



# **Defense Threat Reduction Agency**

## **Reasonable Accommodation Program**

DESK REFERENCE GUIDE

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HUMAN RESOURCES DIRECTORATE

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## INTRODUCTION

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The Defense Threat Reduction Agency (DTRA) Reasonable Accommodation (RA) program is designed to remove any barrier(s) which prevent individuals with disabilities (permanent or temporary) who are employees or applicants from applying for or performing jobs for which they are qualified. Equally important is to empower individuals with disabilities to maximize employment, economic self-sufficiency, and inclusion into society. This guide provides procedures for participation in the DTRA RA program.

The information in this guide applies to all civilian employees and applicants seeking employment within DTRA and takes precedence over all related internal standard operating procedures or guidance.

### References

Chapter 126 of Title 42, United States Code (U.S.C.)  
Deputy Secretary of Defense Memorandum, "Access for People with Disabilities,"  
October 31, 2008  
DoD Manual 8400.01, "Accessibility of Information and communications Technology (ICT),"  
November 14, 2017  
DTRA Instruction 1100.2, "Telework Program, August 21, 2013, as amended  
DTRA Instruction 5505.3, "Defense Threat Reduction Agency Reasonable Accommodation,"  
December 10, 2007, hereby cancelled  
EEOC "ADA Amendments Act of 2008," September 25, 2008  
EEOC "Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the  
American's with Disabilities Act," October 17, 2002  
EEOC "Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance  
Services (PAS) under Section 501 of the Rehabilitation Act," September 18, 2017  
Executive Order 13164, "Requiring Federal Agencies to Establish Procedures to Facilitate the  
Provision of Reasonable Accommodation," July 26, 2000  
Public Law 93-112, "Rehabilitation Act of 1973," as amended  
Public Law 110-325, "ADA Amendments Act of 2008," September 25, 2008  
Section 552a of Title 5, U.S.C.  
Sections 701, Section 791, and Section 1630.1(c)(4) of Title 29, U.S.C.

## DISCUSSION

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### **Program Coverage**

The DTRA RA program provides modification(s) to the work environment that allows an employee to perform the essential functions of his or her position and/or to enjoy equal access to benefits and privileges of employment. The DTRA RA program also provides for modification to the application process allowing qualified individuals with a disability to apply for positions without barriers.

The DTRA RA program complies with United States Equal Employment Opportunity Commission (EEOC) regulations and federal law prohibiting federal agencies from discriminating against qualified individuals with disabilities. A qualified individual with a disability refers to an individual who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires; and who, with or without reasonable accommodation, can perform the essential functions of such position. Effective January 3, 2018, the EEOC amended Section 501 of the Rehabilitation Act of 1973, requiring all federal agencies, to include DTRA, to offer Personal Assistance Services (PAS) to assist with daily living activities (i.e., putting on clothing, eating, using the restroom) for employees with “targeted disabilities” (i.e., blindness, deafness, spinal cord injury, etc.).

### **Eligibility**

Eligibility to participate in the DTRA RA program is limited to permanent full-time and part-time Federal civilian employees or civilian applicants seeking employment within DTRA.

Military members assigned to DTRA seeking a RA must follow his/her Service specific rules for making such a request.

Contractor personnel are not eligible to participate in DTRA’s RA program. Contractors should contact his/her employer if he/she feels a RA is needed.

### **Reporting**

The Director, Human Resources Directorate (HR), has overall responsibility for DTRA guidance and reporting requirements related to the RA program. HR will compile and maintain RA data to evaluate the Agency’s performance in responding to requests for RA, ensure compliance with EEOC regulations and federal laws, and submit report(s) to the EEOC, as appropriate.

## PROCEDURES

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### Designation of RA coordinator

The Director, HR designates a RA coordinator to serve as the program lead. The RA coordinator is responsible for reviewing all RA requests for employees and applicants; ensuring completeness of RA requests; determining whether an employee or applicant meets the definition of a qualified individual with a disability; consulting with Directorates and Staff Offices as necessary; and, providing guidance to all parties.

### Requesting RA

The RA process begins when employees or applicants with a disability request an adjustment or modification to the work environment or application process that will enable the employee or applicant to perform the essential functions of their position, to complete the application process, and/or to enjoy equal access to benefits and privileges of employment (e.g., Agency sponsored events, training).

A request for a RA may be made orally or in writing by an employee or applicant, or the employee or applicant's family member, health care professional or authorized representative. The individual making the request need only indicate the need for assistance based on a medical condition. The use of special words is not required (e.g., "accommodation," "disability," or "rehabilitation").

When a request is made by someone other than an employee or applicant, the RA coordinator will confirm the request with the employee or applicant. In the event a third party acts as a representative for the affected individual, the third party must have written designation authorizing him or her to work on the requestor's behalf.

Types of RA may include, *but are not limited to*:

- Ensuring facilities used by employees and applicants for employment are readily accessible and usable by individuals with disabilities;
- Restructuring jobs and/or modifying work schedules;
- Reassigning current employees to vacant positions;
- Acquiring or modifying equipment or devices;
- Making appropriate modifications to examinations, training materials, or policies; or
- Providing qualified readers or interpreters and/or other similar assistance.

## Processing the RA Request for Employees

A RA request may be submitted in writing or orally to an employee's supervisor, another supervisor in the employee's chain of command, or to the RA coordinator. The initial RA request may be made verbally; however, the RA request must be later documented using DTRA Form 123 found in the DTRA/ Forms Library SharePoint site:

<https://dtra1/j6/RFM/DTRA%20Forms%20Library/Forms/Forms%20By%20Number.aspx>

When a RA request requires review or consultation, the supervisor will ensure the RA request is forwarded to the RA coordinator within **7 calendar days** of receipt.

If an employee's need for RA is not obvious or otherwise known, the employee may be asked to provide supporting medical documentation. The supervisor will identify the essential functions of the employee's position. The supporting medical documentation will determine what the employee can or cannot perform because of the disability. Medical documentation in support of a RA request must come from an appropriate healthcare professional and must include sufficient information regarding the employee's medical condition(s) and the functional limitation(s). The RA should explain:

- The past, present and expected future nature, severity, and duration of the employee's impairment (e.g. functional limitation, symptoms, side effects of any treatments).
- The on-the-job activity or activities that the impairment limits, and the extent to which the impairment limits the employee's ability to perform the activity or activities.
- The medical basis for any opinion that the employee requires a RA and how the RA will assist the employee in the performance of the essential functions of the position.
- Specific limitations associated with each major life activity (i.e., performing manual tasks, walking, standing, reaching, sitting, lifting, etc.).
- If teleworking addresses the medical condition sufficiently for the employee to continue performing the essential functions of the position, the RA must define the parameters of telework. (Note: If the RA request involves "full-time telework," then the employee must complete an additional coordination, requiring approval of the Director, HR, per DTRA Instruction 1100.2).
- How the RA will assist in the performance of the essential functions of the position or to enjoy equal access to benefits and privileges of employment (e.g., Agency sponsored events, training).

Failure on the part of the employee, or the employee's designee, to cooperate in this process or provide sufficient documentation on whether he or she has a disability can result in a denial of RA.

Generally, an employee who has already been determined eligible for a RA will not be required to submit a separate written request for each subsequent occasion in which they will need the

same or similar RA. If the RA is needed on a recurring basis, the supervisor will ensure arrangements are made without requiring a request in advance of each occasion. A supervisor and RA coordinator may reevaluate a RA based on non-permanent conditions and make modifications per the medical documentation, as necessary.

If an employee needs PAS, the employee will describe the kind of assistance needed to perform activities of daily living for their “targeted disability” and will refer to “Making a Request for PAS” section of this Handbook for procedural guidance.

### **Processing the RA Request for Applicants Seeking Employment**

Applicants seeking employment within DTRA may direct their RA request to the RA coordinator, designee, or to the individual contacting the applicant for an interview.

RA requests should include the applicant’s name, name of the hiring organization, a description of the RA being requested, and a brief description of the reason for the RA request which may be documented on the DTRA Form 123.

### **Engaging in the Interactive Process**

An employee is not entitled to the exact RA he/she requests. The RA must allow the requesting employee to perform the essential function of his/her position that the employee is no longer able to perform. Therefore, once the RA request is made by the employee or applicant, he or she will work with the supervisor or hiring manager to identify potential RAs and explore the various options. The supervisor will engage the RA coordinator once the documentation (i.e., supporting medical documentation, DTRA Form 123, DTRA Form 259, Request for RA, description of RA for applicants, etc.) is gathered.

The requester, RA coordinator, supervisor or hiring manager will collaborate throughout the process. Failure on the part of the requester to cooperate in the interactive process can result in a denial of the RA request. Failure on the part of supervisor to participate in the interactive process may potentially result in Agency liability.

**The RA coordinator advises the supervisor and/or hiring manager; however, the supervisor makes the final decision on the RA for an employee and the hiring manager provides written communication to the applicant on his/her RA decision.** Depending on the nature of the RA request, the RA coordinator, will consult with the Office of the General Counsel, DTRA’s Senior Medical Officer, and/or other Directorates and Staff Offices, as needed, to execute RAs. The RA coordinator will collaborate with the supervisor or hiring manager to promptly, effectively, and reasonably to accommodate a qualified employee with a disability. In extenuating circumstances, clearly visible or known disabilities will be evaluated expeditiously and given priority.

## Reasonable Accommodation Review Board

The employee who is denied an RA, or is not given the RA he/she requests, may choose to appeal the decision to the Reasonable Accommodation Review Board (RARB).

Since each RA is unique and often requires guidance from various Directorates and Staff Offices, RARB members include, but is not limited to:

- Chief, Management and Employee Relations Division;
- RA Coordinator;
- Senior Medical Officer; and
- The Office of the General Counsel.

The Chief, Management and Employee Relations Division serves as the RARB chair and will determine if ad hoc membership is required.

## Requesting and Safeguarding Medical Information

The RA coordinator may request additional medical information if the medical documentation does not clearly explain the nature of the disability, the need for RA, or how the RA will assist the employee in performing the essential functions of the job, enjoying the privileges of the workplace, or assisting an applicant with the application process. The RA coordinator may ask the employee, or employee's designee, to provide medical documentation in support of a RA.

If the RA coordinator needs additional medical information in order to process a RA request, the RA coordinator must provide the employee or applicant with a written explanation of why the submitted medical documentation is insufficient and a description of what is needed.

At a minimum, acceptable medical documentation must establish the nature of the medical condition, the limitations the medical condition imposes, and the causal connection between the medical condition and the inability to meet workplace expectations.

When additional medical documentation is needed, the RA coordinator can allow the individual an opportunity to provide the information from their personal healthcare professional. The RA coordinator may ask the individual to sign a limited release and then either submit a list of specific questions to the individual's health care professional or have DTRA's Senior Medical Officer contact the individual's healthcare professional. If this does not result in sufficient information, the Agency may require the individual to submit to an independent medical examination by a healthcare professional of the Agency's choice and at the Agency's expense.

Individuals should respond to requests for medical documentation within **15 calendar days** after receipt of the RA request. An additional **15 calendar days** may be granted for extenuating circumstances.

All medical information obtained in connection with the RA process must be kept confidential, must not be shared with others unless on a need-to-know basis, and must be appropriately



protected from unlawful disclosure. Any employee who obtains or receives such information is strictly bound by these confidentiality requirements. Restrictions apply to information and documents. The only circumstances under which medical information may be disclosed are:

- Providing identification of an employee's functional limitations and what RAs have been approved to those who have a need-to-know;
- Providing pertinent information to first aid and emergency personnel if the impaired individual requires emergency treatment; or
- Providing investigative services to ensure DTRA is in compliance with EEOC regulations.

Medical information or documentation of an employee's impairment, disability, or RA, must be kept in a separate file from normal personnel records and be properly secured when not in use by the authorized parties. Records pertaining to RA requests are maintained for a period of 3 years. If the RA is needed on a recurring basis, then the RA records will be maintained for as long as the case is active.

### **Timeframes for Processing RA Requests**

Responses to RA requests for information will be provided by the RA coordinator, as soon as possible, absent extenuating circumstances, not later than **15 calendar days** after receipt. Absent extenuating circumstances, requests for RA will be processed and a decision on the request will be provided within **30 calendar days** of receiving all requested information. If there is a delay in issuing a written determination, the individual requesting RA must be issued written notification of the reasons for the delay.

If a request for a RA can be processed without supporting medical information, and there are no other extenuating circumstances, determinations will be made within **30 calendar days** from the date the request is received. When extenuating circumstances are present, such as failure to provide requested medical information or the information specified, or where independent medical review is necessary, the time for processing a RA request will be extended as reasonably necessary. If the delay exceeds **45 calendar days** from the date of the employee's initial request, he or she will be notified in writing. Unnecessary delays may result in Agency liability and can also result in a violation of the Americans with Disabilities Act (ADA).

If the RA cannot be provided immediately, the supervisor, in coordination with the RA coordinator, should inform the requester in writing of the projected timeframe for providing the RA. Temporary measures must be explored when there may be a delay in processing a request or implementing a RA. If a temporary accommodation is provided, the employee must be informed the accommodation is being provided only on a temporary, interim basis.

In special circumstances expedited processing of a RA request may be required. Examples include when the RA is needed to enable an individual to apply for a job, to participate in a specific activity that is scheduled to occur on a specified date, or in cases involving safety issues.

## Reassignment

Reassignment to a vacant position is a potential RA. In general, reassignment should be considered as a “last resort,” only when RA within the individual's current position is not possible, or would pose an undue hardship to the Agency. Reassignment is not available to applicants. In accordance with EEOC regulatory guidance, reassignment will be considered for an employee when:

- The employee, because of a disability, can no longer perform the essential functions of the position he or she holds, with or without RA.
- There is no available RA that would enable the employee to perform the essential functions of the position or if the only effective accommodation would cause undue hardship to the Agency.
- There is a vacant position for which the employee is qualified. The vacant position must be equivalent to the employee's current position in terms of pay, grade, benefits, geographical location, etc., unless the employee consents to being placed in a lower graded position and/or placed in a different geographical location.

## Vacant Position Searches

Searches for vacant positions will be handled by the RA coordinator in coordination with the HR Services Division. The search will include positions that are anticipated to be vacant within **60 calendar days** of the initial request for a RA. This search does not obligate DTRA to wait **60 calendar days** to take appropriate action, only to consider vacancies that have been forecasted within **60 calendar days**.

## Decision to Grant a RA Request

When it is determined that a RA will be provided, the decision will be communicated in writing to the requesting individual and his or her authorized representative if one has been identified. If the supervisor grants a RA that was not agreed upon during the interactive process, the notice should explain the reason(s) for the denial of the requested RA and the reason(s) that he or she believes the chosen RA is more effective.

A supervisor is not required to provide the precise RA requested so long as the alternative accommodation is effective and does not create an undue hardship to the Agency, per EEOC regulations.

The RA coordinator will follow up with the employee or applicant to ensure the effectiveness of the RA.

## Decision to Deny a RA Request

When the supervisor, in coordination with the RARB, determines that a RA request will be denied, this will be communicated in writing to the requesting individual, and his or her authorized representative. The explanation for the denial will be written clearly stating the specific reason(s) for the denial. All denial notices will be coordinated with the RARB and sent to the requesting individual by the RA coordinator.

The reason(s) for the denial of a RA request may include, *but are not limited to*, the following:

- The requested accommodation would not be effective and an effective alternate RA was not identified.
- The requested accommodation would result in undue hardship and an effective alternate RA was not identified.
- The submitted medical documentation does not establish that the individual has a disability or needs a RA.
- The requested accommodation would require the removal of an essential function and an effective alternate RA was not identified.
- The requested accommodation would require the lowering of a performance or production standard and an effective alternate RA was not identified.
- The employee is successfully completing all the essential elements of his/her position and is therefore not a “qualified” individual with a disability.

The supervisor, in coordination with the RA coordinator, will provide a written notice of denial to inform the individual of his or her right to file an appeal. The individual may file an appeal with the RARB. If the individual believes the Americans with Disabilities Act was violated, he/she may file a complaint with DTRA’ Equal Opportunity and Diversity Programs Office.

## Tracking and Reporting Requirements

The RA coordinator will gather, track, and report:

- The number and types of RAs that have been requested, and whether those requests have been granted or denied.
- The jobs, to include occupational series, grade level, position titles, etc., for which RAs have been requested.
- The reasons for denial of requests for RA.

- The amount of time taken to process each RA request.
- The sources of technical assistance that have been consulted in trying to identify possible RAs.

### **Making a Request for Personal Assistance Services (PAS)**

An employee may request a PAS by informing a supervisor, the RA coordinator, or other suitable representative that he or she needs assistance with daily life activities because of a medical condition. The employee does not need to mention Section 501 or EEOC regulations explicitly, or use terms such as “PAS” or “affirmative action” to trigger DTRA’s obligation to consider the request.

The RA coordinator will work with the employee to define PAS parameters to include:

- The employee’s targeted disability which makes him or her eligible for PAS.
- The type(s) of PAS (i.e., assistance with removing and putting on clothing, eating, using the restroom, pushing a wheelchair, etc.) required because of his or her targeted disability as defined by the treating health care provider.
- The extent to which PAS is needed for job-related travel, if applicable, but not including the commute to and from work, which is not covered under EEOC regulations.
- The extent to which PAS is needed for teleworking, if applicable.
- The extent to which PAS is needed for employer-sponsored trainings and events.
- The extent to which a RA is needed to supplement the PAS, if applicable.
- The employee’s preference to a specific PAS provider, if applicable.

### **Denying a Request for PAS**

DTRA is only required to provide PAS if the requesting employee is entitled under the EEOC’s affirmative action ruling. Therefore, DTRA will deny a request for PAS if:

- The requestor is not a DTRA employee;
- The requestor does not have a targeted disability;
- The targeted disability does not create a need for PAS;

- The requestor is not able to perform the essential functions of the job, even with PAS and any RAs;
- The requestor would create a direct threat to safety on the job, even with PAS and any RAs; or
- Providing PAS would impose undue hardship on DTRA.

### **Confidentiality Requirements for PAS**

All medical information obtained in connection with PAS requests must be kept confidential and appropriately protected from unlawful disclosure. PAS requests must be kept confidential and must not be shared with others unless on a need-to-know basis. Any employee who obtains or receives such information is strictly bound by these confidentiality requirements per EEOC regulation and federal laws. The RA coordinator must maintain records for a period of 3 years. If the RA is needed on a recurring basis, then the RA records will be maintained for as long as the case is active.

### **Reporting Requirements for PAS**

HR will compile and maintain PAS data to evaluate the Agency's performance in responding to requests for PAS, ensure compliance with EEOC regulations and federal laws, and submit report(s) to the EEOC, as appropriate.

## ACRONYMS

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ADA	Americans with Disabilities Act
DTRA	Defense Threat Reduction Agency
EEOC	United States Equal Employment Opportunity Commission
HR	Human Resources Directorate
PAS	Personal Assistance Services
RA	Reasonable Accommodation
RARB	Reasonable Accommodation Review Board

## DEFINITIONS

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**Disability.** Per ADA Amendments Act of 2008, the basic definition of "disability" is an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

**Essential Functions.** The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things: (a) the position exists specifically to perform that function, (b) there are a limited number of other employees who could perform the function if it were assigned to them or (c) the function is specialized and the incumbent is hired based on his/her ability to perform it.

**Individual with a Disability.** An individual with a disability is a person who (a) has a physical or mental impairment that substantially limits one or more of major life activities; (b) has a record of such impairment, or (c) is regarded as having such impairment.

**Personal Assistant Services (PAS).** PAS means 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 a reasonable accommodation.

**Qualified Individual with a Disability.** A qualified individual with a disability is a person who (a) satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or desires and (b) can perform the essential functions of the position, with or without reasonable accommodation.

**Reasonable Accommodation (RA).** RA is a modification or adjustment to a position, the work environment, or the application process that enables a qualified individual with a disability to attain the same level of performance of the essential duties of the job or to enjoy equal benefits and privileges of employment as are available to a similarly situated employee without a disability.

**Reassignment.** Reassignment is a form of RA that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of the job, with or without RA. Reassignments are made only to vacant positions and for employees who are qualified for the new position, when no other RA exists.

**Targeted Disabilities.** Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehabilitation Act. Qualified individuals with certain disabilities (e.g., paralysis due to spinal cord injury, blindness, missing limbs) face significant barriers to employment, which for some people may include lack of access to PAS in the workplace, that are above and beyond the barriers faced by people with the broader range of disabilities.

**Undue Hardship.** Undue hardship generally refers to a specific accommodation that requires the DTRA to incur significant difficulty or expense. Determinations are made on a case-by-case basis, considering the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the DTRA.