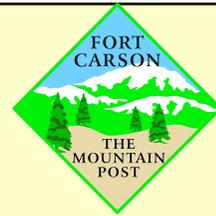


EEO FOCUS



NEWS YOU CAN USE

Understanding the Reasonable Accommodation Process

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In addressing reasonable accommodation, the parties should engage in an informal and flexible interactive process to identify the precise limitations of the individual and what accommodations could overcome those limitations. The process may be more or less intense depending on whether appropriate accommodations are obvious or more difficult to determine. The essential process is as follows:

1. Analyze the particular job involved a determine its purpose and essential functions.
2. Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation.
3. In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.
4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

The interactive process requires the agency to assess both the particular job at issue, including its actual duties and purpose, and the specific abilities and limitations of the individual in need of reasonable accommodation.

The EEOC notes that if such an assessment and a consultation with the individual do not reveal appropriate potential accommodations, the agency should seek technical assistance from the EEOC, state or local rehabilitation agencies or private organizations.

Because disabilities and the needs of individuals with disabilities vary so widely, agencies should be open to a broad variety of accommodation possibilities. Supervisors are not expected to tackle accommodation alone – the EEO Office is here to assist you in determining effective types of accommodations . If after an initial assessment you do not believe you can accommodate,

please immediately contact the EEO Office for assistance as the accommodation request will be elevated and the Reasonable Accommodation Committee will be convened. Usually, at this level, accommodation issues can be accomplished to the benefit of the employee and the organization.

Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
- Job restructuring.
- Part-time or modified work schedules.
- Acquisition or modifications of equipment or devices.
- Appropriate adjustment or modifications of examinations, training materials or policies.
- Provision of qualified readers or interpreters.
- Permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment.
- Making employer-provided transportation accessible.
- Providing reserved parking spaces.
- Providing personal assistants, such as a page turner or travel attendant.
- Reassignment to a vacant position.

Depending on the individual involved and the complexity of the accommodation provided, reasonable accommodation can be an ongoing process.

The accommodation agreed upon may ultimately prove unworkable or the individual's condition may change. In any case, the agency remains responsible to reasonably accommodate a qualified individual with a disability, absent a showing of undue hardship. Therefore, if an accommodation proves ineffective, for whatever reason, the agency should work promptly and diligently to make the changes necessary to achieve an effective accommodation.

The Department of Army Reasonable Accommodation Policy is available at: <http://www.carson.army.mil/EEO/new%20site/policy.html>

Material compiled from www.eeoc.gov

Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment.

William J. Brennan, Jr.

Who are you?

*Diversity:
The art of thinking
independently
together.*

Malcolm Forbes

We Need Your Help!

Every year the EEO Office compiles a comprehensive report detailing our workforce demographics for the Equal Employment Opportunity Commission (EEOC). Those demographics include information on Race, National Origin, and Individuals with Disabilities of the Fort Carson civilian workforce.

We ask all current employees to ensure their profile information is correct in MY BIZ. Our goal is to have the statistics accurately reflect those serving in civilian positions.

By following these steps, you can verify the accuracy of your record:

1. Go to: www.cpol.army.mil
2. Go to the Employee Portal (facing the screen) on the far bottom right of the screen and select

“Click here for DCPDS/My Biz/My Workplace”

3. Login Using Your CAC (follow CAC Registration Instructions)
4. At the DCPDS Portal in the “My Application Database” underneath the Region Association TAB select “Army Region”
5. You’ll see a new screen with DOD; underneath you’ll see Navigator tab/yellow folders; select My Biz Folder tab
6. Next to Navigator/yellow folders you’ll see My Biz tab
7. Underneath My Biz tab select Update My Information
8. Read over the Privacy Act Information, click on accept and continue
9. You should now be looking at

your Profile. Please update information in all the tabs and pay particular attention to the “Handicap Code” and the “US Fed Ethnicity and Race Category.”

We also want to emphasize the importance of ensuring your Emergency Contact Information is correct so this is a great time to review it.

Thank you for taking the time to ensure we have it right!

By: Bertha Ramirez
Fort Carson EEO Specialist

*Breakdowns can
create break-
throughs. Things
fall apart so
things can fall
together.*

Unknown Source

Mediation: Take II

Mediation: It Makes Good Business Sense Part II

The last issue of the *EEO Focus-News You Can Use*, defined Mediation as the most popular form of Alternative Dispute Resolution (ADR). In this issue we want to dispel any myths that may have you apprehensive about mediations conducted in the EEO complaint process.

ADR Myths:

- Resistance to ADR is often based on myths and misconceptions --
- ADR is too “touchy-feely” like group therapy
 - ADR is an ATM machine for disgruntled workers
 - any settlement in ADR will set a bad precedent
 - ADR undermines my authority by forcing me to backpedal on my decisions
 - why waste my time trying to

settle in ADR when the claim has no legal merit? EEOC found this to be the #1 reason employers refuse to participate in mediation.

In fact, ADR:

- typically is anything but “touchy-feely;”
- think of it as a negotiation, often hard-fought, with a trusted neutral assisting both sides
- Does not result in payouts any higher than cases resolved through other means
- can’t be used as precedent (same as any settlement)
- does not admit or support an inference of any wrongdoing or error in supervisory judgment
- is less concerned with the legal merits of a claim than with solving the problem.

ADR can fashion a solution without a finding of liability.

ADR is forward-looking; litigation always dwells in the past

Consider this –

- the vast majority (over 95%) of all civil disputes in litigation *NEVER GO TO TRIAL*
- about half are dismissed or otherwise disposed of by motion
- the rest are settled at some point along the way, many “on the courthouse steps.”

Now consider this –

- if you’re going to settle anyway, using ADR will likely produce a faster, cheaper, and better deal, for both sides.
- most courts and many administrative boards require parties to try ADR before docketing cases for trial.

Extracted from IMI briefing by:
Marc Van Nuys
Director of Army
Alternative Dispute Resolution



Case Review – Learning from EEOC Admin Judge (AJ) Discrimination Findings

Reasonable Accommodation Sainz v Treasury

The Commission affirmed an AJ's decision after a hearing finding that complainant was terminated during his probationary period on the basis of his perceived disability (knee injury). The complaint was injured 6 months into his probationary period and placed on light duty during his rehabilitation efforts. Rather than wait for complainant's physician to issue restriction, the agency terminated complainant because it assumed without any legitimate basis that complainant's restriction would be deemed permanent by complainant's physician. Two days following the termination, the agency received complainant's permanent restriction which indicated that he was capable of performing the essential functions of his position without any accommodation. Yet, the agency refused to reconsider its termination decision. The Commission modified the AJ's rationale and concluded that complaint was perceived as being substantially limited in the major life functions of lifting, standing and walking and that he was terminated because of this mistaken belief.

Race Discrimination Mallet, Jr. v Dept of Veterans Affairs

The decision affirmed an AJ determination that the complainant was discriminated against based on his race when he was not selected for promotion to one of two advertised slots for the position of supervisory housekeeping aide. The evidence supported the AJ's finding that the selectee and complainant were equally qualified for the supervisory slots, but rather than promote complainant, the agency discriminatorily withdrew the second slot. The decision noted when the selection occurred there were no black supervisory housekeeping aides, and there was testimony from agency employees that black males were routinely denied promotions in the responsible management official's department. The appellate decision ordered the agency to offer to promote complainant to the subject position with all the career ladder promotion he would have received, ordered back pay to complainant, EEO training of the responsible agency official, ordered the consideration of discipline for the responsible agency official, and ordered a posting notice.

Reprisal Yau v USPS

Complainant, a mail processing clerk, suffered an on-the-job injury to his foot and was provided with an open-toed post-operative shoe to help alleviate the pain. Despite the agency's own safety regulations which forbid employees from wearing open-toed shoes on the workroom floor, management continually ordered complainant to work on the workroom floor while wearing his post-op shoe. When he refused, citing safety regulations, management issued him progressive discipline and eventually removed him from his position. The Commission found that complainant engaged in protected EEO activity, of which management was aware, and was subjected to adverse treatment within close temporal proximity to the protected activity. Further, the agency's actions were motivated by retaliatory animus, because the orders complainant was disciplined for refusing to follow were in violation of the agency's own safety policy.

Extracted from briefing by:
Don Names, Office of Civilian
Human Resources, Department of the Navy
IMCOM Multifunctional Conf.

The Burden of Proof

EEO Complaint Burden of Proof:

A claim of prohibited discrimination is a very serious accusation and is taken seriously. However, EEO complaints should not deter or hinder leadership from taking appropriate and timely actions when necessary. EEO complaints and processing continues to be an area of concern for commanders, managers, supervisors and employees. Employment discrimination is clearly defined. The EEO complaint process ensures employees have due process. The question of *Burden of Proof* is often asked by those involved in the discrimination complaints process.

The following is provided as information regarding the burden of proof:

(1) the burden of proof in a prohibited discrimination claim always remains with the complainant. He/she must establish a *prima facie* case of discrimination by presenting evidence such that, were it not rebutted, the finder of fact could conclude that unlawful discrimination did occur. In most EEO cases, an employee may establish a case of prohibited discrimination by showing that he/she is a member of a protected group, was similarly situated to an individual who was not member the group and that he/she was treated more harshly. To be similarly situated, comparative employees must have reported to the same supervisor, been subjected to the same standards governing discipline and engaged in similar conduct without mitigating circumstances;

(2) the agency (management officials) must articulate some legitimate, nondiscriminatory reason(s) for its action(s). They must introduce evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the adverse action(s). Once the agency carries this burden of production, the presumption of discrimination created by the *prima facie* "finding drops from the case";

(3) the complainant then must demonstrate that the agency's reason(s) was not the true reason for the decision and that unlawful discrimination was. The complainant retains the ultimate burden of persuading the finder of fact that the agency intentionally discriminated against him/her.

By: Carole Page
IMCOM Complaints Manager

Contractor Complaints

Contractor Employees and the EEO Process

Many people believe that the Federal Sector Equal Employment Opportunity complaint process is available only to current and former Appropriated Fund and Non-Appropriated Fund employees and applicants for employment. Army Regulation 690-600, which outlines the EEO complaint process in the Department of the Army, states in Chapter 1, Section I, 1-1 in part, "The processing of all EEO complaints filed by Army civilian employees, former employees, applicants for employment and *certain contractor employees* will be governed by this regulation". You may be wondering what the AR means by certain contractor employees, particularly if you are a supervisor who has contractor employees working in your area of responsibility.

Contractor employees have the right to use the federal sector EEO complaints process if government agency employees have sufficient supervisory control over contractor employees. The Equal Employment Opportunity Commission has developed criteria to determine if a contractor employee qualifies as a government "de facto" (in fact) employee,

which creates a joint liability situation for both the contractor employer and the government agency if that employee has been discriminated against in the workplace. This criteria includes who sets pay and pays the individual, does the agency withhold taxes from the individual's pay, what type of work does the individual do for the agency and who assigns work to the individual, does a contract exist which provides for an on-site supervisor, what equipment, materials or supplies does the agency provide the individual in order to perform duties, to whom are leave requests submitted, what input does the agency have in the individual's performance evaluation and who can terminate the individual's employment. The more direct control the agency has over when, where and in what manner the contractor employee performs duties, the more likely the individual is a de facto employee.

In order to minimize potential joint liability, agency managers and supervisors should always proactively address allegations of agency employees engaging in discrimination or harassment, regardless of whether the individual making the allegation is a contractor or federal employee. Federal agencies can provide EEO training to contractor employees if expressly provided for in the employment contract. Contractor em-

ployees should be allowed to contact the activity's servicing EEO office when they raise issues of discrimination. AR 690-600 has special procedures for handling complaint contacts from contractor employees.

By Victoria Evans, IMCOM
Complaints and Compliance Analyst

The vast majority of non-medical contractor positions are structured and intended to remain wholly contractual. Managers who do not maintain and reinforce the contractual nature of the relationship risk taking on a number of unintended employee-employer responsibilities. This does not represent a proper evolution of contractor relationships, but a breakdown in the disciplines associated with management of the contract and an erosion of the safeguards intended to define the relationship between federal managers and the employees of our contracting partners. A federal manager who starts to exercise direct control of another party's employees is generally making a mistake. Contact your contracting officer, contract attorney, or labor attorney if you have questions on managing contractors in the federal workplace.

Postscript by Bill Hennessy
Fort Carson Labor Attorney

Training Information

Training Corner:

The EEO Office provides training in Equal Employment Opportunity (EEO) and in the Prevention of Sexual Harassment (POSH). Seminars targeting Supervisors and Managers are offered on EEO responsibilities and understanding reasonable accommodation.

Every civilian employee must have training in the Prevention of Sexual Harassment each fiscal year. This training can be done theater style or on-line.

Every manager or supervisor of civilian employees must attend an EEO for Managers or Supervisors class each year and are encouraged to also attend specific EEO seminars such as Understanding Reasonable Accommodation.

Theater Style Prevention of Sexual Harassment Training & EEO for Managers/Supervisors:

11 August at McMahon Theater - 0800, 1000, and 1300 Pre-registration is not required.

To log into the POSH training course and examination, go to:

Step 1: Go to website:
<https://lms.carson.army.mil/> (right click on website and click on Open Hyperlink)

Step 2: Follow the directions on the Learning Management Website regarding how to configure your browser for LMS

Step 3: Login using your AKO e-mail address and password (LMS is not CAC enabled)

Step 4: From the Public Course List, **select Prevention of Sexual Harassmentv2**

Step 5: New window - Click on Load Course, new window, follow the set instructions.

Step 6: Complete the course

Step 7: Take Exam

Step 8: Print Certificate and provide a copy to your supervisor and training coordinator

EEO for Managers & Supervisors:

21 July, 1100 - 1200 (MEDDAC, Barton K. George Classroom)

21 August, 0900 and 1030 (Bldg. 1430, Main Conference Room)

16 September, 0900 (Fire Dept Training Facility, Bldg. 3669)

Understanding Reasonable Accommodation:

16 September, 1300 - 1400 (Fire Dept Training Facility, Bldg. 3669)