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SEEM (23-01)

25 January 2023

MEMORANDUM FOR Pennsylvania National Guard Civilian Personnel and Applicants

SUBJECT: Reasonable Accommodation and Personal Assistance Services Policy and Procedures

1. References:

- a. National Guard Bureau (NGB) Army and Air National Guard Readiness Centers, NGB-Equity and Inclusion Office, Reasonable Accommodation Guide, July 2021.
- b. Equal Employment Opportunity Commission (EEOC) Management Directive 715, 1 October 2003.
- c. Memorandum of Understanding, Subject: Firewall Between Reasonable Accommodations Coordinator and State Equal Employment Manager, dated 17 January 2023.

2. Purpose. Establish guidance, outline roles and responsibilities, and implement the provisions of the Reasonable Accommodations (RA) and Personal Assistance Service (PAS) requests within the Pennsylvania National Guard (PANG).

3. Applicability. This policy applies to PANG Title 5 and Title 32 Department of Defense civilian employees and applicants.

4. Policy. The PANG will provide this policy to employees and job applicants in written and accessible formats as required. The RA policy is an important aspect of our commitment to create employment opportunities for individuals with disabilities. Managers and supervisors are expected to make every effort to provide RA to employees with disabilities, unless doing so would create an undue hardship. Reassignment is an option of last resort. It is PANG's policy to reassign a qualified employee with a disability in accordance with applicable references to a vacant, funded position within the agency. If the employee is unable to perform the essential functions of his/her present position with or without accommodation because of a disability and can perform the essential functions of the identified position, with or without accommodation. PANG provides RA when:

- a. An applicant for employment with a disability needs an accommodation to be considered for a job;
- b. A qualified employee with a disability needs an accommodation to enable her/him to perform the essential functions of the job or to gain access to the workplace; and
- c. An employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment enjoyed by employees without disabilities.

PANG's RA Coordinator will assist management to process requests for RA and, when appropriate, provide RA in a prompt, fair, and efficient manner.

PANG will provide access to PAS to individuals with targeted disabilities. PANG will process requests and make determinations for PAS in the same manner as it processes requests and makes determinations for RA.

5. Definitions. See Reference (a) for additional definitions.

- a. Accessible. Enterable, operable, safely usable, or otherwise open to participation, independently and with dignity, by a person with a disability. The term can apply to a work environment, service, or program.
- b. Disability. With respect to an individual, (1) A physical or mental impairment that substantially limits one or more major life activities; (2) a record of such impairment; or (3) being regarded as having such an impairment, which means that the individual has been subjected to an action prohibited by the ADA because of an actual or perceived impairment that is not both "transitory and minor."
- c. Essential Functions. The fundamental job duties of the employment position the individual with disabilities holds or desires. A job function may be an essential function if, among other things: (1) the reason the position exists is to perform that function; (2) there are a limited number of other employees who could perform the function; and/or (3) the function is specialized and the individual is hired based on her or his ability to perform that particular function.
- d. Interactive Process. An informal process by which PANG will communicate with an employee or applicant who has requested an RA. This process will identify the specific limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
- e. Major Life Activity. Illustrative, non-exhaustive list of major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, speaking, standing, lifting, bending, communicating, thinking, learning, breathing, sitting, reaching,

interacting with others, reading, concentrating, working. Major life activities also include the operation of major bodily functions, such as functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, respiratory, circulatory, and cardiovascular functions.

f. Personal Assistance Services (PAS). Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as an RA. Examples include, but are not limited to, assistance with removing and putting on clothing, eating, and using the restroom. PAS need only be provided to individuals with targeted disabilities as defined below.

g. Physical or Mental Impairment. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems including, but not limited to, the neurological, musculoskeletal, respiratory, cardiovascular, reproductive, digestive, and immune systems; or any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

h. Reasonable Accommodation (RA). Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position desired; 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 an individual with a disability who is qualified to perform the essential functions of that position; or modification or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other employees without disabilities. Examples include, but are not limited to:

- (1) Making existing employee facilities readily accessible to and useable by individuals with disabilities;
- (2) Job restructuring;
- (3) Part-time or modified work schedules;
- (4) Reassignment to a vacant position;
- (5) Acquisition or modifications of equipment or devices;
- (6) Appropriate adjustment or modifications of examinations, training materials, or policies; and
- (7) Provision of qualified readers or interpreters.

i. Targeted Disability. A disability that is designated as a “targeted disability or health condition” on the Office of Personnel Management’s Standard Form 256 or that falls under one

of the first 12 categories of disability listed in part A of question 5 of the Equal Employment Opportunity Commission's Demographic Information on Applicants form. They include, but are not limited to, deafness or serious difficulty hearing, blindness or serious difficulty seeing even when wearing glasses, missing extremities, partial or complete paralysis, significant mobility impairment, intellectual disability, and significant psychiatric disorders.

j. Undue Hardship. A special or specified circumstance that partially or fully exempt a person or organization from performance of a legal obligation so as to avoid an unreasonable or disproportionate burden or obstacle.

6. Procedures. A request for RA is a statement that an individual needs an adjustment or change in the application process, at work, or in a benefit or privilege of employment for a reason related to a disability. It should be recognized a person might not always state a request for RA plainly. A request is any communication in which an individual asks or states a need for PANG to provide or to change something because of a medical condition. If an employee or applicant raises any of the following points, s/he is likely requesting RA: a) the person is talking about some type of medical condition that is impacting her/his work; b) the person mentions some sort of physical, intellectual, or psychiatric challenge that is impacting her/his work; c) the person requests an adjustment or change to the workplace; d) the person openly discloses a disability or medical condition; and/or e) the person states s/he needs assistance performing a job function. Whenever a supervisor or other employee is uncertain as to whether a person is requesting RA, the person shall be asked for clarification.

a. Who can request RA. Requests for RA can be submitted by an employee or an applicant for employment. A family member, friend, health professional, or other representative may request RA on behalf of an individual with a disability. When a third party makes a request for RA on an individual's behalf, the decision maker should, if possible, confirm with the applicant or employee the s/he, in fact, wants RA before proceeding further with the interactive process.

b. How to request RA. A person may initiate any request for RA orally or in writing at any time. Doing so initiates the interactive process. The requester does not need to: a) fill out any specific form in order to initiate the interactive process; b) have a particular accommodation in mind before making the request; or c) use any special terms like "RA" or "disability" when making the request. Although not required to initiate the interactive process, for tracking purposes, the RA Coordinator requires a written request from either the RA requester or the supervisor. This written request is provided on page 9, "RA Request Form", and can be provided in alternative formats if requested, however, the manager or supervisor cannot ignore an initial oral request. The request must include a statement relating the adjustment or change at work to a medical condition. An example statement is, "I am having trouble getting to work at my scheduled starting time because of medical treatments I am undergoing." The phrase RA does not have to be referenced for a request to be considered. The American with Disabilities Act, Rehabilitation Act, or the phrase RA does not have to be mentioned for a request to be considered. A person does not have to specify a particular accommodation although it is

helpful if one can be suggested. It is sufficient for the individual requesting RA to state that some sort of change or assistance is required.

c. Who can accept a request for RA. An employee may request RA from one of the following officials: a) the immediate supervisor, as well as any supervisor or manager in the employee's chain of command; b) the Human Resources (HR) Director, HR Deputy Director, or a designated HR Specialist; c) the selecting official (if the requestor is an applicant); or d) the RA Coordinator. In cases when an applicant does not make a request to a HR Specialist, the selecting official or RA Coordinator must forward the request to the Office of HR as soon as possible and no later than two (2) business days after receiving the request.

d. How often must a request for RA be made. An employee who requires an RA on a repeated or permanent basis (e.g., a sign language interpreter) does not need to submit a new written request each time an RA is needed.

e. If the RA request is for assistive technology or services. For any request in which the employee requests assistive technology and/or services, the decision maker should request the employee complete a Computer/Electronic Accommodations Program (CAP) Accommodation Request online at www.cap.mil or complete the form on the employee's behalf.

f. PANG response to a request for RA. The recipient of the RA request must submit it to the RA Coordinator within two (2) business days. The RA Coordinator works with the decision-making supervisor throughout the interactive process. The immediate supervisor will explain to the requester that the decision-making supervisor will determine whether PANG will provide the RA and describe the decision-making/interactive process to include the following:

(1) Management must communicate with the requester early in the interactive process and periodically throughout regarding his/her request to ensure the complete exchange of relevant information. Relevant information may include that which assists in determining whether the employee is a qualified individual with a disability and if medical documentation is necessary. The requester may, at reasonable intervals, ask the decision maker about the status of the request.

(2) Management must communicate with the requester to clarify what the employee specifically needs and identify the appropriate RA. Ongoing communication is particularly important when an effective accommodation is not obvious or when parties are considering different possible accommodations. Management or the decision maker must take a proactive approach in searching out and considering possible accommodations. The decision maker may consult with other appropriate offices and resources as necessary. The requester should also participate, to the extent possible, in identifying an effective RA.

(3) Management and the RA Coordinator are not to disclose that an employee is receiving RA because it usually amounts to a disclosure that the individual has a disability.

f. Time frame for processing RA Requests. The process begins when an applicant or employee makes an oral or written request for RA. Upon receipt of an RA Request, the supervisor must submit it to the RA Coordinator within two (2) business days. Absent extenuating circumstances, the RA should be provided or denied within 30 business days. If unable to process the request within 30 business days, the RA Coordinator will notify the supervisor who must document and communicate in writing to the requester the reason for delay. This time period does not include waiting to receive information from the requester/healthcare provider or the time it takes to receive adaptive equipment. The precise time necessary to process a request will depend on the nature of the accommodation requested and whether the RA Coordinator must obtain supporting information.

g. If an RA Request is denied. Decision makers must inform the RA Coordinator and Staff Judge Advocate before denying an RA Request. The decision maker must provide documentation that demonstrates the effort made to explore, with the requester, other options for accommodation.

(1) PANG must obtain legal reviews for all proposed denials of an RA Request or the particular accommodation requested before informing the requester of the denial.

(2) When the decision maker denies an RA Request, s/he must notify the requester in writing. The notification must be in plain language and state the specific reason(s) for denial. The written denial must identify the supervisor/manager and the office that made the decision and provide information about the individual's right to file an Equal Employment Opportunity (EEO) complaint; the right to file an appeal with the Merit System Protection Board (MSPB); the right to file a Union Grievance and involve other applicable statutory or regulatory processes, including the availability of the Alternative Dispute Resolution (ADR) process.

(3) The decision maker must complete a memorandum for record documenting the denial and submit it to the Staff Judge Advocate along with a copy of the written notification of denial.

7. Responsibilities.

a. RA Coordinator

(1) Manage and assist in coordinating all RA requests.

(2) Ensure all RA requests are processed in accordance with applicable references.

(3) Collaborate with supervisors during the on-going, informal interactive discussions with the individual seeking an accommodation.

(4) Involve appropriate personnel who provide recommendations to the person responsible for making the decision on a request for RA.

SEEM (23-01)

SUBJECT: Reasonable Accommodation and Personal Assistance Services Policy and Procedures

(5) Monitor the tracking and monitoring systems for RA requests to ensure accuracy.

(6) Maintain all RA case files in a secure manner.

(7) Ensure the confidentiality of medical information. Access to this information is limited to a need to know.

(8) Ensure training on RA and PAS is provided annually to Supervisors and Managers.

(9) Refer requests for permanent RA to Human Resources Offices for final approval.

b. State Equal Employment Manager (SEEM) Office

(1) Establish a system of recordkeeping to track the processing of RA Requests.

(2) Summarize information on RA Requests in the annual Management Directive (MD) 715 Report submit to the Equal Employment Opportunity Commission.

c. Managers and Supervisors

(1) Immediately contact the RA Coordinator upon knowledge of or receipt for request for RA within two (2) business days.

(2) Process all RA requests in accordance with the procedures outlined in this guide.

(3) Maintain an open line of communication with the employee seeking an accommodation and engage in on-going, informal discussions with the employee during the RA process.

(4) Determine approval for temporary RA requests and re-assess as recommended.

d. Human Resources Office

(1) Determine approval for permanent RA requests.

(2) Provide the RA Coordinator supervision and oversight as needed in accordance with reference (c).

e. An employee and/or applicant for employment requesting RA

(1) Employees will immediately notify their first-level supervisor or RA Coordinator when it is determined some form of RA is required to perform the essential function(s) of their position.

(2) Request a RA/PAS during the application process.

SEEM (23-01)

SUBJECT: Reasonable Accommodation and Personal Assistance Services Policy and Procedures

(3) Request a RA when s/he knows there is a workplace barrier that is preventing her/him, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment.

(4) Actively participate in the interactive discussion portion of the RA process.

(5) Provide all documentation, to include medical documentation, if requested.

8. Personal Assistance Services. The process for requesting PAS, the process for determining whether PAS are required (including whether the individual has a targeted disability), and decision maker's right to deny a request for PAS when providing PAS would pose an undue hardship, are the same as those for RA Requests. These requests along with any cost associated with them are to be included in the Tracking System.

9. Information Tracking System or Record Keeping. The RA Coordinator will retain information or any cumulative records used to track the agency's performance with regard to RA for at least 5 years. Records may be used to determine compliance with nondiscrimination and affirmative action requirements.

(a) Records containing medical information are subject to the Health Insurance Portability and Accountability Act and the organization's recordkeeping systems must ensure adherence.

(b) At a minimum, records related to RA Requests should be maintained for the duration of the employee's tenure to ensure the employee is not asked to provide medical information previously submitted. After the employee's tenure, records will be maintained in accordance with the NG's record retention policies.

10. This memorandum replaces memorandum HRO (18-04) Subject: Reasonable Accommodation Policy and Procedures for the PA National Guard, dated 10 May 2018.

11. Point of contact for this memorandum is Dr. Millicent Carvalho-Grevious, SEEM, at (717) 861-8520 or millicent.j.carvalho-grevious.civ@army.mil. RA Coordinator is Ms. Patty Lundsted, Equal Employment Specialist, at (717) 861-8934 or patrice.m.lundsted.civ@army.mil.

FOR THE ADJUTANT GENERAL:

PATRICK E. MOORE
COL, PAARNG
Human Resources Officer

SEEM (23-01)

SUBJECT: Reasonable Accommodation and Personal Assistance Services Policy and Procedures

REASONABLE ACCOMMODATION REQUEST FORM

Date of Request:

Employee Name:

Job Title and Pay Grade:

Employee Phone Number and Email:

Supervisor Name:

Supervisor Phone Number and Email:

Please provide the following information. Use additional pages or provide documentation as needed. PANG will provide this form in alternative formats if requested.

1. What specific accommodation(s) are you requesting, if known?
2. If you are requesting a specific accommodation, how will that accommodation assist you in performing essential functions of your job position?
3. If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore? If yes, please explain.
4. Is your accommodation request time sensitive? If yes, please explain.
5. Expected time duration of the accommodation. If temporary rather than permanent, how long will the accommodation be needed?

Your supervisor will submit this completed form to the RA Coordinator at patrice.m.lundsted.civ@army.mil. Your supervisor or the RA Coordinator will set up a time to speak with you about your request.

Employee Signature and Date:

Supervisor Receiving RA Request Signature/Date:

Case Number (Assigned by RA Coordinator):