



Policies and procedures

Subject Americans with Disabilities Act (ADA)
Section Human Resources
Approved by Martha Bennett, Chief Operating Officer; MERC Commission

POLICY

Metro complies with the Americans with Disabilities Act and corresponding state law. In keeping with Metro's commitment to equal opportunity, Metro will not discriminate against any individual based on disability and will ensure that reasonable disability accommodation is provided to allow qualified individuals with disabilities to perform the essential functions of their positions and enjoy equal benefits and privileges of employment.

Applicable to

All employees, interns and applicants.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Americans with Disabilities Act (ADA): A federal law designed to protect individuals with disabilities from discrimination. For purposes of this policy, the focus will be on the employment-related portion of the ADA.

Disability: An individual with a disability is a person who: (1) has a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

Essential function: The fundamental duties of a position that an individual with a disability holds or desires. Considerations in determining essential functions include the time it takes to perform the function; the consequences of not performing that function; whether the position exists to perform that function; and whether there are others who can perform that function.

Genetic information: For the purposes of this policy, genetic information includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Interactive process: An informal process between an individual with a disability and an employer in an effort to identify potential reasonable accommodation.

Major life activity: Major life activities include, but are not limited to: caring for oneself; performing manual tasks; seeing; hearing; eating; drinking; sleeping; walking; standing; lifting; bending; twisting; speaking; breathing; cognitive functioning; learning; education; reading; concentrating; remembering; thinking;

communicating; operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; working. To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

Qualified individual: An individual who is able to perform the essential functions of his or her position with or without reasonable accommodation.

Reasonable accommodation: Any modification or adjustment to a position or the work environment that will enable a qualified individual with a disability to participate in the application process or perform essential job functions. Reasonable accommodation also includes adjustments to provide a covered individual the same employment rights and privileges enjoyed by those without disabilities.

Substantially limits: Restricts one or more of an individual's major life activities as compared to most people in the general population. This analysis is made without regard to whether the individual can reduce the effects of the impairment through the use of mitigating measures, with the exception of ordinary eyeglasses and contact lenses.

Undue hardship: A significant difficulty or expense.

Guidelines

1. Metro will not discriminate against any employee, intern or applicant because the individual has a disability or a record of disability; is regarded as having a disability; is associated with a person with a disability; or has inquired about, received, or requested reasonable accommodation.
2. Metro will provide reasonable accommodation to employees, interns and applicants with disabilities unless to do so would result in an undue hardship. When an otherwise qualified employee or intern has a disability, Metro will engage in an interactive process to determine whether he or she can perform the essential functions of his or her position with reasonable accommodation.
3. In accordance with the Genetic Information Non-Discrimination Act of 2008, no genetic information, including family medical history, will be requested or considered as part of the accommodation process.

Procedures

Applicants for employment or promotion

1. Reasonable accommodation will be provided to individuals with disabilities applying for employment, internships or promotional opportunities, if necessary to complete the application process.
 - a. If a physical capacities test is necessary before beginning regularly scheduled work, the test will be required only after a conditional offer of employment has been made, consistent with the requirements of the ADA.
 - b. If the results of a physical capacities test indicate that an employee is unable to perform essential functions of the position, Metro will initiate an interactive process with the employee to determine whether disability accommodation is appropriate.

- c. Applicants with disabilities are required to make a request for reasonable accommodation to their recruiter and the recruiter is responsible for ensuring that a complete Request for Reasonable Accommodation Form is on file.

Current employees and interns

1. An individual with a disability may request an accommodation if needed to perform the essential functions of his or her position.
 - a. The individual should initiate the request by contacting his or her supervisor or the Human Resources Total Compensation Manager.
 - b. Upon receipt of a request for accommodation, the supervisor shall immediately notify the Total Compensation Manager.
 - c. The individual is required to complete the Request for Reasonable Accommodation Form and submit it to the Total Compensation Manager within 14 calendar days.
 - d. The Total Compensation Manager is responsible for providing an overview of the ADA accommodation process to the individual initiating the request utilizing the following documents: Guide to Interactive Process for Reasonable Accommodation and Checklist for Reasonable Accommodation Requests.
2. Upon receipt of a completed Request for Reasonable Accommodation Form, the Total Compensation Manager is responsible for determining whether the individual has a disability. The Total Compensation Manager can request that the individual provide documentation to support what the impairment is and how the impairment substantially limits a major life activity unless the impairment is obvious or substantiating documents are already on file or due to other applicable reasons.
 - a. If documentation is required to support what the impairment is and how the impairment substantially limits a major life activity, the Total Compensation Manager will write a letter outlining the duties of the position to the employee's or intern's health care provider and will request a signed medical release from the employee or intern. The release will authorize the health care provider to provide a medical opinion and relevant medical information as to whether the individual can perform the full scope of the essential duties of the position and what, if any, accommodation(s) is(are) recommended.
 - b. If documentation is required to support what the impairment is and how the impairment substantially limits a major life activity, the Total Compensation Manager will review the health care provider's responses. If the documentation is insufficient to establish the existence of a disability and the need for accommodation, the Total Compensation Manager will explain why the documentation is insufficient and allow an opportunity to provide the missing information.
 - i. With the employee's or intern's written consent, the Total Compensation Manager may request follow-up information directly from the employee's health care provider.
 - ii. If necessary to confirm or clarify the need for accommodation, Metro may require the employee or intern to go to a second health care provider chosen by Metro for an independent medical opinion at Metro's expense.
 - c. Metro will reimburse the employee or intern for out-of-pocket costs for providing medical documentation required under this policy in accordance with applicable law.

3. The employee or intern will be asked to meet with the Total Compensation Manager and/or the employee's or intern's supervisor to engage in an interactive process to discuss the disability in relation to the essential functions of the position and to identify reasonable adjustments or changes that may allow the individual to perform these essential functions.
 - a. Prior to the meeting, Human Resources will inform the individual that they may have a union representative, family member, or other appropriate person present during interactive process meetings.
 - b. An employee or intern may choose to decline participation in the interactive process at this point or at any other time. This decision will suspend Metro's further assessment of potential disability accommodations until the employee or intern re-initiates a request. Human Resources will twice seek to initiate such a dialogue before closing the matter due to non-participation. A closure of this nature will not prevent the employee from initiating the ADA process at a later date for the same or different medical reasons.
4. The Total Compensation Manager, the employee or intern, and the supervisor will meet to discuss the accommodation the employee/intern is requesting and, if appropriate, other potential accommodations that may allow the employee or intern to perform the essential functions of the employee's or intern's position. Human Resources and the employee's supervisor will jointly determine if a reasonable accommodation is available, and if so, they will arrange for timely implementation.
5. If a reasonable accommodation cannot be made so that an employee may continue to successfully perform in the employee's or intern's current position, the Recruitment Manager will conduct a thorough review of available and suitable positions to determine if there is an available, suitable position for which the employee may be eligible.
6. If the suggested accommodations will create an undue hardship to Metro's operations as defined by the ADA, the Total Compensation Manager will meet with the employee to determine if any other benefit options, including a review of available and suitable positions, may be appropriate. If no other options are found, Human Resources will meet with the Department Director and Office of Metro Attorney to determine if a termination is necessary due to inability to perform the job.
7. An employee who has a disability that may cause performance or conduct problems is encouraged to seek reasonable accommodation before problems arise.
8. Consistent with the ADA, Metro will not accommodate or extend job protections based on current use of illegal drugs or being under the influence of alcohol at the workplace.
9. Metro will provide reasonable accommodation to help employees meet performance and conduct standards; however, Metro is not required to waive or lower performance or conduct standards that are job-related and consistent with business necessity or to rescind discipline or an evaluation warranted by poor performance if the employee has not requested accommodation.
10. At the conclusion of the interactive process, the Total Compensation Manager is responsible for completing the Resolution of Request for Reasonable Accommodation Form. The Office of Metro Attorney must be consulted before denying an accommodation request.
11. Information obtained regarding an individual's medical condition or history will be kept in separate medical files and treated as confidential, except as follows:
 - a. Supervisors and managers may be informed regarding necessary restrictions on the individual's duties and necessary accommodations.

- b. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
 - c. Officers and employees of the Equal Employment Opportunity Commission and the Bureau of Labor and Industries investigating compliance will be provided relevant information upon request.
12. Anyone with concerns about the ADA process, including the outcome of the interactive process, may contact the Director of Human Resources or Office of Metro Attorney to discuss the matter.
13. Anyone who experiences or observes discrimination, harassment, or retaliation related to disability should report the offending conduct using the procedures specified in Metro's Discrimination and Harassment Policy.

Responsibilities

Employee/Intern:

- Notify the supervisor or Total Compensation Manager that an accommodation is being requested.
- Meet with the Total Compensation Manager to begin the ADA interactive process and follow up as requested.
- Provide a medical release for Metro to obtain relevant medical information if applicable.
- Report any discrimination, harassment, or retaliation related to disability using the procedures specified in Metro's Discrimination and Harassment Policy.

Supervisor:

- Timely respond to all ADA requests by notifying Human Resources.
- Participate in a discussion with the employee or intern and Human Resources regarding reasonable accommodation.
- Coordinate with Human Resources and the employee or intern to implement any necessary accommodations.
- Refer any reports or observations of discrimination, harassment, or retaliation related to disability to Human Resources.
- Maintain the confidentiality of medical information.

Total Compensation Manager:

- Provide the employee or intern with the appropriate forms and procedures.
- Obtain necessary medical information from the applicable health care professional(s) if necessary in order to verify the need for accommodation and identify potential solutions.
- Ensure that genetic information is not requested or considered during the accommodation process.
- Work with the employee or intern and the supervisor to determine if reasonable accommodation(s) can be made.
- Consult with Office of Metro Attorney prior to denying an employee's accommodation request.
- Coordinate implementation of any necessary accommodations.
- Ensure completion of process documents including the Checklist for Reasonable Accommodation Requests, Guide to Interactive Process for Reasonable Accommodation, and Resolution of Request for Reasonable Accommodation Form.
- Maintain medical information in a confidential file separate from the personnel file.

References

Americans with Disabilities Act of 1990 (ADA) as amended- 42 U.S.C. 12101 et seq., 29 C.F.R. 1630 et seq.
ORS 659A.103 – 659A.142; OAR 839-006-0200 – 839-006-0265 (Oregon disability law).

2013 Oregon Laws Ch. 379 (House Bill 2669)

Genetic Information Nondiscrimination Act of 2008 (GINA) – Pub.L. 110-233, 122 Stat. 881 (2008).