



## City of Dixon Disability Discrimination Policy And Complaint Procedure

APPROVED:

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3/17/2009

DATE

EFFECTIVE DATE: MARCH, 20, 2009

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### Purpose:

The purpose of this policy is to:

- prohibit and eliminate discrimination in employment, in places of public accommodation, and in public service, against a qualified individual with a disability;
- define what constitutes "disability";
- define who is a "qualified individual with a disability";
- define discrimination on the basis of disability; and
- establish a procedure for investigating and resolving disability discrimination complaints.

### Policy:

Discrimination on the basis of disability against an applicant, an employee, or a citizen requesting public service, who is a qualified individual with a disability, by any employee of the City of Dixon is not condoned and will not be tolerated. This policy applies to the job application process, to all terms and conditions of employment including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training; and to public services offered by the City of Dixon.

All complaints of discrimination on the basis of disability will be promptly and objectively investigated.

Disciplinary action up to and including termination will be instituted for behavior described in the definition of discrimination on the basis of disability set forth below.

Any retaliation against a person for filing a discrimination charge or making a discrimination complaint is prohibited.

**Definitions:**

**A. Disability**

“Disability” is: (1) a physical or mental impairment that limits one or more major life activity; or (2) having a record of such an impairment; or (3) being regarded as having such an impairment.

**1. Physical or Mental Impairments**

Physical or mental impairments include, but are not limited to: vision, speech and hearing impairments; emotional disturbance and mental illness; seizure disorders; mental retardation; orthopedic and neuromotor disabilities; learning disabilities; diabetes; heart disease; nervous conditions; cancer; asthma; Hepatitis B; HIV infection; and drug addiction if the addict has successfully completed or is participating in a rehabilitation program and no longer uses illegal drugs.

**2. Substantial Limitation of Major Life Activities**

An individual is disabled if he or she has a physical or mental impairment that (a) renders him or her unable to perform a major life activity, or that (b) limits the condition, manner or duration under which he or she can perform a particular major life activity in comparison to other people.

Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

In determining whether physical or mental impairment substantially limits the condition, manner or duration under which an individual can perform a particular major life activity in comparison to other people, the following factors shall be considered:

- a. the nature and severity of the impairment;
- b. the duration or expected duration of the impairment; and
- c. the permanent or long-term impact (or expected impact) of or resulting from the impairment.

In determining whether a physical or mental impairment limits an individual with respect to the major life activity of “working”, the following factors should be considered:

- a. the geographical area to which the individual has reasonable access;

- b. the job from which the individual has been disqualified because of an impairment and the number and types of jobs within that geographical area utilizing similar training, knowledge, skills or abilities from which the individual is also disqualified because of the impairment; and/or
- c. the number and types of other jobs within that geographical area not utilizing similar training, knowledge, skills or abilities (to the job from which disqualified) from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

### ***3. Having a Record of Impairment***

An individual is disabled if he or she has a history of having an impairment that limits the performance of a major life activity; or has been diagnosed, correctly or incorrectly, as having such an impairment.

### ***4. Regarded as Having a Disability***

An individual is disabled if he or she is treated or perceived as having an impairment that limits major life activities, although no such impairment exists.

## **B. Qualified Individual With a Disability (Employment)**

A “qualified individual with a disability” is a person who (1) satisfies the (job) related requirements for the position, and (2) can perform the “essential functions” of the position despite their disability, or who (3) with “reasonable accommodation” can perform the essential functions of the position.

### ***1. Satisfies Job-Related Requirements***

The first step is to determine whether the disabled individual satisfies the job-related requirements of the position. Satisfying the job-related requirements of the position means that the disabled individual possesses the appropriate educational background, employment experience, skills, and license required for the position.

### ***2. Essential Factors***

The second step is to determine whether the individual can perform the essential functions of the position despite their disability. Essential functions are the fundamental duties of a position. Marginal or peripheral functions of a position are not essential functions.

A function may be essential because:

- a. the reason the position exists is to perform that function;
- b. of the limited number of employees available among whom the performance of that job function can be distributed; and
- c. it is highly specialized and requires specific expertise or skill to perform.

The following factors shall be considered in determining whether a function is essential: the agency’s judgment as to which functions are essential; written job descriptions; the amount of time spent on the job performing the function; the

consequences of not requiring the performance of the function; the terms of a collective bargaining agreement or MOU; and the work experience of past and present incumbents in the position.

### **3. Accommodation**

If the individual cannot perform the essential functions despite their disability, this step is to determine whether reasonable accommodation would enable the individual to perform the essential functions of the position.

Accommodation is any change in the environment or in the way things are customarily done that enables a disabled individual to enjoy equal opportunities. Accommodation means modifications or adjustments:

- a. to a job application process to enable an individual with a disability to be considered for the position;
- b. to the environment in which a function is performed so that a disabled person can perform the essential functions of the position; and
- c. that enable disabled individuals to enjoy or receive equal benefits and privileges of public services or employment as other similarly situated employees or citizens without disabilities enjoy.

Accommodation includes making existing facilities and equipment used by employees readily accessible to and usable by individuals with disabilities.

Accommodation may apply to:

- all employment decisions and to the job application process;
- all services and programs provided in connection with employment;
- non-work facilities and services provided by the agency to all employees and citizens; and
- known disabilities only.

Accommodation is not required if:

- it constitutes a modification or elimination of an essential function of a position from the disabled individual's job; or
- adjustments or modifications requested are primarily for the benefit of the disabled individual.
- providing the accommodation would constitute an undue hardship (see below)
- providing the accommodation would not eliminate a significant risk of substantial harm to the health or safety of the individual or others

#### **4. Undue Hardship**

Agency will not provide an accommodation that imposes an “undue hardship” on the operation of the agency’s business. Undue hardship means significant difficulty or expenses incurred in the provision of accommodation. Undue hardship includes but is not limited to financial difficulty. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operation of the business.

Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. The following factors will be considered in determining whether an accommodation would create an undue hardship: the nature and cost of the accommodation; the financial resources of the agency; the number of employees; and the type of operations of the agency, including the composition and functions of its workforce.

#### **5. Determining the Appropriate Accommodation**

If a qualified individual with a disability requests the provision of a reasonable accommodation, the agency shall engage in an informal, interactive process with the disabled person which identifies the precise limitations resulting from the disability and the potential accommodations that could overcome those limitations.

The accommodation process shall generally involve five steps. First, the agency shall analyze the particular job at issue and determine its purpose and essential functions. Second, the agency shall consult with the disabled individual to ascertain the precise job-related limitations imposed by the individual’s disability. Third, the agency shall consult with the disabled individual to identify potential accommodations. Fourth, the agency shall assess the effectiveness of each potential accommodation with regard to enabling the individual to perform the essential functions of the position. Fifth, if a reasonable accommodation exists, the agency will evaluate whether providing the accommodation would not eliminate a significant risk of substantial harm to the health or safety of the individual or others. Finally, the agency shall consider the preference of the individual to be accommodated and select and implement the reasonable accommodation that is most appropriate for both the employee and the agency.

### **C. Discrimination on the Basis of Disability**

Discrimination on the basis of disability means to:

- limit, segregate, or classify a job applicant, employee, or member of the public in a way that may adversely affect opportunities or status because of the individual’s disability;
- participate in a contract which could subject an applicant, employee, or a member of the public with a disability to discrimination;
- use any standards, criteria or method of administration which could have the effect of discriminating on the basis of disability;

- deny equal jobs or benefits because of a disability;
- fail to make reasonable accommodations to known physical or mental limitations of an otherwise qualified individual unless it can be shown that the accommodation would impose an undue hardship or would not eliminate a significant risk of substantial harm to the health or safety of the individual or others;
- use selection criteria which exclude disabled persons unless the criteria is job-related and consistent with business necessity; and
- fail to use employment tests in a manner that ensures that the test results accurately reflect the applicant's or employee's skills or aptitude for a particular job.

### **Complaint Procedure:**

1. A job applicant, employee or member of the public who believes he or she has been discriminated against on the basis of disability may make a written complaint as soon as possible after the incident to either: (a) the compliance officer (Human Resources Director), 600 East "A" Street, Dixon, CA 95620, (916) 678-7000; (b) complainant's immediate supervisor; (c) complainant's department head.

In order to facilitate the investigation, the complainant is encouraged to submit the complaint within 30 days of the alleged incident(s). Where reasonable circumstances prevent the filing of the complaint within this time period, complaints received after this time period may be accepted.

2. The complaint shall include the:

- description of the offending behavior(s) or violations;
- date(s), time(s) and location(s) of incident(s);
- name(s) of alleged offender(s);
- name(s) of witnesses, if any; and
- remedy desired.

3. Complainant's immediate supervisor or department head shall refer all complaints received to the compliance officer (Human Resources Director).

4. Upon receipt of a complaint, the compliance officer or designee shall investigate all charges. The investigation shall include interviews with: (a) the complainant; (b) the person(s) allegedly engaged in discrimination; and (c) any other person the compliance officer or designee believes to have relevant knowledge concerning the complaint.

5. Upon completion of the investigation, the compliance officer or designee shall review factual information gathered through the investigation to determine whether the alleged

conduct constitutes discrimination, giving consideration to all factual information, the totality of the circumstances, including the nature of the alleged discriminatory conduct and the context in which the alleged incidents occurred.

6. The compliance officer or designee shall then prepare a written report setting forth the results of the investigation and the determination as to whether discrimination occurred. The results of the investigation, but not the investigation report, shall be conveyed to appropriate persons including to the complainant and the person(s) allegedly engaged in discrimination.

7. If it is determined that discrimination occurred, prompt and appropriate disciplinary action will be taken that is commensurate with the severity and/or frequency of the offense.

8. Reasonable steps shall be taken to protect the victim and other potential victims from further discrimination.

9. Reasonable steps shall be taken to protect the victim from retaliation as a result of communicating the complaint.

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