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TAG POLICY LETTER
NO. 24-006

15 November 2024

REASONABLE ACCOMMODATION (RA)

Purpose. This instruction establishes the Reasonable Accommodation (RA) Policy for the New Jersey National Guard (NJNG). It describes the rights and responsibilities of managers, supervisors, and employees IAW appropriate references, except as prescribed by statute or policy consistent with the statute as they relate to requesting, approving, and/or providing reasonable accommodations. The Rehabilitation Act of 1973 requires all Federal agencies to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment unless doing so would cause undue hardship.

Applicability. This policy regulation applies to all Title 5 National Guard (NG) Employees, and Title 32 Dual Status Technicians, when not in a military status; and applies to applicants for such positions.

Background.

a. A reasonable accommodation is any change to a job, the work environment, or customary procedures that allow an individual with disabilities (IWD) to enjoy equal employment opportunities. These may include modifications/adjustments in three areas:

- 1) The job application process by permitting an IWD to be considered for a job;
- 2) The opportunity for a qualified IWD to perform essential functions of the job; and
- 3) The opportunity for an IWD to enjoy equal employment benefits and privileges.

b. Reasonable Accommodation requests may be requested at any time during the application or hiring process, or while on the job. Requests are considered on a case-by-case basis.

Supplementation. Supplementation of and deviations from this policy are not permitted without prior approval from the NJNG Human Resources Office.

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Chapter 1 – General Overview

1-1 General Guidance on Reasonable Accommodations

a. In accordance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990, the laws require agencies to develop policies and procedures to facilitate the hiring, placement, and advancement in employment of IWD and to provide RA to qualified employees or applicants with disabilities unless doing so would cause undue hardship to the agency. This RA Policy helps to implement the requirements of the Rehabilitation Act and the ADA that agencies provide RA to qualified employees and applicants with disabilities.

b. This RA Policy is to be interpreted and applied in accordance with two fundamental purposes, within the spirit of the Rehabilitation Act and the ADA.

(1) RAs remove barriers that prevent IWDs from applying for and performing jobs for which they are qualified.

(2) RAs remove barriers that prevent IWDs access to the workplace and enables equal access to job benefits.

1-2 Responsibilities

a. The Adjutant General (TAG)

(1) Serves as the final agency authority concerning the overall application of this regulation. This responsibility may be delegated to a General within the NJNG.

(2) Receives and reviews timely appeals as outlined within this policy.

b. NJNG Human Resources Officer (HRO)

(1) Oversee the implementation and administration of this RA policy.

(2) Assist and advise managers and supervisors in reviewing requests for RA and scheduling training for supervisors and managers. Reviews approved RAs annually.

(3) Make RA training a part of newly appointed supervisor and manager orientation.

(4) Consult with supervisors/hiring officials to recommend the parameters of approval or denial of reasonable accommodation requests.

(5) Accepts timely appeals and coordinates for TAG approval or denial.

c. State Equal Employment Manager (SEEM)

(1) Conduct new supervisor and manager RA training on an annual basis.

(2) Ensure copies of this RA Policy and its applicable procedures are readily available to NJNG Managers, Supervisors, and Employees. This will be accomplished by maintaining copies in the SEEM's Office as well as in designated locations such as the NJNG virtual network. This RA policy must be accessible to individuals with disabilities, when necessary, through alternative formats.

(3) Track RA requests in coordination with the Occupational Health Specialist and submit applicable RA reports to the National Guard Bureau EEO office annually for inclusion in the Management Directive (MD)-715 report.

d. Occupational Health Specialist (OHS)

(1) Review medical documentation to assist in the preparation and reviewing of RA packages.

(2) Serve as the proponent for Individuals with Disabilities (IWD) and coordinate RA requests as needed.

(3) Manage all medical documentation in accordance with the Health Insurance Portability and Accountability Act (HIPAA) and Privacy Act of 1974.

(4) Consult with supervisors and HRO to determine whether to approve RA requests or offer an alternative RA. HRO is authorized to recommend the parameters of approval or denial of reasonable accommodation requests or when requests must be submitted to TAG for approval or denial.

e. Commanders and Managers

(1) Ensure employees are aware the RA process is available to IWDs.

(2) Receive initial RA requests and initiate the interactive process.

(3) Ensure that forms are tracked appropriately and that the following are enforced:

i. Requests that can be handled by the supervisor are still annotated on an RA form and forwarded through the appropriate RA distribution list.

ii. Work with the office supply to ensure that RA's that can be handled through normal, regular office supply purchases (i.e. ergonomic keypads or mousepads) are ordered, and work with the RA team when the funding allocation is not clear.

iii. Contact the SEEM, OHS, or Safety Office if there is a question of whether it is a Preventative Measure or an RA. Preventative Measures may include, for example, ergonomic equipment deemed necessary after an ergonomic evaluation to prevent future injuries (i.e. this could include a footstool for posture, etc.)

f. Direct Supervisors

(1) Receive and review RA requests from employees and forward to the SEEM Office for process initiation and OHS for initial medical review within appropriate time constraints.

(2) Communicate the status and ultimate disposition of employee RA requests to the requesting employee.

1-3 Definitions

a. **Direct Threat.** This is a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

b. **Essential Functions.** These are job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function is “essential” if, among other things, the position exists specifically to perform that function, there are a limited number of employees who could perform the function if it were assigned to them, or the function is specialized, so the incumbent is hired based on his or her ability to perform it.

c. **Extenuating Circumstances.** Described as factors that could not reasonably have been anticipated or avoided in advance of the request for RA, such as back order of necessary equipment or failure of the employee’s health care professional to timely provide necessary documentation.

d. **Individual with a Disability (IWD).** An IWD is any person, who has a physical or mental impairment that substantially limits one or more of such person’s major life activities, has a record of such impairment, or is regarded as having such an impairment.

e. **Major Life Activities.** These include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working as well as the operation of a major bodily function including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain respiratory, circulatory, endocrine, and reproductive functions. Furthermore, episodic impairments or medical conditions that are in remission are nonetheless disabilities if they would substantially limit a major life activity when active.

f. **Interactive Process.** An interactive process allows requests to be made by the individual with a disability as well as by a family member, health professional, and other representative who is legally acting on the individual’s behalf.

g. **Qualified Individual.** This describes an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

h. **Reasonable Accommodation.** This describes a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. There are three categories of RA that apply:

(1) Modifications or adjustments to a job application process to permit an IWD to be considered for a job.

(2) Modifications or adjustments necessary to enable a qualified IWD to perform the essential functions of the job.

(3) Modifications or adjustments that enable IWDs to enjoy equal benefits and privileges of employment.

i. **Undue Hardship.** Undue hardship generally involves significant difficulty or expense. It refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. The supervisory chain of command and HRO must assess on a case-by-case basis whether a particular accommodation would cause undue hardship. The analysis focuses on the resources and circumstances of the NJNG in relation to the cost or difficulty of providing a specific accommodation. HRO is authorized to recommend the parameters of approval or denial of reasonable accommodation requests or when a request must be submitted to TAG for approval or denial. TAG is the final approval authority.

j. **Personal Assistants.** Personal assistance services to employees are reasonable accommodations when:

(1) The employee requires such services because of a targeted disability;

(2) The provision would enable the employee to perform the essential functions of his/her position; and

(3) The provision of services would not impose due hardship on the agency. Personal Assistant services must be provided by a qualified personal assistance service provider, The NJNG is prohibited from taking adverse actions for an employee/ applicant asking for a personal assistant.

k. **Service Animal.** A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Tasks performed may include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

(1) **Types of Service Dogs:** For animals to fit the ADA's definition of "service animal" they must have been specifically trained to perform a task for the person with a disability, for example:

i. **Guide Dog or Seeing Eye® Dog.** Is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.

ii. **Hearing or Signal Dog.** Is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.

iii. **Psychiatric Service Dog.** Is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects. Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches, turning on lights for persons with Post Traumatic Stress Disorder, interrupting self-mutilation by persons with dissociative identity disorders, and keeping disoriented individuals from danger.

iv. **Sensory Signal Dog or Social Signal Dog (SSigDOG).** Is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).

v. **Seizure Response Dog.** Is a dog trained to assist a person with a seizure disorder. How the dog serves the person depends on the person's needs. The dog may stand guard over the person during a seizure, or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

Chapter 2 – Reasonable Accommodation Interactive Process

2-1 Requesting Reasonable Accommodation

a. The RA process (Appendix A) is initiated when an IWD indicates a need for an adjustment (or change at work) or in the application process for a medical-related condition. The requestor does not have to use any particular words, cite the Rehabilitation Act, this RA Policy, or even use the term “reasonable accommodation.” For example, it is sufficient for a vision-impaired person to ask for specific work-related materials to be provided in large print. This is a request for reasonable accommodation.

b. An IWD may initiate a request for RA orally or in written form at any time. This interactive process allows requests to be made by the individual with a disability in addition to a family member, health professional, and other representative who is legally acting on the individual’s behalf. The IWD will be asked to complete an RA request form for documentation and processing purposes. The Reasonable Accommodation Request Form, which is attached to this policy (Appendix B), has been developed for this purpose. Despite the requirement that the requesting individual complete and submit a request form, the individual’s initial request, whether verbal or written, starts the RA process.

c. Requests for RA should originally be addressed to the individual’s direct (first-line) supervisor so that the request can be properly tracked and acted upon. At the individual’s discretion, however, the RA request can be made to any of the following:

- (1) The individual’s supervisor;
- (2) Any manager or supervisor in the individual’s immediate chain of command;
- (3) SEEM’s office; or

(4) In the case of an applicant involved in the application process, any NJNG employee in the applicant’s chain of command. Requests for RA made to individuals or offices other than those listed cannot be properly tracked and will not be processed.

d. Where an IWD has requested a type of reasonable accommodation that he/she is likely to need on a repeated basis, for example, the assistance of sign language interpreters or readers, the IWD will not be required to submit a written request for record-keeping purposes each time the RA is needed. In such cases, the IWD may obtain the RA by notice to his/her supervisor once the RA is approved the first time.

2-2 Special Requests

a. **Personal Assistants.** Services to employees are reasonable accommodations when: (1) the employee requires such services because of a targeted disability; (2) the provision would enable the employee to perform the essential functions of his/her position; and (3) the provision of services would not impose due hardship upon the agency. Personal Assistant services must be provided by a qualified personal assistance service provider. The Agency is prohibited from taking adverse actions for an employee/applicant asking for a personal assistant.

b. **Service Animals.** A service animal may be a reasonable accommodation when:

- (1) The employee requires such services because of a targeted disability;
- (2) The provision would enable the employee to perform the essential functions of his/her position; and
- (3) The provision of services would not impose due hardship upon the agency.

c. A service animal must provide a service to a qualified individual with a disability. Any requests by a member of the military will not go through this process and should refer to their respective NJNG Military Medical Unit(s) to review the request.

2-3 Processing Requests for Reasonable Accommodations

a. A request for RA is the first step in an informal, interactive process between the employee and the supervisor. The process is always begun by the employee or a family member, health professional, or other representative who is legally acting on the employee's behalf. Supervisors should not unilaterally ask employees if they have a disability or if they need an accommodation. While an employee may request an RA due to a medical condition, this request does not necessarily mean that the NJNG is required to provide the RA.

b. Upon receipt of a request for RA, supervisors will direct the requesting individual to complete and submit a Reasonable Accommodation Request Form. Supervisors will not delay the interactive process while waiting for the form. The supervisor will reach out to the OHS to begin the process. The OHS will notify HRO and the SEEM office that a request has been made for tracking purposes, and will reach out to the requesting individual and begin to discuss:

- (1) The underlying disability or medical issue;
- (2) The specific functional limitations resulting from the disability or medical issue and how they relate to or affect the employees' job functions; and
- (3) Any suggestions the employee may have for a reasonable accommodation.

c. The OHS will document the conversation in writing and take detailed notes Appendix C). The OHS is encouraged to seek guidance from the HRO, Deputy HRO, State Labor Relation Specialist (SLRS), and State Judge Advocate at any time during the process. Information obtained regarding the medical issue and related facts, documents, etc., will be kept confidential to the extent required by applicable law but will be shared with those individuals in the NJNG involved in determining whether to grant a request for RA.

d. In situations where the employee's disability and need for an RA are reasonably obvious, the OHS should assure the employee that he or she will determine whether the requested accommodation is available within thirty (30) calendar days, absent extenuating circumstances. At the close of the meeting, the OHS will inform the employee of his or her RA rights and the opportunity to obtain information and assistance from SEEM or HRO.

e. Some cases will allow for the supervisor to work directly with the individual requesting. In those cases, the supervisor will forward the completed form to the OHS and the SEEM for tracking and processing.

f. Decisions on RAs will be expedited where the RA is needed to enable an applicant to apply for a job or the RA is needed for a specific NJNG activity that is scheduled to occur shortly.

g. The NJNG is entitled to know that an employee has a covered disability that requires an RA. Thus, when a disability and/or need for an RA is requested, the NJNG may require that the employee provide reasonable supporting medical documentation regarding the suspected disability and functional limitations. If the employee has not requested a specific accommodation, the supervisor will inform the employee that he or she may determine whether there is an RA that could be made, again, within thirty (30) calendar days. Any documentation requested must come from an appropriate professional, depending upon the type of claimed disability, such as a doctor (including a psychiatrist), psychologist, nurse, physical therapist, occupational therapist, speech therapist, vocational rehabilitation specialist, or licensed mental health professional. The documentation must contain the following information:

- (1) The nature, severity, and duration of the employee's impairment;
- (2) The activity or activities that the impairment limits; and
- (3) The extent to which the impairment limits the employee's ability to perform the activity or activities; and
- (4) Why the employee requires an RA, or how it will assist the individual in applying for a job, performing the essential functions of the job, or enjoying a benefit of the workplace.

h. Supervisors will not request medical documentation when the employee has provided sufficient information to document the existence of the disability and his/her functional limitations. The OHS will require only the documentation that is needed to establish that the employee has a disability, and that the disability necessitates an RA. This process does not require information that is unrelated to determining the existence of a disability and the need for an RA.

i. Supporting medical documentation must be provided to the OHS within ten (10) calendar days after the individual is informed that it is required, absent extenuating circumstances. Failure to provide necessary documentation where it has been properly requested could result in a denial of RA. Medical information will be kept confidential to the extent required by applicable law but will be shared only with those "other agency officials" involved in determining whether to grant a request for RA. These officials include:

- (1) Supervisors and managers who need to know may be told about necessary restrictions and about the necessary accommodations(s);
- (2) First aid and safety personnel may be told if the disability might require emergency treatment;

(3) Government officials to investigate the NJNG's compliance with the Rehabilitation Act;

(4) Workers' compensation offices or insurance carriers; and

(5) EEO officials may be given the information to maintain records.

j. The NJNG may request supplemental documentation when the information already submitted is insufficient to document the disability and/or functional limitations it causes, as well as the need for the RA. In such cases, requesting officials should describe to the employee in writing why the submitted documentation is insufficient and identifying the information that is needed. Failure to provide necessary documentation where it has been properly requested could result in a denial of RA.

k. An IWD does not need to have a particular accommodation in mind before making a request. Once it is determined that the employee requesting an RA has a qualifying disability and is therefore an IWD, the supervisor/hiring official will consult with the HRO to determine whether the requested RA is appropriate under the circumstances. HRO will authorize or deny RA requests. IWD may appeal the denial to TAG. TAG is the final NJNG authority. RAs will only be provided to individuals with actual disabilities.

l. In considering whether an RA can be provided, supervisors and the HRO should identify the essential job functions (as defined above) of the IWD's position, the IWD's functional limitations to completing the essential job functions, and whether there are any reasonable alternative approaches to meeting essential job functions. Appendix D lists some examples of reasonable accommodations. Appendix G contains a list of selected resources to help supervisors and HROs in considering possible RAs.

m. A modification or adjustment is "reasonable" if it is feasible or plausible under the given circumstances. An accommodation must also be effective in meeting the needs of the IWD. This means that an RA enables an IWD to perform the essential functions of his/her job. Finally, an RA allows an IWD an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

n. The NJNG has the authority to choose among possible RAs if the chosen RA is effective. Thus, as part of the interactive process, supervisors may offer IWDs alternative suggestions for RA and discuss their effectiveness in removing the workplace barrier that is impeding the IWD. If there are two possible RAs, and one costs more or is more burdensome than the other, supervisors may choose the less expensive or burdensome accommodation if it is effective. Similarly, when there are two or more effective accommodations, supervisors may choose the one that is easier to provide. In either situation, the supervisor is not required to show that it is an undue hardship to provide the more expensive or more difficult accommodation. The preference of the IWD should be given primary consideration, but the supervisor/hiring official in consultation with HRO has the discretion to choose between effective accommodations.

o. The Pregnant Workers Fairness Act (PWFA) is a Federal law that strengthens pregnant workers' access to time off or job modifications, or accommodations, that they need to continue working safely. It also gives employees a right to request and receive accommodation for childbirth and pre- and post-partum conditions related to pregnancy like infertility, abortion, and lactation. The condition necessitating accommodation must be "known" to the employer, meaning that the employee or a representative has communicated it to the employer. Once the worker's limitation is known to the employer, the employer must either grant the requested accommodation, or initiate an "interactive process" to identify another reasonable accommodation that meets the employee's needs. The process typically includes one or more conversations with the employee about what they can and cannot do, what kinds of changes would allow the employee to do their job tasks, and consideration of the employee's preferred accommodation. An employer is not required to provide an accommodation if it would create an undue hardship on the employer to do so.

p. There are modifications or adjustments to which supervisors do not have the authority to agree. These include:

(1) A supervisor may not agree to eliminate an essential function i.e., a fundamental duty of the position.

(2) Supervisors are prohibited from agreeing to lower production standards as an accommodation, whether qualitative or quantitative, that are applied uniformly to other employees with and without disabilities.

q. The NJNG will not provide, as reasonable accommodations, personal use items needed in accomplishing daily activities both on and off the job. The NJNG will not provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, the NJNG will not provide personal use amenities, such as a refrigerator if those items are not provided to employees without disabilities. Items that might otherwise be considered personal may be considered reasonable accommodations in appropriate cases where they are specifically designed or required to meet job requirements rather than personal needs.

r. RA requests may be denied where the requested RA would cause "undue hardship" to the NJNG. Undue hardship, which generally involves significant difficulty or expense, is to be determined on a case-by-case basis. The analysis focuses on the resources and circumstances of the NJNG in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the agency. The supervisor and HRO must assess on a case-by-case basis whether a particular accommodation would cause undue hardship.

s. The reassignment to a vacant position for which an employee is qualified is a reasonable accommodation and the NJNG must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. NJNG HRO must notify supervisors and other pertinent NJNG officials when they are to conduct searches for available vacancies when considering reassignment as an RA.

t. An annual review will be conducted of all approved RA requests to determine if there is a continuing need for the accommodation. The review will be conducted on or about the anniversary date of the initial approval of the RA request. The employee and supervisor will work together to conduct the review. The review will be documented as a memorandum for record (MFR) by OHS/SEEM along with the remainder of the RA documentation.

2-4 Approval and/or Denial of Requests for Reasonable Accommodation

a. **Approval.** HRO will engage in an interactive process with the OHS, SEEM, and/or Judge Advocate to make a formal recommendation to the supervisor/hiring official. HRO is authorized to recommend the parameters of approval or denial of reasonable accommodation requests or when requests must be submitted to TAG for approval or denial. When the NJNG determines that an RA request will be approved, the IWD's supervisor/hiring official will notify the IWD in writing and document the date and circumstances of the notification. The supervisor will implement the approved RA at the earliest possible moment. In the event, the supervisor/hiring official disagrees with the formal recommendation, they must provide a response to HRO within fifteen (15) calendar days. Supervisors/hiring officials should engage in an interactive process to clearly outline their response to the recommendation. TAG reserves the right to decide upon all RA requests; this authority may be delegated in writing. A copy of the supervisor's hiring official's written notification will go into a separate file for the employee/applicant.

b. **Denial.** IAW this RA Policy, the IWD's supervisor/hiring official will consult with the HRO, whom through an interactive process will make a recommendation to the supervisor/hiring official. HRO is authorized to recommend the parameters of approval or denial of reasonable accommodation requests. When the NJNG concludes that an RA request will be denied, the IWD will be notified in writing to document the date and circumstances. The written notification to the IWD must contain:

- (1) The name of the supervisor who made the decision;
- (2) The reasons for the denial;
- (3) A notice that if the IWD wants to file an EEO complaint that the IWD must contact the NJNG EEO office within 45 calendar days of receiving the notice; and
- (4) The IWD can engage in the Informal Resolution Process by appealing the decision to the next supervisor in the employee's chain of command, but that utilizing the Informal Resolution Process does not extend the 45 calendar days that the employee has to contact the EEO office.

c. **Delay in Processing.** When there is any delay in either processing a request for or providing a reasonable accommodation, the IWD supervisor/hiring official must notify the individual in writing of the reason for the delay, including any extenuating circumstances that justify the delay. If the NJNG cannot provide the accommodation immediately, then the NJNG must provide an interim accommodation that allows the individual to perform some, or all essential functions of his or her job if it is possible to do so without imposing undue hardship on the NJNG.

2-5 Informal Resolution and Appeals

a. An IWD may appeal the decision of his/her supervisor to the next supervisor in the IWD's chain of command within seven (7) calendar days of receipt of the original supervisor's decision. The appeal should be in writing and should contain any additional information or documentation that the employee would like the higher supervisor to consider.

b. The higher-level supervisor who receives the appeal will consult with the SLRS and render a decision on the appeal within fourteen (14) calendar days of receiving the appeal from the employee unless there are extenuating circumstances. The appeal should involve reviewing the original supervisor's notes and any documentation submitted by the employee/applicant. HRO is authorized to recommend the parameters of approval or denial of reasonable accommodation requests or when requests must be submitted to TAG for approval or denial. There is no requirement that the higher supervisor meet with the employee unless the higher supervisor believes it is necessary in the interests of fairness. Notice of the supervisor's decision will be IAW Section 2-4 (b) above, except that the notice will remind the employee that he/she must contact the NJNG EEO office within 45 calendar days of receipt of the original supervisor's decision if the employee wishes to file an EEO complaint.

c. **Approval of Appeal Request.** If the NJNG determines that an appealed RA request will be approved, the IWD's supervisor/hiring official will notify the IWD in writing and document the date and circumstances of the notification. Approved requests are subject to an annual review.

d. **Denial of Appeal Request.** When the NJNG concludes that an RA appeal will be denied, the IWD will be notified in writing to document the date and circumstances. Notification of the NJNG's decision will be IAW this RA Policy, TAG or his or her representative is the final agency authority for appeals.

Chapter 3 – Recordkeeping Requirements

3-1 Tracking Requirements.

a. The primary proponent for reasonable accommodation recordkeeping is the NJNG SEEM Office. NJNG HRO is responsible for supporting this recordkeeping requirement. The tracking information data should be maintained for a period of five (5) years. This data will assist an organization in evaluating its performance regarding the adequate, timely processing of RA requests and their corrective action if required.

b. Although the original RA request does not have to be in writing, the SEEM will assign a tracking number to each RA request. For example: NJNGRAFYXX (number). The SEEM will notify (in writing) the employee/applicant of his/her tracking number within seven (7) calendar days of receipt of the RA request. The employee/applicant can track his/her request process through his/her tracking number by calling the SEEM's Office. The SEEM is responsible for tracking the following information:

(1) The number and types of RA requested in the application for employment process and whether those requests were granted or denied.

(2) The jobs (occupational series, grade level, and organization) for which RAs have been requested.

(3) The types of RAs that have been requested for each of those jobs;

(4) By organization (unit/department) the number and types of RAs for each job that has been approved and denied;

(5) The number and types of requests for RAs that relate to benefits or privileges of employment, and whether those requests have been granted or denied;

(6) The reasons for denial of RA requests;

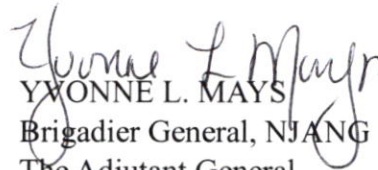
(7) The amount of time taken to process each RA request;

(8) The source of technical assistance consulted in trying to identify possible RA's;

(9) Dispositions of Reasonable Accommodation Request Data, including medical Information;

(10) Documentation related to a particular individual who has requested RA is to be filed apart from other personnel records, safeguarded regarding confidential requirements, and maintained for the duration of that employee's/applicant's employment. Records concerning requests, approval, and disapproval are maintained by the Joint Force Headquarters SEEM Office.

4. **Point of Contact.** This policy supersedes and replaces TAG Policy Letter, 22-004, Reasonable Accommodation, Anti-Discrimination on Disability, and Personal Assistance Services Policy, dated 20 July 2022, all previous versions and related policies as of 15 November 2024. Please direct any questions to the Human Resources Office – J1, (609) 562-0872.


YVONNE L. MAYS
Brigadier General, NJANG
The Adjutant General

Appendix A**Reasonable Accommodation Request Process**

Step 1 (Initial Request): Individual with a Disability (or someone on behalf of the IWD) makes a request for a workplace accommodation. (to: Direct Supervisor and/or SEEM Office).



Step 2 (Formal Request): The NJNG's obligation to consider an individual's request begins when the individual makes that request to any of the following: his/her supervisor; a supervisor or manager in his/her immediate chain of command; the EEO office, HRO, or OHS.



Step 3 (OH Case Review): OHS will reach out to the requesting individual and/or supervisor. They will discuss the disability, limitations of the disability, and suggested accommodations. (10-day requirement to return documents to OHN from IWD).



Step 4 (HR Review): HRO should identify the essential job functions of the IWD's position, the IWD's functional limitations to completing the essential job functions, and whether there are any reasonable alternative approaches/positions within the NJNG.



Step 5 (Agency Recommendation): HRO is authorized to recommend the parameters of approval or denial of reasonable accommodation requests or when requests must be submitted to TAG for approval or denial (usually 30 days). Supervisor/Commander make the decision on whether their applicable unit can accommodate as per the NJNG recommendation.



Step 6 (Agency Decision): If approved, the IWD's supervisor/hiring official will notify the IWD in writing and implement the approved RA at the earliest possible moment. If denied, the IWD's supervisor must notice the employee of their rights to appeal within seven (7) calendar days to the next higher-level supervisor or as appropriate.



Step 7 (Final Agency Decision): TAG is the final NJNG decision maker. Any requests to appeal his decision must be brought to the SEEM, an EEO Counselor, or the State EEO Office.

Appendix B**Reasonable Accommodation Request Form**

Name: _____ Cell #: _____

E-mail: _____ Work #: _____

Position Title: _____ Grade: _____

Date of Request: _____

Supervisor: _____ Work #: _____

E-mail: _____

1. What specific accommodation are you requesting?

2. Please identify the specific limitation(s) which requires accommodation.

3. Specify, how this accommodation will assist you to perform the essential functions of your position.

4. What limitation is interfering with your ability to perform your job or access an employment benefit?

5. Have had any accommodations in the past for this same limitation, initial here: _____ and explain.

6. Is the RA request time-sensitive? If so, initial here: _____ and explain:

7. Please provide any additional information that might be useful in considering your request.

Printed Name of Individual Making Request

Signature of Individual Making Request

Appendix C

NJNG Reasonable Accommodation Review Form

NJNG Reasonable Accommodation Review Form			
<p>The following request is submitted in accordance with TAG Policy Letter 24-006, Reasonable Accommodation (RA). This request applies to all Title 5 National Guard (NG) Employees, and Title 32 Dual Status Technicians, when not in a military status; and applies to applicants for such positions.</p>			
Enclosed Documents (if applicable): <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Doctor's Note OR Letter <input type="checkbox"/> Supporting Medical Records <input type="checkbox"/> Supervisor/Commander <input type="checkbox"/> Employee Statement </div> <div style="width: 50%;"> <input type="checkbox"/> Treatment Plan <input type="checkbox"/> Work Schedule <input type="checkbox"/> Disability Assessment <input type="checkbox"/> Other: _____ </div> </div>		For Human Resources Use Only Log Number: _____ Date Logged: _____ Date of Request: _____	
Section 1. Administrative Data			
A. Name (First Last MI)		B. Duty Location	
D. Position Title Occupational Series and Grade		E. Position Description	
Section 2. Descriptive Information			
A. Accommodation Requested:			
B. Time-Sensitive Request (Please explain):			
Section 3. Management Coordination			
Direct Supervisor			
A. Supervisor Name		B. Contact Information	
C. Signature		D. Date Signed	
E. I certify the unit supporting this employee:		F. Supervisor Remarks	
i. Can accommodate the RA as requested <input type="checkbox"/> ii. Can accommodate this RA request with amendments <input type="checkbox"/> iii. Can NOT accommodate the RA as requested (Explain) <input type="checkbox"/>			
Commander/Director			
G. Commander/Director Name		H. Contact Information	
I. Signature		J. Date Signed	
K. I certify the unit supporting this employee:		L. Commander/Director Remarks	
i. Can accommodate the RA as requested <input type="checkbox"/> ii. Can accommodate this RA request with amendments <input type="checkbox"/> iii. Can NOT accommodate the RA as requested (Explain) <input type="checkbox"/>			
NJNG Reasonable Accommodation Form (Sept 24) Page 1 of 2			

NJNG Reasonable Accommodation Review Form			
Section 4. Agency Review			
Occupational Health Nurse			
A. Occupational Health Nurse Name	B. Contact Information	C. Signature	D. Date Signed
E. Date Medical Requested		F. Date Medical Received	G. I certify that upon record review
			i. Medical review supports the RA requested <input checked="" type="checkbox"/> ii. Medical review does NOT support the RA Requested <input type="checkbox"/> iii. Insufficient OR no medical documentation received <input type="checkbox"/>
H. Occupational Health Nurse Remarks:			
Human Resources Specialist (Case reviewer)			
I. HRO Specialist Name	J. Contact Information	K. Signature	L. Date Signed
M. HRO Specialist Remarks:			
Section 5. Agency Determination			
Human Resources Office Director			
A. HRO Director Name	B. Contact Information	C. Signature	D. Date Signed
E. Decision on determination is made based upon the following findings (if applicable):			
Section 6. Record Keeping			
State Equal Employment Specialist			
A. EEO Specialist Name	B. Annual Review Date	C. Signature	D. Date Signed
NJNG Reasonable Accommodation Form (Sept 24)			
Page 2 of 2			

Appendix D

Examples of Reasonable Accommodations

C-1: Job Restructuring. Involve modifications such as reallocating or redistributing marginal job functions that an employee/applicant is unable to perform because of a disability, as well as altering when and or how a function, essential or marginal, is performed. Supervisors/hiring officials will not, however, reallocate essential functions as a reasonable accommodation.

C-2: Leave. Whether accrued paid or unpaid, leave is a form of RA when necessitated by an employee's/applicant's disability. Supervisors are not required to provide paid leave beyond that which is provided to similarly situated employees/applicants. When leave is used as an RA, employees/applicants will use accrued paid leave before beginning any allotted unpaid leave. Supervisors should remember that there may be FMLA implications when considering leave as an RA.

C-3: Essential Function. For certain positions, the time during which an essential function is performed may be critical and a modification may disrupt operations and lead to undue hardship. This could affect whether a supervisor can grant a request to modify an employee's schedule or if reassignment is more appropriate.

C-4: Modified Workplace Policies. These constitute an RA when necessitated by an employee's/applicant's disability-related limitations, absent undue hardship. Modification under these circumstances only applies to the IWD and not to other employees/applicants in the supervisor's section or working unit.

C-5: Assistive Devices. Specific to individuals with visual impairments, supervisors/hiring officials should consider Braille displays, Braille embossers, portable note-takers, print enlargers, scanners/readers, and screen readers. Specific to individuals with impaired dexterity, supervisors/hiring officials should consider alternative input systems, alternative keyboards, alternative pointing devices, keyboard enhancement programs, and voice recognition systems.

C-6: Assistive Devices (Audio). Specific to individuals who are deaf or hard of hearing, supervisors/hiring officials should consider implication devices, close caption decoders and captioning for training tapes, signaling devices, teletypewriters (TTYs), sign language interpreters, and TTY modems.

C-7: Personal Assistants. Personal assistance services to employees are reasonable accommodations when:

- (1) The employee requires such services because of a targeted disability;
- (2) The provision would enable the employee to perform the essential functions of his/her position; and
- (3) The provision of services would not impose due hardship on the agency.

Personal Assistant services must be provided by a qualified personal assistance service provider. The NJNG is prohibited from taking adverse actions for an employee/applicant asking for a personal assistant.

C-8: Reassignment. Reassignment to a vacant position must be provided to an employee/applicant (not an applicant) who, because of a disability, can no longer perform the essential functions of his/her current position, with or without an RA, unless the supervisor/hiring official can show that reassignment would be an undue hardship. The employee/applicant must be qualified for the position, which means that he/she has the requisite skill, experience, education, and other job-related requirements of the position (not necessarily best qualified). The employee/applicant must also be able to perform the essential functions of the new position, with or without an RA. The NJNG is not obligated to assist the employee/applicant to become qualified for the new position unless the NJNG would normally provide such training to an individual transitioning into the position. Reassignment is the RA of last resort and is only required if:

(1) There are no effective accommodations that will enable the employee/applicant to perform the essential functions of his/her current position; and

(2) All other RAs would impose an undue hardship.

“Vacant” means that the position is available when the employee/applicant asks for reasonable accommodation, or that the agency knows that it will become available within a reasonable amount of time. The agency does not have to bump another employee/applicant from a job to create a vacancy; nor does it have to create a new position.

Of all the above-cited examples of RA, only Reassignment is mandatory and only under the circumstances stated. The other examples should be considered on a case-by-case basis and may not always be appropriate.

Appendix E

Service Animals

D-1: Definition. A request for a Service Animal (SA) is a request for reasonable accommodation. Therefore, all policies and procedures for Reasonable Accommodation processes apply to requests for a service animal.

a. For National Guard Full Time Employees, an SA is defined as a dog that is individually trained to do work or perform tasks for a person with disabilities IAW the ADA, and section 504 of the Rehabilitation Act. (Examples of such work or tasks SA may perform include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting, and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties.)

b. SAs are working animals, not pets. The work or task a dog has been trained to provide service must be directly related to the person's disability. Emotional support, therapy, comfort, or companion animals are not considered service animals under the ADA. The only service animal authorized within the workplace is a Trained Service dog, no other animals are authorized.

D-2 Approval Process.

a. See processes for Request of Reasonable Accommodations (Appendix D) and Service Animal Request Form (Appendix F). In general, the applicant's (Handler) direct chain of command will be the approving authority; with HRO oversight. The Adjutant General is the final approval authority as the NJNG Agency Head.

b. Employees must complete and sign a Service Animal Handlers Agreement (Appendix F). This agreement requires an SA to be trained, housebroken, licensed with immunizations, and compatible with the work environment. To ensure the SA is compatible with the work environment, the agreement requires the successful completion of a 30-day (calendar) trial period. A new trial period is required each time a new SA is acquired for the same disability.

D-3 Responsibilities.

a. HRO is responsible for:

- (1) Ensuring all employees are aware of the service animal policies and procedures.
- (2) Providing advice, assistance, and training to all NJNG employees, commanders, managers, and supervisors on Service Animal policy and procedures.
- (3) Maintaining a copy of all NJNG's required documents related to the service animal (e.g., Reasonable Accommodation or Workplace Modification documents, Handlers Agreement, etc.).

b. Management is responsible for:

- (1) Ensuring the Service Animal Handler Agreement is reviewed and signed.
- (2) Maintaining all SA and medical documents separate from personal files.
- (3) To notify all employees within the general area that there will be an SA in the work area and employees with allergies or concerns need to bring these to the attention of the supervisor, not directly to the Handler. Counsel the employee's not to discriminate.
- (4) To counsel the Handler about any workplace issues/limitations. Management can exclude the service animal from the workplace if the SA is out of control and the handler cannot get the animal under control. Management will reassess the SA's workplace access to determine when and if the SA may return based on the circumstances leading to the SA's expulsion.
- (5) To notify emergency personnel of the presence of a SA, if there is a need for evacuation purposes.

c. Service Animal Handler is responsible for:

- (1) Maintain documentation of the SA's current licensing, immunizations, and vaccinations according to all local civil laws and ordinances.
- (2) For any damages and injuries, the SA incurs or causes and agrees to indemnify and hold harmless the NJNG for same.
- (3) To ensure the SA can be always identified as a service animal while in NJNG facilities.
- (4) To maintain positive control of the SA (e.g., via harness, leash, voice, or other effective means, or otherwise under affirmative control).
- (5) For caring for their SA (to include cleaning up after the SA and placing properly bagged excrement in outdoor receptacles). The handler must also provide a point of contact to care for SA in case of an emergency.

D-4: Revocation.

a. If a service animal is unruly, disruptive (aggressively jumping, nipping, etc.), or not house-trained, the patron/employee may be asked to remove the animal. If the animal's inappropriate behavior happens repeatedly, the patron/employee may be asked not to bring the animal into common areas until steps have been taken to mitigate the behavior (such as refresher training). If the behavior poses a significant threat to patrons or employees, the patron/employee may be required to remove the animal from the premises altogether.

b. Coordination with the Supervisor must be conducted regarding the situation before the SA will be allowed to return to the workplace.

D-5: Prerequisites for Service Animals.

a. No Service Animal will be permitted in the workplace until the animal is licensed by an appropriate municipal clerk or veterinary licensing agent; and is current on all recommended vaccinations.

b. Additional considerations when determining a service animal as a reasonable accommodation:

(1) The Supervisor will notify co-workers of the pending placement of a Service Animal and give the opportunity for co-workers to express concerns in advance.

(2) The Supervisor will develop a plan to address the concerns of employees who are allergic to or fearful of a potential Service Animal, if appropriate.

(3) The Responsible Employee should post prominent notices at his or her workstation with information for co-workers about interactions with the animal, such as “please ask before petting or speaking to” the Service Animal.

(4) If an RA for an SA is approved before the employee brings the service dog to the workplace, the employee must complete a Service Animal Handlers Agreement. The agreement will be reviewed with their supervisor and signed.

(5) A new Service Animal Handlers Agreement may be required if there is a change in the employee’s management (chain of command), or the employee accepts a new position. In the case of a new position, a new 30-day trial period may be required to ensure SA compatibility with the new work environment.

Appendix E**Service Animal Handlers Agreement**

DD MMM YYYY

NJ-HRO

MEMORANDUM FOR RECORD

SUBJECT: Service Animal Handlers Agreement, Name, Position Details

1. Reference. Reasonable Accommodation dated _____ .
2. The only service animal (SA) authorized under the referenced Reasonable Accommodation is a trained Service Dog, no other animals are authorized. The SA must provide a service to attenuate your disability allowing you to perform your required work responsibilities in the workplace.
3. Acceptance of the referenced Reasonable Accommodation must be signed and dated prior to the implementation of this agreement. This signed agreement then becomes part and parcel with the accepted reasonable accommodation.
4. To be allowed within the workplace, an SA must be fully trained, house-broken, and compatible with the work environment. To ensure the SA is compatible with the work environment, a 30-day (calendar) trial period is required, effective the date of this signed agreement. At the conclusion of the trial period, the Handler and Supervisor will meet and document in writing the results of the trial period's determination of the SA's compatibility.
5. Handler acknowledges and accepts the following requirements:

	Initials
Handler must maintain documentation of the SA's current licensing, immunizations, and vaccinations according to all local civil laws and ordinances.	
Handler accepts responsibility for any damages and injuries the SA incurs or causes and agrees to indemnify and hold harmless the New Jersey National Guard for same.	
Handler will make sure the SA can be always identified as a service animal while in NJNG facilities.	
Handler shall maintain positive control of the SA (e.g., via harness, leash, voice, or other effective means, or otherwise under affirmative control).	
Handler is solely responsible for caring for their SA (to include cleaning up after the SA and placing properly bagged excrement in outdoor receptacles). Handler must also provide a point of contact to care for SA in case of an emergency.	
Handler will be responsible for the SA's behavior in the workplace and surroundings. If the dog becomes unruly or out of control and the handler does not take effective action to correct the situation, the handler will be asked to remove the animal from the premises. Coordination with the Supervisor must be conducted regarding the situation before the SA will be allowed to return to the workplace.	

6. A copy of the trial period determination and this agreement will be forwarded to the Disability Program Manager and the Labor and Employee Relations Specialist to be included in the file along with your Reasonable Accommodation Memorandum.

7. The Handler acknowledges and accepts the terms of this Agreement to have a SA in the workplace.

Signature of Service Animal Handler

Date

XXXXXXXXXX, Rank, NJNG
Human Resources Director

Appendix G – Additional Resources**U.S. Equal Employment Opportunity Commission**

Newark Area Office

Two Gateway Center

283-299 Market Street, Suite 1703

Newark, NJ 07102

Phone: 1-800-669-4000

Fax: 1-973-339-7380

TTY: 1-800-669-6820

ASL Video Phone: 1-844-234-5122

www.eeoc.gov

The Newark Area Office is open Monday - Friday from 8:00 a.m. – 4:30 p.m. and receives visitors for Intake of charges from 8:30 a.m. to 3:00 p.m.

The Newark Area Office is readily accessible by numerous transportation methods. There are parking lots that surround the building and is also connected by an inside walk-way to Newark Penn Station which can be reached by New Jersey Transit trains and buses, as well as PATH Trains which connect to the World Trade Center in New York with stops in Hoboken and Jersey City. In order to visit the offices, you will need to present photo identification (e.g. driver's license, school or employee ID, etc.)

Please be advised that you have the option to schedule an in-office interview or schedule an interview by phone. Individuals who come into the office without an appointment will be screened for appropriate follow-up. Scheduling an interview is strongly recommended and individuals with appointments will be given priority.

You are encouraged to visit the EEOC Public Portal (<https://publicportal.eeoc.gov/>) to schedule an intake appointment by telephone or an in-office interview. The system can also be accessed by going directly to our website at <https://www.eeoc.gov/>.

There are strict deadlines for filing a charge of discrimination, please review the information in the timeliness tab or call 1-800-669-4000.

For individuals who are Deaf or Hard of Hearing, you can reach EEOC by videophone at 1-844-234-5122. If you have a disability which prevents you from accessing the Public Portal or you otherwise have difficulty with accessing the portal, please call 1-800-669-4000.

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA and the Rehabilitation Act. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship.

Job Accommodation Network (JAN)

1-800-526-7234

<https://askjan.org/>

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free of charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

New England ADA Center

Institute for Human Centered Design

200 Portland Street, 1st Floor

Boston, MA 02114

Phone: 617-695-0085 (Voice/TTY)

Website: www.northeastada.org (link is external)Email: ADAinfo@NewEnglandADA.org

The DBTACs consist of ten (10) federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local businesses, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

1-301-608-0050 (Voice/TT)

Registry of Interpreters for the Deaf, Inc.

333 Commerce Street

Alexandria, VA 22314

703-838-0030

<http://www.rid.org>

The Registry offers information on locating and using interpreters and transliteration services.

Computer/Electronic Accommodation Program<https://cap.mil/>

4800 Mark Center Drive, Suite 05E22

Alexandria, VA 22350

(833) 227-3272 or (703) 614-8416 (Voice)

(571) 384-5629 (Videophone)

(703) 697-5851 (Fax)

cap@mail.mil (Email)

The Computer/Electronic-Accommodation Program (CAP) was established by DOD to help provide RA to individuals with disabilities. The purpose of the CAP is to ensure that all disabled DOD employers get equipment that best meets their needs at no charge to the employer. The Defense Medical Information Management Office is the executive agent for the CAP. The CAP is available to advise on ways to provide RA.

Appendix H – References

- a. Rehabilitation Act of 1973, as amended.
- b. Americans with Disabilities Act (ADA) of 1990; ADA Amendments Act of 2008 (ADAAA).
- c. U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disability Act (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>).
- d. Executive Order 13164, 26 July 2000: Requesting Federal Agencies to Establish Procedures to Facilitate the Provisions of Reasonable Accommodation.
- e. CNGBI 9600, State National Guard Civilian Equal Employment Opportunity Complaint Processing and Reporting Guidance, 10 May 2017.
- f. CNGBI 9400.01, Nondiscrimination in Federally Assisted Programs, 29 November 2017.
- g. U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>).
- h. EEOC Policy Guidance on Executive Order 13164.
- i. DODI 1300.27, Guidelines on the Use of Service Dogs by Service Members, 7 January 2016.
- j. U.S. Department of Justice, Civil Rights Division, Ada Requirements: Service Animals (<https://www.ada.gov/resources/service-animals-2010-requirements/>)
- k. 29 C.F. R. § 1614.203, Federal Sector Equal Employment Opportunity