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POLICY DIRECTIVE 2020-04

31 March 2020

SUBJECT: Reasonable Accommodation (RA) and Personal Assistance Services (PAS)

1. Effective. This policy directive is effective on the date signed and supersedes previous policy memorandums or directives with subject above.
2. Applicability. This policy applies to Hawaii National Guard (HING) Title 32 Dual Status Technicians, Title 5 Employees, and prospective applicants for employment.
3. Purpose. The HING is committed to providing RA and PAS to employees and applicants for employment to ensure that individuals with disabilities (IWD) and individuals with targeted disabilities (IWTD) enjoy equal access to all employment opportunities. This policy establishes the responsibilities and procedures that support the prompt, fair, and efficient processing of RA and PAS requests in accordance with statutory and regulatory requirements.
4. References.
 - a. Rehabilitation Act of 1973, September 26, 1973, as amended.
 - b. American with Disabilities Amendments Act (ADAA) of 2008.
 - c. EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 17, 2002.
 - d. EEOC Policy Guidance on Executive Order 13164, subject: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, October 20, 2000.
5. General.
 - a. The Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 requires federal agencies, as employers, to provide RA to qualified IWD, and PAS to IWTD, absent undue hardship.

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b. This policy is in compliance with the Affirmative Action for Individuals with Disabilities in Federal Employment, Rehabilitation Act, 29 C.F.R. § 1614.203, January 3, 2017. The Rule codifies a variety of obligations currently in place on federal agencies by management directives and Executive Orders. It also adds substantive affirmative action requirements mandating that federal agencies:

(1) Adopt employment goals for IWD and with sub-goals for IWTD;

(2) Provide PAS to certain employees who require them because of a targeted disability;

(3) Meet a number of other requirements designed to improve the recruitment, hiring, retention, and advancement of IWD and IWTD in the federal workforce;

c. RA and PAS removes the barriers that prevent IWD and IWTD from applying for or performing jobs for which they are qualified;

d. RA and PAS will ensure qualified IWD and IWTD have equal rights and opportunities. Both RA and PAS are case specific and fact specific processes.

6. Policy.

a. Requesting RA.

(1) RA requests may be requested at any time, either verbally or in writing, for an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition.

(2) Requests may be made by a designated representative such as a family member, health professional or anyone acting on the individual's behalf. For example, a doctor's note outlining medical restrictions is an acceptable form of a request for RA.

(3) Requests do not have to include any special words, such as reasonable accommodation, disability, or Rehabilitation Act. A request is any

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communication that informs the agency that an adjustment or change at work is required for a reason related to a medical condition. Requests do not require the employee or applicant to provide a specific accommodation when requesting.

(4) The RA process begins when an employee or applicant submits a verbal or written request for an accommodation. Requests may be submitted to the following:

(a) Supervisor/manager in the employee's immediate chain of command;

(b) Labor Relations Specialist (LRS);

(c) In the case of an applicant involved in the application process, any agency employee in the application process;

(d) Requests made to or submitted to individuals other than those identified above may not be properly tracked and processed.

b. Requesting PAS.

(1) The process for requesting PAS is the same as the process for requesting RA in determining whether such services are required and the agencies right to deny such requests when provision of the services would pose an undue hardship.

(2) The HING is only required to provide PAS if the individual is an employee of the HING and:

(a) Employee has a targeted disability;

(b) Employee requires the services because of his or her targeted disability;

(c) Employee will be able to perform the essential functions of the job, without posing a direct threat to safety once PAS and/or any required RA have been provided;

(d) Providing PAS will not impose an undue hardship on the HING;

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(e) A PAS provider will provide PAS to the IWTD. The HING may require PAS providers to perform services to more than one IWTD and perform tasks unrelated to PAS, but only to the extent that doing so does not result in failure to provide PAS in a timely manner;

(f) If an IWTD recommends a PAS provider, i.e. because the PAS provider has worked with the IWTD in the past, the HING will consider the individual's choice to the extent permitted by law;

(g) The HING is prohibited from taking adverse actions against job applicants or employees based on their need for or perceived need for PAS.

c. Processing Requests for RA and PAS.

(1) The LRS will complete the Confirmation of Request for Reasonable Accommodation/Personal Assistance Services form and assign a tracking number.

(2) The LRS will contact the employee or applicant within five (5) business days from date the request is received to review and discuss the following:

(a) The underlying disability or medical condition;

(b) The specific functional limitations resulting from the disability or medical condition, and how it relates to, or affect the employee or applicant's job function;

(c) Any suggestions the employee or applicant may have for a reasonable accommodation;

(d) If not already completed, the LRS will require the employee or applicant to complete the Request for RA/PAS form for documentation and processing purpose. This will not stop or delay the interactive process.

(3) The LRS may require that the employee or applicant provide medical documentation that explains:

(a) Nature of the disability;

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(b) Need for RA or PAS;

(c) How the requested accommodation will assist in applying for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.

(4) The LRS has the right to request relevant supplemental medical information if the information received was insufficient and to have the medical information reviewed by a medical expert chosen and paid for by the HING.

(5) Information obtained from the employee, applicant or designated representative regarding the medical condition and related facts, documents, etc. will be kept confidential to the extent required by applicable law and will be shared only with individuals involved in the approval process.

(6) The LRS may need to consult with HING personnel, i.e. HING leadership, State Judge Advocate, or outside sources to obtain necessary information in order to make a determination.

(7) Decisions on RA or PAS requests will be expedited when:

(a) The RA or PAS is required to enable an applicant to apply for a job;

(b) The RA or PAS is required to enable the employee or applicant to apply for a job or attend a short notice event.

(8) In considering whether an RA or PAS can be provided, the employee's supervisor/manager and the LRS should identify the essential job functions of the employee's position, functional limitations to completing the essential job functions and whether there are any reasonable alternative approaches to meeting essential job functions.

(9) When a RA or PAS cannot be provided immediately, an interim accommodation will be identified in order to avoid, for example, a worsening of symptoms or exacerbation of a medical condition. Under extenuating circumstances, the time for processing an RA or PAS request and providing an accommodation or services will be extended as reasonably necessary. An extension will be limited to circumstances where it is necessary and only for as long as required to manage the extenuating circumstance.

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(10) Reassignment to another position may be an effective accommodation if no other accommodation is available to enable performance of the essential functions of the job, or if the only effective accommodation would cause undue hardship.

(11) The LRS will work with the Human Resource Office (HRO) and employee's supervisor/manager to identify vacant positions, or positions identified as becoming vacant within the agency for which the employee may be qualified with or without RA.

(12) The HING has the authority to choose among possible RAs as long as the chosen RA is effective.

d. Approving/Denying Requests for RA and PAS:

(1) The LRS will notify the employee or applicant, in writing, when a determination is made to approve, deny, or offer alternate accommodation.

(2) For approved requests, the LRS will coordinate with the employee's supervisor/manager with the implementation of the accommodation. It is the responsibility of the employee and supervisor/manager to ensure the approved accommodation or modification is implemented within the allotted time limits. If an assistive device or equipment is required, the supervisor/manager must ensure to follow appropriate policies and regulations prior to procuring equipment. Failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

(3) For denied requests, the denial notification will explain the reason(s) for the denial, available internal appeal process or the informal dispute resolution process and the right to file an EEO complaint and invoke other statutory processes. If the denial is for reasons of undue hardship or the RA is not required by the Rehabilitation Act, an alternate accommodation will be explored. Requests will not be denied for reasons of cost, and that IWD are not excluded from employment due to the anticipated cost of a RA, if the resources available as a whole, excluding those designated by statute for a specific purpose that does not include RA, would enable it to provide an effective RA without undue hardship.

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(4) Denial of an accommodation does not prevent the employee or applicant from making another request at a later time if circumstances change and an accommodation is required due to limitations from a disability, i.e. the disability worsens or assignment of new duties require an additional or different RA. Additionally, the LRS may not refuse to process a request for RA, and a RA may not be denied, based on a belief that the accommodation should have been requested earlier, i.e. during the application process.

e. Time Limits for Processing Requests for RA and PAS.

(1) The time frame for processing a request, including providing the accommodation and absent any extenuating circumstances, is as soon as possible but not later than 45 business days from the date the request is made. The timeframe begins when a verbal or written request for RA and PAS is made.

(2) Where there is a delay in either processing a request or providing a RA or PAS, the LRS will notify the employee or applicant of the reasons for the delay, including any extenuating circumstances that justify the delay. Unnecessary delays in processing RA and PAS requests can result in a violation of the Rehabilitation Act.

(3) In certain circumstances, an RA or PAS request will require an expedited review and decision. This includes an accommodation needed to enable an applicant to apply for a position or to enable an employee to attend a short notice event. Cases that require expedited processing will be adjudicated as soon as possible.

f. Informal Dispute Resolution.

(1) An employee or applicant dissatisfied with the resolution of a RA or PAS request may ask the Human Resource Officer to reconsider the decision. Request for a reconsideration must be submitted within ten business days of receiving a written denial. A request for reconsideration will not extend the time limits for initiating administrative, statutory, or collective bargaining claims. Requests may be submitted to the Human Resource Officer at the address above.

(2) An employee or applicant has the right to file an informal complaint if he/she believes the denial of the RA or PAS request is based on discrimination

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or harassment due to a disability. Complainant must contact an EEO Counselor within 45 calendar days from the date of the most recent alleged unlawful practice or discriminatory act, or within 45 calendar days from the date the complainant was notified or became aware of the alleged violation.

(3) Whenever possible and in accordance with the desires of the complainant, the matter will be resolved in an informal setting. Informal resolution may include mediation when the parties agree. These mediation services may include consultation with the complainant and any other parties involved, either separately or jointly. Confidentiality in mediation will be maintained.

g. Information Tracking and Reporting.

(1) The Reasonable Accommodation or Personal Assistance Services Information Tracking Form will be used to track RA and PAS requests. Employees or applicants may contact the LRS directly for updates on pending requests.

(2) Records will be maintained and secured at the HRO for the duration of the employee's tenure, and for non-select applicants one calendar year after the selection date.

(3) RA and PAS requests will be used to report the following information:

(a) Types of reasonable accommodation;

(b) Occupational series, grade level and organization;

(c) Whether the accommodation was needed to apply for a job, perform essential functions of a job or enjoy the benefits and privileges of employment;

(d) Whether request was granted or denied and basis for denial;

(e) Identity of the deciding official;

(f) Processing time (Number of days).

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7. Responsibilities.

a. Human Resources Officer.

- (1) Approving authority for RA and PAS requests.
- (2) Provides oversight and administration of the RA and PAS program.
- (3) Ensures statutory and regulatory requirements are enforced.

b. Labor Relations Specialist (LRS).

- (1) Manages the RA and PAS program.
- (2) Receive, log, review, process and track RA and PAS request.
- (3) Consult with HING leadership, State Judge Advocate, and outside sources as required.
- (4) Provides guidance, training, and assistance to managers, supervisors, employees, and applicants regarding the RA and PAS program.
- (5) Disseminate information on available RA and PAS resources.

c. State Equal Employment Manager (SEEM).

- (1) Conduct training annually for supervisors and managers and newly appointed supervisors and managers.
- (2) Track and report RA requests in the annual Individuals with Disabilities Affirmative Action Program Plan.
- (3) Submit RA data to the National Guard Bureau EEO Office annually.

d. Supervisors/Managers.

- (1) Ensure employees are aware that RA is available for IWD.
- (2) Receive, review and forward RA requests to LRS within five (5) business days.

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(3) Participate in the interactive process to ensure accommodations meet the employee's needs and enables the employee to perform the essential functions of the position.

(4) Notify employee of actions taken and status of RA request.

(5) In the case of higher-level supervisors, receive and consider requests reconsideration from employees whose RA requests were previously denied by a subordinate supervisor.

e. Employee or Applicant with a Disability or Medical Condition.

(1) Cooperate in the interactive process. Failure to do so may result in a denial for RA or PAS.

(2) Promptly provide any requested medical information about the disability, functional limitations, and need for RA or PA.

(3) Submit any request for reconsideration to the approving authority within ten business days from date of receipt of the denial notification.

8. Annual Review. An annual review will be conducted for all approved RA and PAS requests to determine if there is a continuing need for the accommodation. The review will be conducted on or about the anniversary date of the initial approval of the RA and PAS request.

9. Proponent. The HRO is the proponent for this policy. Questions may be directed to Mr. John Yim, Deputy HRO at (808) 672-1555.

3 Encls
Encl A – Definitions
Encl B – Examples of RA
Encl C – Request for RA/PAS Form

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STEPHEN F. LOGAN
Colonel, HING
Acting Adjutant General

Enclosure A Definitions

1. Reasonable Accommodation:

a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position;

b. 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;

c. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment similar to employees without disabilities.

2. Essential Functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be essential if, among other things:

a. The position exists specifically to perform the function;

b. There are a limited number of employees available among whom the performance of that job function can be distributed;

c. The function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

3. Extenuating Circumstances: Factors that could not have reasonably been anticipated, or avoided in advance of the RA or PAS request.

4. Individual with a Disability (IWD): Any person who has a physical or mental impairment that substantially limits one or more of such person's major life activities; has a record of such impairment, or regarded as having such an impairment.

5. Major Life Activities include, but are not limited to, the following:

a. In general, care for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working;

b. The operation of a major bodily function, including functions of the immune system, special sense organs and the skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine,

hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

6. **Qualified**, with respect to an individual with a disability, means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the position.

7. **Undue Hardship** is an action requiring significant difficulty or expense incurred by the Hawaii National Guard. In determining whether an accommodation would impose an undue hardship, factors considered include:

a. The nature and net cost of the accommodation needed;

b. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number or persons employed at such facility, and the effect on expenses and resources;

c. The overall financial resources of the Hawaii National Guard, the overall size of the organization with respect to the number of its employees, and the number, type, and the location of its facilities;

d. The type of operations, including the composition, structure and functions of its workforce and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question; and

e. The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

8. **Targeted Disability** is a subset of conditions that would be considered disabilities under the Rehabilitation Act. The federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment, that are above and beyond the barriers faced by people with a broader range of disabilities. A list of targeted disabilities can be found at https://www.opm.gov/Forms/pdf_fill/sf256.pdf.

9. **Personal Assistance Services** are services that help individuals who, because of a targeted disability require assistance to perform basic activities of daily living, like eating and using the restroom, during work hours and job-related travel.

Examples of Reasonable Accommodations

1. Job restructuring involves modifications such as reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability, as well as altering when and/or how a function, essential or marginal is performed. Supervisors; however, will not reallocate essential functions as a reasonable accommodation.
2. Leave, whether accrued paid leave or unpaid leave is a form of RA when necessitated by an employee's disability. Supervisors are not required to provide paid leave beyond that which is provided to similarly situated employees. When leave is used as an RA, employees will use accrued paid leave before beginning any allotted unpaid leave. Supervisors should remember that there might be FMLA implications when considering leave as an RA.
3. For certain positions, the time during which an essential function is performed may be critical and a modification may disrupt operations and lead to undue hardship. This could affect whether a supervisor can grant a request to modify an employee's schedule or if reassignment is more appropriate.
4. Modified Workplace Policies constitute an RA when necessitated by an employee's disability-related limitations, absent undue hardship. Modification under these circumstances only applies to the IWD and not to other employees in the supervisor's section or working unit.
5. Specific to individuals who are deaf or hard of hearing, supervisors should consider amplification devices, closed caption decoders and captioning for training tapes, signaling devices, teletypewriters (TTYs), sign language interpreters, and TTY modems.
6. Specific to individuals with visual impairments, supervisors should consider Braille displays, Braille embossers, portable note-takers, print enlargers, scanner/readers, and screen readers.
7. Specific to individuals with impaired dexterity, supervisors should consider alternative input systems, alternative keyboards, alternative pointing devices, keyboard enhancement programs, and voice recognition systems.
8. Reassignment to a vacant position must be provided to an employee (not an applicant) who, because of a disability, can no longer perform the essential functions of his/her current position, with or without an RA; unless the supervisor can show that reassignment would be an undue hardship. The employee must be qualified for the position, which means that he/she has the requisite skill, experience, education, and other job-related requirements of the position (not necessarily best qualified). The employee must also be able to perform the essential functions of the new position, with or without an RA. The HING is not obligated to assist the employee to become qualified for the new position, unless the HING would normally provide such training to an

individual transitioning into the position. Reassignment is the RA of last resort and is only required if; (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position; (2) all other RAs would impose an undue hardship. "Vacant" means that the position is available when the employee asks for reasonable accommodation, or that the employer knows that it will become available within a reasonable amount of time. The employer does not have to bump another employee from a job in order to create a vacancy; nor does it have to create a new position.

9. Of the above-cited examples of RA, only reassignment is mandatory and only under the circumstances stated. The other examples should be considered on a case-by-case basis and may not always be appropriate.