

## REASONABLE ACCOMMODATION

- Policy Number:** HR-404
- Effective Date:** Approved by the **Eastern Washington State Historical Society (EWSHS)** Board of Trustees on September 2, 2020.
- Application:** Applies to all employees and candidates for employment with the EWSHS.
- History:** This policy updates and renumbers the BP 129 dated May 6, 2020. Previous BP 129 undated the previous version of the policy dated February 1, 2017. The previous version replaced HR Policy 115.
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### Article I PURPOSE

**1.1:** This policy sets forth provisions for reasonably accommodating the EWSHS qualified employees and candidates for employment for reasons of disability, pregnancy, and safety consistent with federal and state law.

### Article II DEFINITIONS

**2.1: Direct threat** – A significant risk of substantial harm to the health and safety of self or others, where the risk is connected to a disability and there is no reasonable accommodation that will reduce the risk. The risk must be specific, substantial, demonstrable, likely or imminent; and cannot be reduced to an acceptable level through reasonable accommodation. In determining a direct threat, the EWSHS will consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, the imminence of the potential harm and any potential accommodation in alignment with this policy.

**2.2: Disability** – Is defined by federal and state law below:

Americans with Disabilities Act (ADA)	Washington State Law Against Discrimination
Has a physical or mental impairment that substantially limits one or more major life activities,	The presence of a sensory, mental or physical impairment that is medically cognizable or diagnosable; or
Has a record of such impairment, or	Exists as a record or history; or
Is regarded as having such an impairment.	Is perceived to exist whether or not it exists in fact.

**2.3: Disability Separation** – an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee's position, or alternative position, with or without reasonable accommodation, due to a disability.

**2.4: Domestic Violence** – Has the same meaning as in RCW 26.50.010.

**2.5: Equal Employment Opportunity** – An opportunity to perform the essential functions or enjoy equal benefits and privileges of employment as are available to a similarly situated applicant or employee without a disability.

**2.6: Essential Job Functions** – The fundamental job duties performed in a position. A function may be essential because:

- The position exists to perform that function.
- There are a limited number of employees available who can perform the function.
- The function is highly specialized.

The term “essential functions” does not include the marginal functions of the position.

**2.7: Family members** – Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW [26.60.020](#) or a person with whom the employee has a dating relationship as defined in RCW [26.50.010](#).

**2.8: Health Care Professionals** – A person who has completed a course of study and is licensed to practice in a field of health care which includes the diagnosis and assessment of the particular disability or disabilities in question.

**2.9: Impairment** – includes, but is not limited to, 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; endocrine; or 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.

For the purposes of qualifying for reasonable accommodation, an impairment must be known or shown through an interactive process to exist in fact. The impairment must have a substantially limiting effect upon the individual’s ability to perform their job; the individual’s ability to apply or be considered for a job; the individual’s access to equal benefits, privileges or terms or conditions of employment; or the employee must have put the employer on notice of the existence of an impairment and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

**2.10: Pregnancy** – Includes the employee’s pregnancy and pregnancy-related health conditions, including the need to express breast milk.

**2.11: Qualified Individual with a Disability** – An employee or job applicant who meets the skill, experience, education, and other job-related requirements of the position held or applied for, and who with or without reasonable accommodation can perform the essential functions of the job.

**2.12: Reasonable Accommodation** – The modification or adjustment to a job, work environment, policies, practices or procedures that enable qualified individuals with disabilities to participate in the job application process, to perform the essential functions of a job, to enjoy equal employment opportunity or to ensure the opportunity for equal participation in work-related events during employment with the agency.

**2.13: Sexual Assault** – Has the same meaning as in RCW 70.125.030.

**2.14: Stalking** – Has the same meaning as in RCW 9A.46.110.

**2.15: Undue Hardship** – An excessively costly, extensive, substantial or disruptive modification or adjustment or one that would fundamentally alter the nature or operation of the agency. An accommodation will be considered an undue hardship if the cost or difficulty is unreasonable in view of: (1) the size and resources available to the EWSHS; (2) whether the cost can be included in planned remodeling or maintenance; and (3) the requirements of other laws and contracts, and other appropriate considerations.

### **Article III POLICY STATEMENT**

**3.1:** The **EWSHS** is committed to offering equal access to employment, services, and facilities for the following reasons: (1) disability; (2) pregnancy; and (3) safety.

**3.1.1:** The agency will not discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions, and privileges of employment.

**3.1.2:** The agency will engage in the reasonable accommodation process with a qualified individual with a disability. All employees, applicants, and selected candidates have the right to request and receive reasonable accommodation without stigma, harassment, or retaliation.

**3.1.3:** The need for a reasonable accommodation will not negatively impact the consideration of a qualified individual with a disability for: employment, training, promotion, travel, participation in projects, committees or developmental work assignments or any other opportunity which may have an impact on an employee's career development. Job applicants requiring reasonable accommodation to complete the application process should notify the hiring agency.

**3.2:** Examples of reasonable accommodation include, but are not limited to:

**3.2.1:** Modifying application procedures, testing, interview processes, and work schedules;

**3.2.2:** Acquiring or modifying equipment;

**3.2.3:** Providing readers or interpreters;

**3.2.4:** Reassignment to a vacant position; and

**3.2.5:** Allowing leave.

**3.3: Process to Request Reasonable Accommodation**

**3.3.1:** Requests for reasonable accommodation will be reviewed on a case-by-case basis and handled in a timely manner. Reasonable accommodations will be brought to the attention of applicants in the job announcement or posting. The supervisor may ask, but not require, the individual employee, applicant, or selected candidate to submit this request in writing. The process shall be interactive between the employee, applicant, or selected candidate and the agency, keeping the employee involved throughout. The agency is not obligated to accommodate persons who fail to cooperate.

**3.3.2:** Employees, applicants, and selected candidates are welcome to approach their supervisor, the Department of Enterprise Services (DES) Human Resource (HR) Consultant or other agency representative at any time to initiate discussions about reasonable accommodation(s).

- 3.3.3:** EWSHS will acknowledge receipt of the reasonable accommodation request within five business days and will begin processing the request no later than 15 days from the date of the request.
- 3.3.4:** This is an interactive process. The EWSHS will work with the requester to figure out what it can do to help. To aid in this process, the EWSHS may request medical documentation. The agency will treat information about the presence or nature of a disability as confidential medical information, and will secure the information apart from the employee's personnel file.
- 3.3.5:** When two or more effective accommodations allow a qualified individual with a disability an equal employment opportunity the agency shall select the reasonable accommodation to be provided to the individual.
- 3.3.6:** If an employee cannot be reasonably accommodated in their current position, the department will ask the employee whether they want the agency to look for reassignment to a vacant funded position elsewhere in the agency. If so, the agency will look for a position that meets the following criteria:
  - 3.3.6.1:** The position is one that the employee is qualified to perform.
  - 3.3.6.2:** The position is at the same or lower salary level.
  - 3.3.6.3:** The position meets the employee's reasonable accommodation needs.
- 3.3.7:** If there is a question whether a particular reasonable accommodation might cause an undue hardship or if a direct threat issue exists, then the DES HR Consultant will work with the agency in assessing the concern. An accommodation may be denied if it would cause undue hardship because it is costly, extensive, substantial and/or disruptive and/or would fundamentally alter the nature or operation of the agency. That being said, the EWSHS will not deny an accommodation simply because it has some cost.
- 3.3.8:** A qualified person with a disability has the right to refuse an accommodation. However, when a person refuses a reasonable accommodation and cannot perform the essential functions of the job without the accommodation, the agency will not consider such person to be otherwise qualified and will treat the situation as a performance issue.
- 3.3.9:** If the EWSHS denies a request for accommodation, such denial and the reasons for it will be documented in writing and sent to the individual requesting the accommodation. Employees may request a review of the denial from the Executive Director and/or their designee.

#### **3.4: Workplace Pregnancy Accommodation**

- 3.4.1:** The EWSHS will provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation, which includes the following:
  - 3.4.1.1:** Providing more frequent, longer, or flexible restroom breaks;
  - 3.4.1.2:** Modifying a no food or drink policy;
  - 3.4.1.3:** Providing seating or allowing an employee to sit more frequently if the job requires standing;

**3.4.1.4:** Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

**3.4.1.5:** Providing a temporary transfer to a less strenuous or less hazardous position;

**3.4.1.6:** Providing assistance with manual labor and limits on lifting;

**3.4.1.7:** Scheduling flexibility for prenatal visits; and

**3.4.1.8:** Any further pregnancy accommodation an employee may request and to which the EWSHS must give reasonable consideration in consultation with information provided on pregnancy accommodation by the Department of Labor and Industries or the employee's health care provider.

**3.4.2:** The EWSHS will not require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.

**3.4.3:** The EWSHS is not required to create additional employment that it would not otherwise have created.

**3.4.4:** The EWSHS may deny a reasonable pregnancy accommodation based on undue hardship, which, for the purposes of workplace pregnancy accommodation, means an action requiring significant difficulty or expense, to the EWSHS's program, enterprise or business for pregnancy accommodations 4 through 8 above. The EWSHS will not claim undue hardship for pregnancy accommodations 1 through 3 above or for limits on lifting over seventeen pounds. Certain accommodations that incur additional cost are not considered undue hardship per RCW 43.10.005.

**3.4.5:** When an employee is pregnant or has a pregnancy-related condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for pregnancy accommodations 4 through 8 above. An employee is not required to submit written certification for pregnancy accommodations 1 through 3 above.

**3.4.6:** The EWSHS will provide reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and provide a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs.

**3.4.7:** A denial of reasonable accommodations will be recorded, the reasons documented in writing, and the record will be sent to the individual requesting the accommodation.

### **3.5: Safety Accommodation**

**3.5.1:** The EWSHS will provide reasonable safety accommodations to an applicant, employee, or an employee whose family member is a victim of domestic violence, sexual assault or stalking as required in chapter 49.76 RCW, including, but not limited to, the following:

**3.5.1.1:** A transfer or reassignment;

**3.5.1.2:** Modified schedule;



information and an assessment of the individual's present ability to safely perform the essential functions of the job. The employee may be sent to a doctor of the EWSHS's choosing at the agency's expense if there is objective evidence to support a reasonable belief that, due to a disability, the employee poses a direct threat to self or others.

### **3.7: Disability Separation**

**3.7.1:** The EWSHS may separate an employee due to disability when any of the following circumstances exist: (1) The EWSHS is unable to reasonably accommodate the employee; (2) The EWSHS has medical documentation of the employee's inability to work in any capacity; or (3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class. Disability separation is not a disciplinary action. . Notice of disability separation must: be in writing to the employee; provide seven calendar days' notice; and include information about the option to reapply for employment.

## **Article IV COMPLAINTS**

**4.1:** Any person with a disability who feels discriminated against on the basis of a disability may either file an internal complaint with the agency director, the DES HR Consultant or file a formal complaint with any of the following:

**4.1.1:** The Washington State Human Rights Commission.

**4.1.2:** The United States Equal Employment Opportunity Commission.

**4.1.3:** The Health and Human Services Office for Civil Rights.

**4.2:** The Executive Director may designate a delegate to hear the appeal.

## **Article V COMPLIANCE**

**5.1:** The EWSHS Board will review this policy every other year for changes and effectiveness.

**5.2:** This policy and procedures outlined are mandatory directives for all employees. This policy also applies to applicants and selected candidates seeking accommodation in the hiring process. Failure to comply will result in corrective action to ensure the agency's goals of diversity, equity, and inclusion are met.

**5.3:** EWSHS supervisors will be evaluated annually for successful implementation of this policy. The following criteria will be used in this evaluation:

**5.3.1:** Supervisors, managers, and leadership must within six months of hire and at least annually thereafter review the reasonable accommodation policy and signify their understanding and compliance. Each department is responsible for making all employees aware of this policy and creating an environment free of discrimination.

**5.3.2:** The agency will monitor complaints filed regarding a violation of this policy to ensure each supervisor, manager, and leader is acting in good faith when reviewing requests for accommodations. Complaints associated with this policy should be processed in accordance with the procedures set forth by human resources.

**5.3.3:** Each department must compile a record of requests and accommodations for the board to review for effective compliance with this policy. All denial of request letters will be attached to the report for review.

**Primary roles and responsibilities for Reasonable Accommodation within the EWSHS.**

<b>Role</b>	<b>Responsibilities</b>
<b>DES Recruiter</b>	Ensure that recruitment announcements have a statement addressing applicant rights to request reasonable accommodation throughout the recruitment and selection process.
<b>Agency</b>	Forward requests for reasonable accommodation to the DES HR Consultant for record-keeping and assistance in considering more complex accommodations.
<b>DES HR Consultant</b>	Determine whether or not the involvement of a health care professional is necessary, and if so, work with the health care professional.
<b>Job Applicant/ Employee</b>	If requested, provide a medical statement from the health care professional supporting the need for reasonable accommodation.
<b>Supervisor</b>	Ensure that employees have access to a copy of their PDF that clearly identifies essential functions.
<b>Supervisor</b>	If a reasonable accommodation discussed between the employee and supervisor can be easily implemented, the supervisor or manager may make the accommodation and forward a note to the DES HR Consultant.
<b>Employee/ Supervisor</b>	If a reasonable accommodation is requested that requires more information, contact the DES HR Consultant.
<b>DES HR Consultant</b>	Coordinate implementation of the selected reasonable accommodation. If an accommodation is denied, provide notice to the employee including: <ul style="list-style-type: none"> <li>• Reason(s) for denial.</li> <li>• Information about the possibility of a disability separation.</li> <li>• Rights granted to an employee under disability separation.</li> </ul>

**WAC's and references that apply to this policy**

357-16-090 (who has responsibility for requesting and granting reasonable accommodation in the examination process)	357-26-005 (provides guidance to employers)
357-26-010 (when RA must be provided)	357-26-015 (what action employers can take)
357-26-020 (RA policy requirement)	357-26-025 (employee right to disability sep)
357-26-030 (pregnancy accommodations)	357-26-035 (what action employers must take to provide pregnancy accommodation)
357-26-040 (when employer may deny pregnancy accommodation)	357-26-045 (documentation of need for pregnancy accommodation)
357-26-050 (safety accommodation)	357-26-055 (what action employers must take to provide safety accommodation)

357-26-060 (documentation of need for safety accommodation)	RCW 43.10.005 (workplace pregnancy accommodations)
357-46-160 (disability sep definition)	357-46-165 (employer right to disability sep)
162-22-065 (purpose of RA)	162-22-075 (undue hardship)
162-22-090 (health care opinions)	Washington State Law Against Discrimination
Americans with Disabilities Act	Chapter 49.76 RCW (domestic violence leave)