

Subject: Americans' with Disabilities Act (ADA) Accommodation Policy

1. **PURPOSE:** It is the purpose of this policy to establish a written and readily accessible policy regarding reasonable accommodations in accordance with the Title I of the ADA, to provide guidance and resources about reasonable accommodations, to establish a respectful and consistent interactive process to explore reasonable accommodations and to provide a timely and thoughtful review process for requests for reasonable accommodations.
2. **AUTHORITY:** The Saginaw County Board of Commissioners.
3. **APPLICATION:** This policy applies to all employees of Saginaw County and all applicants for employment with the County.
4. **RESPONSIBILITY:** Request for accommodation from employees or applicants for employment will be processed through the Controller's Office. A request that is connected to a disability application or workers' compensation will go through the Payroll Division of the Controller's Office. All other requests will be processed through the Personnel Division.
5. **DEFINITIONS:**
 - 5.1 **Applicant:** A person who expresses interest in employment and satisfies the minimum requirements for application established by the job description.
 - 5.2 **Americans with Disabilities Act Coordinators:** the individuals designated to coordinate compliance with Title I of the ADA.
 - 5.3 **Direct Threat:** A significant risk of substantial harm to the health, safety, or well-being of the individual or others that cannot be eliminated or reduced by reasonable accommodation. Determination of whether or not an individual presents a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.
 - 5.4 **Essential Functions of the job:** Job activities that are determined by the employer to be core to performing the job; these functions cannot be modified, as they are duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if:

- The job exists specifically to perform the function(s); or
- There are a limited number of other employees who could perform the function(s); or
- The function(s) is/are specialized and the individual is hired based on the employee's expertise.

5.5 Interactive Process: A discussion between the employer and the individual with a disability to determine a reasonable accommodation for the individual with a disability. To be interactive both sides must communicate and exchange information.

5.6 Individual with a Disability: An individual who:

- Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or
- Has a record or history of such impairment; or
- Is regarded as having such impairment.

5.7 Qualified Individual with a Disability: An individual who:

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

5.8 Major Life Activities: Those functions that are important to most people's daily lives.

May include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, eating, concentrating, thinking, communicating, and working.

Major life activities also include the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

5.9 Medical Documentation – Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what type of reasonable accommodation is needed when the disability or need for accommodation is not obvious.

- 5.10 Reasonable Accommodation – An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include:
- Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or
 - Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or
 - Modifications or adjustments that enable qualified individuals with disabilities to enjoy equal benefits and privileges of employment.
- 5.11 Reassignment: Reassignment to a vacant position for which an employee is qualified is “last resort” form of reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability can no longer perform the essential functions of the position they currently hold, with or without reasonable accommodation, unless the employer can show that it is an undue hardship.
- 5.12 Substantially limiting: In accordance with the ADAAA final regulations, the determination of whether an impairment substantially limits a major life activity requires an individualized assessment, and an impairment that is episodic or in remission may also meet the definition of disability if it would substantially limit a major life activity when active. Some examples of these types of impairments may include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder and schizophrenia. An impairment, such as cancer that is in remission but that may possibly return in a substantially limiting form, is also considered a disability under EEOC final ADAAA regulations.
- 5.12 Undue Hardship: A specific reasonable accommodation that would require significant difficulty, disruption to the service or workforce or expense. It is determined on a case by cases basis considering factors that include the nature or cost of the accommodation requested and the impact of the accommodation on the operations of the department. A department is not required to provide accommodations that would impose an undue hardship on the operation of the department.

6. Policy:

6.1 Individuals who may request a reasonable accommodation include:

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified County employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, healthcare professional or other representative, on behalf of the qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the County must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.
- Individuals who are currently using illegal drugs are excluded from coverage under the County ADA policy.

6.2 The applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee's chain of command
- Controller's Office staff (Personnel or Payroll staff, as appropriate)
- Any County official with whom the applicant has contact during the application process, interview and/or selection process
- A designated ADA Coordinator

The request can be made at any time. A request is any communication in which an individual asks or states that he or she needs the County to provide or change something because of a medical condition. An initial request for an accommodation can be made in any manner (e.g. writing, electronically, in person or orally.) Oral requests must be documented in writing to ensure efficient processing of requests. A request form may be obtained in the Controller's Office.

In making the request, the requestor is responsible for requesting a reasonable accommodation or providing enough notice to the County that an accommodation is needed.

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase “reasonable accommodation” or “disability.”

- 6.3 When a supervisor or department head observes or receives information indicating that an employee is having trouble performing the job due to a medical condition or disability, further inquiry may be required. They should consult with Personnel for direction on how to proceed. If the matter is related to a condition for which the employee is currently seeking or has previously been approved for disability leave or is relating to workers’ compensation, they should contact Payroll.
- 6.4 Communication is key throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee, applicant and/or member of the public and the County. This process is required when:
- The need for a reasonable accommodation is not obvious;
 - The specific limitation, problem, or barrier is unclear;
 - An effective reasonable accommodation is not obvious;
 - The parties are considering different forms of reasonable accommodations;
 - The medical condition changes or fluctuates; or
 - There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the request for accommodation becomes known.

The process should include a fair exchange of relevant information and communication between the individual and the County. An individual may also request that a union representative or another support individual be present during the discussion.

- 6.5 Before approving or denying a request for accommodation, the County will:
- 1) Determine if the individual is a qualified individual with a disability;

- 2) Determine if the accommodation is needed to:
 - Enable a qualified applicant with a disability to be considered for the position the individual desires;
 - Enable a qualified employee with a disability to perform the essential functions of the position;
 - Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
- 3) Determine whether the requested accommodation is reasonable;
- 4) Determine whether there is a reasonable accommodation that will be effective for the requestor and the County;
- 5) Determine whether the reasonable accommodation will impose an undue hardship on the County's operations.

Accommodation will be determined on a case by case basis. A requestor's accommodation preference is always seriously considered, however, the County is not obligated to provide the requestor's accommodation of choice, so long as the County offers an effective accommodation or determines the accommodation would cause an undue hardship.

6.6 In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, when the requestor is blind. In these cases, the County will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are not obvious or known, the County may require medical documentation showing the requestor has a covered disability that requires accommodation. The County may request medical documentation in certain other circumstances. For example, when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation.
- A question exists as to whether an individual can perform the essential functions of the position, with or without reasonable accommodation.
- A question exists as to whether the individual will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the Controller's Office will make the request. The party making the request for accommodation will be asked to complete an Authorization for Release of Medical Records before the Controller's Office communicates with their medical provider. The individual may choose to not complete the Authorization, however if they do so, it is the individual's responsibility to ensure the County receives the requested medical information.

The Employee's medical provider will also be provided an accommodation request assessment and medical inquiry form to assist with the provision of needed information.

Only medical documentation relating to the individual's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is requested, it must provide it in a timely manner, or the County may deny the reasonable accommodation request.

Medical information obtained in connection with the reasonable accommodation process shall be kept confidential. All medical information obtained in connection with such requests must be collected and maintain on separate forms and in separate files from non-medical personnel files and records.

The Controller's Office may disclose medical information shared in connection with the reasonable accommodation process to the following:

- Supervisors, Department Heads, or other Controller's Office staff, who have a need to know, may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, such information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed when appropriate, if the employee may require emergency medical treatment or assistance in an emergency evacuation;
- To consult with legal counsel about accommodation requests, denial of accommodation requests, or purchasing of specific assistance technology or other resources; or
- Government officials assigned to investigate compliance with the ADA.

When medical information is disclosed in accordance with the above, the recipients of the information must comply with all confidentiality requirements.

The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation such as the requestor's supervisor and the Controller's Office.

- 6.7 As soon as it is determined that a reasonable accommodation will be provided, the Controller's Office will process the request and provide the reasonable accommodation in as short a timeframe as possible. The timeframe necessary to process a request will depend on the nature of the accommodation requested, and whether it is necessary to obtain supporting documentation. If an approved accommodation cannot be provided within a reasonable time, the decision maker will inform the requestor of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the Controller's Office.

- 6.8 The County may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to themselves or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the Controller's Office.
- Where no reasonable accommodation including reassignment to a vacant position, will enable the employee to perform all of the essential functions of the job.

The explanation for the denial must be provide to the requestor in writing. The explanation should clearly state the reason for the denial. When the specific request for an accommodation has been denied, but another reasonable accommodation offered in its place, the letter should explain both the reason for denying the request and the reasons that the accommodation being offered will be effective.

6.9 An interactive process must occur prior to the County making a determination on undue hardship. Determination of undue hardship is made on a case-by-case basis. In determining whether granting a reasonable accommodation will cause undue hardship, the County considers factors such as the nature and cost of the accommodation in relation to the size and resources of the County and impact the accommodation will have on the operations of the County.

6.10 The determination that an individual poses a “direct threat” (i.e., a significant risk of substantial harm to the health and safety of the individual or others) which cannot be reduced or eliminated by a reasonable accommodation, must be based on an individual assessment of the individual’s present ability to safely perform the essential functions of their job with or without reasonable accommodation. A determination that the individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual’s disability. Instead, the County must make a reasonable medical judgement relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

6.11 If the request for reasonable accommodation is denied, the requestor must also be informed of their ability to appeal the decision through the County’s appeal process. Appeals should be filed with the County Controller/CAO.

7. Administrative Procedures: None.

8. CONTROLLER/CAO LEGAL COUNSEL REVIEW: The Controller/CAO has determined that this Policy, as submitted to the Board of Commissioners, contains the necessary substance in order to carry out the purpose of the policy. County Civil Counsel has determined that this Policy, as submitted, contains content that appears to be legal activities of the Saginaw County Board of Commissioners.

Approved as to Substance:
Saginaw County Controller/CAO

Approved as to Legal Content:
Saginaw County Civil Counsel

ADOPTED: September 22, 2020