

County of Monterey Board Policy Manual

Policy Name Reasonable Accommodation Policy	Policy Number P-	Page 1 of 9
Policy Category Personnel		

I. Purpose

1. To assist applicants for employment, current employees, individuals desiring to participate in County programs or activities, and department supervisors and managers request and process accommodation requests.
2. To comply with federal and state civil rights laws, including California's Fair Employment and Housing Act (FEHA), the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act of 1975 (ADEA), and the Rehabilitation Act of 1973.
3. To support an organizational culture that values diversity, equity, and inclusion.

II. Definitions

The following definitions are provided to assist in interpreting and applying this Policy. Further detail is available from the County's Civil Rights Office (CRO). Definitions are also outlined in the ADA, FEHA, California Government Code §12926, related federal and state laws and regulations, and cases interpreting those laws and regulations.

Individual with a Disability – Any individual with a disability is a person who has a physical or mental impairment that limits the performance of one or more major life activities, has a record of impairment, or is perceived as having such impairment.

Reasonable Accommodation – A reasonable accommodation means modifying or adjusting practices, procedures, policies, job duties, or the work or application environment so that a qualified individual with a disability can perform a position's essential functions and enjoy equal employment opportunity.

Qualified Individual with a Disability - A qualified individual with a disability is a person with a disability, who meets the skill, experience, education, and other job-related requirements of the position held or desired, and who can perform the essential

functions of the position with or without reasonable accommodation.

Mental Impairment – Mental impairment includes, but is not limited to, having any mental or psychological disorder or condition, such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

Physical Impairment – Physical impairment includes, but is not limited to, having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, speech organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, which limits a major life activity.

Major Life Activities – Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Primary attention is given to those life activities that affect employability or otherwise present a barrier to employment or advancement.

Interactive Process – The interactive process is good faith, ongoing dialogue between the employee and the County about possible options for reasonably accommodating the individual's disability. Both the County and the individual are expected to participate in the interactive process.

Essential Functions – Essential functions are the fundamental job duties or requirements of a position. Essential functions are such that they cannot be eliminated or substantially modified without changing the nature of the position. Factors to consider in determining if a job function is essential include, but are not limited to:

- Whether the reason the position exists is to perform that function;
- The number of other employees available to perform the function or among whom the performance of the function can be distributed; and,
- The degree of expertise or skill required to perform the function and whether the function is specialized, and the individual is hired based on their ability to perform the function.

Benefits and Privileges of Employment – Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs, cafeterias, lounges), and (3) parties, County-sanctioned, or other social functions (e.g., parties to celebrate retirements and birthdays).

Undue Hardship – Undue hardship means an excessively costly, extensive, substantial, or disruptive modification or one that would fundamentally alter the nature or operation of the County. The comprehensive resources and options available to the County are legally relevant in determining whether a requested reasonable accommodation poses an undue hardship, not just the budget or resources of an

individual segment, sub-component, or division within the County or department.

Direct Threat – A direct threat is a significant risk of substantial and imminent harm, which cannot be eliminated or reduced to an acceptable level by reasonable accommodation. A direct threat occurs when an individual who, because of a disability, poses a direct threat to the health or safety of the individual or others even with a reasonable accommodation. An individual who poses a direct threat is not a qualified individual with a disability. The assessment of whether or not a person poses a direct threat must be made on a case-by-case basis considering the following factors: duration of the risk, nature, and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm.

Departmental Reasonable Accommodation Coordinator (DRAC) – Each County department shall designate a DRAC. The DRAC is responsible for appropriately responding to requests from employees, members of the public seeking services applicants, and management regarding disability-related accommodation issues. The DRAC is accountable for managing and tracking reasonable accommodation requests and initiating the mandatory interactive process. Accommodations that are handled and granted by a supervisor or manager need not go to the DRAC; however, the information should be reported to the DRAC for tracking purposes. The CRO shall be notified of the designated DRAC.

Reasonable Accommodation Review Committee (RARC) – The RARC is comprised of a representative of the department or the DRAC, and a representative from Risk Management, County Counsel's Office, Human Resources Department (including Employee Relations and Benefits representatives, as needed) and the CRO. Members of the RARC may assist the department and the DRAC with requests for accommodations. Before denying a request for an accommodation, the matter shall be referred to the RARC for review.

III. Background

This policy revision responds to changes in FEHA, ADA, and other related statutory and case law.

IV. Policy

The County of Monterey (County) is committed to providing equal access and opportunity to qualified individuals with disabilities in employment practices, provision of public services, and access to governmental facilities. The County will adhere to the ADA, FEHA, and all other applicable federal and state laws, regulations, and guidelines concerning providing reasonable accommodations, as necessary, to afford equal employment opportunity and equal access to programs, services, and benefits for qualified individuals with disabilities.

Following a timely good-faith interactive process with the individual to determine effective reasonable accommodations, the County shall make reasonable

accommodation for an individual's known physical or mental disability except in specific circumstances when legally exempt from doing so.

Requesting an accommodation is protected activity. Retaliation against an individual for requesting an accommodation is prohibited.

Information in this process will be confidential, to the extent allowed by law, and limited to those with a need to know.

V. Procedure

A reasonable accommodation request is a statement that an individual needs an adjustment or change at work, in the application process, in receiving County services, or in a benefit or privilege of employment for a reason related to a physical or mental impairment. Accommodation requests may be made either orally or in writing.

- **Current Employees:** Generally, to comply with privacy laws, the County is subject to strict limitations regarding inquiries about the physical, mental, or medical condition of an employee. Employees are, therefore, responsible for requesting accommodations when needed. An employee may request a reasonable accommodation orally or in writing from their Supervisor, another Manager in their immediate chain of command, the DRAC, the Ergonomics Manager, or the CRO. A Reasonable Accommodation Request form will be given to the employee to complete. The written form is required only for the first request, although appropriate notice must be given each time an accommodation is needed.
- **Applicants:** Employment opportunities will not be denied to anyone because of the need to make reasonable accommodation for a person's disability. The County will include a statement on all applications and recruitment packages indicating the availability of reasonable accommodation in the application process with instructions to applicants regarding the process for requesting a reasonable accommodation. Applicants who have received employment interview offers may also make an accommodation request.

When an applicant requests an accommodation, Human Resources Department (HRD) staff will confer with the applicant on the type of accommodation they need. When the applicant's disability is not obvious or known or additional medical clarification is needed, the County will request from the applicant appropriate documentation of the disability, limitations, and needed accommodation. Given the recruitment process's time-sensitivity, Human Resources staff will move as quickly as possible to decide and provide an accommodation if appropriate. When a reasonable accommodation request is received, HRD staff shall complete the County's Request for Reasonable Accommodation Form.

- **Representatives:** A family member, health care professional, or other representatives may request an accommodation on behalf of a County employee or applicant. The request should go to one of the same persons to whom the employee or applicant would request.

When a third party makes an accommodation request, the DRAC should, if possible, confirm with the employee or applicant with a disability that they want a reasonable accommodation before proceeding. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In his situation, the County will process the third party's request and will consult directly with the individual needing the request as soon as it is practical.

- **Public:** A member of the public who has a disability may request a reasonable accommodation to access County facilities, programs, or services. No person will be denied because of a disability, and no one will be charged a fee for a reasonable accommodation. The County will respond to requests for reasonable accommodations promptly to avoid unreasonable delays or unreasonable denial of services.

It is the individual's responsibility to seek available assistance, make their needs known to County staff, and give the County adequate time to provide the accommodation. County employees shall assist and advise individuals who request reasonable accommodations. If the department is unable to assist the individual, the department shall contact the CRO.

Employees are encouraged to utilize the County's Request for Reasonable Accommodation Form. The processing of a request will be determined as the date an oral or written request was made, not the date the Reasonable Accommodation Request form was submitted.

All requests for reasonable accommodation must provide the following information:

- The type of accommodation requested;
- An explanation of the limitation for which the accommodation is needed; and,
- A description of how the accommodation will allow the individual to perform the essential functions of his/her job.

To enable the County to keep accurate records regarding accommodation requests, the DRAC must follow up with an oral request by completing the Reasonable Accommodation Request form.

Requests should be forwarded to the DRAC as soon as possible but no later than 5 business days. Requests for reasonable accommodations will be processed by the DRAC using the interactive process.

Interactive Process

When someone makes a request for accommodation, the County and the individual requesting the accommodation must engage in a good-faith interactive process to determine what, if any, accommodation may be provided. The individual and the County must communicate with each other about the request, the process for determining whether an accommodation will be provided, and the potential accommodations.

Communication is a priority throughout the entire process. The employer and employee are obligated to communicate directly and exchange essential information to work towards the shared goal of identifying effective reasonable accommodations.

Applicants, employees, managers, and supervisors are encouraged to contact the DRAC, the Ergonomics Manager, or the CRO at any time during this process to request assistance or advice. Individuals seeking reasonable accommodation may be assisted in the process by a person of their choice.

The County does not have to provide the accommodation preferred by the employee or applicant or their health care professional. The County has the discretion to choose amongst the accommodations so long as the chosen accommodation is reasonable and effective.

If a qualified employee with a disability cannot perform the essential functions of their current position, with or without accommodation, but may be qualified to perform the essential functions of a different position, the County shall explore reassignment to a vacant position. Reassignment to another position is made only to vacant and funded positions. The County will make efforts to find a vacant position within the employee's current department. If a suitable position does not exist within the employee's current department, HRD staff will conduct an internal County-wide job search. Promotions, creation of new positions, or displacement of other employees are not a required part of the accommodation process.

Reassignment will be considered only if no accommodations are available to enable the individual to perform the essential functions of their current job, or if the only suitable accommodation would cause an undue hardship.

Performance and Conduct Standards

The ADA and FEHA do not require the employer to ignore a violation of a uniformly applied rule that is job-related and consistent with business necessity. Additionally, since reasonable accommodations are prospective, an employer is not required to ignore past misconduct even if the misconduct is the result of the disability. Therefore, departments are not prohibited from applying appropriate disciplinary action or exercising appropriate management responsibility.

If during the disciplinary process, an employee makes a connection between a physical

or mental impairment and the performance or misconduct, the County will initiate the interactive process; this may include requesting appropriate documentation and verification of the disability. Whether or not an effective accommodation is provided, the employee remains responsible for performing the essential job functions in a timely and satisfactory manner and complying with County policies and guidelines. If the employee fails to do so, disciplinary action may be initiated.

Requests for Medical Information

When an individual's disability is not readily apparent, the disability has not been previously documented, or the reasonableness of the accommodation request is not obvious, the County may request that the individual provide verification from a health care professional that they have the claimed disability and that it has the effect of needing a reasonable accommodation. The request for verification may ask the opinion of the health care professional as to whether the individual can perform the essential functions of the job or whether the requested accommodation is appropriate to the disability. The County has a right to have medical information reviewed by its own medical experts at the County's expense.

The County has a right to request relevant supplemental medical information if the information submitted does not clearly explain the impact of the disability on working, or the need for the reasonable accommodation, or otherwise clarify how the requested accommodation will assist the employee in performing the essential functions of the job or in enjoying the benefits and privileges of the workplace, or assist an applicant with the application process. If this does not result in enough information, the County may require the individual to be evaluated by a healthcare professional of the County's choice at the County's expense. During the period necessary to obtain relevant and enough supplemental medical information, the employee's eligibility for any form of paid leave shall be determined by the County's Personnel Policies and Practices Resolution (PPPR) or applicable MOU or collective bargaining agreement.

Prior to obtaining medical information, the employee, applicant, or third party shall execute an appropriate Authorization to Release Medical Information statement.

All medical information will be requested and reviewed by the DRAC and HRD staff, if necessary, to identify an effective accommodation, in consultation with the requesting individual or their representative. The failure to provide appropriate documentation or cooperate in the County's efforts to obtain such documentation can result in a denial of the accommodation.

Confidentiality

To the extent possible, all medical information – including information about functional limitations and reasonable accommodation needs – obtained in connection with a request for reasonable accommodation shall be treated as a confidential medical record and is maintained securely, apart from personnel files and with access restricted to designated personnel on a need to know basis. Also, employees who

obtain or receive such information are strictly bound by these confidentiality requirements.

“Medical information” includes any information concerning an individual’s medical condition or history, regardless of whether the information was provided voluntarily or in response to a disability-related question, or the fact that someone is receiving an accommodation or has a disability.

Timeliness

The County will process requests for a reasonable accommodation as previously set forth and then provide accommodations, where appropriate, in as short a time frame as reasonably possible. However, the County recognizes that the time necessary to process a request will depend on the nature of the accommodations requested and whether it is necessary to obtain supporting information.

The DRAC will decide on the request. If granted, the accommodation will be provided within a reasonable time from the date the request was initially made, absent extenuating circumstances. If medical documentation is necessary, the decision will be made within 30 days from the documentation’s receipt, absent extenuating circumstances.

If there is a delay in providing an approved accommodation, the DRAC shall investigate whether the County can take temporary measures to assist the individual. These measures could include providing the requested accommodation temporarily or temporarily providing a less effective form of accommodation. Additionally, the DRAC may offer measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) they do not interfere with the operations of the department or the County; and, (2) the employee is clearly informed, in writing, that they are being provided an accommodation only temporarily.

Denial of an Accommodation

Prior to denying an accommodation as unreasonable, the matter must be referred to the RARC for review.

After review by the RARC, the DRAC shall complete the Denial of Request form if it is determined that a request for an accommodation cannot be granted. The explanation should clearly state the specific reasons for the denial and may include recommended alternate reasonable accommodations, if applicable. The appointing authority shall review the Denial of Request form and sign and date, if appropriate.

The written notice of denial must inform the individual that they have the right to file a complaint with the County CRO, the U.S. Equal Employment Opportunity Commission (EEOC), or the California Department of Fair Employment and Housing (DFEH). Nothing contained in this Policy shall preclude an individual from filing a complaint with the County CRO, EEOC, or the DFEH before the issuance of the denial notice.

Individuals who were denied a reasonable accommodation may request reconsideration of a denial. If an individual requests reconsideration, they should first ask the DRAC to reconsider the decision. The individual may present additional information in support of their request. The DRAC will respond to the request for reconsideration within 10 business days.

This Policy is in addition to statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory claims, including time frames for filing such claims, are set by the United States Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH).

Complaint Resolution

If an individual is not satisfied with the interactive process's outcome, they may file a complaint with the CRO, the DFEH (www.dfeh.ca.gov/), or the EEOC (www.eeoc.gov/).

CRO staff members who had significant involvement in processing a reasonable accommodation request or reviewing a denial of an accommodation may recuse themselves from reviewing or investigating a complaint of discrimination or retaliation related to a request.

Information Tracking and Reporting

After a reasonable accommodation request is granted or denied, and within 5 business days, the DRAC or HRD personnel shall complete a Reasonable Accommodation Reporting form and forward a copy to the CRO.

VI. Review date:

- a. This Policy will be reviewed for continuance by [DATE].

VII. Board Action

- a. Legistar File Number _____