

HR/LR General Memo #2015-8
Reassignments under the Americans with Disabilities
Act (Former PERSL 1361)

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Authority Equal Opportunity,
Diversity, and Inclusion

GENERAL GUIDANCE AND INFORMATION

Title I of the Americans with Disabilities Act (“ADA”) and the Minnesota Human Rights Act ([M.S. 363A](#)) require employers to provide reasonable accommodations to qualified individuals with disabilities unless doing so would cause an undue hardship. Failure to provide reasonable accommodation is a form of discrimination under the law.

Reassignments

The ADA specifically lists “reassignment to a vacant position” as a form of reasonable accommodation. In its Enforcement Guidance on Reasonable Accommodation, the Equal Employment Opportunity Commission (“EEOC”) states that reassignment must be provided as a reasonable accommodation “to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.”

When should reassignment be considered?

The EEOC Guidance describes reassignment as the reasonable accommodation “of last resort”. Before considering reassignment as a reasonable accommodation, employers should first consider other accommodations that would enable an employee to remain in the employee’s current position. As a result, reassignment should be considered only after it has been determined that:

1. There are no effective reasonable accommodations that will enable the employee to perform the essential functions of the employee’s current position, or
2. All other reasonable accommodations would impose an undue hardship.

However, reassignment may be considered at any time if both the employer and the employee voluntarily agree that reassignment is preferable to remaining in the current position with some form of reasonable accommodation.

Is the employee qualified for reassignment?

In order to be “qualified” for reassignment, the individual must be qualified for the original position, and qualified for the reassignment position.

Applicants are not entitled to reassignment.

Employers cannot deny a reassignment to an employee solely because the employee is a “probationary” employee, 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. The longer the probationary employee has adequately performed the essential functions, with or without reasonable accommodation, the more likely it is that reassignment is appropriate if the employee becomes unable to continue performing the essential functions of the current position due to a disability.

New hires/probationary employees who have never adequately performed the essential functions of the position, with or without reasonable accommodation, are not eligible for reassignment because they were never “qualified” for the original position.

In order to receive reassignment to a vacant position as a reasonable accommodation, the employee must also be qualified for the new position. An employee is qualified for a position if the employee:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the position; and
2. Can perform the essential functions of the new position, with or without reasonable accommodation.

The EEOC Guidance states that the employee does not need to be the best qualified individual for the position in order to obtain reassignment to the position as a reasonable accommodation.

The employer is not required to assist the employee to become qualified for the new position. The employer does not have to provide training so that the employee acquires necessary skills to take a job. However, the employer must provide an employee with a disability who is being reassigned with any training that is normally provided to anyone hired for or transferred to the position.

Does the employee who is eligible for reassignment as a reasonable accommodation need to compete for the vacant position?

The EEOC Guidance states that if the employee is qualified for the vacant position, the employee must be reassigned, and cannot be made to compete for the position.

What is considered a “vacant” position for reassignment purposes?

A vacant position is a position for which the employee may be qualified, with or without reasonable accommodation, and that is available at the time the employee asks for reasonable accommodation, or a position that the employer knows will become available within a reasonable amount of time. The EEOC’s internal workplace accommodation procedures use a guideline of 60 days from the date the search for a vacant position is initiated.

The EEOC considers a position as vacant for purposes of reassignment even if a notice or announcement seeking applications has already been posted.

Reassignment does not require that an employer:

- 1) Promote an employee who is eligible for reassignment as an accommodation.
- 2) Create a new position.
- 3) Bump another employee in order to create a vacancy.

Who is responsible to identify vacant positions?

The EEOC states that the employer is in the best position to know what vacancies are available or may become available within a reasonable amount of time. The employer, as part of the interactive process, should ask the employee about the employee’s qualifications and interests and must inform the employee of vacancies for which he or she is qualified. The employee should assist the employer in identifying appropriate vacancies to the extent the employee has access to information about them.

Procedures for Reassignment

As described above, typically, reassignment will only be considered when employees, because of disability, are unable to perform the essential functions of their current position with or without reasonable accommodation or the only effective reasonable accommodation for their current position would cause an undue hardship.

Once this determination has been made, the agency ADA Coordinator/designee should alert the agency’s Human Resources department and engage in the interactive process with the employee by discussing the possibility of reassignment and assessing the employee’s qualifications and skills. Human Resources should obtain a copy of the employee’s resume.

The agency ADA Coordinator/Designee will work with agency Human Resources and the employee requesting reassignment to identify: (1) vacant positions within the agency for which the employee may be qualified, with or without accommodation; and (2) positions which Human Resources has reason to believe will become vacant within the agency in the next 60 days from the date the search is initiated and for which the employee is

qualified. This means looking at all vacancies within the agency, including other facilities of the agency located throughout the state.

Efforts should be made to first identify vacant positions at the employee's current pay and status. If no equivalent positions are available, agency Human Resources will identify any lower grade positions if the employee has indicated he or she would consider such positions. Reassignments may be made to agency locations outside of the employee's commuting area if the employee is willing to relocate. The agency will not pay for relocation costs.

When the vacant position identified is a union-represented position, the agency must comply with the union's notification procedures, or work with the applicable union to waive posting requirements. The employee should be informed that if the union does not waive posting requirements, if a more senior employee bids or expresses interest in the vacant position, the agency must adhere to the seniority provisions of the applicable collective bargaining agreement. If the union waives the posting requirement or if a more senior employee does not bid or express interest in the vacant position, the employee will be reassigned noncompetitively as a reasonable accommodation in accordance with federal and state law.

FORMS AND SUPPLEMENTS

Include relevant forms and supplements, if applicable.

Contacts Identify who to contact with questions or concerns about the policy; these should be identified generically (e.g., a division, work unit, or job title/role).

References [EEOC Enforcement Guidance: Reasonable Accommodation and Undue hardship Under the Americans with Disabilities Act](#) (Excerpts taken from the Introduction and from Reassignment sections 25-31).

The [Rehabilitation Act of 1973, Title 29 USC 701](#), as amended, requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others.

[Americans with Disabilities Act \(1990\)](#), and amendments, prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment, and requires employers to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others.

[Title 29, C.F.R. Part 1630 "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act"](#) and Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. §§ 1630.2(o), (p), and 1630.9.

[Executive Order 14-14, Providing for Increased Participation of Individuals with Disabilities in State Employment](#), directs agencies to make efforts to hire more individuals with disabilities and report on progress.

[Statewide Reasonable Accommodation Policy and Forms](#)

- Employee and Applicant Request for Reasonable Accommodation
- Authorization of Release of Medical Information for ADA Reasonable Accommodations
- Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider.