

Arkansas National Guard Human Resources Office



Guide to Reasonable Accommodation

(9 September 2013)

People with disabilities in the Arkansas National Guard Technician Workforce

I. Introduction

The purpose of this guide is to provide information on reasonable accommodation to qualified individuals with disabilities. The Rehabilitation Act of 1973, with amendments requires the employer to consider ways to alter, restructure, or change the manner of doing a job in order to allow a qualified person with a disability to perform the essential functions of a particular job, to be considered for a position he or she desires, or to enjoy equal employment opportunities.

II. Reference

Executive Order 13164, July 26, 2000

Title 1 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101-12117

Rehabilitation Act of 1973, 29 U.S.C. Section 791

Equal Employment Opportunity Commission (EEOC) Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, October 20, 2000

Federal Sector Equal Employment Opportunity, 29 C.F.R.1614, November 9, 1999

National Defense Authorization Act for FY2008 [Public Law 110-181]

III. Reasonable Accommodation

The Arkansas National Guard (ANG) is committed to ensure requests for reasonable accommodation are handled in an effective and expeditious manner. It is the obligation of ANG to provide reasonable accommodation to qualified individuals with disabilities, unless to do so would cause undue hardship to ANG. Examples of reasonable accommodations include providing interpreters, readers, or other personal assistance; modifying job duties; restructuring work sites; providing flexible work schedules or work sites; and providing accessible technology or other workplace adaptive equipment. The ANG has the following objectives:

- To enable the individual employee to perform the essential functions of the position, or to gain access to the workplace
- To enable an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job
- To allow an employee with a disability an opportunity to enjoy equal benefits and privileges of employment are enjoyed by other similarly situated employees without disabilities

IV. Requesting Reasonable Accommodation

Individuals requesting a reasonable accommodation should complete the Request for Reasonable Accommodation form (Attached). The application for reasonable accommodation may be submitted to the supervisor or the Equal Employment Office. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process **MUST BE KEPT CONFIDENTIAL**. All medical information obtained in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. If requests are given to the supervisor or hiring official they will immediately notify the EEO Office for assistance in processing the request.

V. Processing a Request for Reasonable Accommodation

The supervisor will be responsible for considering and approving requests for reasonable accommodation in coordination with the Equal Employment Opportunity (EEO) Office. The EEO staff will communicate with the requester to ensure that all effective accommodations have been considered where the specific limitation, problem or barrier is unclear. The EEO office will oversee the agency's reasonable accommodation process and will act as a resource for individual with disabilities and agency decision makers.

VI. Determining Reasonable Accommodation

Requests will be granted or denied expeditiously absent extenuating circumstances. After a request for accommodation has been made the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means the individual requesting the accommodation must communicate with the responsible designated agency official about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation and alternative accommodations that may be effective in meeting the requestor's needs. In the event of a delay, a conversation with the requestor will occur to consider providing temporary measures.

If a requestor's disability and/or need for accommodation are not obvious or already known, the agency is entitled to ask for and receive medical information showing that the requestor has a covered disability under the Rehabilitation Act definition that requires accommodation. It is the responsibility of the requestor to provide appropriate medical information to the agency pertaining to the disability and/or need for accommodation.

All accommodation approvals or denials will be made in writing with a copy forwarded to the EEO office. Any denial will include specific reasons for denial. In addition to being in writing and including the specific reasons for the denial, denials must also identify the employee or office that made the decision. The requestor may appeal the denial to the next level of supervision that will also provide their decision in writing. Denials must include information about the individual's right to file an EEO complaint, to invoke other statutory process and information about the availability of the informal dispute resolution process.

VII. Time Frames for Processing Requesting Reasonable Accommodation

The agency shall process requests for reasonable accommodation and provide accommodations as soon as possible but decisions regarding accommodations should be rendered within 30 calendar days of the date request was received. If additional medical documentation is needed, the decision to grant an accommodation shall be made within 30 calendar days of the date all such additional documentation is received or obtained by the department. Extenuating circumstances are circumstances that cannot be reasonably anticipated or avoided in advance of the request for accommodation or are beyond the agency's control. When extenuating circumstances are present the time for processing a request for reasonable accommodation and providing accommodation will be extended as reasonably necessary and a conversation with the requestor will occur to consider providing temporary measures.

VIII. Military Technicians

Military Technicians also known as Dual Status Technicians may make reasonable accommodation requests, however, they must meet all applicable requirements for continued military service. However when a Military/Dual Status Technician loses their military membership they can lose their full-time technician job as well. The National Defense Authorization Act (NDAA) for FY 2008 [Public Law 110-181] amended Section 10216 of Title 10, United States Code to add subsection (g) which in certain circumstances can provide for the retention of military technicians who lose their military membership, and therefore their dual-status (DS) military technician positions, **due to a combat-related disability.**

Under the provisions of the FY 2008 NDAA, individuals may be retained as non-dual status (NDS) military technicians as long as the disability:

- (a) does not prevent him/her from performing the duties of the NDS position, and
- (b) he/she is not disqualified from performing the duties because of performance, medical or other reasons.

It does not require placement into the same [DS] position the technician held prior to mobilization and injury. Nor is the technician subject to mandatory placement as a result of the statute. State HR professionals will make every effort to place the technician into a valid NDS designated position with an established NDS position description. If an exception PD is required, normal procedures to obtain approvals will be utilized. **Inherently military positions/functions (e.g. military command, pilot, aircrew, key staff) will not be converted to NDS to accommodate placement under this authority.**

Eligibility for conversion to NDS will be determined on the basis of:

(a) examination of the DD Form 214 and/or military orders to validate military service and combat-related disability; NGB Form 22; award of the Purple Heart, due to injury as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war; *and*

(b) the attending physician's evaluation of position requirements and determination of the technician's work capacity assessment or "job readiness" certification. Certification of "job readiness" is a determination that the technician is likely to succeed in the performance of the duties of the position. A "qualified" individual with a disability is a technician who, with or without reasonable accommodation, can perform the essential functions of the position.

Selectees for continued service as non-dual status technician positions must meet basic education, experience, training and physical requirements set by NGB, DoD or OPM. They must also meet any selective placement factors that apply to the position being filled. If they require a reasonable accommodation they should follow the procedures set forth in this guide.

IX. DEFINITIONS

Designated Management Official.

The person who has authority to decide whether the Department will provide a requested accommodation. The Designated Management Official who grants a request for an accommodation shall also be referred to as the “decision maker.”

Dual Status/Military Technician

Positions in the National Guard Technician Program that require military membership in the National Guard as a condition of technician employment are in the excepted service under the provisions of 32 USC 709. This status means they are “excepted” from the rules that govern civil service employees in the areas of tenure and competitive requirements for appointments. Employment as a NG military technician does not result in “competitive” civil service status. Loss of military membership for any reason can cause termination of technician employment.

Essential Job Functions

The 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, the position exists specifically to perform that function, there is a limited number of other employees who could perform the function if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

Non-Dual Status Technician

Positions in the National Guard Technician Program that do not require military membership in the National Guard as a condition of technician employment are Non-Dual Status Technicians. This status means the rules that govern civil service employees in the areas of tenure and competitive requirements for appointments are in force and result in “competitive” civil service status.

Person with a Disability

An individual has a physical or mental impairment that substantially limits one or more of the person’s major life activities; has a record of such impairment or is regarded as having such impairment. Based on court decision, examples of major life activities include caring for yourself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Physical Impairment

Any physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respirator, genitor-urinary, hemic and lymphatic, skin and endocrine

Mental Impairment

Any mental or psychological disorder, such as mental retardation, organic, brain syndrome, emotional or mental illness, and specific learning disabilities.

Reasonable Accommodation

The Rehabilitation Act of 1973 requires federal agencies to provide reasonable accommodation to qualified individuals with disabilities, unless to do so would cause undue hardship. In general, an accommodation is a change in work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities.

Undue Hardship

The significant difficulty or expense incurred, should the Department provide a particular accommodation. Agencies do not have to provide reasonable accommodations that would impose an undue hardship on the operation of the agency.

Invisible (Hidden) disabilities

These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Targeted Disabilities

Targeted disabilities are deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine.

Major Life Activities

A major life activity is an activity of fundamental significance to most people in daily life and not simply something important to a particular individual. A major life activity includes obvious functions, such as hearing, seeing, walking, speaking, caring for self, performing manual tasks, and breathing.

X. Resources

Any questions or concerns should be addressed to the Equal Employment Office (501) 212-4231.

General guidelines can be found on EEOC website www.eeoc.gov

**ARKANSAS NATIONAL GUARD
REQUEST FOR REASONABLE ACCOMMODATION**

Application may be made to your supervisor/hiring official or to the Equal Employment Opportunity (EEO) Office. All information pertaining to your request for a reasonable accommodation will be maintained separate from personnel records and may only be used in connection with accommodation efforts.

Section A

Personal Information

(to be completed by applicant)

Name _____ Telephone Number _____
Department _____ Work Location _____
Title _____

Section B

Application for Reasonable Accommodation

(to be completed by applicant and returned to supervisor/hiring official or the EEO Office)

I am requesting the following reasonable accommodations: _____

If accommodation is time sensitive please explain: _____

It is necessary for me to have this accommodation for the following reason(s): _____

Signature _____ Date _____
(Employee)

Section C

First Line Supervisor/Hiring Official's Response to Request for an Accommodation

(to be completed by first line supervisor/hiring official with copy provided to the applicant, original sent to EEO Office)

Recommend Approved Disapproval

Comments _____

No decision has been made at this time. We will continue to assess your request. The EEO Office will contact you within the next five business days.

Signature _____ Date _____
(Supervisor/Hiring Official)

If a requestor's disability and/or need for accommodation are not obvious or already known, the agency is entitled to ask for and receive medical information showing that the requestor has a covered disability under the Rehabilitation Act definition that requires accommodation. It is the responsibility of the requestor to provide appropriate medical information to the agency pertaining to the disability and/or need for accommodation. If the first line supervisor/hiring official approves the accommodation, this form is sent to the EEO Office for recording and filing. If accommodation is declined requestor may appeal the denial to the next level of supervision that will also provide their decision in writing.

Section D

Second Line Supervisor's Response to Request for an Accommodation

(to be completed by second line supervisor with copy provided to the applicant, original sent to EEO Office)

Recommend Approved Disapproval

Comments _____

No decision has been made at this time. We will continue to assess your request. The EEO Office will contact you within the next five business days.

Signature _____ Date _____
(Supervisor/Hiring Official)

If the second line supervisor approves the accommodation, this form is sent to the EEO Office for recording and filing. If the accommodation is not approved at the second line supervisory level the EEO Office will conduct a comprehensive review of this request. This may include asking for medical and other documentation, meeting with the requestor and/or supervisor/hiring official, arranging for a job analysis, and consulting with other State agencies or community based organizations providing services to persons with disabilities.

Privacy Act Statement

The Rehabilitation Act of 1973, 29 U.S.C. section 791, and Executive Order 13164 authorize collection of this information. The primary use of this information is to consider, decide and implement requests for reasonable accommodation. Additional disclosures of the information may be: To medical personnel to meet a bona fide medical emergency; to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceedings; to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

Sample
Notification of Need for Additional Information
(to be completed by the responsible agency official/EEO Office and returned to applicant)

Office Symbol

Date

MEMORANDUM FOR SGT Jane Doe

SUBJECT: Reasonable Accommodation Request Required Supplemental Information

Your supervisor/hiring official has forwarded your application for a reasonable accommodation to the EEO Office. We are continuing to assess your request. To make a determination, we need the following information:

Medical Documentation

Please inform your doctor of your application for an accommodation and have your doctor provide us medical documentation, including the limitations placed on your life functions and activities. Information should be sent within two weeks to: Human Resources Office, ATTN: EEO Office, Box 17 – Camp Robinson, North Little Rock, AR 72199-9600

Other _____

We require no additional information from you at this time.

The EEO Office will review all relevant information. This may include an interview with you and/or your supervisor. After completion of the review, you will be informed in writing regarding the agency's decision. We anticipate that the decision will be within 15 business days barring any extenuating circumstances. If you have any questions, please call the EEO Office at Commercial: 501-212-4231/4216 or DSN: 962-4231/4216.

Signature Block

Privacy Act Statement

The Rehabilitation Act of 1973, 29 U.S.C. section 791, and Executive Order 13164 authorize collection of this information. The primary use of this information is to consider, decide and implement requests for reasonable accommodation. Additional disclosures of the information may be: To medical personnel to meet a bona fide medical emergency; to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceedings; to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

Sample

Notification that Agency will Provide Reasonable Accommodation

(to be completed by the EEO Office in coordination with the responsible agency official and returned to applicant)

Office Symbol

Date

MEMORANDUM FOR SGT Jane Doe

SUBJECT: Reasonable Accommodation Request Approval

We are pleased to inform you that based on the information provided; the Arkansas National Guard is able to provide you the reasonable accommodation which you requested on _____. Please feel free to discuss any questions or concerns that you may have with me or the EEO Office at Commercial: 501-212-4231/4216 or DSN: 962-4231/4216.

Signature Block

**Sample
Notification of Denial of Request for Accommodation**

(to be completed by the EEO Office in coordination with the responsible agency official and returned to applicant)

Office Symbol

Date

MEMORANDUM FOR SGT Jane Doe

SUBJECT: Reasonable Accommodation Request Denial

We regret to inform you that the Arkansas National Guard has denied your request for the accommodation that you made on _____. We are denying the request for the following reason(s): _____
(Date)

You now have multiple options:

1. You may choose to accept the agency's decision and end the process.
2. You may choose to appeal to the next level of supervision.
3. You may choose to file a discrimination complaint if you feel that the agency's denial is based on discrimination. For further information you may contact the local EEO Office 501-212-4231/4216 or the Equal Employment Opportunity Commission at 800-669-4000 (voice), 800-669-6820 (TTY) or by email at: info@eoc.gov.
4. In addition to the options stated above, other alternatives may also be available. This includes but is not limited to filing a complaint with any compliance agency designated under Section 504 of the Rehabilitation Act of 1973. For further information on these options, call the U.S. Department of Justice, Civil Rights Division at 800-514-0301 (voice), 800-514-0383 (TTY), or visit their website at: www.ada.gov.

Signature Block