



## WASHOE COUNTY

# ADA Policy - Disability Accommodations and Anti-Discrimination

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## I. Policy

Washoe County is committed to equal employment opportunities for individuals with disabilities.

### A. Accommodations Provided

Washoe County is committed to providing equal employment opportunities to qualified individuals with disabilities. Consistent with this commitment, Washoe County will provide reasonable accommodations to disabled applicants and employees if the reasonable accommodation would allow the individual to perform the essential functions of the job, unless doing so would create an undue hardship or direct threat to the safety of the workplace.<sup>1</sup> 29 C.F.R. §1630.1

### B. No Discrimination

Washoe County prohibits discrimination and retaliation against employees and job applicants in employment-related decisions such as hiring, promotion or termination. Washoe County prohibits harassment against individuals on the basis of a disability, if the harassment creates a hostile work environment. Please see **Washoe County's Discrimination and Harassment Policy** for more information. 29 C.F.R. §1630.1

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## II. Applicability of ADA

A qualified individual is an employee or job applicant with a disability who can perform the essential functions of the job position with or without reasonable accommodation. 42 U.S.C. §12111(8).

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<sup>1</sup> This policy is a summary of Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), 42 U.S.C §§ 12101-12213, 29 C.F.R. §§1630 et seq. This policy is not meant to be an exhaustive statement of the law or the County's or its' employees' rights and duties. Washoe County intends to reserve all legal rights under the law.

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## III. Disability

### A. Disability Definition – Disability is Construed Broadly and Means:

1. A physical or mental impairment that substantially limits a major life activities;
2. A record or past history of such an impairment; or
3. Being regarded or treated as having such an impairment (this does not require accommodation but discrimination is prohibited). 29 C.F.R. §1630.2(g).

### B. Alcohol and Substance Use as a Disability

1. Alcohol – The disease of alcoholism meets the definition of a disability, which means that an employer may not make job decisions based on the fact that an employee is an alcoholic, attends AA meetings, or takes medication to curb the urge to drink. Reasonable accommodations may be made after engaging in the interactive process.

However, Washoe County may prohibit drinking at work and may generally hold all employees to the same standards of performance and conduct. An employee who can't meet those standards because of drinking may be disciplined and ultimately terminated, even if the employee is an alcoholic. 29 C.F.R. §1630.3(b); 29 C.F.R. §1630.16(b).

2. Drugs – a drug addict is protected as having a disability only if he or she is receiving recovery treatment and is not a current user. Reasonable accommodations may be made after engaging in the interactive process. An employer may discipline, discharge or deny employment to a person whose use of drugs adversely affects job performance or conduct to the extent that s/he is not qualified. 29 C.F.R. §1630.3(b); 29 C.F.R. §1630.16(b).

**C. Mitigating Measures with Positive Effects (medication, prosthetics)** are not considered when determining whether an individual has a disability. The exception is for corrective lenses, which may be considered when determining whether an individual has a disability. 29 C.F.R. §1630.2(j)(5).

## IV. Reasonable Accommodation Process

### A. Request for an Accommodation

1. *Employee Request:* An individual with a disability should inform Human Resources and the Department HR Representative that an accommodation is needed. The burden is on the employee to raise the need for an accommodation. EEOC Enforcement Guide No. 915.002.
  - a. The request may be made orally or in writing.
  - b. Washoe County encourages employees to make their request in writing on Washoe County's Reasonable Accommodation Request form which is found on the HR website. The request should include relevant information, such as a description of the accommodation being requested, the reason an accommodation is needed, and how the accommodation will help with performance of the essential functions of the job.
2. *Request on Behalf of Employee:* Someone other than the individual with a disability may request a reasonable accommodation on the individual's behalf, such as a family member, friend, health professional, or other representative.
3. By law, Washoe County may initiate the accommodation process in certain circumstances: Washoe County may initiate the reasonable accommodation interactive process without being asked if the County:
  - a. Knows that the employee has a disability;
  - b. Reasonably believes that the employee is experiencing workplace problems because of the disability;
  - c. Reasonably believes that the disability prevents the employee from requesting a reasonable accommodation.
  - d. If the employee states that the he or she does not need a reasonable accommodation, Washoe County will not continue with the interactive process, but will document this discussion.

See, Practice Note, Disability Accommodation under the ADA: Employer Obligations When There is No Request for Accommodation.

**B. Discussions to Establish Limitations and Explore Potential Accommodations**  
29 C.F.R. §1630(o)(3)

1. *Case by Case Job Analysis* - Human Resources, with the assistance of the Department, will analyze the job position and determine its essential functions. These are the fundamental job duties of the position.
2. *Interactive Dialogue* - Washoe County will engage in an interactive dialogue with the employee to clarify what the employee needs and to explore and identify potential reasonable accommodations. Washoe County encourages individuals to suggest specific reasonable accommodations. However, Washoe County is not required to make the specific accommodation requested and may provide an alternative, effective accommodation, to the extent any reasonable accommodation can be made without imposing an undue hardship on Washoe County.
3. Medical Information will be requested only if needed. Washoe County will *not* ask for records:
  - a. when both the disability and the need for a reasonable accommodation are obvious;
  - b. when the employee has already provided the County with sufficient information to substantiate that the employee has an ADA disability and needs a reasonable accommodation; or
  - c. that are unrelated to determining the existence of a disability and the need for an accommodation.
4. Washoe County may ask for medical information and/or records if the disability or need for accommodation is not obvious. 29 C.F.R. §1630.14(c).
5. When medical information is needed, Washoe County may:
  - a. require that the records come from an appropriate health care professional;
  - b. ask the employee to sign a limited release allowing Washoe County to submit a list of specific questions to the health care professional;

- c. discuss with the employee the nature of the employee's disability and functional limitations.
6. When insufficient medical information is provided, Washoe County may either:
  - a. allow the individual an opportunity to provide the missing information in a timely manner; or
  - b. require the individual to see a health care professional of Washoe County's choosing at Washoe County's expense.
7. *Failure to provide information.* If the employee fails to provide the requested information or see the designated health care professional, the employee's request for a reasonable accommodation may be denied.
8. *Records kept confidential.* Washoe County will keep confidential any medical information that it obtains in connection with a request for a reasonable accommodation. 29 C.F.R. §1630.14(4)(i).

### **C. Determinations**

Washoe County makes determinations about reasonable accommodations on a case-by-case basis considering various factors and based on an individualized assessment in each situation.

1. Determining the accommodation.

*Reasonable accommodation can include:*

- modifications or adjustments to a job application process
- making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- permitting the use of accrued paid leave or providing unpaid leave
- If more than one accommodation is available, know that it is permissible for the employer to choose the accommodation, if it is effective, that:
  - is less expensive or burdensome;
  - is easier to provide; or
  - requires the employee to remain on the job instead of providing unpaid leave.

*Reasonable accommodations do not include:*

- changing a primary job responsibility or eliminating an essential function of the position;
- lowering performance or production standards;
- providing paid leave beyond that which the County provides to similarly-situated employees;
- providing personal use items the employee needs to accomplish daily activities both on and off the job, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices;
- excusing a violation of a uniformly-applied employee conduct rule that is job-related and consistent with business necessity (for example, conduct rules relating to violence, stealing, or destruction of property);
- bumping other employees or creating a position;
- promoting the employee;
- helping the employee become qualified for a vacant position;
- reassigning the employee in a way that may violate a seniority system, unless there are special circumstances or exceptions;
- excusing past misconduct (before the employee requested an accommodation), even if it is the result of the employee's disability; or
- changing an employee's supervisor.

2. Determination of undue hardship

- a. Washoe County is not required to provide an accommodation if it will result in undue hardship. Washoe County will determine whether an accommodation poses an undue hardship. 29 C.F.R. §1630.2(p); [EEOC Enforcement Guide No. 915.002](#).
- b. An accommodation may pose an undue hardship if:
  - the accommodation is too difficult or expensive to provide in light of the County's size, financial resources and the needs of the County.
  - the reasonable accommodation is unduly disruptive to other employees' ability to perform their jobs; or
  - the employee seeking leave as a reasonable accommodation is unable to provide a fixed return date, and the employer cannot plan for the employee's return or permanently fill the position.

3. Determination of direct threat
  - a. Washoe County is not required to provide an accommodation that may risk the health or safety of the employer or employees. For example, it is unlikely that the County could reasonably accommodate an employee who has suffered from sudden and unpredictable seizures to continue in a position operating heavy machinery. EEOC Publication, The ADA – Questions and Answers.
  - b. The determination that an employee or applicant poses a direct threat will be based on an individualized assessment of that individual’s ability to safely perform the essential functions of the job. 29 C.F.R §1630.2(r).

**D. Notification to the Employee**

Washoe County strives to make determinations about reasonable accommodation requests expeditiously and will inform the employee once a determination has been made.

**E. Review or Modification**

The accommodation process is not set in stone and may need to be reviewed, especially if an employee’s disability changes or the needs of the business change.

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## **V. Disability Discrimination Prohibited**

**A. Policy**

Washoe County prohibits discrimination and retaliation on the basis of disability against employees and job applicants in employment-related decisions such as hiring, promotion or termination. Washoe County prohibits harassment against individuals on the basis of a disability if the harassment creates a hostile work environment. Please refer to Washoe County’s Discrimination and Harassment Policy for more information.



## **B. Complaint Procedure**

1. An employee or job applicant who believes he or she has been subjected to conduct that violates this policy should file a complaint as soon as possible following the offending conduct.
  - a. A complaint may be made orally or in writing. A complaint may be made to your direct supervisor, the next level above your direct supervisor, your designated Human Resources representative or Human Resources.
  - b. Please refer to **Washoe County's Discrimination and Harassment Policy** for more information and a Complaint form.
2. If you have not received a response within five (5) days after reporting an incident, please contact Patricia Knight, Employee & Labor Relations Manager, in Human Resources.

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## **VI. Administration of this Policy**

### **A. Responsibility**

The Human Resources Department is responsible for the administration of this policy. If you have any questions regarding this policy or questions about disability accommodations that are not addressed in this policy, please contact the HR Department.

### **B. Confidentiality of Accommodation Process**

HR will maintain all copies of accommodation requests, supporting medical information and documentation, including denials, in a file separate from the employee personnel file, consistent with the confidentiality requirements of the ADA.

### **C. Documentation of Process**

HR will document the analysis and reasons for accepting or denying an accommodation request.

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## **VII. Contacts**

Human Resources/Labor Relations Department, Assistant Director Patricia Knight

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## **VIII. Related Forms**

- Accommodation Request from Employee Form
- Accommodation Request from Applicant Form
- Complaint of Discrimination and/or Harassment found in Washoe County's Discrimination and Harassment Policy