undue hardship on the DOC.

**C. Complaints.** ADA related Complaints from employees shall be addressed by the Department ADA Coordinator or their designee. The Complaint should follow the procedures listed below:

1. The employee must file the Complaint in writing within five (5) days of the alleged violation. A representative may file a Complaint on behalf of the injured party or complainant.
2. Within fifteen (15) business days of receipt of the Complaint, the Department ADA Coordinator must initiate an investigation. This investigation must include a meeting with the complainant. This process contemplates an informal, but thorough investigation, affording all interested persons and their representatives an opportunity to submit evidence relevant to the Complaint.
3. The results of the investigation will be reviewed by the Unit Administrator where the Complaint occurred, the Department ADA Coordinator, and if possible, an uninterested similarly disabled person.
4. The Department ADA Coordinator or his/her designee shall make the final determination and issue a final ruling in writing to the validity of the Complaint and a description of the resolution within fifteen (15) days of the filing of the Complaint. However, the fifteen (15) day period may be extended, if the Department ADA Coordinator determines that the complexity of the issues gives rise to good cause for delay. A copy of the final ruling should be forwarded to the complainant.
5. The complainant may request a reconsideration of the case in instances where the complainant can provide specific information, proof, or legitimate facts contrary to the final ruling. The request for reconsideration must be made in writing within five (5) working days of receiving the determination to the Department ADA Coordinator. The Department ADA Coordinator will forward the reconsideration request to the DOC Chief of Staff for final determination within five (5) working days of receipt.
6. Pursuant to the Records Retention Secretarial Directive, the Department ADA Coordinator shall maintain the files and records of the DOC relating to the complainants and the resolutions sent to the complainants. Files will be maintained for three (3) years or until disposition of the charge or action, whichever is greater.