

TO: Personnel Directors/Designees
ADA/Disability Coordinators/Designees
Labor Relations Directors/Designees

PERSL 1361

FROM: Julien C. Carter
Commissioner

DATE: June 9, 2000

RE: Reassignment under the Americans with Disabilities Act and the Minnesota
Human Rights Act

The Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act require employers to provide reasonable accommodation to qualified individuals with disabilities, unless to do so would cause undue hardship. In general, reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. The reasonable accommodation process is interactive, requires a case-by-case analysis and consists of discussions with the employee about accommodations that would enable him/her to perform the essential functions of his/her current position

When an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, the Americans with Disabilities Act requires employers to consider "reassignment to a vacant position" as a form of reasonable accommodation. Reassignment as a reasonable accommodation is required only after it has been determined that: 1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her position, or 2) all other reasonable accommodations would impose an undue hardship. Undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.

Once this determination has been made, the possibility of reassignment to a vacant position must be discussed with the employee. In order to narrow the search for potential vacancies, and as a part of the interactive reasonable accommodation process, the employer should ask the employee about his/her qualifications and interests. The employer should inform the employee that the agency can assist in identifying and informing the employee of vacant positions, but that the agency cannot guarantee a reassignment. Furthermore, the employee should be informed that if a more senior employee applies for a vacant position, the agency must adhere to the seniority provisions of the applicable collective bargaining agreements.

In addition, Administrative Procedure 13.1 "Alternative Placement and Referral of Employees with Active Workers' Compensation Claims and Employees Determined Eligible for ADA," should be reviewed to determine if the employee meets the eligibility criteria for this priority referral and appointment process.

When considering reassignment to a vacant position as an accommodation, the employer is required to look at current vacancies or positions that the employer knows will become available within the respective agency within a reasonable amount of time. This means looking at vacancies within the agency that the employee is currently employed with, including other facilities that agency may have that are located throughout the state. Employers are not obligated to look for vacancies in other state agencies. For example, the Minnesota Department of Health does not have to look for a vacancy at the Minnesota Department of Revenue.

To be eligible for reassignment to a vacant position, the employee must be "qualified" for the new position. An employee is "qualified" for a position if s/he: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation.

It should also be noted that although the ADA does not require the employer to seek a waiver of the seniority provisions of the collective bargaining agreements, the agencies are obligated under certain agreements to follow the waiver procedures, if applicable. For example, Article 34 of the AFSCME agreement requires the appointing authority to contact the local union and meet to discuss the specific article(s) to be waived and the manner in which the appointing authority proposes to modify that article(s).

cc: Melissa Wright, Attorney General's Office