**REASONABLE ACCOMMODATIONS ON BASIS OF DISABILITY**

1. **PURPOSE**

This policy establishes organizational guidelines and protocol to ensure that qualified individuals with disabilities have full access to employment opportunities at the Massachusetts Department of Transportation (“MassDOT”). This policy expresses MassDOT’s commitment to non-discrimination and equal opportunity in creating and sustaining a diverse, inclusive and equitable workplace. This policy is not intended, nor should be interpreted, to substitute, contradict, or modify any applicable state or federal law, regulations, collective bargaining agreement (CBA) provisions and/or any other agreements.

1. **SCOPE**

This policy applies to all applicants for employment and employees of MassDOT.

1. **POLICY**

MassDOT will provide accommodations as may be necessary and reasonable to ensure that qualified applicants and employees (together, “individuals”) with disabilities may apply for jobs, perform essential job functions, and/or enjoy the benefits or terms, conditions or privileges of employment of similarly situated applicants and/or employees.

Upon notification, MassDOT will consider an individual’s request for *reasonable accommodation* and any supporting documentation, whenever deemed necessary by MassDOT, on a case-by-case basis in conformance with this policy and applicable law. MassDOT prohibits and will not tolerate any discrimination, harassment, and/or retaliation against any individual who requests an accommodation; files a complaint; or cooperates in any related investigation under this policy.

1. **DEFINITIONS**

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| *Qualified Person with a Disability* | A person who (a) has a physical or mental impairment, which substantially limits one or more major life activities or (b) has a record of such impairment and who can perform the essential job functions of the position, with or without a reasonable accommodation. |
| *Impairment**Record of Impairment* | A physiological disorder affecting one or more of a number of body systems, or a mental or psychological disorder. Individuals with illnesses, such as asthma, cancer, hepatitis, tuberculosis, HIV or AIDS, may be considered to have a disability.[[1]](#footnote-1)A person is considered to have a "disability" if he/she has a past record or medical history of a physical or mental impairment that substantially limited one or more major life activities, even though the impairment may no longer exist.[[2]](#footnote-2) |
| *Substantially Limits**Major Life Activities* | The determination of whether an impairment substantially limits a major life activity requires an individualized assessment and must be made without regard to the ameliorative effects of mitigating measures, i.e., medication or hearing aids (excepting ordinary eyeglasses or contact lenses). An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting;” it is “substantially limiting” if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.[[3]](#footnote-3) Hence, not all impairments will constitute a disability under this policy. Generally include without limitation: (i) 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 and (ii) operation of a major bodily function, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system. In determining other examples of major life activities, the term “major” shall not be interpreted strictly to create a demanding standard for disability. Whether an activity is a “major life activity” is not determined by reference to whether it is of “central importance to daily life.” |
| *Essential Job Functions* | Those functions that must necessarily be performed by an employee to accomplish the principal objectives of the job. "Essential job functions" are those that are not incidental or tangential to the job in question, and may, depending on the circumstances, include those functions that are identified as part of a job, but which are rarely or never performed.In determining whether a job function is essential, MassDOT conducts an individualized assessment and considers whether removing a particular function from the job would fundamentally alter or change the nature of the job in question.[[4]](#footnote-4) Other considerations, including duties identified as essential and listed in a pertinent written job description, and/or the amount of time spent on the job performing the function, the work experience of past incumbents in the job, and the current work experience of incumbents in similar jobs, may also be taken into account in determining whether certain functions are essential to the job.  |
| *Undue Hardship* | Significant difficulty and/or expense in, or as a result of, providing the accommodation. The nature and cost of a reasonable accommodation, MassDOT’s overall financial resources, number and type of employees and facilities and type of operations are considered. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business. For example, where the individual’s request may create: (1) *undue financial burden* (i.e., considering the nature and cost of the accommodation); (2) *undue administrative burden* (i.e., when so complex or inadequate for the relevant setting that it is not practical); and/or (3) *fundamental alteration* (i.e., where the accommodation would fundamentally alter the nature of the business operation and where the employee works). |
| *Direct Threat*  | A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination is based on an individual assessment of the individual’s ability to safely perform the essential functions of the job. Factors to be considered: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (3) the imminence of the potential harm.  |

1. **REASONABLE ACCOMMODATIONS**

In consideration of applicable law and/or CBAs, MassDOT, through its Office of Diversity & Civil Rights (ODCR), will endeavor to make a *reasonable accommodation* for an otherwise qualified applicant or employee with a *disability* to assist the applicant or employee to apply for jobs, perform the essential functions of the job, and/or enjoy the benefits or terms, conditions or privileges of employment, unless doing so would impose an *undue hardship*.

Under this policy, a reasonable accommodation may be an adjustment or alteration that enables a qualified person with a disability (i) to apply for jobs, (ii) to perform *essential job functions*, and/or (iii) to enjoy the benefits or terms, conditions or privileges of employment. These individualized accommodations may reasonably include, depending on the circumstances, without limitation:

* Modifying the manner in which job selection devices (e.g., tests or exams) are administered;
* Modifying work schedules;
* Modifying *when and how* an essential job function is performed;
* Reassigning marginal or non-essential job functions;
* Obtaining, maintaining or modifying adaptive job equipment or devices;
* Allowing time off for medical reasons or other leaves of absence; and/or
* Reassignment or transfer to a vacant or soon to be vacant position (temporarily or permanently) of equal or lesser grade, with reasonably time-bound efforts.

In considering a request for reasonable accommodation, MassDOT may—based on job-relatedness and business necessity—request that the applicant or employee provide specific supporting information and documentation verifying that an *impairment* exists and that the disability necessitates a reasonable accommodation and/or information regarding the accommodation(s) sought and/or suggested.

1. ***Requests***

An applicant or employee may request a reasonable accommodation *at any time* by submitting a *verbal or written* request to ODCR or the Human Resources Department (“HR”).[[5]](#footnote-5) All requests under this policy must be immediately referred to ODCR.

It is the responsibility of the individual requesting an accommodation to ensure that the appropriate supporting information and/or documentation are provided to ODCR in a timely manner for an appropriate and effective evaluation of his/her request.

1. **THE INTERACTIVE PROCESS**

Upon request and as deemed otherwise necessary, ODCR will engage in an open dialogue or interactive process using a variety of possible methods, including, e.g., correspondence or email and/or personal meetings with an applicant or employee. The discussion will generally focus on the job, the essential job functions, any barriers to job performance—or completing the application process—and/or otherwise enjoying the full benefits of employment, and any accommodations sought and/or suggested. The goal in this confidential process is to identify reasonable accommodations that meet the needs of *qualified persons with disabilities*—e.g., assisting them in fully performing the essential functions of their jobs—in a manner that best serves the legitimate business interests of MassDOT, without creating *undue hardship*.

MassDOT endeavors to reach mutually agreeable reasonable accommodations. Specifics of the request will be explored on a case-by-case basis, taking into consideration the individual’s and management’s assessment of the situation. While the goal of the interactive process is to be collaborative and reach effective resolution, MassDOT has final discretion in determining the appropriate reasonable accommodation, and does not have to accept the individual’s proposed or preferred accommodation. Under this policy, supervisors and managers may not engage in the interactive process without ODCR. ODCR must be engaged to manage the interactive process at all times.

If the individual’s initial request for accommodation will not allow the individual to complete the application process or fully perform the essential functions of the job and/or is otherwise not a *reasonable accommodation*, MassDOT and/or the individual may propose alternatives for consideration. An individual’s failure to participate or cooperate in the interactive process may constitute grounds for denial of his/her request. If continued consultation with the individual still does not yield a reasonable accommodation, then ODCR, as part of the interactive process, may at its sole discretion seek technical assistance to accommodate the particular need.[[6]](#footnote-6)

If the applicant or employee presents a *direct threat* of harm to him/herself or others, his/her request may be denied by ODCR.

1. ***Notification of Decision***

At the conclusion of the interactive process, ODCR will issue a written notification to the requesting individual either approving or denying (wholly or partially) the specific request or other alternatives. This written notice will explain the reason(s) for its determination. In cases of approval, HR and management personnel will be given as much information as may be needed for them to perform their duties given the accommodation or, when appropriate, to respond to emergency treatment or assistance in evacuation, etc.

Denial of a request for an accommodation does not prevent the person from making another related or unrelated request for accommodation at a later time, if and when circumstances may change and/or he/she believes an accommodation is needed due to limitations from the disability (e.g., when the disability worsens or an employee is assigned new duties that require an additional or different accommodation). Similarly, an accommodation previously granted by MassDOT may be discontinued when it is no longer necessary due to changing circumstances and/or it imposes an undue hardship.

1. **COMPLAINTS, APPEALS AND OTHER RELIEF**

Discrimination, harassment, and/or retaliation against an individual because of his/her disability are strictly prohibited and will not be tolerated by MassDOT. MassDOT also prohibits any discrimination, harassment and/or retaliation by anyone in the workplace against any individual because he/she has requested an accommodation or appealed a determination; has filed a complaint; and/or has cooperated in a related investigation under this policy.

In case an applicant or employee is dissatisfied or feels aggrieved by a practice or decision under this policy, he/she may file: (i) a verbal or written appeal with the Assistant Secretary of the Office of Diversity and Civil Rights (ODCR) or (ii) a complaint by contacting ODCR’s Investigations Unit at (855) 227-8066 or electronically at ODCRComplaints@dot.state.ma.us in accordance with Executive Order 526 and ODCR’s established policies and procedures. The applicant or employee may also seek other remedies available to him/her at the Massachusetts Commission Against Discrimination (MCAD), Equal Employment Opportunities Commission (EEOC), and/or any other forum with competent jurisdiction.

1. However, in conformance with applicable law, the following conditions may *not* be considered impairments: environmental, cultural, and economic disadvantages; homosexuality and other sexual orientation; normal pregnancy; personality traits not caused by mental or psychological disorders; normal deviations in height, weight, or strength; the current, illegal use of a controlled substance, or the non-dependent use of alcohol. [↑](#footnote-ref-1)
2. An impairment that is episodic (or in remission) is deemed a disability, if it substantially limits major life activity when active. For example, a person who was treated for cancer 5 years earlier but who has been cancer-free since then may still be entitled to legal protection as a “person with a disability.” [↑](#footnote-ref-2)
3. E.g., deafness, blindness, intellectual disability (f/k/a mental retardation), partially or completely missing limbs, cosmetic disfigurement, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, PTSD, obsessive-compulsive disorder, and schizophrenia are conditions that the Americans with Disabilities Act prescribes as likely to be substantially limiting, though each individual employee’s circumstance must be evaluated on a case-by-case basis. [↑](#footnote-ref-3)
4. Thus, e.g., while a Maintenance Equipment Operator in certain Highway Districts may only be called upon to work nights during snow/ice events, removing this essential function from his/her job would fundamentally change the nature of the job. [↑](#footnote-ref-4)
5. The individual need not have self‑identified as a person with a disability for purposes of EEO reporting to make such a request or to receive a reasonable accommodation under this policy. A person other than the applicant or employee (e.g., a family member, health professional or other representative) may request an accommodation for the individual (e.g., a doctor’s note may constitute a request); but, in such case, the individual’s confirmation is absolutely necessary as soon as practicable. [↑](#footnote-ref-5)
6. During the interactive process, MassDOT may at its sole discretion confidentially seek technical assistance from or collaboration with, e.g., the Mass. Office on Disability, U.S. Dept. of Labor Job Accommodations Network (JAN), EEOC, Mass. Commission for the Deaf and Hard of Hearing, Commission for the Blind, et al. to reasonably accommodate an individual. [↑](#footnote-ref-6)