



HUMAN RESOURCES

Americans with Disabilities Act Policy

TITLE 1 and SECTION A, TITLE 11

POLICY Number: B-013

15 March 2013

1. **AUTHORITY:** Director of State Civil Service as contained in La. R.S. 36:54, Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 and other federal and state laws and regulations that prohibit discrimination on the basis of disability.
2. **PURPOSE:** To establish the department's standard on ADA compliance.
3. **APPLICABILITY:** This policy shall apply to all employees of State Civil Service (SCS), contractors and vendors who do business with the department, and members of the general public who receive services from the department.
4. **POLICY:** It is the Director's policy that State Civil Service complies with the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendment Act of 2008, Section 504 of the Rehabilitation Act of 1973, and other federal and state laws and regulations that prohibit discrimination on the basis of disability. The ADA and Section 504 prohibit discrimination against any "qualified individual with a disability." Each qualified individual with a disability shall be afforded a reasonable accommodation necessary to ensure equal access to employment, educational opportunities, programs, services, and activities of the department.

This policy is promulgated by the American with Disabilities Act of 1990 (42 USC 12101, et seq) as amended by the Americans with Disabilities Act Amendment Act of 2008; the Rehabilitation Act of 1973 (29 USC 701-796); and the Civil Rights Act of 1991 (42 USC 1981 and 2000e; 329 USC 626(e)), all as amended.

5. **DEFINITIONS:**
 - A. **Qualified individual with a disability:** An individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, or who, with or without reasonable accommodation, can perform the essential functions of a job.

- B. Individual with a disability:** An individual who:
- has a physical or mental impairment that substantially limits one or more of his major life activities (i.e., walking, seeing, speaking, hearing, breathing, learning, performing manual tasks, caring for oneself, and working);
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- C. Essential Functions of a Job:** The basic job duties that an employee must be able to perform. Considerations in determining whether a function is essential include:
- actual work experience of present or past employees in the job;
 - the time performing the function;
 - the written job description;
 - whether the reason the position exists is to perform that function;
 - the degree of expertise or skill required to perform the function;
 - and the consequences of not requiring an employee to perform the function.
- D. Reasonable Accommodation:**
- Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
- E. Undue Hardship:** With respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in the light of the factors below:
- The nature and net cost of the accommodation;
 - The overall financial resources of the entity;
 - The number of employees and the effect on expenses and resources;
 - The type of operation or operations of the covered entity
 - The impact of the accommodation upon the operation of the entity;
 - The number, type, and location of facilities.

6. PROVISIONS:

SCS shall provide auxiliary aids and services to individuals with disabilities to enable them to communicate effectively and receive the benefits of SCS services, programs, and activities, provided that doing so will not result in undue hardship or cause a

fundamental alteration to a service, activity, or program. If the specific accommodation requested cannot be provided, SCS will attempt to find and provide another type of effective accommodation.

SCS will not discriminate against qualified individuals with disabilities in all employment practices and activities, including, but not limited to, application procedures, hire, promotion, advancement, termination, training, compensation, and benefits.

THE INTERVIEW PROCESS: Hiring officials and committees will not ask applicants about illness, disability, impairment, mental or physical condition, disease, hospitalization, prior absenteeism, medication, or claims for workers' compensation. Hiring officials may describe the essential job functions of the position and inquire if the applicant is able to perform the essential functions with or without reasonable accommodation. A hiring official or committee may request the applicant to describe or demonstrate how he will perform the essential functions of the position, and the type of reasonable accommodation that may be needed.

BEFORE MAKING A JOB OFFER: SCS will not use standards, tests, or criteria that screen out or tend to screen out an applicant with a disability unless 1) the criteria are job-related and required by business necessity, or 2) it is deemed that an applicant will pose a direct threat to the health or safety of the applicant or others.

AFTER MAKING A CONDITIONAL JOB OFFER: A hiring official may require a medical examination and make inquiries of the selected candidate for the position but may not refuse to hire an individual with a disability unless the individual cannot perform the essential functions of the job with reasonable accommodation, if all entering employees in the same job category are subjected to such an examination (or inquiry) regardless of disability. The SCS General Counsel must be consulted before refusing to hire a person with a disability.

DURING EMPLOYMENT: The hiring official shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity. The hiring official may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the work site. The hiring official may make inquiries into the ability of an employee to perform job-related functions.

The ADA protects individuals who have overcome drug or alcohol addiction, including those who are in or have completed rehabilitation. The ADA does not include current illegal drug use or alcohol abuse in the definition of "disability" and does not prevent an employer from taking action to address, prohibit, or prevent alcohol or drug abuse in the workplace.

Guidelines that govern facility standards are based on the date of original construction. Additional guidelines may apply when renovations or alterations are undertaken. SCS will coordinate construction and renovation in conjunction with other appropriate state departments and entities.

All SCS parties entering into contractual or lease agreements with outside entities will consider the need to provide program accessibility. The persons reviewing all such agreements will ensure that appropriate language has been included which addresses accessibility.

Medical documentation of a disability is confidential and will be maintained in a separate, locked cabinet from other personnel records.

7. PROCEDURES:

Individuals may request information and make requests for accommodations by directly calling the division, unit, or location offering the activity, service, or program.

A. EMPLOYEE REQUESTS:

1. Employees with disabilities who desire an accommodation will make such a request to their immediate supervisor in writing.
2. Employees may be required to provide appropriate documentation when requesting an employment accommodation, such as medical certification.
3. The supervisor will review the request with reference to the essential functions of the job and respond within 10 working days or apprise the employee of the progress of the review process. Supervisors should consult with their Division Administrator to review essential functions and performance standards.
4. Supervisors should consult with the General Counsel for technical assistance in assessing the disability and accommodation information.
5. If the supervisor deems the request to be inappropriate or create an undue hardship, he shall consult with his Division Administrator who may, in turn, consult with the General Counsel. The Director shall be the ultimate authority in the approval or denial of an accommodation request.

6. If the request for accommodation is inappropriate or creates an undue hardship, the supervisor will notify the employee in writing of the reasons for denying the request for accommodation.
7. If the supervisor and Division Administrator disagree on the appropriateness of an accommodation, they will resolve their differences with consultation with the General Counsel before presenting the recommended accommodation to the Director.
8. The employee may be communicated with to determine the appropriateness of the accommodation or any change in the accommodation proposed by the management of his unit. The resolution of any accommodation issue will be communicated to the employee in writing.
9. An employee may appeal a denial of an accommodation through his supervisor. The appeal must be in writing within ten working days from the date of the supervisor's notice to the employee. The supervisor will forward the appeal through his Division Administrator to the Director. The Director may form an ad hoc review panel or make a decision himself within ten working days of receipt of the appeal. If the Director chooses to form a review panel, the panel will make a recommendation to the Director within ten working days. The Director, after receiving a recommendation from a review panel, will issue a decision in writing within five working days. The decision of the Director need not be consistent with the review panel's recommendation.

B. MEMBERS OF THE PUBLIC, CLIENTS, AND CUSTOMERS REQUESTS:

1. Requests for accommodation may be made directly to the administrator of the division offering the program, activity, or service.
2. To ensure the accommodation will be available, written requests must be made in a timely manner, but no later than five business days prior to the event to ensure availability of the accommodation being requested.
3. If the division deems the request to be inappropriate or believes that it creates an undue hardship, the Division Administrator shall contact the Director before denying the request. If the Division Administrator and the Director disagree, the Director may consult with the General Counsel for guidance. The Director's decision will be final. The Director will advise and direct the Division Administrator to provide the accommodation or issue a written denial to the requester.

8. **EXCEPTIONS:** The Director of State Civil Service may grant an exception to any provision of this policy, provided such exception shall not be in conflict with Civil Service Rules and Regulations.

s/Shannon S. Templet

Director