**POLICY DIRECTIVE 16-253**

**TO: ALL JUSTICES OF THE PEACE**

 **ALL NON-JUDICIAL COURT EMPLOYEES**

**FROM: ALAN G. DAVIS**

 **CHIEF MAGISTRATE**

**DATE: JANUARY 20, 2016**

**RE: ACCOMMODATION REQUEST PROCESS UNDER THE ADA**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Scope:**

This Policy Directive provides guidance regarding the process by which the Justice of the Peace Court will handle requests for accommodations pursuant to the Americans with Disabilities Act (hereinafter “ADA”).

**Justice of the Peace Court Policy:**

 It is the Policy of the Justice of the Peace Court to comply with all provisions of the ADA through the use of guidelines provided by the State of Delaware Office of Management and Budget. The use of these guidelines will ensure that the ADA is consistently applied and will assist managerial staff and employees alike in the interactive process.

**Policy Directives/Legal Memoranda Affected:**

 No other Justice of the Peace Court Policy Directives or Legal Memoranda address the ADA or its application.

**Effective Date:**

This policy shall take effect immediately upon issuance and shall continue until further notice.

**Discussion:**

 The Americans with Disabilities Act (ADA)[[1]](#footnote-1) prohibits discrimination against individuals with disabilities and provides equal opportunities for individuals with disabilities in the workplace and other areas of public life. Titles I and II of the ADA specifically relate to employment and prohibit an employer from discriminating against individuals with disabilities in any employment related activity, which includes hiring, pay, benefits, firing, leave, job assignments and promotional opportunities. The Justice of the Peace Court, as a state government entity with more than 15 employees, is subject to the requirements of the ADA.

Title I of the ADA protects “qualified individuals with disabilities” from employment discrimination. This definition applies to all employees regardless of their status as merit, exempt, part-time, full-time or casual/seasonal. The ADA defines a qualified individual with a disability as one who has or has had a record of a substantial impairment; one that significantly limits or restricts a major life activity such as seeing, hearing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

If a qualified individual with a disability requests to receive a work accommodation as a result of their disability, the ADA requires the employer to provide a reasonable accommodation unless doing so would present an undue hardship. The intent of the ADA is that the development of a reasonable accommodation come about through an interactive process between the employee and the employer.

The interactive nature of the process is at the heart of the ADA. The ADA Interpretive Guidance states, “The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the individual with a disability.”[[2]](#footnote-2) The guidance further states that the employer should use a problem solving approach aligned with the following steps: (1) Analyze the particular job involved and determine its purpose and essential functions; (2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation; (3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and (4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer. The application of these steps ensure that both the employee and employer have a voice in the process and that all reasonable accommodations are imagined and considered.

The State of Delaware Office of Management and Budget has set forth guidelines and a recommended procedure for use by state agencies in order to evaluate a request for reasonable accommodation. These guidelines, including their appendices and accompanying forms are attached to this policy directive and provide an in-depth explanation of the evaluation process and necessary documentation. Below is a brief summary of the process:

**Initiation**: The reasonable accommodation evaluation process may be initiated by the employee or the employer. The employee may initiate the process by requesting an accommodation either verbally or in writing through their supervisory chain of command or human resources. The employer may initiate an evaluation through human resources or management personnel if the supervisor believes that the employee is in need of an accommodation. Additionally, the employee may request that an accommodation be reviewed if the employee believes it is no longer suitable.

**Documentation**: Once the request is confirmed, the interactive process begins and includes the employee, human resources and the employee’s supervisor. At this time, the Justice of the Peace Court will request that the employee provide reasonable documentation of medical/behavioral health information about the disability and the resulting limitations as it relates to the essential functions of the job. This process is facilitated by the medical questionnaire, form letter and HIPAA medical release form attached herein. Additionally, the employee and their supervisor shall complete the Employee/Supervisor Accommodation Request Questionnaire.

**Interactive Process**: Once all documentation is completed and received, the employee, their supervisor and a representative from human resources shall designate a time to meet to engage in the interactive process. All participants shall bring suggestions and potential means of accommodation to the meeting and come with the understanding that a reasonable accommodation is not always the best or most expensive accommodation, but one that permits the employee to perform the essential functions of the job. The interactive process may continue for a reasonable length of time to develop all potential solutions and is likely to include multiple meetings.

**Decision**: The designated human resources representative will grant or deny the request in writing in a timely manner once the interactive process is complete. If the request is denied, a clear explanation will be provided along with information about additional resources that may be available to the employee.

 Once an accommodation is granted, it shall be reviewed on an annual basis to determine if the need for the accommodation continues to exist, if the current accommodation is successful and/or any additional concerns the employee or their supervisor may have in relation to the accommodation request. This review shall be scheduled by the human resources department. For all existing accommodations, the review shall occur within 6 months of the effective date of this Policy Directive. A review may also occur at the discretion of the supervisor or human resources if circumstances warrant.

 Because every ADA accommodation request is unique based upon the essential job functions of the position and the respective disability of the employee, each request shall be evaluated on a case-by-case basis with the intention of determining the best possible solution. Additional resources are available to both employees and managerial staff and are located in Appendix II of the attached guidelines.

**Conclusion:**

 It is the policy of the Justice of the Peace Court to comply with the provisions of the ADA through the use of the guidelines and procedures provided by the State of Delaware Office of Management and Budget. By doing so, the Court ensures that the evaluation process comports with the intent of the ADA in its interactive nature.

Attachment: State of Delaware Reasonable Accommodation Guidelines and Recommended Procedure

cc: Honorable Leo E. Strine, Jr

Honorable Andre Bouchard

Honorable Jan Jurden

 Honorable Alex J. Smalls

 Honorable Michael K. Newell

Patricia Griffin, State Court Administrator

 All Justice of the Peace Courts

Marianne Kennedy, Justice of the Peace Court Administrator

Jody Huber, Justice of the Peace Court Staff Attorney

Patty Moore, Human Resources Specialist IV

 Mark Hitch, Operations Manager

Jill Malloy, Operations Manager

 Dave Nesler, Chief of Uniformed Services

 Law Libraries: New Castle County, Kent County, Sussex County,

 Widener University School of Law

.

1. 42 U.S. Code §12101, *et. seq.* [↑](#footnote-ref-1)
2. ADA Interpretive Guidance, 29 CFR 1630, Appendix to Part 1630- Interpretive Guidance on Title I of the Americans with Disabilities Act. [↑](#footnote-ref-2)