

## CHAPTER 8 . UNDUE HARDSHIP

### 8-1. DETERMINING UNDUE HARDSHIP

HUD does not have to provide an accommodation that would cause an "undue hardship" on the agency. Undue hardship must be based on an individualized assessment of current circumstances that show that a specific accommodation would cause significant difficulty or expense, or would fundamentally alter the nature of HUD's operations.

### 8-2. WHAT CONSTITUTES UNDUE HARDSHIP?

#### A. Determining Factors

##### 1. Undue hardship must be based on several factors

The nature and cost of the accommodation; the overall financial resources of the agency; the number of persons employed; the effect on expenses and resources; type of operation, including the structure and functions of the workforce, the geographical separateness, and the administrative or fiscal relationship involved in making the reasonable accommodation to the employee; and the impact of the accommodation on the operations.

An employer cannot claim undue hardship based on an employee's fears or prejudices toward the individual's disability, nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where provision of a reasonable accommodation would be unduly disruptive to other employee's ability to work.

Undue hardship relates to HUD's operations and not those of an individual program office. Therefore, all undue hardship issues and/or preliminary decisions regarding undue hardship must be forwarded to the Disability Program Manager who also serves as the Chair of the Reasonable Accommodation Committee for review and final decision.

##### 2. Supervisor/Manager Role

If a supervisor/manager determines that a particular accommodation may cause undue hardship on the agency, but an alternative type of accommodation would be as



effective and will not cause an undue hardship and the Disability Program Manager agrees, then the supervisor shall provide the alternative accommodation.

### **3. Actions, when no undue hardship**

Absent an undue hardship, the supervisor may also choose among reasonable accommodations as long as the chosen one is equally effective. For example, an employee or applicant with a disability requests a specific accommodation and there are two possible reasonable accommodations, one costs more or is more burdensome than the other, the supervisor may choose the less expensive or less burdensome accommodation as long as it is equally effective. An accommodation is considered "effective" if it removes a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment.

#### **B. Individual's Preference**

1. When more than one accommodation is effective, the preference of the individual with a disability should be given primary consideration. However, the supervisor has the ultimate discretion to choose between effective accommodations. The manager, supervisor or DPM may not, however, require a qualified individual with a disability to accept an accommodation.
2. If, however, an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation s/he may not be qualified to remain in the job.

### **8-3. REASSIGNMENT**

#### **A. Last Resort**

If the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his/her current position, absent undue hardship on the agency, reassignment will be considered as a reasonable accommodation. Reassignment, available only to employees, is a "last resort" accommodation that may be made only to a vacant position. The law does not require that agencies create new positions or move employees from their jobs in order to create a

vacancy.<sup>1</sup> If the employee is qualified for the position, s/he should be reassigned to the vacant position as a reasonable accommodation and should not have to compete for it.

## **B. Requirement(s)**

The employee with a disability must be qualified for the position. The employee is qualified if s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position, and can perform the essential functions of the position with or without reasonable accommodation.

## **C. Procedures**

If reassignment is the "last resort" accommodation, the Disability Program Manager, in coordination with the Office of Human Resources, must conduct a search for available vacancies. The Disability Program Manager must consult with the affected employee as necessary to determine whether there are limits on the search the employee would like the Disability Program Manager to conduct; whether the employee is qualified for a particular job; or whether the employee would need a reasonable accommodation to perform the essential functions of a new position.

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<sup>1</sup> Direct threat to the health or safety of others or to oneself in the workplace determinations are based on individualized assessments of current medical evidence or the best available objective evidence that will demonstrate (1) a significant risk of substantial harm; (2) the nature, duration, severity, likelihood, and/or imminence of the risk; (3) the probability that the potential injury will actually occur; and (4) whether reasonable modification of policies, practices, or procedures will mitigate the risk.