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JAN 26 2004

MEMORANDUM FOR All Employees

SUBJECT: Policy Letter No. 04-01, St. Paul District Accommodation Policy

1. The attached policy outlines the rules governing the rights of employees and job applicants to reasonable accommodation, and the procedures employees, supervisors, and job applicants must follow when making and responding to reasonable accommodation requests.
2. It is the goal of the St. Paul District that individuals with disabilities be fully integrated into the District workforce. In order to realize the MVD strategic goal of becoming an "employer of choice," it is necessary that all employees be given the opportunity to realize their full potential. For employees with disabilities, the provision of reasonable accommodation will serve as the vehicle for accomplishing this. Title 29 of the Code of Federal Regulations states that the government shall be a model employer of individuals with disabilities. In addition, the Rehabilitation Act of 1973 requires Federal employers to provide reasonable accommodation to qualified employees and applicants with disabilities. The command recognizes their responsibility as outlined in these statutes and will make every effort to ensure that not only the requirements are met, but that their spirit and intent is also fulfilled.
3. This policy shall be made available to all St. Paul District employees and job applicants.

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Accommodation Policy



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Reasonable Accommodation Policy

I. Statement of Purpose:

It is the goal of the St. Paul District that individuals with disabilities be fully integrated into the District workforce. In order to meet the MVD strategic vision goal of being the “employer of choice”, it is necessary that all employees be given the opportunity to realize their full potential. For employees with disabilities, the provision of reasonable accommodation will serve as the vehicle for accomplishing this. Title 29 of the Code of Federal Regulations states that the Federal Government shall be a model employer of individuals with disabilities. Further, Section 501 of the Rehabilitation Act of 1973 requires Federal employers to provide reasonable accommodation to qualified applicants and employees with disabilities. Therefore, it is the policy of the St. Paul District to provide reasonable accommodations whenever possible to qualified individuals with disabilities, so that they may enjoy the benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities.

Executive Order 13164, issued July 26, 2000, requires Federal agencies to develop written procedures for providing reasonable accommodation. This document satisfies that directive, in addition to ensuring that the District meets its obligations under the Rehabilitation Act.

II. Effective Date: 1 February 2004

III. Posting Requirement: This policy shall be posted in a format accessible to employees, applicants, and other individuals, as applicable. The EEO Office will be assigned oversight of this policy and shall ensure that all employees are made aware of the policy.

IV. Applicable Laws and Regulations:

- a. AR 690-200: General Personnel Provisions.
- b. Titles I and V of the Americans with Disabilities Act of 1990 (Public Law 101-336) (ADA), as amended.
- c. Americans with Disabilities Act of 1990.
- d. The Civil Rights Act of 1991 (Public Law 102-166) (CRA).
- e. The Privacy Act of 1974.
- f. Title 29, Code of Federal Regulations.
- g. Sections 501, 504, 505, and 508 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended.
- h. EEOC Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act. Updated October 2002.
- i. Executive Orders 13078, 13145, and 13164.
- j. AR 690-600, Equal Employment Opportunity Discrimination Complaints.
- k. AR 690-12, Equal Employment Opportunity and Affirmative Action.
- l. AR 600-7, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army.

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- m. The Vietnam Era Veterans' Readjustment Act of 1974, as amended.
- n. The Architectural Barriers Act.
- o. The Civil Rights Act of 1964, as amended.
- p. The Family and Medical Leave Act of 1993.

V. Disclaimer:

This policy applies to the St. Paul District, Corps of Engineers, an organization under the purview of the United States Department of the Army. Nothing in this policy shall be construed to apply a lesser standard or invalidate the standards applied in the above laws and regulations. This policy is subject to the restrictions of, and any changes to, the above references and Department of the Army policies and procedures.

VI. Definitions:

The term "qualified individual with a disability" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires, without endangering the health and safety of the individual or others. The individual must have the skills, experience, education, and other requirements of the employment position. The District's judgment as to what functions of a job are essential should be well documented and these essential functions should be included in any job description or advertisement for the job. A qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs. The term "reasonable accommodation" means any accommodation that does not impose undue hardship on the agency in the operation of its program; "undue hardship" takes into account the agency's size, type of operation, and cost of accommodation. An undue hardship is an action that requires "significant difficulty or expense". See Appendix D for more in depth definitions of the terms and terminology used in this policy.

VII. Background:

The Americans with Disabilities Act of 1990 states that no organization shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, or privileges of employment. Discrimination is present when the organization does not make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the organization can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the organization.

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VIII. Oversight:

The St. Paul District EEO Office shall oversee the reasonable accommodation process and shall provide assistance and information to all District managers and employees involved in the process. This office shall also maintain all files regarding requests/denials/approvals for reasonable accommodation.

IX. Record Keeping:

The EEO Office is responsible for tracking information that will enable the St. Paul District to evaluate its performance in considering and granting requests for reasonable accommodation. While Executive Order 13164 does not impose any specific record-keeping requirements, it is St. Paul District policy that requests for reasonable accommodation shall be documented on Appendix A, and B (if applicable). The EEO Office shall maintain these records for one year for a non-employee and employee, or for an employee, the duration of the employee's employment. Records used to monitor and track the District's performance shall be maintained for a minimum of three years.

Restrictions: Information obtained regarding the medical condition or medical history of any employee or applicant will be collected on separate forms and be treated as a confidential medical record. Except for the reasons stated below, this information will be: (1) for employees, maintained in the appropriate file retained by the CPAC/CPOC; or (2) for non-employees, returned to that individual unless the information is required for an ongoing investigation or as part of a grievance, complaint, or personnel action. Exceptions: the release of medical information may be necessary (1) to inform supervisors and managers regarding necessary restrictions on the work of the employee and necessary accommodations; (2) to inform first aid and safety personnel for the purposes of emergency treatment; or (3) as necessary for government officials investigating compliance.

The Privacy Act of 1974, 5 U.S.C 552a applies to this policy. All requests for reasonable accommodation shall be kept confidential and secured in a locked cabinet.

Rights and Responsibilities: In response to requests, employees or applicants with disabilities may refuse to disclose their medical records directly, and instead may choose to transmit them to a physician of their choice. However, it will be the individual's responsibility to ensure that the District is provided with sufficient necessary medical documentation upon which to make a decision on any reasonable accommodation request. Inquiries of an employee or applicant as to whether that individual has a disability or as to the nature or severity of any disability shall not be made unless such inquiry is shown to be job-related and consistent with business necessity. An example of this is when the organization needs to inquire into the ability of an employee to

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perform job-related functions and/or whether accommodations are necessary if the employee is being hired under a special appointing authority for persons with disabilities.

X. Reporting Requirements:

The EEO Office shall ensure that requests for reasonable accommodation are tracked and progress reported annually as part of the District's affirmative employment program plan for hiring, placement, and advancement of individuals with disabilities.

XI. Procedures:

A. **Requesting an Accommodation:** A qualified individual with a disability should initiate the request for reasonable accommodation, Appendix A. A family member, friend, health professional, or other representative on behalf of an individual with a disability may also make a request for reasonable accommodation. The request may be made orally or in writing to any of the following:

- The individual's supervisor;
- A supervisor or manager in his/her immediate chain of command;
- The EEO Office; or
- In connection with the employment and/or application process, a member of the servicing personnel activity.

The individual with a disability should:

- Be familiar with the job description or essential job duties.
- Be able to discuss how their disabilities will affect the essential job duties.
- If possible, have some suggestions on what accommodations would enable them to more easily perform the essential job duties.
- Be aware that they must be able to perform the essential job duties with or without reasonable accommodation.
- Be aware that eliminating essential job duties is not a reasonable accommodation.
- Be aware that if their disability is not obvious, the supervisor may ask for reasonable documentation of the disability.
- Be aware that it is the employer who will determine whether or not an accommodation is "reasonable".
- Be aware of their right to privacy in making the request for accommodation and in handling of medical records.
- Be aware that they do not have to accept the offered accommodation.
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- Be aware that the agency may not require people with disabilities to use particular words in their requests.

Certain repetitive accommodations, such as the provision of sign-language interpreters, will be documented by the EEO office under a blanket request, and will not need individual requests each time an accommodation is needed. Check with the EEO office to see if the needed accommodation is or can be covered under a blanket accommodation request.

B. Responding to Requests for Current Employees:

First-line supervisors are authorized to consider and approve requests for reasonable accommodations from current employees, wherever possible. Requests for accommodation will be documented on Appendix A, and B (if applicable). While the supervisor or other responding official may ask the requesting employee to fill out the form, it is the supervisor's or other responding official's responsibility to see that the form is completed, and that the request for reasonable accommodation is processed in a timely manner. Supervisors or other responding officials may not ignore verbal requests or wait to begin processing a request until a written form is submitted.

When a qualified individual with a disability requests a reasonable accommodation to assist in the performance of a job, the supervisor or responding official should:

1. Analyze the particular job involved and determine its purpose and essential job 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. It may be appropriate to request reasonable medical documentation for non-obvious conditions. Be aware that the employee may request that medical information be released only to a qualified medical professional. However, sufficient information to substantiate the disability and need for accommodation must be provided in order for supervisors to make a determination on reasonable accommodation. The supervisor or responding official cannot ask for further documentation if both the disability and the need for accommodation are obvious, or if the individual has already provided the District with sufficient information to substantiate the disability and the need for 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. The supervisor or reviewing official will consult with the District Safety Office, if they think that the requested accommodation would affect the health or safety of the individual, the individual's co-workers, or the public. As is the case for non-disabled employees, a safety and health risk assessment should be completed.

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4. Consider the preferences of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the District. Consideration should be given to the individual's preference, if more than one of these accommodations would work, or if the individual prefers to provide his/her own accommodations.
5. Discuss the recommended reasonable accommodation with the individual, and give them the opportunity to accept or reject the recommendation. Note: The District has the ultimate discretion in choosing between effective accommodations, and may choose the less expensive or more easily implemented accommodation, as long as that accommodation is effective.
6. Implement the accommodation, or request assistance in implementing the accommodation by coordinating with the EEO Office.
7. Treat as confidential all requests for accommodation and any supporting information.
8. Forward requests/approvals/denials for reasonable accommodation to the EEO Office.

C. Responding to Requests From Job Applicants:

The CPAC is responsible for and is authorized to provide reasonable accommodation for job applicants. Job announcements will contain the telephone number of a person to contact for assistance. The CPAC will work with the CPOC to handle requests for accommodation during the application and selection process.

Applicants are responsible for following appropriate application procedures; that is, applying for an open internal (Resumix) or external (Delegated Examining Unit) vacancy announcement, or submitting an application through a vocational rehabilitation counselor for consideration under a special appointing authority for persons with disabilities. Applicants or their counselors will identify needed accommodations and provide appropriate documentation to the CPAC or CPOC.

Reasonable accommodations may be requested at any stage of the hiring process, including obtaining vacancy announcements, applying for the position, and interviewing. If selected, requests for accommodations needed in order to perform the job duties will be coordinated with the selecting supervisor.

D. Identifying the Appropriate Reasonable Accommodation:

Reasonable accommodation may include, but is not limited to:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

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2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The following is a list of resources for helping identify reasonable accommodations.

- U.S. Equal Employment Opportunity Commission – <http://www.eeoc.gov>
- Job Accommodation Network – <http://www.jan.wvu.edu>
- Searchable Online Accessibility Resource (SOAR) – <http://www.jan.wvu.edu.soar.disabilities/html> (you can reach it through JAN)
- ADA Disability and Business Technical Assistance Centers – 1-800-949-4232
- RESNA Technical Assistance Project – <http://www.resna.org>
- Computer/Electronic Accommodation Program – <http://www.tricare.osd.mil/cap>
- The Office of Disability Employment Policy – <http://www.dol.gov/odep>
- The Office of Personnel Management – <http://www.opm.gov/disability>
- Diversity Inc. – www.diversityinc.com
- Comprehensive Federal website of disability-related government resources – www.disabilityinfo.gov

XII. Denying Request for Accommodations:

1. A request for accommodation may be denied if it imposes undue hardship on the employer. Factors to be considered in determining whether an accommodation would impose an undue hardship include:

- The nature and cost of the accommodation;
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation;
- The overall financial resources of the employer; and
- The type of operation or operations of the organization, including the composition, structure and functions of the workforce, the geographic separateness, administrative, or fiscal relationship of the facilities in question to the employer.

2. Reasonable accommodations must be considered for and, if appropriate, provided to qualified employees regardless of whether they work part-time or full-time, or are considered “probationary”.

3. Reasonable accommodation can include making changes to property owned by someone else, such as leased workspace.

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4. Reasonable accommodation does not include:

- Eliminating essential job functions;
- Lowering qualitative or quantitative production standards; or
- Providing personal-use items needed in accomplishing daily activities both on and off the job.

5. All denials of reasonable accommodation requests must be coordinated with the EEO Office. If a request for reasonable accommodation is denied, the District must notify the individual that he/she has the right to file an EEO complaint and to engage in any informal dispute resolution procedures the District makes available for this purpose. An EEO Counselor must be contacted within 45 days of the date of the challenged action.

XIII. Timeliness:

Supervisors or responding officials should respond expeditiously to a request for accommodation and should act promptly to provide the reasonable accommodation. The supervisor or responding official will avoid unnecessary delays. Wherein it will necessitate a longer consideration/decision-making process, the requesting individual will be provided an interim response, outlining the status of their request no later than 15 calendar-days after it is initially received by the supervisor or responding official.

XIV. Disputes:

Nothing in this policy shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit, which the individual chooses not to accept. The powers, remedies, and procedures set forth in the Civil Rights Act of 1964 shall be the powers, remedies, and procedures applicable to any person alleging discrimination on the basis of disability. The preferred method of alternative dispute resolution will be mediation, and is encouraged to resolve disputes arising under this procedure.