

Maryland Judicial Branch

2.1 POLICY ON ACCOMMODATION OF DISABILITIES

(a) Purpose and Scope

(1) Purpose

- (A) The Judicial Branch is committed to providing reasonable accommodations to its employees and applicants for employment to ensure that individuals with disabilities enjoy equal access to employment opportunities.
- (B) This policy sets forth the process for making and resolving a request for accommodation for employees and applicants for employment.
- (C) Retaliation against an applicant or employee because he or she has requested accommodation of a disability or participated in the processing of a disability accommodation request or complaint is prohibited.

(2) Scope

- (A) This policy applies to:
 - (i) applicants for employment; and
 - (ii) all persons employed by a court, unit, or judicial entity organized within the Judicial Branch
 - (I) including regular, temporary and contractual employees;
 - (II) regardless of the source of the employee's compensation (*e.g.*, county, state, federal, grant).
- (B) This policy does not apply to:
 - (i) the employees of the Register of Wills or the Orphans' Court; and
 - (ii) judges, except to the extent that certain judges serve as the administrative head of a judicial entity and, therefore, perform administrative duties consistent with this policy.

(b) Definitions

- (1) **ADA** – Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA) of 2008.
- (2) **ADA Coordinator** – For purposes of this policy, an employee responsible for receiving and facilitating a request for a disability accommodation by an employee or applicant.
- (3) **ADA Officer** – The employee responsible for coordinating the efforts of the Judicial Branch concerning compliance with the ADA and providing technical assistance to administrative heads and ADA coordinators.

(4) Administrative Head:

- (A) For the Appellate Courts, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Judge of the Appellate Court where the employee works for all other Appellate Court employees;
- (B) The Clerk of the Circuit Court for all employees under the Clerk's supervision;
- (C) The County Administrative Judge for all employees under the supervision of the Administrative Judge;
- (D) For the District Court, the Chief Judge of the District Court, the Chief Clerk, the Administrative Clerk, or Administrative Commissioner for all employees under his or her supervision;
- (E) For the Administrative Office of the Courts, the State Court Administrator;
- (F) For units organized within the Judicial Branch, the head of the unit where the employee works; and,
- (G) Any person who, by express written designation, serves as the authorized designee of an administrative head.

(5) Direct Threat – A significant risk to the health, safety, or wellbeing of individuals with disabilities or others when this risk cannot be eliminated by reasonable accommodation.

(6) Disability – A physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

(7) Essential Functions – The job activities that are determined by the employer to be essential or core to performing the job; these functions cannot be modified. Factors to consider in determining whether a function is essential include:

- (A) Whether the reason the position exists is to perform that function;
- (B) The number of other employees available to perform the function or among whom the performance of the function can be distributed; and
- (C) The degree of expertise or skill required to perform the function.

(8) Fair Practices Officer (FPO) – An employee in the Fair Practices Department of the Administrative Office of the Courts responsible for ensuring compliance with federal and state equal opportunity laws and overseeing the investigation of complaints of discrimination, harassment, and retaliation brought under this policy and under state and federal law. For all employees, other than employees of a Circuit Court subject to the supervision of a County Administrative Judge, the FPO is designated to receive and investigate complaints of discrimination, harassment, and retaliation.

(9) Judicial Entity – The Court of Appeals; the Court of Special Appeals; a Circuit Court or any department thereof; the District Court or any department thereof; the Administrative Office of the Courts or any department thereof; a unit of the Judiciary.

(10) Judiciary Human Resources Department (JHRD) – The department within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; recruitment; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.

- (11) Major Life Activities** – Term includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- (12) Qualified Individual** – An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- (13) Reasonable Accommodation** – A modification or adjustment to a position, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to perform the essential functions of the position. Reasonable accommodations may include, but are not limited to: making existing facilities readily accessible to and usable by persons with disabilities; job restructuring; modifying work schedules; reassignment to a vacant position; or acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies.
- (14) Substantially Limiting** – An impairment is substantially limiting if it prohibits or significantly restricts an individual's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity. The determination of whether an impairment substantially limits a major life activity depends on the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact of the impairment.

Note: Under the ADAAA regulations, the determination of whether an impairment substantially limits a major life activity requires an individualized assessment, and an impairment that is episodic or in remission may also meet the definition of disability if it would substantially limit a major life activity when active. Some examples may include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder, and schizophrenia. An impairment, such as cancer that is in remission but that may possibly return in a substantially limiting form, is also considered a disability under the ADAAA regulations.

- (15) Undue Hardship** – An accommodation or action requiring significant difficulty or expense when considered in light of factors such as the size, financial resources, and the nature and structure of the employer's operation. Undue hardship also refers to an accommodation that is unduly expensive, substantial, or disruptive, or one that would fundamentally alter the nature of the position.
- (16) Unit** – The Attorney Grievance Commission, the Client Protection Fund, the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure.

(c) Policy Statements

(1) Reasonable Accommodations

- (A) The Judicial Branch is committed to ensuring equal opportunity in employment for its employees with disabilities.

- (B) It is the policy of the Judicial Branch to provide reasonable accommodations:
 - (i) when an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
 - (ii) when an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
 - (iii) when an employee with a disability needs an accommodation to enjoy equal access to the benefits and privileges of employment.
- (C) It is the policy of the Judicial Branch to provide such reasonable accommodations unless doing so causes a direct threat to the individual or others in the workplace and the threat cannot be eliminated by reasonable accommodation or the accommodation imposes an undue hardship on the operation of the employing court, unit, or judicial entity's business or would change the essential functions of the position.

(2) Disabilities Related to Pregnancy

- (A) It is the policy of the Judicial Branch to provide reasonable accommodations for disabilities caused by or attributed to pregnancy.
- (B) Requests for accommodations for such disabilities should be submitted and handled using the request procedures set forth in this policy.

(3) Genetic Information

- (A) The Genetic Information Nondiscrimination Act prohibits employers from requesting or requiring genetic information of an individual or a family member of the individual, except as specifically allowed by law.
- (B) "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 services, and genetic information concerning 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.
- (C) Employees are requested to refrain from providing genetic information when responding to a request for medical information under this policy.

(4) Confidentiality

- (A) It is the policy of the Judicial Branch to treat a request for a reasonable accommodation as confidential to the maximum extent allowed by law.
- (B) Documentation of a request for an accommodation and any medical information submitted in support of the request, including information regarding a medical condition or history, shall be treated as a confidential medical record and be maintained apart from the employee's personnel file.

(d) General Management Responsibilities

(1) Each administrative head shall:

- (A) Ensure that each supervisor, manager, and director who reports to the administrative head is familiar with the Judicial Branch policy providing for the reasonable accommodation of persons with disabilities in the workplace, specifically that
 - (i) The Judicial Branch provides reasonable accommodations:
 - (I) when an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
 - (II) when an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
 - (III) when an employee with a disability needs an accommodation to enjoy equal access to the benefits and privileges of employment; and
 - (ii) A substantiated complaint of discrimination or retaliation based on disability shall result in remedial or disciplinary action, or both, up to and including termination of employment; and
- (B) Designate a person to serve as the ADA coordinator for the court, unit, or judicial entity under the administrative head's supervision and communicate that designation in writing to the employees under his or her supervision and to the Judicial Branch FPO and ADA officer.

(e) Requests for Accommodations

(1) Applicant Process

- (A) Applicant Responsibilities
 - (i) An applicant, or a representative acting on behalf of an applicant, may request an accommodation pertaining to the interview process either orally or in writing.
 - (ii) An applicant may request an accommodation through any of the following: the JHRD recruiter, the administrative head, or the ADA coordinator.
 - (iii) Applicants are encouraged to use the ADA Request for Accommodation form available at http://mdcourts.gov/hr/forms_brochures/adarequest.pdf.
- (B) Management Responsibilities
 - (i) If the applicant does not submit an accommodation request form, the JHRD recruiter, the administrative head, or the ADA coordinator shall complete a request form on behalf of the applicant upon being made aware of an oral request.
 - (ii) The JHRD recruiter, the administrative head, or ADA coordinator shall immediately send a copy of the request to:
 - (I) the administrative head;
 - (II) the ADA coordinator (if he or she is not the administrative head); and
 - (III) the ADA officer (but not for positions under the supervision of a County Administrative Judge).
 - (iii) The administrative head, after consulting with the ADA coordinator, or the ADA officer, may authorize an accommodation for an applicant that he or she determines to be reasonable.

(2) Employee

- (A) An employee may request an accommodation, either orally or in writing, by directing the request to the employee's supervisor, manager, or ADA coordinator.
- (B) Employees with access to CONNECT are directed to submit a request for accommodation through CONNECT. Instructions for completing and submitting a request in CONNECT are available at <http://mdcourts.gov/hr/pdfs/ada/employeesaccommodationrequest.pdf>.
- (C) Circuit Court employees and other employees without access to CONNECT are encouraged to use the ADA Accommodation Request form available at http://mdcourts.gov/hr/forms_brochures/adarequest.pdf.

(f) Responding to a Request for Accommodation

- (1)** Under this policy, the Judicial Branch ADA officer provides technical assistance and guidance to the administrative head of a Circuit Court and his or her designated ADA coordinator upon request. The requirement that an administrative head consult with the ADA officer, report requests, and submit documentation to the ADA officer does not apply to requests for accommodation made by employees of the Circuit Court under the supervision of the County Administrative Judge.

(2) Receipt of Request Orally or in Writing

- (A) If no accommodation request form has been completed, the supervisor, manager, or ADA coordinator will direct the employee to complete the ADA Request for Accommodation form.
- (B) If the employee has made an oral request, the supervisor, manager or ADA coordinator shall memorialize the oral request of the employee.
- (C) The supervisor, manager or ADA coordinator shall immediately send a copy of the request to:
 - (i) the administrative head;
 - (ii) the ADA coordinator (if he or she is not the administrative head); and
 - (iii) the ADA officer.

- (3)** If the administrative head, after consulting with the ADA coordinator, the ADA officer, and the supervisor, determines that further dialogue is unnecessary to identify an effective reasonable accommodation and to determine that an accommodation is warranted, the administrative head may authorize an accommodation that he or she determines to be reasonable and effective.

(4) Interactive Process

- (A) If the request is not granted pursuant to subsection (3) above, the ADA coordinator, ADA officer, or designee should meet with the employee as soon as possible to facilitate the interactive process between the employee and the employer.

- (B) During the interactive process, the employee should communicate how the disability affects his/her ability to perform the essential functions of the job and identify what workplace accommodations are necessary to assist the employee in performing the assigned job duties.
- (C) The ADA coordinator, ADA officer, or designee should discuss the essential functions of the position with the employee and the precise job-related limitations and offer suggestions for possible reasonable and effective accommodations.
- (D) The ADA coordinator, ADA officer, or designee may direct the employee to submit medical documentation establishing the employee's disability, the need for an accommodation, and any functional limitations as specified in the Medical Inquiry and Release of Information form available at http://mdcourts.gov/hr/forms_brochures/adamedicalinquiryform.pdf.
- (E) The employee's supervisor should provide the ADA coordinator, the ADA officer, or designee with information regarding the essential functions of the position and the impact the requested accommodation will have on the operations of the department, unit, or office. The supervisor should also provide input to the ADA coordinator, ADA officer, or designee concerning the effectiveness of each potential accommodation in enabling the employee to perform the essential functions of the position.

(5) Granting or Denying the Accommodation Request

- (A) Upon completion of the interactive process, the ADA coordinator, ADA officer, or designee is responsible for assessing whether the employee's requested workplace accommodation is reasonable and determining what, if any, accommodation is most appropriate for both the employee and the employer.
- (B) The ADA coordinator, ADA officer, or designee shall recommend an appropriate action to the administrative head.
- (C) The administrative head may adopt or reject the recommendation of the ADA coordinator, ADA officer, or designee.
- (D) Consideration may be given to the employee's preference; however, the administrative head may select and implement the reasonably effective accommodation that is most cost-effective and easiest to provide.
- (E) The administrative head, ADA coordinator, or ADA officer will provide a formal response to a request for accommodation within 30 calendar days of receipt of the request, and will notify the employee if a longer period is needed.
- (F) The ADA coordinator or ADA officer shall document the decision to grant or deny the accommodation request on the Disability Accommodation Request Resolution form available on the website http://mdcourts.gov/hr/forms_brochures/adarequest.pdf.

- (G) The formal response granting or denying a request will also be documented in CONNECT for those employees serviced by CONNECT.
- (H) Copies of all paperwork will be forwarded to the ADA officer or ADA coordinator for central record keeping.

(g) Further Review or Action

(1) Informal Review of Accommodation Requests

- (A) An applicant or an employee who is dissatisfied with the resolution of his or her request for accommodation may seek informal reconsideration or review by filing an ADA Accommodation Complaint Form as follows:
 - (i) Employees of the Circuit Courts (under the supervision of the County Administrative Judge) may seek informal reconsideration or review by filing a complaint with the Circuit Court's EEO coordinator, ADA coordinator, or administrative head.
 - (ii) Employees of the Clerks' offices, courts, units, and judicial entities other than the Circuit Courts may seek informal reconsideration or review by:
 - (I) Filing a complaint with the ADA Officer:
Judiciary Human Resources Department
Attention: ADA Officer
580 Taylor Avenue, A-1
Annapolis, Maryland 21401, or
 - (II) Sending a complaint form electronically to aoc.grievances@mdcourts.gov. Telephone inquiries may be directed to (410) 260-3678.
- (B) ADA Accommodation Complaint forms are available at <http://mdcourts.gov/hr/adaforms/jhrd211grievanceform.pdf>.

(2) Complaints Regarding Disability Discrimination or Retaliation.

- (A) An employee or applicant who believes that he or she has been discriminated against based on his or her disability, including the denial of an accommodation request, or retaliated against for exercising a right under a disability or civil rights statute may file a complaint under the Judicial Branch Policy Prohibiting Discrimination, Harassment, and Retaliation, Sections (e)(5) and (6).
- (B) An applicant or employee of a Circuit Court (under the supervision of the County Administrative Judge) may file a complaint with the supervisor, manager, EEO coordinator or administrative head (County Administrative Judge).
- (C) An applicant or employee of the Clerks' offices, courts, units, and judicial entities other than the Circuit Courts may file a complaint with:
 - (i) The supervisor, manager, or administrative head; or
 - (ii) The Fair Practices Officer
Fair Practices Department
Internal Affairs Division

580 Taylor Avenue, A-2
Annapolis, Maryland, 21401

(iii) Complaint forms may be submitted to the FPO by email to fairpractices@mdcourts.gov.

(D) Employees and applicants are encouraged to use the complaint form available on the Fair Practices Department webpage at <http://mdcourts.gov/fairpractices/forms/fpd305eeocomplaintform.pdf>.

(3) External Complaints: An employee may also file a charge with the Maryland Commission on Civil Rights, or the U.S. Equal Employment Opportunity Commission. Notice of this option does not constitute legal advice, nor does it represent all legal remedies or options available to an employee.

(h) Exceptions: The Chief Judge of the Court of Appeals or the State Court Administrator may make exceptions to any provision of this policy.

(i) Interpretive Authority: The JHRD is responsible for interpretation of this policy.

(j) Not a Contract: This policy does not constitute or create an express or implied contract. It is not intended to, and does not, create contractual obligations with respect to any matter it covers.