

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

## REASONABLE ACCOMMODATION PROGRAM POLICY



**March 2025**

Supersedes:

2021 Reasonable Accommodation Policy

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## I. General Provisions

### A. Introduction

The Federal Mine Safety and Health Review Commission ("Commission") is committed to providing a reasonable accommodation for qualified employees or applicants with disabilities to ensure that individuals with disabilities enjoy equal access to all employment opportunities. This commitment applies unless providing an accommodation would create an undue hardship for the Commission. Reasonable accommodation refers to any adjustment or modification to the workplace or job functions that would provide an equal employment opportunity for an individual with a disability.

The Commission processes reasonable accommodation requests promptly and efficiently in accordance with established timeframes.

### B. Scope

This policy applies to Commission employees or applicants with disabilities who require accommodations to:

1. Perform the essential functions of their positions.
2. Enjoy benefits and privileges of employment equal to those of employees without disabilities.

Additionally, the policy applies to personal assistance services for employees requiring assistance during work hours.

## II. Requesting Reasonable Accommodation

### A. Disability Program Coordinator (DPC)

The Disability Program Coordinator (DPC) oversees the reasonable accommodation program. All requests for reasonable accommodation must be directed to:

**Theodosia Villatoro-Sorto**

Disability Program Coordinator

Email: [tvillatoro-sorto@fmshrc.gov](mailto:tvillatoro-sorto@fmshrc.gov)

Phone: (202) 360-1631

### *B. Submitting a Request*

1. **Employees and Applicants:** Reasonable accommodation requests can be submitted orally or in writing to the DPC, the requester's supervisor, or any employee involved in the application process. Supervisors or managers receiving such requests must forward them to the DPC within three business days.
2. **Third Parties:** Family members, health professionals, or other representatives may submit a request on behalf of an employee or applicant to the DPC.
3. **Initial Process:** No specific forms or language are required to initiate a reasonable accommodation request. However, the DPC will ensure that the necessary documentation, including a "Confirmation of Request for Reasonable Accommodation" form, is completed during the process.

### *C. Interactive Process*

The DPC engages in a dialogue with the requester to:

- Clarify the nature of the request.
- Determine how the disability necessitates an accommodation in coordination with Federal Occupational Health (FOH).
- Explore alternative accommodations, if necessary, with the Supervisor and Federal Occupational Health (FOH).

This interactive process may involve consulting the requester's supervisor, other Commission officials, or external Agencies such as FOH.

## III. Requests for Medical Information

### *A. Supporting Documentation*

Regardless of whether your disability is apparent, the Disability Program Coordinator (DPC) will request medical documentation to submit to the Federal Occupational Health Office to verify the existence of the disability and determine appropriate accommodations.

### *B. FOH (Federal Occupational Health) Process*

Requests requiring medical review are processed through the FOH Medical Employability Program. The Disability Program Coordinator will submit a complete package, including:

1. Completed Medical Employability Case Transmittal Form.
2. A written list of concerns/issues to be addressed.

3. Signed Authorization for Disclosure of Information Release Form.
4. Relevant medical records in the agency's possession.
5. Position description and essential functions.
6. Documentation of communications with the employee regarding the issue.

All supporting documentation must be transmitted electronically and encrypted to **medical.employability@foh.hhs.gov**.

#### IV. Confidentiality of Medical Information

All medical information obtained during the reasonable accommodation process is kept confidential and stored separately from personnel files. Information is shared only on a need-to-know basis and under strict confidentiality requirements.

#### V. Timeframes for Decisions

1. The accommodation process begins upon receipt of the request by the DPC.
2. Absent extenuating circumstances, requests will be resolved within 30 days of receipt.
3. The DPC will notify the requester of any delays, provide an interim accommodation if possible, and specify a projected completion date.

#### VI. Resolution and Monitoring

##### *A. Approval and Implementation*

If the request is approved, the DPC discusses implementation with the requester and monitors the effectiveness of the accommodation within 30 days of its implementation.

##### *B. Denials/Request for Reconsideration*

If a request is denied, the DPC works with the EEO Director to provide a written explanation and informs the individual of their right to file an EEO complaint or MSPB appeal.

An informal dispute resolution process is a voluntary mechanism through which an employee can request reconsideration of a denial of RA, regardless of whether the person has started the EEO Complaint Process. An informal dispute resolution process begins when an employee asks the supervisor to reconsider his or her decision. Employees may also request reconsideration of the denial from officials higher in the supervisor's chain of command.

1. The request for reconsideration will be submitted to the original supervisor within five business days. If the original supervisor denies the request for reconsideration, the individual will present the request to the next level supervisor

who will respond to the request within 15 business days. If the original decision is not reversed, there is no provision for review above the second-level supervisor.

2. At any point in this process, the individual may also contact the EEO Office to inquire about Alternative Dispute Resolution (ADR) and initiate informal EEO counseling.
3. Pursuing any of the informal dispute resolution procedures identified above, including seeking reconsideration from the supervisor and appealing to the next person in the supervisor's chain of command, does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, Merit Systems Protection Board (MSPB), or administrative grievance procedures.

#### VII. Personal Assistance Services

The Commission provides personal assistance services for employees with targeted disabilities to perform activities of daily living during work hours unless this creates undue hardship. Requests for such services are processed under the same procedures as reasonable accommodation requests.

#### VIII. Training and Tracking

1. Training in this policy is provided to all managers and employees.
2. The DPC tracks and reports data on reasonable accommodation requests, including processing time, types of accommodations, and outcomes.

#### IX. Effective Date

This policy replaces prior versions and is effective immediately.

**APPENDICES**

**Appendix A – Confirmation of Request for Reasonable Accommodation**

**Appendix B – FOH Authorization for Use/Disclosure of Protected Health Information**

**Appendix C – Resolution of Reasonable Accommodation Request**

**Appendix D – Reasonable Accommodation Information Reporting Form**

**Appendix E – FOH Privacy Act Notice to Individuals**

**Appendix F – FOH Medical Employability Program Factsheet**

**Appendix G – Resources for Reasonable Accommodation**

**Appendix H – Key Terms**

**Appendix A – Confirmation of Request for Reasonable Accommodation**

	<b>Federal Mine Safety and Health Review Commission</b>
<b>Reasonable Accommodation Procedures</b>	
<b>Appendix A: Confirmation of Request for Reasonable Accommodation</b>	
<b>Applicant or Employee's Name:</b>	
<b>Applicant or Employee's contact information:</b>	
<ul style="list-style-type: none"><li>• Email:</li><li>• Telephone Number:</li><li>• Office (for employees):</li></ul>	
<b>Date of Initial Request:</b>	
<b>Describe Accommodation requested (be as specific as possible, e.g., assistive technology, reader, interpreter, schedule change. If the accommodation is time sensitive or will be needed on a repeat basis, please explain):</b>	
<b>Reason for Request:</b>	
<b>Description of Disability:</b>	

Appendix B – FOH Authorization for Use Or Disclosure Of Protected Health Information

<b>Federal Occupational Health</b> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES <b>AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION</b>		
<b>COMPLETE ALL SECTIONS, DATE, AND SIGN – PRINT LEGIBLY AND USE BLACK OR BLUE INK</b>		
I. I, _____, hereby voluntarily authorize the disclosure of information from my health record.		
<b>II. THIS INFORMATION IS TO BE DISCLOSED BY:</b>		
<b>PROVIDED TO: (Agency, Medical Provider, Individual)</b> Name: Treating Provider Information Address: _____ Phone: _____ Fax: _____ Email Address: _____	Name: FOH MEP Case Review Team Address: 5800 Fishers Lane Rockville, MD 20857 Phone: 301-492-4512 Fax: 301-827-9003 301-827-9010 301-827-9015 Email Address: medical.employability@foh.hhs.gov	
<b>III. THE PURPOSE OR NEED FOR DISCLOSURE IS (check the applicable box):</b> <input type="checkbox"/> Medical Services <input type="checkbox"/> Personal Use <input type="checkbox"/> Attorney <input type="checkbox"/> Disability/Reasonable Accommodation <input type="checkbox"/> Leave Bank/FMLA <input type="checkbox"/> Other (specify) _____		
<b>IV. THE INFORMATION IS TO BE DISCLOSED FROM MY HEALTH RECORD (check appropriate box(es)):</b> <input type="checkbox"/> Work-related clearance, problems, or restrictions <i>(If Sensitive Health Information is required, the client MUST select the applicable box in Sensitive Health Section V).</i> <input type="checkbox"/> Only the period of events from _____ to _____ <input type="checkbox"/> Only information related to _____ <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Entire Record		
<b>V. SENSITIVE HEALTH INFORMATION: CHECK THE APPLICABLE BOX(ES) BELOW IF ANY OF THESE ARE TO BE DISCLOSED.</b> <input type="checkbox"/> Alcohol/Drug Abuse Treatment/Referral <input type="checkbox"/> Sexually Transmitted Diseases <input type="checkbox"/> HIV Status/AIDS and related treatment <input type="checkbox"/> Mental Health (other than psychotherapy notes)		
<b>VI. DISCLOSURE AUTHORIZATION: SIGNATURE, DATE, AND VERIFICATION: (Authorization is incomplete without signature and date).</b>		
I understand that I may revoke this authorization by submitting a revocation notice in writing at any time to Federal Occupational Health, except to the extent that action has been taken in reliance on this authorization. If this authorization is requested as a condition of obtaining insurance coverage or a policy of insurance, other law may provide the insurer with the right to contest a claim. If this authorization has not been revoked, it will terminate six months from the date of my signature unless a different expiration date is specified below. (Specify New Date) _____		
I understand that FOH will not condition treatment or eligibility for care on my providing this authorization except if such care is provided solely for the purpose of creating Protected Health Information for disclosure to a third party.		
<b>SIGNATURE OF CLIENT OR PERSONAL REPRESENTATIVE (state relationship to client)</b>	<b>DATE</b>	
<b>SIGNATURE OF WITNESS (if required)</b>	<b>DATE</b>	
<i>This information is to be released for the purpose stated above and may not be used by the recipient for any other purpose. Any person who knowingly and willfully requests or obtains any record concerning an individual from a Federal agency under false pretenses shall be guilty of a misdemeanor (5 USC 552a (j)(3)).</i>		
Client Identification #/Verification Type :	Request Processed By:	
Client Name (Last, First, MI):	Date Completed (MM/DD/YYYY):	
Date of Birth (MM/DD/YYYY):	How was information provided : <input type="checkbox"/> USPS <input type="checkbox"/> UPS <input type="checkbox"/> Fax <input type="checkbox"/> In-Person <input type="checkbox"/> E-mail	
Client Address:	Attach Recipient confirmation (USPS return receipt/fax confirmation):	
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**Appendix C – Resolution of Reasonable Accommodation Request**

	<p><b>Federal Mine Safety and Health Review Commission</b> <b>Reasonable Accommodation Procedures</b> <b>Appendix C: Resolution of Reasonable Accommodation Request</b></p>
<p>1. Name of individual requesting reasonable accommodation: <input type="text"/></p> <p>2. Accommodation(s) requested: <input type="text"/></p> <p>3. Accommodation(s) are:</p> <p><input type="checkbox"/> Approved as originally requested <input type="checkbox"/> Approved with alternative/modified accommodation <input type="checkbox"/> Denied</p> <p>4. Number of days to process request: <input type="text"/></p>	
<p>The expected duration is <input type="text"/>.</p> <p>Is this a repeat accommodation? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>2. If the accommodation was denied, the reason is (may check more than one):</p> <ul style="list-style-type: none"><li>• Requester does not have a Rehabilitation Act Disability <input type="checkbox"/></li><li>• Accommodation would be ineffective <input type="checkbox"/></li><li>• Accommodation would cause undue hardship <input type="checkbox"/></li><li>• Medical documentation inadequate <input type="checkbox"/></li><li>• Accommodation would require removal of essential function of the position <input type="checkbox"/></li><li>• Accommodation would require lowering performance or production standard <input type="checkbox"/></li><li>• Other (please identify) <input type="text"/> <input type="checkbox"/></li></ul> <p>Describe reason(s) for denial in detail (e.g., <i>why</i> the accommodation would be ineffective or cause undue hardship):</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	

**Appendix D – Reasonable Accommodation Information Reporting Form**

	<b>Federal Mine Safety and Health Review Commission</b> <b>Reasonable Accommodation Procedures</b> <b>Appendix D: Reporting Form</b>
1. Name of requesting individual:	
2. Office of requesting individual:	
3. Job held or desired by employee/applicant requesting the reasonable accommodation (including occupational series, grade level, and office):	
4. Determination of Disability:	<input type="checkbox"/> Does have a disability <input type="checkbox"/> Does not have a disability <input type="checkbox"/> No determination made
5. Accommodation is:	<input type="checkbox"/> Approved as originally requested <input type="checkbox"/> Denied <input type="checkbox"/> Alternative offered (describe): _____
6. Date accommodation requested:	Request initially received by: _____ Date referred to Disability Program Coordinator, if applicable: _____
7. Date accommodation approved or denied:	_____ Date accommodation provided (if different): _____ If time frames outlined in RAP were not met, explain why: _____

## Appendix E – FOH Privacy Act Notice to Individuals

OCR HIPAA Privacy  
December 3, 2002  
Revised April 3, 2003

### NOTICE OF PRIVACY PRACTICES FOR PROTECTED HEALTH INFORMATION [45 CFR 164.520]

#### Background

The HIPAA Privacy Rule gives individuals a fundamental new right to be informed of the privacy practices of their health plans and of most of their health care providers, as well as to be informed of their privacy rights with respect to their personal health information. Health plans and covered health care providers are required to develop and distribute a notice that provides a clear explanation of these rights and practices. The notice is intended to focus individuals on privacy issues and concerns, and to prompt them to have discussions with their health plans and health care providers and exercise their rights.

#### How the Rule Works

General Rule. The Privacy Rule provides that an individual has a right to adequate notice of how a covered entity may use and disclose protected health information about the individual, as well as his or her rights and the covered entity's obligations with respect to that information. Most covered entities must develop and provide individuals with this notice of their privacy practices.

The Privacy Rule does not require the following covered entities to develop a notice:

- Health care clearinghouses, if the only protected health information they create or receive is as a business associate of another covered entity. See 45 CFR 164.500(b)(1).
- A correctional institution that is a covered entity (e.g., that has a covered health care provider component).
- A group health plan that provides benefits only through one or more contracts of insurance with health insurance issuers or HMOs, and that does not create or receive protected health information other than summary health information or enrollment or disenrollment information.

See 45 CFR 164.520(a).

Content of the Notice. Covered entities are required to provide a notice in *plain language* that describes:

## Appendix F – FOH Medical Employability Program Factsheet

### Federal Occupational Health

## Medical Employability Program

The Medical Employability Program (MEP) provides expert medical opinions and recommendations pertaining to employees' abilities to perform the essential functions of a specific position as it relates to their health condition(s). These opinions enable your agency to find cost-effective ways of retaining employees and reducing attrition, while meeting regulatory standards.

### How can Medical Employability Program services help

Our MEP team addresses a wide range of employee conditions, from lower back pain and limited vision, to bipolar disorder and autism. We help keep your agency workforce intact by working with management to bring employees back to work in a timely manner while also improving their ability to do their jobs. As a result, agencies maintain a high level of productivity.

### What services can a Medical Employability Program provide for my agency?

Some services the MEP can provide include:

- Reasonable Accommodation (including handicapped parking and workstation ergonomic evaluation) under the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990
- Return to Work / Office of Workers, Compensation Programs (OWCP) Case Management
- Fitness for Duty (medical and psychological)
- Family and Medical Leave Act (FMLA)/Advanced Sick Leave

- Leave Bank Medical Management
- Office of Personnel Management (OPM) Disability Package Review
- Continuation of Health Benefits for Adult Children

### What if a medical issue is affecting a group of employees at the worksite?

FOH can assist your managers in providing risk communication, based on sound medical information, to the affected populations, managers, and human resources personnel.

### Who handles Medical Employability Program cases?

FOH's MEP medical staff is comprised of physicians who are board certified in Occupational and Environmental Medicine, Physician Assistants, and Nurse Practitioners. These providers are trained to assess medical information with regard to validity and standards of care, while adhering to applicable Federal regulations and Equal Employment Opportunity Commission (EEOC) guidelines.

### BENEFITS

- Individualized approach to every case
- Experienced medical providers trained to assess the unique needs of your employees
- Simple and flexible service delivery method using the Interagency Agreement (IAA)



**The value-added of FOH is its medical background. FOH gets detailed information about an employee's problem and makes a recommendation on how we can assist a person or establish disability. FOH makes us think 'outside the box' for ways to accommodate employees, especially those who have a disability that may not be obvious.**

Manager  
Internal Revenue Service (IRS)

### FAST FACTS

- **Experience** – Since 1991, the FOH MEP office has handled over 40,000 requests, working with over 60 agencies nationally.
- **Knowledge** – Medical providers stay current on the latest medical research, best practices, and legal issues affecting employability requests.
- **Support** – The FOH MEP provides expert court testimony upon agency request.

Wellness within your reach.

1-866-4FOH-HLP FOH.PSC.GOV



U.S. Department of Health and Human Services

## Appendix G – Resources for Reasonable Accommodations

### Appendix G

#### RESOURCES FOR LOCATING REASONABLE ACCOMMODATION

##### LEGAL SOURCES

**Rehabilitation Act of 1973**, 29 U.S.C. § 701 et seq., is the Federal law that prohibits Federal government agencies from discrimination on the basis of disability. It also requires reasonable accommodation for qualified employees and applicants for employment with disabilities, unless doing so would create an undue hardship.

**Americans with Disabilities Act (“ADA”)**, as amended by the ADA Amendments Act of 2008 (“ADAAA”), 42 U.S.C. § 12101 et seq., prohibits discrimination on the basis of disability. Although the ADA does not directly apply to the federal government, interpretations of the ADA and ADAAA apply to Rehabilitation Act cases.

**EEOC Regulations Implementing the ADA**, 29 C.F.R. Part 1630.

**Executive Order 13164** requires Federal agencies to establish reasonable accommodation procedures.

##### ORGANIZATIONS

**CAP: Computer/Electronic Accommodations Program, Department of Defense**

(703) 681-8813 (Voice) (703) 681-0881 (TTY)

<http://tricare.osd.mil/cap>

- FMSHRC has a partnership with CAP such that CAP will provide a needs assessment and appropriate computer/electronic accommodation.

**U.S. Equal Opportunity Commission**

1-800-669-3362 (Voice) 1-800-3302 (TTY)

<http://www.eeoc.gov>

- The EEOC’s Publication Center has many free documents on the Americans with Disabilities Act and the Rehabilitation Act. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. Most of these documents are available at [www.eeoc.gov](http://www.eeoc.gov)

## Appendix H – Key Terms

- a. **Department of Defense Computer/Electronic Accommodations Program (CAP).** CAP is a centrally-funded RA program that provides assistive technology and services to Individuals with Disabilities (IWD) federal managers, supervisors, and information technology professionals. For more information visit the CAP web site at [www.cap.mil](http://www.cap.mil).
- b. **Supervisor.** The supervisor is an Agency official within the employee's chain of command, usually the employee's immediate supervisor. In the case of an applicant, the supervisor will be the selecting official, an Agency official in the selecting official's chain of command, or HC personnel assigned to process the vacancy.
- c. **Individual with a Disability.** An individual who has (i) a mental or physical impairment that substantially limits one or more major life activities, (ii) a record of such impairment, or (iii) is regarded as having such impairment.
- d. **“Qualified” Individual With a Disability.** A “qualified” IWD satisfies the requisite skill, experience, education, and other job-related requirements of the position. The individual can perform the essential functions of the position with or without RA.
- e. **Essential Functions.** Those job duties are so fundamental to the position that the Individual holds or desires that s/he cannot do the job without performing them. A function can be "essential" if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized, and the individual is hired based on his/her ability to perform it. The determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic position description.
- f. **Undue Hardship.** If a specific type of RA causes significant difficulty or expense, then FMSHRC does not have to provide that particular accommodation. The determination of undue hardship is made on a case-by-case basis, considering factors that include the nature and cost of the RA needed and the impact of the RA on the operations of the Agency.
- g. **Extenuating circumstances.** Extenuating circumstances are situations that could not reasonably have been anticipated or avoided in advance of the accommodation request or that are beyond the requester's or supervisor's ability to control.
- h. **Reasonable Accommodation.** An RA is any change in the work environment or the way things are customarily done that would enable an IWD to be provided Equal Employment Opportunity (EEO). The request may be made to (1) a supervisor or manager in the individual's chain of command, (2) the office designated by the Agency to oversee the RA process, (3) any Agency employee connected with the application

process, or (4) any other individual designated by the Agency to accept such requests 29 C.F.R § 1614.203(d)(3)(i)(D). Three categories of RA are available for employees or applicants with disabilities:

1. Modifications or adjustments to the application process to permit an IWD to be considered for a job (for example, providing application forms in alternative formats such as large print or Braille).
2. Modifications or adjustments necessary to enable a qualified IWD disability to perform the essential functions of the job (for example, providing a sign language interpreter or teletype [TTY] device).
3. Modifications or adjustments that enable individual IWD to have equal benefits and privileges of employment (for example, removing physical barriers in buildings or providing wheelchairs or motorized scooters to facilitate easy access to buildings).