

To ensure non-discrimination with respect to qualified individuals with disabilities; and to also ensure equal employment opportunities for same, the City of Hagerstown has adopted the following policy.

The American's with Disabilities Act (ADA) requires employers to provide reasonable accommodation to the *known* physical or mental limitations of an otherwise qualified applicant or an employee with a disability, unless the employer can show that the accommodation would impose an undue hardship. The ADA does not require the City to make an accommodation for an individual who is not otherwise qualified for a position.

The reasonable accommodation obligation applies to all aspects of employment, and is therefore an ongoing responsibility that may arise any time that the individual's disability changes, the job changes, or other factors change in the work environment.

A qualified individual with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential functions of the job without the accommodation, they may not be qualified for the job.

Section I - Definitions

For the purposes of this section, the following words and phrases shall have the following meaning:

Direct Threat - A significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodations(s).

Essential Functions - the fundamental duties and/or responsibilities of a job.

Individual With A Disability - applicant or employee who has: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such an impairment; or 3) is regarded as having such an impairment.

Major Life Activities - activities that an average person can perform with little or no difficulty. Examples are: walking, speaking, breathing, seeing, hearing, learning, working, performing manual tasks, caring for oneself, sitting, standing, lifting, or reading.

Qualified Individual With a Disability - a person with a disability who satisfies the skill, experience, education, and other job-related requirements of the position, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Reasonable Accommodation - a modification or adjustment to a job, employment practice, or work environment that makes it possible for an individual with a disability to enjoy equal employment opportunities. The reasonable accommodation should reduce or eliminate unnecessary barriers between the individual's abilities and the requirements for performing the essential functions of the job.

Substantially Limits - An impairment is only a "disability" under the ADA if it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. The extent, duration and impact of the impairment will be considered when determining whether a person's impairment is substantially limiting:

Section II - Assessment and Placement

In the assessment and placement of all candidates for City positions, interviewers have been instructed to consider:

Does the applicant have the ability to perform the duties of the position?;

Is the applicant qualified to perform the work without creating a direct threat?;

Is the applicant competent or has the necessary ability to perform the duties and responsibilities of the job?;

Section III - Reasonable Accommodation

The City of Hagerstown is prepared to make whatever reasonable accommodation is deemed necessary for disabled employees or applicants upon verification that a disability exists, unless said accommodation would impose an undue hardship to the City.

Section IV – Reasonable Accommodation Due to Pregnancy

Under Maryland law, pregnant employees are entitled to a reasonable accommodation for a disability caused or contributed to by pregnancy. If an employee provides the Director of Human Resources certification from a health care provider as to restrictions on their ability to perform their job while the employee is pregnant, the City will explore, with the employee, all possible means of providing a reasonable accommodation, which may include, but not be limited to:

1. changing the employee's job duties;
2. changing the employee's work hours;
3. relocating the employee's work area;
4. providing the employee with mechanical or electrical aids;

5. transferring the employee to a less strenuous or less hazardous position; or
6. providing the employee with leave

The City is not required to make any accommodation for a pregnant employee that imposes an undue hardship on the City. If you have any question or concerns, please contact Human Resources.

Section V - Determination of Disability

- A. An employee who has been diagnosed by a licensed physician to be permanently disabled to the extent that they cannot perform all of the duties of their position as mandated by job description, department rules and regulations, City code, state and/or federal law or other position requirements, is considered disabled.
- B. If the employee disagrees with or questions the original diagnosis they have the right to be examined by another physician at their expense. If there is a conflict between the employee's physician and the physician selected by the City, a third physician will be selected by the two physicians to conduct an examination. Cost of the third physician's services are to be shared equally between the employee and the City. The diagnosis of the third physician shall be binding on the City and the employee.

Section VI - Options Under Disability Status

After an employee has been declared disabled for their current position the City will provide the employee the opportunity to fill a vacant position which they are capable of performing.

If a vacant position is not available which the employee is capable of performing, the employee will be placed in a layoff status in accordance with City policy or the applicable collective bargaining agreement. The employee may be recalled to vacant positions which they may be able to perform.

Employees who are eligible may apply for disability and/or retirement benefits if they are unable or do not desire to fill a vacant position as set forth above.

Section VII - Related Issues

Wages and benefits are uniform for all City employees regardless of any accommodations made on behalf an employee.

This policy is considered an integral part of the general City policy - it is included in the Personnel Manual, our EEOC report and Affirmative Action Plan. Where policies expressly prohibit discrimination said discrimination includes the disabled employee or

applicant.

Conditions of employment provisions as outlined, in all City of Hagerstown bargaining agreements are consistent with the purposes of the guidelines as expressed in this policy.

All recruitment and advertising on behalf of the City is void of any negative expressions designed to limit, specify or discriminate against any person with a physical or mental handicap.

The City has limited job positions for which we claim a Bona Fide Occupational Qualification (BFOQ) to insure normal operation of a particular department, e.g. police officer and firefighter. The use of BFOQ is not intended as a convenience to the City and each use is given careful consideration allowing for the needs of disabled individuals.