

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION**

**CHAPTER 3
REASSIGNMENT AS AN ACCOMMODATION**

I. Determining when Reassignment is an Appropriate Accommodation:

A. Consider other forms of Accommodation: Before considering reassignment as a reasonable accommodation, the activity must first consider those accommodations that would enable an employee to remain in his/her current position.

B. Reassignment as an Accommodation: Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship or pose a threat to the employee's or others' safety. See Chapter 2, VI. B. and C.

II. Eligibility for Reassignment:

A. Current DON employees who are qualified individuals with a disability and who cannot be accommodated in their current position must be considered for reassignment into a vacant position.

1. The employee must be able to perform the essential functions of any potential vacancy and meet the requisite skills, experience, education, and other job-related requirements of the vacancy, with or without an accommodation.

2. The employee does not have to be the best qualified employee for the vacant position, they only have to be qualified.

3. The employee may be offered a position at a lower grade level if there is no vacant position that is equivalent to the same grade and/or pay as their current position.

4. There is no requirement to create a new position to accommodate an employee.

5. Employees may not receive a promotion as a result of the reasonable accommodation process.

B. Probationary employees: A probationary employee with a disability is eligible for reassignment to a vacant position as long as the employee has adequately performed the essential functions of their current position, with or without reasonable accommodation, before the need for a reassignment arose.

1. The longer the period of time in which an employee has adequately performed the essential functions, with or without reasonable accommodation, the more likely it is that reassignment to a vacant position is appropriate if the employee becomes unable to continue performing the essential functions of the current position due to a disability.

2. If, however, the probationary employee, with a disability, has never adequately performed the essential functions of the position, with or without reasonable accommodation, then he/she is not entitled to reassignment because he/she was never qualified for the original position.

3. The same parameters for reassignment, as described in paragraph A.1. to A.5., are also applicable to probationary employees.

C. Applicants for employment are **not** eligible to be considered for a reassignment to a vacant position. An applicant for a position must be qualified for, and be able to perform the essential functions of, the position sought with or without accommodation.

III. Activity Job Search Process: Upon notification that the employee has decided he/she wants to be considered for reassignment (see Chapter 2, VI.C.(1)), the activity will immediately commence a job search within the activity. If the employee cannot be reassigned to a funded, vacant position, within the activity, the job search process will continue within the parameters specified by the employee (as documented on attachment 10, Chapter 2).

A. Qualifications Determination: The activity's servicing HRO will identify the series and appropriate grade level(s) of positions that the employee is qualified to perform utilizing the Office of Personnel Management Operating Manual for Qualification Standards for General Schedule Positions, the Federal Wage System Qualification Handbook or when applicable, DoD developed qualification standards for the position. For purposes of this chapter, the term "qualified" means the employee meets the qualifications in the Manual and the Handbook referenced above.

1. If the employee has identified his/her position preferences for placement, he/she will be considered for placement into those specific positions, if qualified, before any other vacant positions are considered.

2. The employee's resume will serve as the basis for the qualifications determination. If the employee does not submit a resume, qualifications will be determined based on their current series, grade level, and position description.

3. The scope of the job search will be limited to the geographic area(s) identified by the employee. See attachment 10 of this chapter.

B. Identification of Vacant Positions: The employee's first level supervisor and the servicing HRO will identify current vacant positions to include those that will become vacant within the next 60 calendar days.

1. A listing of all current vacant positions to include those that will become vacant within the next 60 calendar days will be maintained and documented by the HRO. A sample form to document the activity's job search efforts is provided as attachment 1. When completed, this form will be filed in the Reasonable Accommodation case file.

2. The employee will be considered only for those vacancies for which he/she is qualified.

C. Placement:

1. The employee will be placed in the vacancy that is the most similar to their current position. The employee must be able to perform the essential functions of

the identified position, with or without accommodation. If an accommodation is required, the Advisory Team and the gaining supervisor will make this determination utilizing the applicable sections in Chapter 2.

2. If a match is found, the employee is reassigned, without competition, into the vacant position.

3. The job search/placement process should be completed within 30 calendar days from the date of the decision that the employee could not be accommodated in his/her current position.

4. The reassignment action should be documented and filed in the reasonable accommodation case file. Attachment 1 may be used for this purpose.

5. The closed reasonable accommodation case file will be maintained in the activity's servicing EEO Office.

D. No Vacant Positions at the Activity Level: If no positions were identified in the review of internal vacancies, the first level supervisor and the HRO must document the process utilized at the activity level. Attachment 1 may be used for this purpose.

1. The Commanding Officer of the activity will certify that there were no current vacant positions (or anticipated vacancies) at the activity for placement of the employee. A sample letter for the required certification is provided as attachment 2. The Commanding Officer's certification and the case file will be reviewed by the major command's Director, Civilian Personnel Programs(DCPP) and the command's legal counsel to validate that the assessment of the claim and the activity's job search efforts were thorough and complete.

2. A copy of the signed certification letter will be filed in the case file.

3. To facilitate the review at the major claimant level, a written summary of the disability assessment and job search efforts should be provided by the Advisory Team.

4. As part of the continuing interactive discussions with the employee, he/she should be advised

that the activity's job placement efforts were not successful and that the job search will proceed to the next stage, within the parameters identified by the employee.

5. The activity will continue to review any new vacancies for potential placement of the employee even after HRSC involvement has been initiated.

IV. HRSC Job Search Process: If the employee has indicated his/her willingness to be reassigned to another activity and after the major claimant has concurred with the activity's disability assessment and job search efforts, the activity's HRO will request the servicing HRSC to assist in the placement of the employee.

A. Information Provided to HRSC: Only the necessary information in the Reasonable Accommodation case file that will enable the HRSC to continue the job search process will be provided, i.e., description of the employee's limitations, documentation of the activity's job search efforts, a copy of the letter from the activity's commander certifying that the employee could not be placed (see attachment 2). A sample letter forwarding the relevant information to the HRSC is provided as attachment 3.

B. Vacant Position at Activity Level becomes Available: If at **any time** during the job search process, a vacant position, for which the employee is qualified, becomes available at the activity level the employee will be placed into the vacancy and the HRSC will be notified of the placement action.

C. HRSC Responsibilities: The HRSC will verify the series and grades for which the employee is qualified, validate the activity HRO's job search actions, review the information forwarded by the activity and execute their job search responsibilities under the reasonable accommodation procedures process. HRSC job search efforts will continue for a period of 60 calendar days from the date notification for reassignment as a reasonable accommodation was received, or less, if the employee is placed before the expiration of this time period.

D. No Vacant Positions Identified: If no vacancies are identified during the 60 calendar days, the HRSC will document their job search efforts and results. This documentation will be forwarded to the activity HRO with a

copy to the major command DCPD within 5 calendar days after the expiration of the 60 day time period. A copy of this documentation will be filed in the Reasonable Accommodation case file.

1. Appropriate administrative action should be taken by the activity HRO if the HRSC job search results in no identification of vacancies for placement of the employee. See Chapter 2, VI.C.(1)b. and c.

2. The employee will be notified of the negative results of the job search and their options at this point in the process, i.e., removal for medical inability or possible eligibility for disability retirement. Attachment 6, provided in Chapter 2, may be used as a sample for the required employee notification.

3. The Advisory Team will forward a written summary of the case addressing all the steps, to include the employee's final employment action, to the major command's CDEEO for review and tracking purposes.

4. The closed case file will be maintained in the activity's servicing EEO Office.

E. Placement: If a vacant position is identified for which the employee is qualified, the HRSC will contact the gaining activity HRO and DCPD to advise them of the pending referral for reassignment as a reasonable accommodation.

1. If several appropriate vacant positions are identified, a decision on the best placement for the employee will be made.

a. For vacancies within a single major command, the HRSC, with advice from the DCPD and the servicing HRO, will make the decision on the best placement for the employee. The HRSC determination will take into consideration: the employee's qualifications for a particular vacancy, the grade level of the vacancy; and, the employee's identified parameters for the job search.

b. For vacancies that cross command lines, the HRSC will make the decision on the best placement for the employee following the established job search order:

(1) activities in the employee's major command within the commuting area;

(2) activities in all major commands within the commuting area;

(3) activities in the employee's major command Navy-wide;

(4) activities in all major commands Navy-wide.

2. An interactive discussion with the employee to discuss his/her placement options may be useful in determining the best placement for the employee.

3. Placement decisions made by either the major command or the HRSC will document all identified vacancies and the basis for the decision to place the employee in a specific vacancy. A copy of this documentation will be filed in the Reasonable Accommodation case file.

4. Once a placement decision has been made, the HRSC will prepare a Priority Consideration Certificate and forward it and relevant information provided by the losing activity's HRO on the employee's accommodation needs to the gaining activity's HRO. The form included in attachment 4 may be used as a template for identifying the employee's accommodation needs.

a. The HRSC will provide sufficient information on the accommodation needs of the employee in order for the gaining activity to make a determination whether the employee is able to perform the essential functions of the identified vacancy, with or without an accommodation.

b. Medical documentation will not be provided to the gaining activity during the placement determination process.

c. The RA POC at the gaining activity should be used as a resource to advise and educate the gaining supervisor on his/her responsibilities for reasonable accommodation. To further assist the gaining supervisor in understanding the reasonable accommodation process, attachment 4 is an information sheet that explains DON's

policy to provide reasonable accommodation to qualified employees and applicants with disabilities and outlines the threshold for determining undue hardship.

d. Once it has been determined that the employee is able to perform the essential functions of the vacant position and if the gaining activity cannot articulate an undue hardship, the employee will be placed into the identified position.

e. In accordance with established business processes, the HRSC or gaining HRO will make a written job offer to the employee.

f. Documentation of all the actions leading up to and including the employee's placement will be prepared by the HRSC and gaining HRO. A copy of this documentation will be placed in the Reasonable Accommodation case file.

g. The complete Reasonable Accommodation case file will be forwarded to the gaining activity's servicing EEO Office for retention.

h. Relocation costs will typically be borne by the employee. However, if the activity routinely pays for relocation expenses for other, similar reassignment actions, the activity may be obligated to assume these costs. For pay purposes under the National Security Personnel System (NSPS), employees are not eligible to receive an increase in base salary for a reassignment action that is a result of the reasonable accommodation process.

F. Declination of a Job Placement Offer: If the employee declines the job placement offer, his/her servicing HRO will be notified of the decision. The employee will be issued a letter denying his/her request for reasonable accommodation based on his/her decision to decline the offer of reassignment. Attachment 6, provided in Chapter 2, may be used as a sample for the required employee notification.

G. Determination that Employee Cannot be Accommodated in a Vacancy: If the gaining activity determines that the employee cannot perform the essential functions of the position and/or that they cannot accommodate the employee

and there are no other vacancies at the gaining activity, the HRO will document, in writing, the specific reasons for non-placement.

1. The gaining activity's Commanding Officer must sign this document and certify that the employee cannot be placed into the vacant position(s).

2. If the basis for non-placement is undue hardship, the gaining activity's DCPD and major command's legal counsel will review the analysis that led to this determination.

3. A copy of the analysis and the Commanding Officer's certification will be provided to the HRSC and the employee's HRO. Copies will be filed in the Reasonable Accommodation case file.

H. Continuing Placement Efforts: Placement efforts will continue for 60 calendar days until the employee is either placed, the list of vacancies is depleted, or the employee is separated.

1. The job search should be completed within 30-60 calendar days to avoid unnecessary delay in providing the employee reasonable accommodation.

2. The HRSC will document, in writing, all its efforts to place the employee. This document will be filed in the Reasonable Accommodation case file.

3. If the HRSC job search efforts are not successful, the HRSC will document its actions and return the job search package to the employee's HRO.

I. Final Action if Placement Efforts are not Successful: If the employee is not placed, despite the agency's best efforts, the employee will be issued a letter denying his/her request for reasonable accommodation because no vacant positions for which he/she is qualified were identified. Attachment 6, provided in Chapter 2, may be used as a sample for the required employee notification.

1. The activity's servicing EEO Office is responsible for maintaining the complete case file.

2. A summary of the actions, disability analysis and decisions will be forwarded to the major command's CDEEO for review.

**SAMPLE
DOCUMENTATION OF ACTIVITY JOB SEARCH EFFORTS**

Date search initiated: _____

Name of Employee: _____

Current Position: _____

In the space provided below, list all vacant positions, to include those that may become vacant in the next 60 calendar days, by title, series, grade level and as much other identifying information as possible.

Annotate next to each vacancy whether or not the employee is qualified for placement into the position. If the employee is not eligible for placement, provide a brief explanation for this determination.

<u>Title/Series/Grade</u>	<u>Other Information</u>	<u>Qualified/Not Qualified</u>

Employee placed into: Identify title, series, grade and any other relevant information

Effective date of placement: _____

Employee could not be placed. Date job search terminated:

SAMPLE CERTIFICATION LETTER FROM COMMANDING OFFICER

From: Commander of local activity
To: Major command's DCP
Via: Legal Counsel (major command's)

Subj: CERTIFICATION OF LACK OF INTERNAL VACANCIES FOR
REASONABLE ACCOMMODATION PLACEMENT

Ref: (a) DoN CHRM Subchapter 1606

Encl: (1) Reasonable Accommodation Case file

1. Enclosure (1) documents the activity's determination that (*name of employee*) could not be accommodated in their current position as a (*identify current position by title, series, grade*). Per reference (a), a job search at the activity level was conducted. No positions were identified for placement.

2. The case file, enclosure (1), to include documentation of the internal job search, is forwarded for review and concurrence. If you concur with the actions as described in enclosure (1), you are requested to document your concurrence in the space provided below.

3. If you have any questions, please contact

_____.

Reviewed and concur

Reviewed and concur

Legal Counsel Date

DCPP Date

SAMPLE LETTER TO HRSC TO CONTINUE JOB SEARCH EFFORTS

From:

To: Servicing HRSC

Subj: REQUEST FOR JOB PLACEMENT ASSISTANCE FOR
REASONABLE ACCOMMODATION CASE

Encl: (1) Documentation of activity's job search efforts
(2) CO's certification that employee could not be
placed at the activity level

1. The activity's efforts to place **identify employee** as part of the reasonable accommodation process were not successful. The HRSC's assistance in locating a position commensurate with his/her job qualifications and within the parameters identified by the employee is requested.

2. Information to assist the HRSC in its job search efforts is provided as enclosure(s) _____ .

3. If you have any questions on the above, please contact
_____ .

REASONABLE ACCOMMODATION INFORMATION SHEET

The goal of reasonable accommodation is to enable qualified individuals with disabilities to perform the essential functions of their position and to enjoy equal employment opportunities. Many disabled individuals are able to perform their jobs without accommodation. However, there may be barriers in the workplace that prevent others from performing tasks that they could otherwise do with accommodation. The Rehabilitation Act of 1973, which was modified by the Americans with Disabilities Act of 1990, requires federal agencies to accommodate applicants and employees who are qualified individuals with disabilities, unless to do so would impose an undue hardship on the operation of its programs or pose a direct threat to the safety of the employee or others.

In accordance with the Rehabilitation Act and the Americans with Disabilities Act, it is DON policy to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause an undue hardship or pose a direct threat to the safety of the employee or others. DON's policy to provide reasonable accommodation includes the reassignment of a qualified employee with a disability to a vacant position within the agency if the employee is able to perform the essential functions of the identified position, with or without accommodation.

Your Role as a Selecting Official

A vacancy in your organization has been identified as a possible placement option for an employee who needs an accommodation. Several preliminary actions have been completed:

- It has been determined that the employee meets the definition of a qualified individual with a disability, however, he/she cannot be accommodated in his/her current position of record. *A qualified individual with a disability is defined as an individual who, with or without reasonable accommodation, can perform the essential functions of the position in question and meets the experience or education requirements of the position in question.*

- The employee meets the basic qualifications for the vacancy identified in your organization.
- The employee must be considered for reassignment into a vacant position within the DON.

Your role is to assist the HRSC and the activity HRO in determining the essential functions of your vacancy.

The essential functions of a job are those functions that define the job. In other words, the job exists to perform those tasks. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

A job function may be considered essential for several reasons, including but not limited to, the following:

- The function may be essential because the position exists to perform that function.
- The function may be essential because of the limited number of employees available to whom the performance of the job function can be distributed.
- The function may be highly specialized so that the incumbent in the position is hired for his/her expertise or ability to perform the particular function.

Some examples of essential functions:

1. An electronics technician whose primary duty is servicing radar. An essential function would be the requirement to climb radar equipment.
2. A photographer whose primary duty is to photograph test events. Essential functions might include the requirement to travel, to climb ladders aboard ship and to transport equipment weighing up to 50 pounds each.

Evidence of whether a particular function is essential includes, but is not limited to, the following:

- The employer's judgment regarding a determination as to which functions are essential.
- Written job descriptions.

- The amount of time spent performing the function.
- The consequences of not requiring the incumbent to perform the function.
- The terms of a collective bargaining agreement.
- The work experience of past incumbents in the job.
- The current work experience of incumbents in a similar job.
- Actual duties performed by a person holding the job.

The essential functions of the job are determined on a case-by-case basis.

Sometimes an accommodation involves a job restructuring or altering the nonessential requirements of a particular job. The law, however, does not require change or alteration of the essential functions of a job.

If you require assistance in determining the essential functions of your position, you should consult with your activity's reasonable accommodation Advisory Team and/or reasonable accommodation point of contact. A description of the employee's medical restrictions is provided as an attachment to assist you in determining if the employee is able to perform the essential functions of your vacancy. Once the essential functions of the vacancy have been determined, you should document them in writing. **The prospective supervisor may use attachment 4 in Chapter 2 to document the essential functions of his/her vacancy.**

If the identified employee is able to perform the essential functions of your vacancy, with or without an accommodation, he/she will be reassigned into the position, unless the accommodation would cause an undue hardship for the agency or pose a direct threat to the safety of the employee or others.

There are a number of factors which must be considered before making a determination that a particular accommodation would constitute an undue hardship.

- Expense. The overall economic resources available to an agency are an important factor for consideration. There is no formula to use in making the determination whether or not an accommodation is too costly for implementation. Generally, an economic defense is not

successful as a reason for undue hardship, especially for an agency as large as the DON.

- Impact on Operations. Another undue hardship defense is that providing an accommodation would significantly interfere with the operation of the program. The nature of the accommodation, the number of employee at the activity, the impact on the operations, the potential for accommodation at another activity, the composition/structure/function of the workforce at the activity, and the geographic location separateness of the activity are factors to be considered. There may be occasions when it simply is not feasible to provide an accommodation due to the impact on the activity's operations.
- Violate the seniority provisions of a collective bargaining agreement.
- Fail to eliminate or reduce the direct threat of harm. Direct threat is a significant risk of substantial harm to the health or safety of the employee or others that cannot be reduced or eliminated by reasonable accommodation.

The threshold for undue hardship is very high. Therefore, exceptions to this threshold are very rare. All undue hardship claims will be reviewed by the activity's major command's Director, Civilian Personnel Program, and legal counsel.

**MEDICAL RESTRICTIONS AND
DESCRIPTION OF REQUEST FOR REASONABLE ACCOMMODATION**

Description of nature, severity, and duration of the individual's impairment.

Description of the activity(ies) that the impairment limits.

Description of the extent to which the impairment limits the individual's ability to perform the activity(ies).

Description why the individual requires reasonable accommodation or the particular reasonable accommodation request, as well as how the reasonable accommodation will assist the individual to perform the essential functions of the job, or enjoy a benefit of the workplace.