

## Committee

Meeting date: April 24, 2019

For the Metropolitan Council meeting of May 8, 2019

**Subject:** Approval of changes to the Metropolitan Council Policy, 4-2-2 Disability Management

**District(s), Member(s):** All

**Policy/Legal Reference:** 4 – Employees in the Workplace

**Staff Prepared/Presented:** Marcy Syman, Director of Human Resources, 651-602-1417 and Deborah Aebi, Sr. Manager of Human Resources, 651-602-1319

**Division/Department:** Human Resources

### Proposed Action

That the Metropolitan Council approve changes to the Metropolitan Council Policy 4-2-2 Disability Management.

### Background

The Council's Disability Management Policy was last revised in 2015. Key changes to the Policy include the following additions: 1) the definition of an applicant, a qualified individual with a disability, essential functions of a position, and a fitness for duty exam; 2) responsibilities of the employee, manager/supervisor, Division Director, OEO and Human Resources staff; 3) an expanded interactive dialogue requirement; and 4) approval from HR/OEO prior to denying a reasonable accommodation. The new policy has been reviewed by the Federal Equal Employment Opportunity Commission (EEOC) and has been approved by the Council's Office of Equal Opportunity and the Office of General Counsel.

### Rationale

The Policy was revised to involve Occupational health staff in discussions with employees about medical restrictions and a need for reasonable accommodation. The Policy will enhance the quality of the interactive dialogue process for employees, ensure consistency in the manner by which reasonable accommodations are granted across the Council, and will limit amount of medical information available to managers about the employees they oversee. The Policy includes review and authorization by the Office of Human Resources and the Office of Equal Opportunity prior to denying a reasonable accommodation based on undue hardship, and before any medical disqualification occurs.

### Thrive Lens Analysis

Authorization to approve the Metropolitan Council Policy 4-2-2 supports the Thrive outcome of Stewardship by providing occupational health oversight for employees with disabilities that require reasonable accommodation to perform their jobs. This ensures the Council meets regulatory requirements and provides services to the public performed by employees who are safe and healthy to do so.

### Funding

This change does not require additional funding.

### Known Support / Opposition

None

# POLICY

## DISABILITY MANAGEMENT

Section/Number:	4-2-2	Total Pages:	3
Dept. Responsible:	Human Resources – Occ. Health	Effective Date:	12/17/1998
Special Note:	This supersedes any previous reasonable accommodation and disability management policies.	Revision No:	<u>2</u>
		Last Revision Date:	<u>2/25/2019</u>

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Deleted: Accordingly, the Council is committed to providing equal access to its facilities and services and equal employment opportunities for all individuals with disabilities. Discrimination based on a person's disability and retaliation against an individual who opposes such discriminatory treatment is strictly prohibited. ¶  
The Metropolitan Council will attempt to provide reasonable accommodations for the disabilities of qualified applicants and employees that do not impose an undue hardship on the operation of its business.¶  
An employee may be medically disqualified and terminated from their position in accordance with established procedures, bargaining unit contract provisions, and/or applicable state and federal law, if the employee is unable to perform the essential functions of their job with or without an accommodation, or are absent six months (185 days) in a rolling calendar year for medical reasons. An extension beyond six months may be granted upon request by an employee and will be considered on a case by case basis.

Deleted: State and federal statutes require employers to reasonably accommodate the disabilities of qualified persons that do not cause an undue hardship to the employer. This requirement applies to current employees and applicants for employment, as well as employees who become disabled either on or off the job. ¶  
The Metropolitan Council also recognizes that situations arise in which an employee is unable to fully perform their job because of an impairment that does not meet the ADAAA's definition of a disability. In those situations, the Metropolitan Council allows, at management's discretion and in consideration for business necessity and availability of resources or other considerations, for workplace accommodations to be provided to an employee whose mental or physical impairment limits their ability to completely perform the job without a workplace accommodation. In these circumstances, workplace accommodations are not required by law or regulation.

### I. Policy

The Metropolitan Council complies with all state and federal laws that prohibit discrimination against qualified individuals with disabilities in all employment practices. The Council and its divisions will provide reasonable accommodations, in accordance with the Americans with Disabilities Act (ADA), it's amendments passed in 2008, the ADA Amendments Act (ADAAA) and the Minnesota Human Rights Act, to qualified applicants and employees with disabilities, unless doing so will cause an undue hardship to the organization. Reasonable accommodations are provided to a job applicant with a disability who requests an accommodation during the recruitment and selection process, an employee with a disability who requests an accommodation to perform the essential functions of their position, and when an employee with a disability requests an accommodation to have equal access to the benefits and privileges of their employment.

This policy applies to all employees of and applicants for employment to the Council and its division.

### II. Purpose of Policy

This policy and related procedures(s) ensure compliance with all federal, state and local laws, establishes a written and readily accessible procedure regarding reasonable accommodations to all employees and job applicants, provides guidance and resources about reasonable accommodations, outlines an interactive dialogues process to explore reasonable accommodations, and establishes a timely and thorough review process for requests for reasonable accommodation.



III.

IV. Definitions

**Applicant:** A person who expresses interest in employment by completing an application

**Disability:** An impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment.

**Disability Management Conference (DMC):** Employees who are unable to perform the essential functions of their position because of a physical or mental impairment are required to communicate with their manager and Occupational health at established intervals to engage in the interactive process, which may include discussing the employee's planned date of return, the employee's need for continued reasonable accommodation and eligibility under the FMLA. The employee is generally required to produce updated medical information at or in conjunction with the DMC meeting.

**Essential Functions:** The required duties of a job that are so fundamental that the individual holding the job cannot perform the job without being able to perform them. A function can be essential if the job exists solely for the purpose of performing the function, if there are a limited number of other employees who could perform the function(s), or the functions are so specialized, and the individual is hired based on their ability to perform such functions. Essential functions are determined by Human Resources.

**Fitness for Duty:** An evaluation by a designated medical provider that may be required for employees returning from a medical leave of absence to assess the employee's ability to resume work and perform the essential functions of a job.

**Interactive Process:** The communication process between an employee who has requested an accommodation and the employee's supervisor/manager, Occupational Health, and the Human Resources Business Partner to clarify the nature of the disability and the employee's functional limitations in order to identify whether an effective reasonable accommodation exists which would enable the employee to perform the essential functions of his/her job. To be interactive, all sides must communicate and exchange information. The employee must provide information needed to establish that the employee has a disability requiring a reasonable accommodation. Engaging in the interactive process does not require the Council to grant the specific accommodation the employee requests.

**Qualified Individual with a Disability:** An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires and can perform the essential functions of the job with or without a reasonable accommodation.

**Leave and Accommodation Management Officer:** The Leave and Accommodation Management Officer will work with Occupational Health, Division Management and the

Deleted: Background and Reasons for Policy¶  
Prior to the 1990, Americans with disabilities were not ensured equal opportunity to the mainstream of American life. This Metropolitan Council Disability Management Policy reflects that the Council's continued vitality, strength and vibrancy is through the full realization of the contributions of all of its employees.

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- 1) has a physical or mental impairment that substantially limits one or more major life activities;
  - 2) has a record of such an impairment; or ¶
  - 3) is regarded as having such an impairment.¶
- Major life activities may include, but are not limited to; caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working, as well as the operation of major bodily functions.¶

**Qualified Individual with a Disability¶**

- A qualified individual with a disability must: ¶
- 1) satisfy the requisite skill, experience, and other job-related requirements of the employment position; and ¶
- 2) with or without reasonable accommodation, perform the essential functions of the position.¶

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Undue hardship is defined as an action that is:¶  
"Excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business." ¶

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Office of Equal Opportunity (OEO), when applicable to identify an acceptable reasonable accommodation.

**Major Life Activities:** Can include both activities and bodily functions. Activities include, but are not limited to, actions required to care for oneself, manual tasks, sight (vision), hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Bodily functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**Medical Disqualification:** An employee may be medically disqualified and terminated from employment in accordance with established procedures, bargaining unit contract provisions, and applicable state and federal law when an employee is unable to perform the essential functions of their job, with or without a reasonable accommodation, for a period of 240 calendar days in a rolling year. An extension to a medical disqualification date may be granted when reasonable accommodation will allow the employee to return to work. An extension will be considered on a case by case basis.

**Medical Documentation:** Information from the employee or applicant's health care or rehabilitation provider sufficient to enable the Council to determine whether an individual has a qualified disability and whether a reasonable accommodation would enable the individual to perform the essential functions of the position. The Council may ask clarifying questions of the medical provider to identify an effective, reasonable accommodation. The medical provider must be licensed to administer medical care in their jurisdiction.

**Reasonable Accommodation:** An adjustment or alteration of the work environment that enables a qualified individual with a disability to apply for a position, perform essential job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include modifications to a job application process, modification of a work method or work schedule, reassignment to a vacant position for which the employee is qualified, or physical or environmental adjustments to a work space.

**Undue Hardship:** When a specific accommodation request would create significant difficulty, resources, or expense, be unduly extensive, substantial or disruptive, or fundamentally alter the nature or operation of the position or the department. Undue hardship is determined on a case-by-case basis considering factors that include the nature and cost of the request and the impact of the request on the operations of the Council. The Council is not required to provide accommodations that would impose an undue hardship on the operation of the agency.

### **III. Roles and Responsibilities**

Employees:

The employee is responsible for requesting a reasonable accommodation, participating in the interactive process, including scheduled Disability Management

Conferences, and promptly responding to requests for information from Occupational Health.

Managers/Supervisors:

The manager/supervisor is responsible to contact an Occupational Health representative and their Human Resources Business Partner when an employee has difficulty performing their job, provides work restrictions, or requests a reasonable accommodation to perform their job duties.

Division Directors or Designee:

Division Leaders are responsible for ensuring their managers and support staff comply with this policy, including providing resources to managers/supervisors to fully implement a reasonable accommodation.

Office of Equal Opportunity (OEO):

Office of Equal Opportunity staff will be consulted when an accommodation is unreasonable or will create an undue business hardship for the Council, and prior to a medical disqualification.

The Office of Equal Opportunity independently investigates related complaints.

Leave and Accommodation Management Officer:

The Leave and Accommodation Management Officer is the Council's decision maker for employment-related reasonable accommodation requests. The Leave and Accommodation Management Officer will be consulted when issues, conflicts or questions arise in the interactive process; prior to denying a request for accommodation because of undue hardship, and prior to the medical disqualification of an employee.

The Leave and Accommodation Management Officer will consult with the Office of Equal Opportunity staff prior to denying an accommodation because of undue hardship, and prior to any employee medical disqualification.

The Leave and Accommodation Management Officer is a designee of the Human Resources department and is appointed by the Director of Human Resources.

Human Resources:

Occupational Health representatives will assist an applicant with a disability requiring a reasonable accommodation to participate in the recruitment and selection process.

Occupational Health representatives will work with the employee with a disability, the manager/supervisor, and when necessary, the Division Director, to identify a reasonable accommodation and to ensure the agreed upon reasonable

accommodation is effective.

The Occupational Health representative is responsible for leading the disability management process when an employee is unable to perform the essential job duties of their position with or without reasonable accommodation.

The Occupational Health staff engages with occupational physicians and/or treating physicians regarding the employee's medical needs.

The Human Resources employees in the Business Partner job title support managers in the event additional coaching, training, or other corrective measures are needed outside of the interactive process.

Talent acquisition representatives are responsible to notify an Occupational Health representative when an applicant with a disability needs an accommodation during the recruitment and selection process or requests assistance in the recruiting, selection or onboarding process.

#### **IV. Recordkeeping**

The Occupational Health unit tracks reasonable accommodations requested, approved, and denied.

Information related to an employee's reasonable accommodation request, and supporting documentation is retained in the same manner as other similar employee medical information. Employee documentation is kept in accordance with the Council's retention and data practices policies and the MN Government Data Practices Act.

Statutory References: Rehabilitation Act of 1973, Title 29 USC 701; Americans with Disabilities Act as Amended 2008; 29 CFR 1630.

#### **VI. Accountability**

- A. The Director of Human Resources is responsible for enforcing this policy.
- B. The Director of Human Resources, or designee will review denied reasonable accommodations via an appeal process provided for by the Disability Management Procedure.
- C. All Council employees are expected to conduct themselves in accordance with the spirit and requirements of this policy.

#### **Related Policies and Procedures:**

[4-2-2b Disability Management Procedure](#)

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#### **Reasonable Accommodation¶**

. The ADA, ADAAA, and the Minnesota Human Rights Act require the employer to reasonably accommodate the disabilities of qualified employees, applicants, and persons to whom it provides a public service.¶

Reasonable Accommodations include, but are not limited to:¶

Modifications or adjustments to the 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 under which the position held or desired is typically performed, that enable a qualified individual with a disability to perform the essential functions of the position;¶

¶  
Allowing paid or unpaid leaves of absences for medical treatment; and¶

¶  
Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.¶

For more information about reasonable accommodations, please consult the Disability Management - Reasonable Accommodations Procedure (4-2-2a) and the Disability Management – Medical Disqualification Procedure (4-2-2b). ¶

#### **V. Implementation/Accountability for Reasonable Accommodations¶**

Implementing Procedures: 4-2-2a Disability Management - Reasonable Accommodations and 4-2-2b Disability Management – Medical Disqualification¶  
Managers and supervisors will be held accountable for taking prompt and appropriate action to ensure that reasonable accommodations are provided, when appropriate, to the disabilities of all qualified applicants and/or employees.

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*Revision/Review Tracking*

Date	Revision No.	Review Only – No changes
04/15/2015	1	
02/25/2019	2	