

PERSONNEL POLICY MANUAL



EMPLOYMENT STATEMENTS

Policy Number: 2.8

Page: 1 of 8

Title: REASONABLE ACCOMMODATION FOR
QUALIFIED INDIVIDUALS WITH DISABILITIES

Effective: 03/01/17

Authorized by:

A handwritten signature in black ink, appearing to be 'J. [unclear]'. The signature is written over the 'Authorized by:' label.

Supersedes: ---

SUMMARY

OTS provides “reasonable accommodations” to qualified applicants and employees with disabilities.

A “reasonable accommodation” is any change in the workplace or the way work is customarily performed.

An individual or the individual’s representative must inform OTS of the need for a “reasonable accommodation.”

Once a request is made, OTS and the individual must communicate about the request, the nature of the workplace problem, the health condition requiring the accommodation, and alternative workplace accommodations.

OTS prohibits retaliation against individuals on the basis that they have requested reasonable accommodations.

Scope

This policy applies to all employees.

Policy on Reasonable Accommodation

To ensure qualified individuals with disabilities¹ enjoy equal access to all employment opportunities, Oahu Transit Services, Inc. (“OTS”) doing business as TheBus and TheHandi-Van, provides reasonable accommodations to its employees and applicants to

¹ An individual with a “disability” is a person who has a physical or mental impairment that substantially limits one or more major life activity (“actual” disability) or has a record of such an impairment, even if they currently do not have any actual disability or are regarded as having a disability. Reasonable accommodations will not be provided to individuals who only meet the “regarded as” definition of disability. Individuals who meet the “actual” or “record of” definitions of disability must be able to show that the disability or past disability requires a reasonable accommodation. A “qualified individual with a disability” is an individual who can perform the essential functions of the position with or without reasonable accommodation.

compete for a job; to perform the essential functions² of the job or to gain access to the workplace; and to enjoy equal access to benefits and privileges of employment.

A "reasonable accommodation" is defined as any change in the workplace or the way things are customarily done to enable an individual with a disability to enjoy equal employment opportunities. OTS does not have to provide the exact accommodation requested. If more than one accommodation is effective, OTS may choose which one to provide. OTS does not have to provide the accommodation if the accommodation would cause "undue hardship" to the employer. "Undue hardship" means the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the nature and structure of the business operation.

Accommodations which pose a "direct threat," a significant risk of substantial harm to the health or safety of the individual or others in the workplace that cannot be eliminated or reduced by reasonable accommodation, will be rejected. A "significant" risk is a high, and not just a slightly increased, risk. The determination that an individual poses a "direct threat" must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job, considering a reasonable medical judgment relying on the most current medical knowledge and/or the best objective evidence. Regarding the employment of individuals with psychiatric disabilities, the employer must identify the specific behavior that would pose a direct threat. An individual does not pose a "direct threat" by having a history of psychiatric disability or being treated for a psychiatric disability.

OTS has a Reasonable Accommodation Team ("Team") in Human Resources to oversee the reasonable accommodation program. All requests for reasonable accommodation will be handled by the Team. If a request is given to a manager or supervisor rather than directly to the Team, that manager or supervisor should immediately forward the request to the Team. The manager or supervisor should email the Team at HR@thebus.org with the request and scanned copies of all documentation on the same day it is received. The original documentation should be hand-delivered to the Team or sent in a sealed confidential transmittal to Human Resources by the next business day.

² 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 are 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.

Reasonable Accommodation Procedures

The Team will document and keep records of all communication, information, and documents obtained through the reasonable accommodation process.

1. Requesting Reasonable Accommodation

An applicant or employee must inform OTS that the applicant or employee needs an adjustment or change concerning an aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An applicant or employee may request a reasonable accommodation, orally or in writing. An individual should request a reasonable accommodation from the Team. Information about contacting the Team will be in the job opening announcement.

A request does not have to include any special words—"reasonable accommodation," "fair employment," "disability" or "Americans with Disabilities Act (ADA)." A request is any communication in which individuals state they need OTS to provide or to change something because of a medical condition. If the nature of the initial communication is unclear, the supervisor, manager, or the Team should ask the individual whether they are requesting a reasonable accommodation.

A family member, health professional, or other representative may request an accommodation on behalf of an OTS employee or applicant. A doctor's note outlining medical restrictions for an employee constitutes a request for reasonable accommodation.

When an individual (or third party) makes an oral request, the Team must ensure that the "Request for Reasonable Accommodation" form ("Request Form") is completed. The Team should fill out the Request Form if the individual does not.

An employee needing a reasonable accommodation on a recurring basis, such as the assistance of a sign language interpreter must submit the Request Form only for the first request. However, the employee requesting accommodation must give advance notice each subsequent time the accommodation is needed. If the accommodation is needed regularly (e.g., a weekly staff meeting), the Team should ensure that the employee's supervisor arranges the accommodation without requiring a request before each occasion.

2. Processing the Request

While the Team has responsibility for processing requests for reasonable accommodation, the Team will work closely with an employee's supervisor or manager in responding to the request, particularly those involving job performance.

3. The Interactive Process

After submittal of a request for an accommodation, the parties will begin the interactive process to determine what accommodation should be provided. This means that the individual requesting the accommodation and the Team must communicate with each other about the request, the precise nature of the problem generating the request, how a health condition is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting the individual's needs.

The Team may ask questions concerning the disability and the individual's functional limitations to identify an effective accommodation. While the individual with a disability does not have to specify the precise accommodation, the individual must describe the problems posed by the workplace barrier. Suggestions from the individual with a disability may assist the Team in determining the reasonable accommodation to provide.

The Team should contact the applicant or employee within 10 business days after the request is made.

Two-way communication is critical throughout the process, but particularly where:

- the limitation, problem, or barrier is unclear;
- an effective accommodation is not obvious; or
- the parties are considering different forms of reasonable accommodation.

Both the individual making the request and the Team should work together to identify effective accommodations. There are specific considerations in the interactive process when an employee needs, or may need, a reassignment.

- Reassignment will only be considered if no accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship or a direct threat.
- In considering whether positions are available for reassignment, the Team will identify: (1) vacant positions for which the employee may be qualified (i.e. perform the essential functions), with or without reasonable accommodation; and (2) positions which the Team has reason to believe will become vacant and for which the employee may be qualified.

4. Requests for Medical Information

If an individual's impairment or need for accommodation is not obvious or already known, the Team may seek medical information showing that the individual has a covered disability that requires accommodation.

If the initial information provided by the health professional or volunteered by the individual cannot enable the Team to determine whether the individual has a "disability"

or what accommodation is needed, the Team will explain what additional information is needed. The Team may ask the individual requesting accommodation to sign an individually-tailored limited medical release permitting the Team to contact the health care provider for additional information. The Team may have the medical information reviewed by a doctor of its choosing, at OTS's expense.

If a supervisor or manager believes that an employee may no longer need a reasonable accommodation or that work circumstances have changed, they should contact the Team. The Team will determine if there is a reason to contact the employee to discuss whether the employee has a continuing need for reasonable accommodation.

5. Confidentiality of Medical Information

Medical information must be kept confidential and in a file separate from the individual's personnel file.

Medical information may be disclosed to:

- supervisors and managers to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
- first aid and safety personnel if the disability might require emergency treatment or assistance in evacuation; and
- government officials to investigate the Company's compliance with the Law.

6. Time Frame for Processing Requests and Providing Reasonable Accommodations

The time target for processing a request (including providing accommodation, if approved) is as soon as reasonably possible but no later than 30 business days from the date the request is made.

If the Team requires medical information, the time frame will stop on the day that the Team makes a request to the individual to obtain medical information or sends out a request for information/documentation and will resume on the day that the information/documentation is received by the Team.

7. Resolution of the Request for Reasonable Accommodation

All decisions regarding a request for reasonable accommodation will be communicated to the applicant or employee both orally and by a document titled "Resolution of Reasonable Accommodation Request" ("Resolution of Request").

Grant of Request. If the Team grants a request for accommodation, it will meet with the individual to discuss implementation of the accommodation. If the request is granted,

but the accommodation cannot be provided immediately, the Team will inform the individual in writing of the projected time frame for providing the accommodation.

A decision to provide an effective accommodation, even if it is not in the form specifically requested, will be deemed a decision to grant an accommodation. In such case, the Team will explain both the reasons for the denial of the individual's specifically requested accommodation and why the Team believes that the chosen accommodation will be effective. An individual may refuse to accept the effective accommodation chosen by OTS. In such case, the Team will record the individual's rejection of the alternative accommodation on the Resolution of Request. If such individual cannot perform the essential functions of the job thereafter, the individual will not be deemed "qualified" under the law to remain in the job.

Denial of Request. If the Team denies the specific request for accommodation, the Team will meet with the individual and discuss the reason(s) for the denial. The Resolution of Request will state the specific reason(s) for the denial, i.e., why the accommodation would cause undue hardship or why it would be ineffective. The Team will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not mean this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action not required by law, the Team will explore whether a reasonable accommodation will meet the employee's needs.

8. Relation of Procedures to Statutory and Collective Bargaining Claims

These procedures do not limit statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. **Requirements governing the initiation of statutory and collective bargaining claims remain unchanged, including the time frames for filing such claims.**

Retaliation Prohibited

OTS forbids retaliation which means, adverse action against individuals on the basis that they have engaged in a protected activity. "Adverse action" is an action that is likely to interfere with or deter individuals from engaging in a protected activity, such as termination, refusal to hire, denial of promotion, intimidation, threats, harassment, unjustified negative evaluations, unjustified negative references, increased surveillance, and assault or unfounded civil or criminal charges. "Protected activity" includes opposing discrimination or harassment (e.g. complaining about an alleged discrimination or harassment, notifying others of the intent to file a charge or complaint, refusing to obey an order reasonably believed to be discrimination or harassment), participating in a discrimination proceeding (e.g. filing a charge of employment discrimination; assisting, cooperating with or serving as

a witness in an investigation, proceeding, or litigation of alleged discrimination or harassment), or requesting reasonable accommodations (whether granted or not).

Reporting of Discrimination, Harassment, or Retaliation

Individuals who have witnessed, been subjected to, or believe that someone has been the subject of discrimination, harassment, or retaliation in violation of this policy must immediately report the matter to the Team. Any individual who feels reporting to the Team would be or has been futile, unsatisfactory, or counterproductive, should contact the Director of Human Resources. Any individual who is determined, after investigation, to have engaged in discrimination, harassment, or retaliation in violation of this policy will be subject to discipline up to and including discharge (and for employees covered by the Teamsters contract, up to and including suspension pending dismissal).

An individual may also file complaints with external agencies. However, complaints are encouraged to be initially filed through OTS to determine if internal resolution is possible. The following external agencies will accept complaints:

1. EEO Officer
Department of Transportation Services City
& County of Honolulu
711 Kapiolani Boulevard, Suite 1600
Honolulu, HI 96813
Phone: (808) 768-8342
2. Equal Employment Opportunity Commission
300 Ala Moana Boulevard, Room 7127
Honolulu, HI 96850-7127
Phone: (800) 669-4000
3. Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411 Honolulu,
HI 96813-5080
Phone: (808) 586-8636

While OTS will not condone any form of retaliation against individuals who have made a good-faith complaint of discrimination, harassment, or retaliation with the Team or any governmental agency, individuals who file knowingly false and/or untruthful complaints will be subject to discipline up to and including discharge (and for employees covered by the Teamsters contract, up to and including suspension pending dismissal).

Policy Number: 2.8

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Title: REASONABLE ACCOMMODATION FOR
QUALIFIED INDIVIDUALS WITH DISABILITIES

Effective: 03/01/17

Attachments:

1. Request for Reasonable Accommodation
2. Resolution of Request for Reasonable Accommodation
3. Authorization for Release of Health Information Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA")
4. Letter to Health Care Provider "Request for Documentation and Information Regarding Disability Accommodation Request," in Compliance with Hawaii Civil Rights Commission ("HCRC") Regulation, Hawaii Administrative Rules ("HAR") § 12-46-190(d)
5. Selected HCRC Regulations
6. Health Care Provider Accommodation Certification

Request for Reasonable Accommodation for Employees and Applicants of Oahu Transit Services, Inc.

Date: _____

Applicant/Employee Name: _____

Employee ID #: _____ Job Title/Department _____

Telephone Number: _____

_____ I have reviewed the summary of Personnel Policy 2.8, "Reasonable Accommodation
Initial for Qualified Individuals with Disabilities," on page 2 of this form and understand that
I may view the full policy on www.thebus.org or request a printed copy from the
Human Resources Office.

Accommodation Requested, if known:

(Be as specific and detailed as possible. e.g., type of assistive technology, interpreter, dates of schedule change, etc.)

Reason for Request:

(Be as detailed as possible.)

Applicant/Employee Signature: _____

If request not submitted by applicant/employee, form completed by:

Name: _____

Job Title or relationship to applicant/employee: _____

Signature: _____

Human Resources Office Use Only:

ADA Request No.: _____

Date Received by Reasonable Accommodation Team: _____

Date Applicant/Employee Contacted: _____

Request for Reasonable Accommodation for Employees and Applicants of Oahu Transit Services, Inc.

SUMMARY OF PERSONNEL POLICY 2.8 “Reasonable Accommodation for Qualified Individuals with Disabilities”

To ensure qualified individuals with disabilities¹ enjoy equal access to all employment opportunities, Oahu Transit Services, Inc. (“OTS”) doing business as TheBus and TheHandi-Van, provides reasonable accommodations² to its employees and applicants to compete for a job; to perform the essential functions³ of the job or to gain access to the workplace; and to enjoy equal access to benefits and privileges of employment.

Once a request is made, OTS’s Reasonable Accommodation Team (“Team”) will contact the individual within 10 business days to start the interactive process to determine what accommodation should be provided. The individual and Team must communicate with each other about the request, the nature of the workplace problem, the health condition requiring the accommodation, and alternative workplace accommodations.

The time target for processing a request (including providing accommodation, if approved) is as soon as reasonable possible but no later than 30 business days from the date the request is made. If the Team requires medical information, the time frame will stop on the day the medical information/documentation is requested and will resume on the day that the information/documentation is received by the Team.

All decisions regarding a request for reasonable accommodation will be communicated to the individual both orally and by a document titled “Resolution of Reasonable Accommodation Request.”

OTS prohibits retaliation against individuals on the basis that they have requested reasonable accommodations.

¹ An individual with a “disability” is a person who has a physical or mental impairment that substantially limits one or more major life activity (“actual” disability) or has a record of such an impairment, even if they currently do not have any actual disability or are regarded as having a disability. Reasonable accommodations will not be provided to individuals who only meet the “regarded as” definition of disability. Individuals who meet the “actual” or “record of” definitions of disability must be able to show that the disability or past disability requires a reasonable accommodation. A “qualified individual with a disability” is an individual who can perform the essential functions of the position with or without reasonable accommodation.

² A “reasonable accommodation” is any change in the workplace or the way work is customarily done to enable an individual with a disability to enjoy equal employment opportunities. OTS does not have to provide the exact accommodation requested. If more than one accommodation is effective, OTS may choose which one to provide. OTS does not have to provide the accommodation if the accommodation would cause “undue hardship” to the employer. “Undue hardship” means the accommodation would be too difficult or too expensive to provide, in light of the employer’s size, financial resources, and the nature and structure of the business operation. Accommodations which pose a “direct threat,” a significant risk of substantial harm to the health or safety of the individual or others in the workplace that cannot be eliminated or reduced by reasonable accommodation, will be rejected.

³ 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 are 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.

Resolution of Request for Reasonable Accommodation for Employees and Applicants of Oahu Transit Services, Inc.

ADA Request No.: _____ Resolution No.: _____ Draft Date: _____

Applicant/Employee Name: _____

Employee ID #: _____ Job Title/Department _____

Summary of Accommodation(s) Requested: _____

Applicant/Employee's request has been:

- Approved as requested. Approved but different from originally requested.*
- Denied.**

If Approved/Approved but different from originally requested, estimated effective date of accommodation: _____

* If Approved but different from originally requested:

(a) The alternative accommodation offered: _____

(b) The reason why the chosen alternative accommodation will be effective: _____

**If Denied, the specific reason(s) for the denial (may check more than one):

- Requesting individual does not have a disability requiring reasonable accommodations under the Americans with Disabilities Act.
- Requested accommodation would be ineffective. Reason(s) why it would be ineffective: _____

- Requested accommodation would cause undue hardship. Reason(s) why it would cause undue hardship: _____

- Medical documentation was not provided.
- Medical documentation was inadequate. How it was inadequate: _____

Resolution of Request for Reasonable Accommodation

ADA Request No.: _____ Resolution No.: _____ Draft Date: _____

Requested accommodation would require removal of an essential job function.
Essential function(s) that would be removed: _____

Requested accommodation would require lowering performance or production standard.

Other (identify): _____

Applicant/Employee's Response to Decision:

I have been informed of the Reasonable Accommodation Team's decision and my right to appeal this decision by contacting the Director of Human Resources. I have decided to:

Accept the decision and/or accommodation offered.

Reject the decision and/or accommodation offered*** and request the following accommodation:

Reject the decision and/or accommodation*** and will exercise my right to appeal to the Director of Human Resources.

Reject the decision and/or accommodation. ***

*** Individuals that reject the effective accommodation offered by OTS may not be qualified to remain in their job if they cannot perform the essential functions of their job.

Applicant/Employee Signature

Date

Reasonable Accommodation Team

Date

I declare under penalty of law and perjury that the applicant/employee was presented this form and refused to sign.

Witness Signature

Date

ADA Request No. _____

**AUTHORIZATION FOR
RELEASE OF HEALTH INFORMATION PURSUANT TO
THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (“HIPAA”)**

Name of Patient	
Date of Birth	
Gender	
Address	
Telephone Number	

I, _____, request that health information regarding my past, present and future, health care and treatment be released under this medical authorization.

Name of Health Care Provider	
Address of Health Care Provider	
Medical Records Covered by this Authorization	<p>[This section must be narrowly drafted and tailored only to seek information about the claimed disability or requested accommodation.]</p> <p>_____ (initial) Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, reports, x-rays, referrals, consults, billing records, insurance records, and records sent to you by other health care providers, pertaining to Patient’s <u>insert specific impairment or condition</u></p> <p>____ (initial) I agree to the release of the following information should it be contained in my medical record: Acquired Immune Deficiency Syndrome (AIDS); Human Immunodeficiency Virus (HIV); Alcohol and/or drug abuse treatment; or Behavioral or mental health services. [Only if relevant.]</p>
Revocation of Authorization	<p>This authorization may be revoked at any time, upon written notice provided to the Health Care Provider or the employer by employee or employee’s representative. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.</p>

Duration of Authorization	This authorization will automatically expire on _____, 20____.
HIPAA Authorization	This Authorization constitutes an express waiver of any rule against disclosure otherwise provided by any confidentiality provision of Federal, State, or other applicable law, including but not limited to the Health Insurance Portability and Accountability Act's (HIPAA) privacy regulations.
Information to be released to:	Oahu Transit Services, Inc. 811 Middle St, Honolulu, HI 96819 Attn: Reasonable Accommodation Team
Photo Copy Valid	A photocopy or facsimile of this Authorization shall be considered as effective and equally valid as the original.
<p><u>Voluntary Authorization:</u></p> <p>1. I provide this authorization voluntarily and freely. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.</p> <p>2. I have read and fully understand its contents. By signing below, I acknowledge having had adequate time and opportunity to fully consider this Authorization.</p> <p>3. I acknowledge that HIPAA's privacy regulations do not protect health information from being re-disclosed by the recipient, although other laws may protect against re-disclosure (except as noted in Item No. 5).</p> <p>4. I release the above-named health care provider from all liability and claims whatsoever pertaining to the disclosure of information as contained in the records released pursuant to this authorization.</p> <p>5. _____(initial) I understand that, if I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health information, the recipient is prohibited from re-disclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. [Only if relevant.]</p>	
Employee/Patient Name:	
Signature:	
Date:	



Letter to Health Care Provider

Oahu Transit Services, Inc.
811 Middle St. Honolulu, HI 96819-2316
telephone (808) 848-4400 facsimile (808) 848-4419
www.thebus.org

Date

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. [Redacted]
[Insert Address]

Re: [Insert Name of Employee]
Request for Documentation and Information Regarding
Disability Accommodation Request

Dear Dr. [Redacted]:

[Insert Name of Employee] asserts they have a disability and has requested a [insert description of requested accommodation].

Please assist us in determining [Insert Name of Employee/Patient] 's ("Employee") ability to perform the essential functions of Employee's position and to determine whether an effective reasonable accommodation exists to help Employee perform the essential functions of Employee's job. Regular work attendance is also an essential function of Employee's job.

Please complete and return the attached "Health Care Provider Accommodation Certification" form. We have also included a copy of Employee's job description, selected Hawaii Civil Rights Commission ("HCRC") regulations, and Authorization for Release of Health Information Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), signed by the Employee.

Thank you for your assistance. If you have questions, please contact the Reasonable Accommodation Team at 768-9490 or HR@thebus.org.

Sincerely,

Reasonable Accommodation Team
Oahu Transit Services, Inc.

Enclosures:

- Health Care Provider Accommodation Certification
• Job Description
• Selected HCRC Regulations
• Authorization for Release of Health Information Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA")

ADA Request No.: [Redacted]

SELECTED HCRC REGULATIONS

(Hawaii Administrative Rules)

§ 12-46-190 Prohibited medical examinations and inquiries.

- (a) Except as permitted by section 12-46-191, it is unlawful for an employer or other covered entity to:
 - (1) Conduct a medical examination of an applicant; or
 - (2) Make inquiries as to whether an applicant is a person with a disability or as to the nature or severity of such disability.
- (b) Except as permitted by section 12-46-191, it is unlawful for an employer or other covered entity to:
 - (1) Require a medical examination of an employee; or
 - (2) Make inquiries as to whether an employee is a person with a disability or as to the nature or severity of such disability.

§ 12-46-191 Medical examinations and inquiries specifically permitted.

- (a) An employer or other covered entity may make pre-employment inquiries into the ability of an applicant to perform essential job functions and ask an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will be able to perform essential job functions.
- (b) An employer or other covered entity may require a medical examination or inquiry, or both, after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination or inquiry, or both, if all entering employees in the same job category are subjected to such an examination or inquiry, or both, regardless of disability. Information obtained under this subsection shall not be used for any purposes inconsistent with this subchapter and must be maintained in accordance with subsection (f). Such post-offer medical examinations conducted in accordance with this subsection do not have to be job-related and consistent with business necessity.
 - (1) If qualification standards, tests, or selection criteria are used to screen out a person with a disability or a class of persons with disabilities on the basis of a specified physical or mental impairment, condition, or disability, the criteria must be shown to be a bona fide occupational qualification. Other qualification tests, standards, or selection criteria that screen out a person with a disability or class of persons with disabilities must be shown to be job-related and consistent with business necessity.

- (2) If any adverse consequences result from a post-offer medical examination, the employer or other covered entity shall base its action on a medical examination conducted in accordance with subsection (d).
- (c) An employer or other covered entity may require a medical examination or inquiry, or both, of an employee that is job-related and consistent with business necessity. The employer or other covered entity bears the burden of establishing that such medical examination or inquiry, or both, is job-related and consistent with business necessity and must provide specific instances or examples of the employee's conduct which raised concerns about his or her inability to perform essential job functions or direct threat to self or others, except where an employee is returning to work after receiving disability benefits, such as workers compensation.

Example:

- In order to justify requiring an employee to undergo a medical examination, an employer must establish that an employee's recent work performance raised reasonable concerns that the employee could not perform essential job functions or posed a direct threat to self or others, with or without reasonable accommodation. The employer must articulate specific instances which raised such concerns, except where an employee is returning to work after receiving disability benefits.
- (d) An employer or other covered entity which requires an applicant or employee to undergo a medical examination shall provide every examiner with sufficient job information to assess the applicant's or employee's ability to perform essential job functions or the applicant's or employee's direct threat potential. The job information shall include an accurate written description of the essential responsibilities and functions of the job, and the following rules: the definition of reasonable accommodation in section 12-46-182 and section 12-46-187. If the employer believes that the applicant or employee may pose a direct threat to self or others, the employer shall provide the following rules: the definition of direct threat in section 12-46-182 and section 12-46-188(d). If the applicant or employee wishes to go to a second examiner, the employer or covered entity shall provide the examiner with the same job information. Information obtained under this subsection shall be collected and maintained in accordance with subsection (f).
- (e) An employer or other covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. An employer or other covered entity may make inquiries into the ability of an employee to perform essential job functions. Information obtained under this subsection shall be maintained in accordance with subsection (f).
- (f) All information related to or obtained under subsections (b), (c), (d), and (e) regarding the medical examination, condition, or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
- (2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (3) Commission employees investigating compliance with this subchapter shall be provided any and all information on request.

Information obtained under subsections (b), (c), (d), and (e) regarding the medical condition or history of any applicant or employee shall not be disclosed to persons who are not entitled to have access to the information or used for any purpose inconsistent with this subchapter.

- (g) A test or inquiry to determine the illegal use of drugs is not considered a medical examination or inquiry under this subchapter.

§ 12-46-182 Definitions.

...

"Disability" means:

- (1) With respect to a person:
 - (A) Having a physical or mental impairment which substantially limits one or more major life activities;
 - (B) Having a record of such an impairment; or,
 - (C) Being regarded as having such an impairment, as described in these rules.
- (2) Disability does not include transvestism, transsexualism, or gender identity disorders not resulting from physical impairments. Disability also does not include pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

...

"Reasonable accommodation" means:

- (1) In general:
 - (A) Modifications or adjustments to a job application process that enable an applicant with a disability to be considered for the position such applicant desires;
 - (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 person with a disability to perform the essential functions of that position;

- (C) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy the same or equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities; or
- (D) Modifications or adjustments to schedules or leave policies to enable an employee with record of an impairment that previously substantially limited, but no longer substantially limits a major life activity, to attend follow-up or monitoring appointments from a health care provider.

(2) Reasonable accommodation may include, but is not limited to:

- (A) Making existing facilities used by employees readily accessible to and usable by persons with disabilities; and
- (B) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for persons with disabilities.

...

§12-46-187 Failure to make reasonable accommodation.

- (a) It is unlawful for an employer or other covered entity not to make reasonable accommodation to the known physical or mental limitations of an applicant or employee with a disability who is otherwise qualified, unless such employer or entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business. An employee does not have to specifically request a "reasonable accommodation", but must only let the employer know that some adjustment or change is needed to do a job because of limitations caused by a disability.
- (b) To determine the appropriate reasonable accommodation, it shall be necessary for an employer or other covered entity to initiate an interactive process, after a request for an accommodation, with the person with a disability in need of the accommodation. This process shall identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
- (c) It is unlawful for an employer or other covered entity to deny employment opportunities to an applicant or employee with a disability based on the need of such employer or entity to make reasonable accommodation to such person's physical or mental impairments.

- (d) A person with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified person chooses not to accept. However, if such person, after notice by the employer or other covered entity of the possible consequences of rejecting, rejects a reasonable accommodation, aid, service, opportunity, or benefit that enables the person to perform the essential functions of the position held or desired and cannot, as a result of that rejection, perform the essential functions of the position, the person will not be considered qualified.
- (e) An employer or other covered entity is not required to make a reasonable accommodation to a person who meets the definition of disability solely under the "regarded as" prong.

§12-46-182 Definitions.**"Direct threat" means:**

- (1) A significant risk of substantial harm to the health or safety of the person or others that cannot be eliminated or reduced by reasonable accommodation based upon an individualized assessment. The risk of harm should be identifiable, substantial, current, and probable.
- (2) The factors to be considered include:
 - (A) The harm that may result if the person with a disability performed the essential job functions;
 - (B) The duration of the risk of harm;
 - (C) The nature and severity of the potential harm;
 - (D) Whether the harm may be "significantly greater" than if a non-disabled person performed the essential job functions;
 - (E) The likelihood that the potential harm will occur;
 - (F) The imminence of the potential harm; and
 - (G) Whether a reasonable accommodation can eliminate or reduce the risk of harm below the level of direct threat.

Example:

An employee with epilepsy who works with hazardous machinery may not automatically pose a direct threat to self or others. The employer must first make an individualized evaluation taking into account such factors as the type of job; the aspect of the disability and harm it may cause if the employee performed the essential job functions; the duration of the risk of harm; the types of seizures which

have occurred; whether there is warning of seizures; the degree of seizure control; the employee's reliability in taking medication; any side effects; whether the harm resulting from the employee's epilepsy is significantly greater than for employees without epilepsy; and possible reasonable accommodations. Persons who have had no seizures because they regularly take medication, or who have sufficient advanced warning of a seizure so that they can stop hazardous activity, would not pose a direct threat to self or others because the risk of harm was not substantial, current, or probable.

- (3) The belief that a person may pose a direct threat to self or others shall not be based upon subjective perceptions, irrational fears, patronizing attitudes, or stereotypes about the nature and effect of a particular disability or disabilities in general. Generalized fears about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used to disqualify a person with a disability.

Example:

A person with a history of disabling mental illness cannot be rejected by an employer because of a generalized fear that the work would trigger a relapse of the illness. The mere possibility that a person with a disability may harm the health or safety of self or others is insufficient to establish a direct threat because the risk of harm is not identifiable, substantial, current, or probable.

§ 12-46-188 Qualification Standards, Tests, and Other Selection Criteria.

...

- (d) It is unlawful for an employer or other covered entity to discriminate against a person with a disability for reasons related to safety unless the person poses a direct threat to self or others. The determination that a person with a disability poses a "direct threat" shall be based on an individualized assessment of the person's present ability to safely perform the essential functions of the job, the person's past and current job history, and reasonable medical judgment that relies on the current medical knowledge or the best available objective or scientific evidence, not speculation, considering the factors defined in "direct threat". The individualized assessment made by the employer or covered entity shall identify and document the aspect of the disability and specific risk of harm that would pose the direct threat to self or others. If a person poses a direct threat, the employer or other covered entity must try to eliminate or reduce the threat to an acceptable level through provision of a reasonable accommodation.

...

Health Care Provider Accommodation Certification for Employee of Oahu Transit Services, Inc.

Please Refer to the Attached Selected HCRC Regulations for Definition of Terms

ADA Request No.: _____

Draft Date: _____

Employee's ("Patient") Name: _____

Health Care Provider's Name (please print): _____

Type of practice or Medical Specialty: _____

Telephone: _____

Fax: _____

1. Is Patient's disability _____

_____?
_____? Yes No

If the above is incorrect or insufficient, please describe Patient's disability fully and accurately.

2. Can Patient perform the essential functions of Patient's job (including regular work attendance) **without** reasonable accommodation? Yes No
(Please read the attached Job Description.)

3. Can Patient perform the essential functions of Patient's job (including regular work attendance) **with** reasonable accommodation? Yes No
(Please read the attached Job Description.)

If "yes," what accommodations do you suggest to enable Patient to perform the affected essential functions of the job? (If the space below is insufficient, please provide your answer on a separate sheet of paper.)

Health Care Provider Accommodation Certification

Please Refer to the Attached Selected HCRC Regulations for Definition of Terms

Employee Name: _____ ADA Request No.: _____

4. Is additional leave needed as a reasonable accommodation? Yes No

If yes, what type of leave is needed?

Continuous leave. Please specify estimated start and end dates.

Intermittent leave. Please provide an estimate of the *frequency* and *duration* of intermittent leave needed.

5. Is Patients' impairment(s) discussed in Question 1 permanent? Yes No

If "no," how long will the impairment continue?

6. Would the reasonable accommodations discussed in Questions 3 and 4 be necessary indefinitely? Yes No

If "no," how long would Patient require the reasonable accommodation?
