

**Equal Employment Opportunity**

**Reasonable Accommodations for Individuals with Disabilities**

**FOR THE GOVERNOR:**

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**Applicability.** California National Guard Full-time Personnel Regulation (CNGFPR) applies to all California Army and California Air National Guard technicians and to commanders, managers, and supervisors (military or civilian) with authority or responsibility over technician personnel management.

**Proponent and Exception Authority.** The proponent of this regulation is the Joint Force Headquarters, J1-HR, Equal Employment Opportunity (EEO) Office. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulations.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

**Distribution.** Distribution of the regulation is Army - A and Air Force - AF.

**History.** None

**Summary.** This regulation describes procedures and policies in the area of reasonable accommodation (RA) for Individuals With Disabilities (IWDs). The regulation replaces any Technician AGR Administrative Instruction (TAAI) concerning this subject published before implementation of this regulation.

**Content (listed by paragraph number)**

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## 1. Purpose.

This technician personnel regulation establishes the California National Guard Reasonable Accommodation (RA) Policy for Dual Status and Non-Dual Status technicians. The RA Policy is concerned with, but not limited to, establishing a procedure that will support the prompt, fair, and efficient processing of requests for RA; increasing awareness of responsibility in providing for the expansion of opportunities for individuals with disabilities; and ensuring that civilian and military technician managers and supervisors comply with provisions of the Rehabilitation Act of 1973, as amended.

## 2. References.

- a. The Equal Employment Opportunity Commission (EEOC) Policy Guidance on Executive Order (EO) 13164.
- b. EO 12640
- c. EO 12704
- d. EO 13164

## 3. Responsibilities.

- a. The JFHQ-J1-HR is responsible for providing a Reasonable Accommodation Policy based on guidance from National Guard Bureau and Office of Personnel Management (OPM).
- b. The Directorate for Human Resources is responsible for implementation and administration of a Reasonable Accommodation Policy.
- c. The EEO Office is responsible for the following:
  - (1) Conducting supervisor and manager RA training programs.
  - (2) Assisting managers, supervisors, and employees with RA requests.
  - (3) Developing and disseminating information on RA resources available.
  - (4) As the proponent for the Program for Individuals With Disabilities, coordinate all RA requests.
  - (5) When appropriate, provide information to supervisors regarding RA for employees with disabilities.
  - (6) Track and report on RA requests in the annual Individuals With Disabilities Affirmative Action Program Plan.
  - (7) Submit RA data for California National Guard (CNG) employees to the NGB EEO Office each year for inclusion in the MD715
- d. Commanders and directors at all levels are responsible for:
  - (1) Promoting the RA process.
  - (2) Provide necessary resources to support the RA process.
- e. Management and Supervisors will:
  - (1) Assure employees with disabilities are aware of their right to request RA because of a medical condition. This may necessitate providing information in alternative formats, such as large print, Braille, or electronic diskette (on request). Other alternatives will be made available, so the RA procedures are accessible for individuals with particular disabilities.
  - (2) Review RA requests received from employees.
  - (3) Consider and approve RA requests, whenever possible.

## 4. Background.

- a. EO 13164, "Establishing Procedures to Facilitate the Provision of Reasonable Accommodation," dated 26 July 00, requires Federal agencies to establish written procedures for processing RA requests. The EO also clarifies the requirement of the Rehabilitation Act of 1973 to provide RA to qualified employees and applicants with disabilities.
- b. On 20 October 2000, the EEOC issued its "Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation." This guidance requires federal agencies to establish written procedures for processing requests for RA. The complete text of the EEOC guidance can be found at [www.eeoc.gov](http://www.eeoc.gov).
- c. Notably, the EO does not create any new rights for applicants or employees, nor does it limit an individual's rights under the Rehabilitation Act. As a result, an individual who believes that his /her rights to RA have been violated may pursue the remedies already in place under the act.
- d. The Americans with Disabilities Act (ADA) of 1990 initially did not apply to Federal employees, because the Rehabilitation Act of 1973 already included the same information. The ADA coverage now extends equally to Federal employees.

## 5. Definitions.

a. *Essential functions* – Job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function is “essential” if, among other things, the position exists specifically to perform that function, there are a limited number of employees who could perform the function if it were assigned to them, or the function is specialized, so the incumbent is hired based on his/her ability to perform it.

b. *Extenuating circumstances* – Factors that could not reasonably have been anticipated or avoided in relation to the request for RA.

c. *Individual with a disability* – A person who has a mental or physical disability that substantially limits one or more major life activity, has a record of such impairment, or is regarded as having such impairment.

d. *“Qualified” person with a disability* – A qualified person with a disability is an IWD who is otherwise qualified or capable of doing the essential functions of a job with or without RA.

e. *Reasonable accommodation* – A change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. There are three general categories of RA:

(1) Modifications or adjustments to a job application process to permit an IWD to be considered for a job (e.g., providing application forms in alternative formats like large print or Braille).

(2) Modification or adjustments necessary to enable a qualified IWD to perform the essential functions of the job (e.g., providing sign language interpreters, special computer keyboards, or voice amplification devices).

(3) Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (e.g., removing physical barriers in an office).

f. *Undue hardship* – A specific accommodation that involves significant difficulty or expense. This determination, which must be made on a case-by-case basis, considers factors such as the nature and costs of accommodation needed, the size and budget of organization, and impact of accommodation on the operations of the agency, in this case, the CNG.

g. *Not so obvious (hidden) disability* – A disability that is not readily apparent, such as asthma, arthritis, cancer, chronic depression, chronic fatigue syndrome, diabetes, epilepsy, kidney disease, learning disabilities, and mild mental retardation.

## 6. The Reasonable Accommodation Process.

a. An employee or job applicant may initiate a request for RA orally or in writing. The employee will be asked to complete an RA request form for documentation and processing purposes. The CNG Form 690-50, Reasonable Accommodation Request, has been developed for this process. However, a person’s oral or written request starts the RA process. When an IWD requests assistance in completing the RA request form, the activity must provide that assistance.

b. The RA process is initiated when a person with a disability indicates need for an adjustment (or a change at work) or in the application process for a reason related to a medical condition. The requester does not have to use any particular words, cite the Rehabilitation Act of 1973, or even use the term “reasonable accommodation.” For example, it is sufficient for a vision-impaired person to ask for assistance with certain work related materials. It is also acceptable for a person to state that he/she is having a problem with an established tour of duty because of new medication.

c. A family member, health professional, or other representative may request a RA on behalf of the IWD. The need for a RA should then be confirmed with the person who has the disability.

d. First-line supervisors will consider and approve requests for RA, whenever possible. Each RA request will be different and will have to be considered on a case-by-case basis. However, employees or applicants for employment should be informed as soon as possible about the status of their RA requests, especially if an urgent situation exists. Where the requested RA is simple and straightforward with no question of undue hardship to the CNG, processing of the RA requests should not exceed thirty (30) days. If there are extenuating circumstances that will preclude providing the requested RA within 30 days, the requester will be notified of the reason for the delay and will be provided the anticipated completion date in writing.

e. Information on the RA type and date the RA is provided will be documented and filed on a RA request form.

## 7. Medical Information.

a. If the disability and/or need for accommodation are not obvious or already known by the employer, employees or applicants for employment must provide relevant medical information related to the disability (being reviewed) and the requested accommodation.

b. Additional health information may be requested if the initial medical information submitted:

- (1) Does not clearly explain the nature of the disability or the need for RA, or
- (2) Does not clarify how the RA will assist the employee in performing essential functions of the job or how it will enable the IWD to enjoy benefits and privileges of the workplace.
- c. At his/her own expense, an employer may have a health expert review the medical information.
- d. In accordance with the Rehabilitation Act of 1973, medical information may not be requested when:
  - (1) Both the disability and the need for RA are obvious or already known, or
  - (2) The individual has already provided the agency with sufficient information to document the existence of a disability and his/her functional limitations.
- e. The Rehabilitation Act also requires that all medical information be kept confidential. Medical information may only be shared on a need to know basis. When medical information is disclosed to appropriate officials, they must be informed of the confidentiality requirements under law.
- f. To maintain confidentiality of medical information and RA requested data, these records should be filed separately from official personnel files or the personnel files maintained in most offices.

#### **8. Types of Reasonable Accommodation.**

- a. Modifications or adjustments may be made to the application process, job, or workplace. Refer to the examples described for RA in item 3. Definitions are above.
- b. Reassignment must be considered (absent undue hardship to the organization) for an employee who, because of disability, can no longer perform the essential functions of his/her job with or without RA. Reassignment may be made only to a vacant position. The law does not require that agencies create new positions or move other employees from their jobs to create a vacancy. If the employee is qualified for the vacant position, he/she should be reassigned to that position as a RA and should not have to compete for it.
- c. As stated previously (see item 6e), information on the RA type and date the RA is provided should be documented and filed on a RA request form.

#### **9. Denials of Reasonable Accommodation.**

- a. If an individual's request for RA is denied, he/she must be notified in writing of the reasons. The denial should be written in plain language, specific, and identify the office and individual who made the decision. As appropriate, the notice of denial should be provided in alternate format such as large print, Braille, etc.
- b. If a specific RA is denied but an alternate RA is offered, the notice should explain specific reason(s) for the denial and why another accommodation is considered to be a good alternative.
- c. The notice must also include an explanation of informal procedures that are available for a review of the denial action. Individuals should be encouraged to first discuss the denial with the person who made the decision. If the requestor is not satisfied, he/she would then have an opportunity to appeal the denial action to others in the deciding official's chain of command. If the matter has still not been resolved to the requestor's satisfaction, there will be an opportunity to proceed under an alternative dispute resolution (ADR) process. The ADR process recommended for use is EEO Office review and/or mediation. The individual challenging the denial of a RA request may participate in mediation without having to file an EEO complaint.

#### **10. Informal Procedures and EEO Complaints.**

- a. The informal procedures discussed in item 9c above must be in addition to but may not modify or replace the EEO Complaint Process or grievance procedures.
- b. The informal procedures (reference item 9c above) are strictly voluntary and may not be used to limit an individual's rights. The employer may not prevent an individual from filing an EEO complaint or a grievance even if he/she is also pursuing the steps detailed in the informal procedures.
- c. The informal procedures (reference item 9c above) do not affect time limits for the EEO Complaint Process. Thus, when an employer denies a RA request, the individual must be notified in writing that if he/she wishes to file an EEO complaint on the denial action, it must be done within 45 days of receipt of the denial action, even if he/she is pursuing steps detailed in the informal procedures.
- d. EEO Offices can provide information regarding filing an EEO discrimination complaint.

#### **11. Tracking Requirements.**

The proponent for reasonable accommodation is the EEO Office. As a result, at the operational level, the servicing EEO Office is responsible for tracking the following information:

- a. The number and types of RA requested in the application for employment process and whether those requests were granted or denied.
- b. The jobs (occupational series, grade level, and organization) for which RAs have been requested.
- c. The types of RAs that have been requested for each of those jobs.

- d. By organization, the number and types of RAs for each job that have been approved and denied.
- e. The number and types of requests for RAs that relate to benefits or privileges of employment, and whether those requests have been granted or denied.
- f. The reasons for denial of RA requests.
- g. The amount of time taken to process each RA request.
- h. The source of technical assistance consulted in trying to identify possible RAs.

**12. Dispositions of Reasonable Accommodation Request Data, Including Medical Information.**

- a. Documentation related to a particular individual who has requested RA is to be filed apart from other personnel records, safeguarded regarding confidential requirements, and maintained for the duration of that employee's employment. Records concerning requests, approval, and disapproval are maintained by the Joint Force Headquarters EEO office.
- b. The tracking information data should be maintained for a period of 5 years. This data will assist an organization in evaluating its performance regarding the adequate, timely processing of RA requests and their corrective action, if required.

**13. Computer/Electronic Accommodation Program - General.**

The Computer/Electronic Accommodation Program (CAP) (<http://www.tricare.osd.mil/cap>) was established by DOD to help provide reasonable accommodation to individuals with disabilities (IWDs). The purpose of the CAP is to ensure that all disabled DOD employees get equipment which best meets their needs at no charge to the employer. The Defense Medical Information Management Office is the executive agent for the CAP. The CAP staff (703-681-8811) Voice and TTY are available to advise on ways to provide reasonable accommodation. The CAP serves the DOD community by:

- a. Buying accommodations to make computer and telecommunications systems accessible to IWDs, as required by Public Laws 99-506 and 100-542.
- b. Providing funds for sign-language interpreters, readers, and personal assistants for employees attending long-term training (2 days or more).
- c. Providing expertise in solving accessibility problems through the use of software, hardware, and other assistive technology.
- d. Providing training and educational support.

**14. Choosing Accommodations.**

Choosing appropriate accommodations is best done on a case-by-case basis. Accommodation needs must be evaluated in consideration of an individual's job responsibilities and technical environment (for example, workstation configuration).

**a. Needs Assessment.** A needs assessment should be conducted to identify accommodations suited to an individual's specific situation. Both employees with disabilities and their supervisors should always be involved in the needs assessment. This assessment should address the following questions:

- (1) Job:
  - (a) What are the essential job requirements?
  - (b) Which skills (physical and cognitive) are required for job performance?
- (2) Individual:
  - (a) What are the individual's functional limits to meeting job requirements?
  - (b) Are there alternative approaches to meeting essential job requirements?
- (3) Solutions:
  - (a) What accommodations, compatible with workstation, computer, and telecommunication systems, are available to meet individual's needs?
  - (b) Which alternative approach or accommodation is most suited for individual in specific work environment?

**b. Types of Accommodation.** Types of accommodation are divided into the following groups:

- (1) For individuals who are deaf or hard of hearing:
  - (a) Amplification devices.
  - (b) Closed-caption decoders and captioning for training tapes.
  - (c) Signaling devices.
  - (d) Teletypewriters (TTYs).
  - (e) TTY modems.
- (2) For individuals with visual impairments:
  - (a) Braille displays.

- (b) Braille embossers.
  - (c) Portable note-takers.
  - (d) Print enlargers.
  - (e) Scanner/readers.
  - (f) Screen readers.
- (3) For individuals with impaired dexterity:
- (a) Alternative input systems.
  - (b) Alternative keyboards.
  - (c) Alternative pointing devices.
  - (d) Keyboard-enhancement programs.
  - (e) Voice-recognition systems.
- (4) Training support provided to IWDs:
- (a) Personal assistants.
  - (b) Readers.
  - (c) Sign language interpreters.
  - (d) Training.