

# CITY OF RACINE AMERICANS WITH DISABILITIES ACT (ADA) Title I

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Federal Americans with Disabilities Act and Wisconsin Fair Employment Act

**Special Instructions:** N/A

## I. PURPOSE

This policy outlines the provisions of the Americans with Disabilities Act (ADA) of 1990 and the rights and obligations of employees and the city under federal and state law.

## II. POLICY

In accordance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the ADA Amendments Act of 2008 and the Wisconsin Fair Employment Act, the City of Racine prohibits discrimination against qualified individuals with disabilities in all employment practices, including: job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. The City of Racine is committed to providing reasonable accommodations for eligible employees, provided they can perform the essential functions of the job, citizens who are eligible for the receipt of service and/or applicants with documented disabilities.

### a. Application Process

In accordance with the law, all applicants for City positions must have accessibility to all steps in the selection process and are protected from disability related questions that could potentially screen them out of the application process. Applicants may not be asked questions that are likely to elicit information about a disability, including whether an applicant has a particular disability. Inquiries regarding an applicant's medical or worker's compensation history may also not be asked. However, applicants may be asked questions concerning their ability to perform the essential functions of a job. An applicant may not be asked to describe or demonstrate how they would perform the job functions, unless all applicants are asked to do this or if the disability is obvious or the applicant discloses a hidden disability.

Reasonable accommodation will be provided to qualified applicants during the selection process to ensure that all applicants have accessibility to all phases of the process. Accommodations may include making an interview room accessible, or supplying an interpreter or reader.

### b. Pre-Employment

Pre-offer physicals are prohibited by the city, as are inquiries regarding the existence of an applicant's disability or the nature and severity of the disability.

After an offer of employment has been extended, it may be conditioned on the results of a medical examination, as long as all individuals in the same job category have to undergo a medical exam. The information received during medical examinations will remain confidential. However, a supervisor may be told of a candidate's necessary restrictions and/or accommodations.

If the existence of a disability is revealed during the medical exam, the offer of employment may not be withdrawn unless: (1) the reason is job related and consistent with business necessity and no reasonable accommodation can be made; (2) the disability poses a *direct threat* to the health and safety of the applicant, other employees or the general public, and which cannot be eliminated by reasonable accommodation.

#### **c. Reasonable Accommodation**

The city is committed to making reasonable accommodation in job duties, the work environment, and the application process to enable a qualified individual with a disability to enjoy equal employment opportunities, as long as such accommodations do not constitute an undue hardship on the city.

#### **d. Complaint Procedure**

If an employee believes they have been discriminated against in employment on the basis of disability, an internal complaint may be filed through the City's harassment complaint procedure, or a formal complaint may be filed with the Wisconsin Equal Rights Division of the Department of Workforce Development and/or the federal Equal Employment Opportunity Commission.

### **III. PROCEDURE**

#### **a. Requests for Accommodation**

An employee who believes they need a reasonable accommodation to perform an essential function of their job should make that request through their direct supervisor, the ADA Coordinator or Human Resources Director. The city will work with the employee to determine if their disability can be reasonably accommodated.

When a request for accommodation is received by a supervisor or when it is apparent that a reasonable accommodation may enable an individual with a disability to perform the essential functions of the position or participate in the employment process, the employee should be directed to submit a **"Reasonable Accommodation Request Form"** with appropriate supporting documentation to their direct supervisor [*Cities should determine whether accommodation requests should go to the supervisor or an ADA Coordinator*] or the Human Resources Director [*Cities should establish a "ADA Coordinator" or designate the position which accommodation requests or other ADA related inquiries*]

should be addressed to] for consideration. [Note: A request for reasonable accommodation may be verbal or written. If the request is verbal, the agent of the employer must begin the interactive process, regardless of whether a “request for accommodation form” is completed].

All requests for accommodation shall be responded to in a timely fashion, after the supervisor has engaged in the “interactive process” with the employee requesting accommodation. Supervisors are encouraged to request assistance from the Human Resources Department [or other department or ADA Coordinator] or other outside sources, as necessary.

The city reviews all requests for accommodation on a case by case basis and may provide a reasonable accommodation that allows the qualified individual with a disability to achieve the same level of job performance as other similarly skilled employees. The city is not obligated to provide an accommodation that causes an undue hardship on the city.

**b. Documentation of Request for Accommodation**

Documentation of the request for accommodation and the response (provided on the “*Response to Accommodation Request Form*”) by the supervisor and/or [Human Resources Director or ADA Coordinator] should be forwarded to the Human Resource Department and shall be kept in a confidential file (separate from personnel and/or medical files).

**IV. DEFINITIONS**

- a. **“Disability” as defined under the Americans with Disabilities Act of 1990** (42 U.S.C. sec. 12112) and the ADA Amendments Act of 2008: A physical or mental impairment that substantially limits one or more major life activities (sometimes referred to in the regulations as an “actual disability”, or a record of a physical or mental impairment that substantially limited a major life activity (“record of”), or when a covered entity take an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor (“regarded as”)
- b. **“Disability” as defined under the Wisconsin Fair Employment Act** (Section 111.32): A physical or mental impairment which makes achievement unusually difficult or limits the capacity to work; has a record of such an impairment; or is perceived as having such an impairment.
- c. **Direct Threat To Safety:** A significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation.
- d. **Essential Job Functions:** Those activities of a job that are the core to performing the position that cannot be modified. A function is essential if: the job exists to accomplish the function, only a limited number of employees can perform the function, the function is highly specialized and an employee is hired for his/her expertise in the area. Other factors that may be considered in determining whether a function is essential are: the amount of time an employee spends performing the function, the consequences if the employee were

not required to perform the function, the terms of applicable collective bargaining agreements, the work experience of previous employees who held the job, and the work experience of employees in similar jobs.

- e. **Interactive Process:** The process by which an agent of the employer and individual requesting accommodation engage in, to discuss physical or mental abilities and limitations as they relate to the job's essential functions and to determine possible job accommodations.
- f. **Major Life Activities** (Non-exhaustive list): 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. Major life activities include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Major bodily functions also include the operation of an individual organ within a body system (i.e. the operation of the kidney, liver or pancreas).
- g. **Physical or Mental Impairment:** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. They also cover any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities [Section 1630.2(h)]
- h. **Qualified Individual with A Disability:** A person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the "essential" functions of the position with or without reasonable accommodation
- i. **Reasonable Accommodation:** Any modification or adjustment to a job or the work environment that will enable a "qualified" applicant or employee with a disability to participate in the application process or to perform essential job functions. Examples of reasonable accommodation include: making facilities readily accessible, job restructuring, modifying work schedules, implementing flexible leave policies, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting or modifying tests, training material or policies, and providing qualified readers or interpreters.
- j. **Substantial Limitation of a Major Life Activity:** To have an actual disability or to have a record of a disability, an individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the general population. The following "rules of construction", as adopted by the ADAAA, will be used when determining if an individual is substantially limited in performing a major life activity:

- An impairment need not prevent or severely or significantly limit a major life activity to be considered “substantially limiting”. However, not every impairment will constitute a disability.
  - The term “substantially limits” should be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA.
  - The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.
  - The determination of disability should not require extensive analysis.
  - Although determination of whether an impairment substantially limits a major life activity as compared to most people will not usually require scientific, medical or statistical evidence, such evidence may be used if appropriate.
  - An individual need only be substantially limited, or have a record of a substantial limitation, in one major life activity to be covered under the first or second prong of the definition of “disability.”
- k. Undue Hardship:** An action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.