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REASSIGNMENT PROCEDURES

.01 OVERVIEW.

- a. Reassignment is a form of reasonable accommodation that is provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodations. Reassignment is not available to applicants.
- b. Reassignment is the reasonable accommodation of last resort. Therefore, the Department must consider reassignment as an accommodation prior to terminating an employee who because of a disability cannot be accommodated in his/her current position. Reassignment is required only after it has been determined 1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position or 2) all other reasonable accommodations would impose an undue hardship.
- c. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities.
- d. An employee can choose not to pursue reassignment as an accommodation. If that is the case, the employee is required to indicate in writing that she/he declines the reassignment.

.02 CONSIDERATIONS.

- a. After a determination has been made that an employee with a disability cannot be accommodated in his/her current position, the Reasonable Accommodation Coordinator (RAC) should identify and document what limitations, if any, the employee has with respect to the reassignment. The RAC, in collaboration with Human Resources (HR), should discuss the reassignment option with the employee and inquire about:
 - 1) what types of work the employee is willing and qualified to perform, and what medical restrictions or limitations s/he has;
 - 2) whether the employee is willing to be reassigned outside the facility or outside the commuting area, and if so, to what locations;
 - 3) whether the employee is willing to be reassigned to a different type of position for which he or she may be qualified, and if so to what type(s);
 - 4) whether the employee is willing to be reassigned to a different sub-component of the department, and if so, to which one(s); and
 - 5) whether the employee is willing, if no position is available at his or her current grade level, to be reassigned to a lower-graded position, and if so, down to what grade.

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b. Before a vacancy search commences, the requestor should complete the “*Declaration of Availability for Reassignment within the Department of Commerce*” form (Exhibit 2) and submit to the RAC and HR. The HR office will use this information to conduct the vacancy search within the parameters the employee has set. This method considers the employee's preferences while minimizing the scope of the vacancy search. If the agency conducts a search within the parameters developed with the employee and no appropriate position is found, the RAC or HR Specialist should ask if the employee wants to expand the scope of the search.

c. An employee must be “qualified” for the new position. An employee is “qualified” for the position if s/he:

- 1) satisfies the requisite skills, experience, education, and other job-related requirements of the position; and
- 2) can perform the essential functions of the new position with or without a reasonable accommodation. The employee does not need to be the “best” qualified individual for the position in order to obtain it as a reassignment.

d. There is no obligation for the Department to assist the employee to become qualified. Therefore, the Department does not have to provide training so that the employee acquires necessary skills to take a job. The Department, however, would have to provide the same training that is normally provided to a person hired or transferred to the position, to the employee with a disability who is being reassigned.

.03 VACANCY SEARCH PROCESS.

a. The Department is required to reassign an employee to a “vacant funded” position that is equal in pay and status to the one held, or as close as possible, if an equivalent position is not available. The position must also be within the commuting area or any geographic area to which the employee indicates he or she is willing to move and for which the employee is qualified. In the event there is more than one vacancy for which the employee is qualified, the employee must be placed in the position that comes closest to his/her current position in terms of pay, status, benefits, and geographic location. If it is unclear which position comes closest, the RAC and/or HR should consult with the employee about his/her preference before determining the position to which the employee will be reassigned.

b. “Vacant funded” means that the position is funded and available when the employee asks for reasonable accommodation, or that it will become available within a reasonable amount of time. A position is considered vacant even if a notice or announcement has been posted seeking applications for that position. The Department is not required to “bump” an employee from a job in order to create a vacancy; nor create a new position to accommodate an employee with a disability.

c. The Bureau RAC will collaborate with the Bureau’s HR office to identify: (1) vacant funded positions within the Bureau for which the employee may be qualified, with or without

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reasonable accommodation; and/or (2) positions which HR has reason to believe will become vacant within 60 calendar days from the date the search is initiated and for which the employee may be qualified.

d. After a position is identified, the assigned HR Specialist will consult with the hiring official to confirm the skills sets, essential functions of the position, duties, etc. that are required, in order to make a qualifications determination. The HR Specialist should ask whether there are any qualifications or requirements that were not mentioned in the announcement. **At this point, the HR Specialist must not mention the reasonable accommodation reassignment to the hiring official.**

e. Once the HR Specialist has ascertained all of the requirements for the position, the HR Specialist will compare them to the employee's skills, experience and knowledge. If the employee meets the minimum qualifications for the position and can perform the essential functions of the position, with or without accommodation, the assigned HR Specialist will inform the hiring official that the position must be held for a reassignment. The gaining supervisor should not receive the name or contact information for the employee at this point. The placement/reassignment must be non-competitive, thus, there is no ranking process or interview.

f. The assigned HR Specialist will then contact the employee to offer the job and complete the necessary paperwork for the reassignment. The employee will have 14 calendar days from receipt of the offer to accept the reassignment. The identified vacancy must be held open during this time. The HR Specialist must also notify the Bureau PHRM and the RAC of the offer. The gaining servicing HR Office will complete the necessary reassignment paperwork.

g. When a suitable, vacant funded position has been identified, the HR staff in the gaining Bureau must inform the gaining hiring official about the reassignment. The Staffing Specialist should inform the hiring official that the job description was reviewed and compared to the employee's resume, and s/he was found to be qualified. The HR Specialist may also provide the gaining hiring official with a sanitized copy of the employee's resume (all identifying information, such as employee name, previous supervisor names, and contact information must be removed).

h. The HR Staff Specialist may use the following statement to explain to the supervisor for the identified vacancy the reason for the placement: "Your vacancy was identified as a suitable position for an employee who needs a reassignment as an accommodation. DOC is required to follow EEOC guidance in this matter, which provides that this type of reassignment is non-competitive. The HR Staffing Specialist reviewed the job description, compared it to the employee's resume, and s/he was found to be qualified. If you wish to meet the employee before s/he begins working in the new position, you may do so, but we must stress that this is not an interview. It has already been decided that this employee will be reassigned to this position. Please note that an individual's disability status is private information and may not be shared with anyone not having a bona fide, business related need to know. I want to thank you for your support of DOC's efforts to comply with EEOC regulations."

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- i. If after 30 calendar days, a vacant funded position within the employee's Bureau, has not been identified, the HR specialist must notify the Bureau's PHRM, or designee, and submit a request for a Department-wide vacancy search. The HR Specialist will also provide the PHRM, or designee, and the Bureau RAC a consolidated list of the Bureau-wide vacancy search results. Concurrently, the search must continue within the employee's assigned Bureau.
- j. Reassignment does not include giving an employee a promotion. An employee must compete for any vacant funded positions that would constitute a promotion.
- k. If there are no vacant funded equivalent positions, the employee may be assigned to a vacant funded lower level position for which the individual is qualified. If the employee accepts a reassignment to a lower graded position or position carrying less seniority due to the absence of an equivalent vacancy, the Department is not required to maintain the employee's salary or seniority from the higher graded position, unless it does so for other reassigned employees without disabilities.
- l. Reassignment must first be attempted within the employee's assigned Bureau before the Department offers reassignment to a vacant funded position that is outside of an employee's office, branch, division, bureau, department, facility, personnel system (if the employer has more than a single personnel system), or geographical area.
- m. Reassignments may also be made to a vacant funded position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the Department will not pay for the employee's relocation costs, unless it pays the costs for other employees without disabilities.
- n. The Department-wide vacancy search may be extended up to 60 calendar days from the date it is requested. There will be no further extension beyond the additional 60 calendar days unless there are extenuating circumstances (see Section 10.04b of this DAO). Department-wide vacant funded searches should be processed through the Bureau's Principal Human Resources Manager (PHRM) or designee.

.04 FINAL DISPOSITION OF REQUEST

- a. After the Department has completed its vacancy search, identified whether there are any vacant funded positions available (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed him/her that no appropriate vacancies are available, the Department will have fulfilled its obligation.
- b. If an employee is reassigned as a reasonable accommodation and is not able to perform the essential functions of the reassignment position, with or without reasonable accommodation, the reassignment has not been an effective accommodation. Subsequent reassignments will be considered on a case-by-case basis. If the employee is not able to perform the essential functions of the position due to performance issues unrelated to the need for accommodation, Departmental procedures for addressing performance issues will be followed.

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c. If the employee declines the job placement offer, the assigned HR Specialist will notify the Bureau PHRM and RAC. The Bureau PHRM, or designee, will issue a written notification to the employee informing him/her that there will be no further vacancy searches conducted based on his/her decision to decline the offer of reassignment.

d. If after 90 calendar days from receipt of the request for reassignment, no suitable vacant funded positions have been identified to which the employee can be reassigned, or the employee declines a job placement offer, the PHRM must notify the RAC and the employee's DMO. The DMO will then issue a written notification of denial with specific reasons for the denial, to the requester within 14 business days of notification from the PHRM. Before denying a request for reasonable accommodation, the DMO must consult with the RAC and OGC to ensure all efforts have been made to provide reasonable accommodations to the employee, including reassignment. See Section 8.02 of this DAO for information on Denials.

.05 PROBATIONARY EMPLOYEES

An employee with a disability is eligible for reassignment to a new position, regardless of whether s/he is considered "probationary," as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose. If, however, the probationary employee has never adequately performed the essential functions, with or without reasonable accommodation, then s/he is not entitled to reassignment because s/he was never "qualified" for the original position. However, the employee may request consideration for a change to lower grade as a reasonable accommodation.

.06 RESPONSIBILITIES

a. Reasonable Accommodation Coordinator (RAC)

- 1) The RAC will provide guidance to the Deciding Management Official (DMO) in making the determination that an employee with a disability cannot be accommodated in his/her current position due to the disability or undue hardship. The RAC will document all efforts the Bureau has taken to accommodate the employee. The RAC should also identify any functional limitations the employee has with respect to reassignment.
- 2) The RAC, in collaboration with HR, will discuss the reassignment option with the employee and have the employee complete and submit the "Declaration of Availability for Reassignment within the Department of Commerce."
- 3) If an employee accepts a job in another Bureau, the RAC in the employee's current Bureau must immediately notify the RAC in the gaining Bureau. The gaining RAC will assist the employee with acquiring all needed accommodations in the newly assigned position.

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b. Servicing Human Resource Office

- 1) The employee's servicing HR office will work with the RAC in the manner described above in order to meet the requirements to accommodate employees with disabilities who have been deemed eligible for reassignment.
- 2) The employee's servicing HR office must collaborate with the RAC and communicate with the employee to ensure all pertinent information (i.e. employee's knowledge, skills, abilities, grade level, geographic preference, etc.) is considered when attempting to reassignment him/her.
- 3) The servicing HR Specialist must ensure s/he does not divulge the employee's disability status or condition to the DMO or any potential hiring officials.

c. Principal Human Resource Manager (PHRM)

- 1) The requester's servicing PHRM, or designee, must send required requests and decisions, within 14 calendar days to the appropriate offices/persons, as described in the process above. PHRMs, or designees, must certify that a thorough and impartial search of the Bureau's vacant funded positions was conducted. The RAC may also provide to the PHRM any functional limitations the employee has expressed.
- 2) The servicing PHRM, or designee, will serve as the DMO for all final reassignment determinations. The PHRM, or designee, issues the final written denial decision, when it has been determined that there are no suitable positions in which the employee can be reassigned.

d. Employee Responsibility

- 1) The employee requesting the reasonable accommodation must cooperate with the RAC and HR officials in completing and submitting the "Declaration of Availability within the Department of Commerce" form (Exhibit 2) within seven (7) calendar days of receiving notification of reassignment eligibility.
- 2) If the employee does not submit the requested documents within the seven (7) calendar days, the employee's qualifications for current vacancies will be based only on available information. The employee may continue to work in the current unit during the vacancy search and must be provided appropriate reasonable accommodations.
- 3) Once the job offer is made, the employee's Bureau HR Office will give the employee a written notification of Offer of Reassignment. The employee will have 14 calendar days from his or her receipt of the offer to decide whether to accept the offered reassignment. If the employee turns down the offer or does not respond within the 14 days, the employee is no longer considered eligible for reassignment.

e. Hiring Official

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- 1) The hiring official is allowed to meet with the reassigned employee before they begin working in the new position, but only after the job offer has been extended and accepted by the employee. The hiring official may not interview the employee and is prohibited from asking about disability status or specific information regarding the employee's medical condition. The HR or the RAC should not disclose the employee's disability status. However, in the event additional accommodations are required after the employee begins working in the new position, the hiring official may be provided information regarding the employee's limitations in order to make a decision on a subsequent RA request.
- 2) If the hiring official of the gaining organization, after reviewing the employee's resume, believes the employee is not qualified for the position, he/she must submit a written justification of his/her rationale for review by the PHRM, OGC and the RAC. The PHRM will make the final determination on whether a person is qualified for the position.