

VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 86)

21 October 2019

American with Disabilities Act for Employees Policy

1. Purpose

The purpose of this policy is to provide guidelines to employees to ensure compliance with the *Americans with Disabilities Act of 1990 (ADA)*, the *Rehabilitation Act of 1973 (Revised)*, and the *Americans with Disabilities Amendments Act (ADAAA)*. The ADA is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities. The ADA establishes a process in which the employer must assess a disabled individual's ability to perform the essential functions of the specific job held or desired. While the ADA focuses on eradicating barriers, the ADA does not relieve a covered employee or applicant from the obligation to perform the essential functions of the job. To the contrary, the ADA is intended to enable covered individuals to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.

2. Definitions

- A. Essential Functions of a Job:** The basic job duties that an employee must be able to perform, with or without reasonable accommodation, to accomplish the job's purpose. If the job description contains the essential functions of the job including physical, behavioral, and minimal qualification requirements, that description will be considered evidence of the essential functions of the job. If the position exists to perform a function, then that function is essential. A function may also be essential if:
- it requires specialized skills or expertise;
 - it requires a significant amount of time;
 - removing the function would fundamentally change the job;
 - there are significant consequences if the function is not performed; or
 - there are a limited number of employees to perform the function.
- B. Major Life Activities:** Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- C. Major Bodily Functions:** A major life activity also includes 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.

D. Qualified Person with a Disability: A person who meets the skill, experience, education or other requirements for a position, and who can perform the essential functions of the position with or without a reasonable accommodation to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services.

E. Substantially Limits: Inability to perform a major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

3. Policy

VMI will provide reasonable accommodation to qualified individuals with documented disabilities to ensure equal access and equal opportunities with regard to employment, educational opportunities, programs, and services.

Procedures for processing workplace accommodations will allow the Human Resources Office to process requests in a prompt, fair, and efficient manner. The procedures also provide guidance to individuals with disabilities on steps to request accommodations.

Employees with disabilities are held to the same standards of conduct as other employees, students, or visitors, and a disability will not excuse misconduct.

3.1 Covered Individuals

The ADA defines disability as:

- a person who has a physical or mental impairment that substantially limits one or more major life activities;
- a person who has a record of such an impairment; or
- a person who is regarded as having such an impairment.

The ADA also:

- prohibits discrimination against individuals based on their relationship or association with a person with a disability;
- prohibits retaliation or coercion against individuals who opposed any acts made unlawful by the ADA, participated in the enforcement process, or encouraged others to exercise their rights under the ADA; and
- covers part-time employees/students and applicants regardless of national origin or status.

3.2 Reasonable Accommodations

Reasonable accommodations are modifications, adjustments or placements that will enable a qualified individual with a disability to perform the essential job functions, so long as such

accommodation does not impose an undue hardship on the Institute. Reasonable accommodations do not change the fundamental nature of the job or eliminate the essential functions of a job.

3.3 Undue Hardship

Virginia Military Institute is not required to provide accommodations that would present an undue burden to the institution by requiring significant difficulty or expense when considered in light of factors such as the Institute's size, financial resources, or the nature and structure of its operation or that would change the fundamental nature of a program or job duties.

3.4 Harassment, Discrimination, and Retaliation

Harassment or discrimination based on a disability is illegal. VMI prohibits harassment or discrimination on the basis of disability under General Order 16.

The ADA also prohibits retaliation against individuals who exercise their rights under the ADA or assist others in exercising their rights.

Claims of harassment, discrimination, or retaliation on the basis of disability should be reported to the Institute Inspector General at (540) 464-7072.

3.5 Confidentiality and Release of Information

Disability-related information is to be treated as confidential medical information. Institute faculty and staff do not have a right or a need to access diagnostic or other information regarding the disability of an employee or applicant; they only need to know what accommodations are necessary or appropriate to meet the individual's disability-related needs. If an employee has requested an accommodation, the individual will be informed as to what information is being provided to the department or supervisor regarding the request. To limit access to confidential files, all disability-related information must be filed with the Human Resources Office. Departments, offices, or individuals should not keep any copies of such documentation within departments or offices.

Information may be released under the following circumstances:

1. to non-Institute personnel pursuant to a court order or subpoena;
2. in accordance with a written authorization by the employee for the release of information;
3. if an employee poses a direct threat to self or others; or
4. as otherwise permitted by law.

4. Procedures

VMI will attempt to reasonably accommodate a qualified individual with a disability so that the employee can perform the essential functions of a job, unless doing so creates an undue hardship or causes a direct threat to the individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation. Such accommodations may be adjustments to the way a job is performed and/or to the work environment itself.

The process of identifying whether, and to what extent, a reasonable accommodation is required involves an interactive process between both the employer and the individual with a disability. Depending on the individual's particular limitations and needs, accommodation solutions may involve equipment changes, workstation modifications, adjustments to work schedules, job restructuring, or assistance in accessing the facility. Of course, the determination of whether an individual is qualified for a particular position is made on a case-by-case basis. No specific form of accommodation is guaranteed for all individuals with a particular disability. A reasonable accommodation is tailored to match the needs and limitations of the disabled individual with the requirements of the job's essential functions, in accordance with ADA parameters.

4.1 Obtaining Accommodations

It is the responsibility of the individual with a disability to request reasonable accommodation from the respective supervisor. Requests are handled on a case-by-case basis and the procedures for obtaining an accommodation may vary. Generally, once the individual makes the request, the following steps should be followed:

1. Supervisor obtains the Americans With Disabilities Act (ADA) forms, which include:
 - a. Employee Request for Accommodation Form
 - b. Medical Professional's Documentation of Disability
 - c. Accommodation Evaluation Form
2. Supervisor reviews the Employee Work Profile (EWP).
3. The employee requesting an accommodation completes and returns the Employee Request for Accommodation form and has his/her medical professional complete the Medical Professional's Documentation of Disability form.
4. The Human Resources Office determines if the employee has a qualifying disability by evaluating the Medical Professional's Documentation of Disability form.
5. The supervisor contacts the Human Resources Office for assistance completing the Accommodation Evaluation Form. A representative from the Human Resources Office and the supervisor will discuss the request, evaluate the requested accommodations, determine if the requested accommodation is reasonable, and propose alternatives. The employee's supervisor must agree to the proposed accommodation. If the supervisor is in agreement with the accommodation, the accommodation is implemented. Final determination of reasonable accommodations rests with the Institute.
6. The accommodation is monitored for effectiveness. An accommodation can be changed or altered at any time.

4.2 Interactive Process

An interactive process among the supervisor, employee, and Human Resources Office is necessary to help determine and implement the appropriate accommodation. During the interactive process, the supervisor and the Human Resources Office may ask the worker relevant questions that will enable the Institute to make an informed decision about the request. This includes asking for information about the desired accommodation, the nature of the impairment prompting the request, and how the employee believes a disability has required the need for an accommodation.

The employee is also required to participate in the interactive process. Although the individual with a disability is not required to identify the exact accommodation necessary, the employee does need to describe the work-related problem he or she is having and why he or she believes it is related to a disability.

5. Responsibilities

5.1 Employee Responsibilities

An employee is responsible for providing adequate notification to either his or her supervisor or HR of the need for accommodation for a disability. The employee is also responsible for providing appropriate documentation of the disability requiring reasonable accommodation, and for cooperating with the Institute in attempting to reach a reasonable accommodation.

5.2 Human Resources Office

The Human Resources Office is responsible for processing and assessing requests for disability accommodations from employees, and for advising supervisors concerning reasonable accommodations for employees.

5.3 Institute Employees

Any Institute employee who receives a request for an accommodation is responsible for contacting HR for assistance in providing an appropriate response to the request.

5.4 Supervisors

Supervisors are responsible for providing reasonable accommodations regarding assignments, schedules, and other aspects of employment to employees within their areas.

5.5 Accommodation Costs

Normally the employee's department or office will be responsible for the costs associated with making reasonable accommodations for employees, although extraordinary costs for reasonable accommodations may be the responsibility of a higher budgetary authority.

6. Interpretation

The authority to interpret this policy rests with the Superintendent, and can be delegated at his discretion.

FOR THE SUPERINTENDENT:

James P. Inman
Colonel, US Army (Ret.)
Chief of Staff

Attachments: Forms
OPR: Human Resources



Americans with Disabilities Act (ADA) Employee Request for Accommodation

This form must be completed when an employee is making a request for accommodation due to a documented disability. To be eligible for a reasonable accommodation under the American with Disabilities Act (ADA), you must be able to perform the essential functions of your position with or without an accommodation, and have a qualifying disability that limits major life functions.

Employee Name:	Employee Phone:
Supervisor:	Supervisor Phone:
Department:	Date:
<p>1. Please describe which major life activity your medical condition limits. <i>(For example: caring for oneself, performing manual tasks, walking, seeing, hearing, sitting, speaking, breathing, learning, remembering, concentrating, etc.)</i></p>	
<p>2. Describe how our medical condition limits your ability to perform the essential functions of your job. Using your Employee Work Profile, identify the essential functions affected and be specific about how the medical condition impairs your ability in each instance.</p>	
<p>3. Specifically describe the accommodation(s) you are proposing:</p>	
<p>4. Please add any comments you feel may be helpful in our consideration of your request:</p>	
Employee Signature:	Date:



Americans with Disabilities Act (ADA) Medical Professional's Documentation of Disability

As part of the accommodation process, documentation that an employee has a qualifying disability is required. The ADA defines a qualifying disability as one that fits into one of these categories:

- A physical or mental impairment that substantially limits one or more major life activities; or
- A record of impairment; or
- The employee is regarded as having an impairment

This form is designed to provide a method for compliance with this mandate for documentation and should be completed by the employee's diagnosing professional

Section I – Employee Information

Employee Name:	Date:
Supervisor Name:	Work Phone:
Department:	Supervisor Work Phone
Medical Professional Name:	Professional's Title
Professional's Work Phone	Professional's license #

Using the space below or by attaching a letter, please describe the diagnosis and how it fits into one of the categories above:

Please suggest accommodations relating to the above diagnoses (if any):

Section II – Medical Professional’s Evaluation

I certify that the employee has a physical, mental, emotional impairment that limits one or more major life activity. The life function affected is:

(circle all that apply)

Caring for oneself, performing manual tasks, walking, seeing, hearing, sitting, speaking, breathing, learning, working, remembering, reasoning, other (please describe)

Indicate the limitations of the employee below

Physical Activity Limitation(s)			
Sitting	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Use of Hands	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Standing	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Right only	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Walking	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Left only	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Bending Over	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Both	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Climbing	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Light Grasping	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Reaching Overhead	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Right only	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Kneeling	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Left only	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Pushing/Pulling	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Both	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Crouching/stooping	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Firm/Strong Grasping	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Lifting or Carrying	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Right only	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
• 10 lbs. or less	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Left only	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
• 11-25 lbs.	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	• Both	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
• 26-50 lbs.	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Fine motor, right hand	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
• 51-75 lbs.	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Fine motor, left hand	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
• 76-100 lbs.	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe		
• Over 100 lbs.	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe		

Level of Mental, Emotional, and Sensory Limitation(s)			
Pace of Work	<input type="checkbox"/> Fast <input type="checkbox"/> Average <input type="checkbox"/> Below	Reasoning	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Manage Multiple Priorities	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Hearing	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Intense Customer Interactions	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Reading	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Multiple Stimuli	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Analyzing	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Frequent Change	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Verbal Communication	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Short-term Memory	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Written Communication	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Long-term Memory	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Vision	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe
Attention Span	<input type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe		

Section III – Medical Professional’s Comments

The above limitations are permanent. <input type="checkbox"/> Yes <input type="checkbox"/> No	
Comment:	
Medical Professional’s signature:	
Print Professional’s Name:	Date:

Please include additional documentation to support the request for accommodation as well as a cover letter on professional stationary. Return completed form to the Human Resources Office or fax to 540-464-7199.



**Americans with Disabilities Act (ADA)
Accommodation Evaluation Form**

Employee Name:	Employee Phone:
Supervisor:	Supervisor Phone:
Department:	Date:
<p>Step 1 – Identify barriers to performing the essential functions, with input from the employee, supervisor and Human Resources.</p> <ul style="list-style-type: none"> • Using the Employee Work Profile, identify which essential function is impacted by which limitation • What makes it difficult for the person in question to perform his or her job as it relates to the disability? 	
<p>Step 2 – Identify Possible Accommodations</p>	
<p>Step 3 – Choose the appropriate reasonable accommodation</p> <ul style="list-style-type: none"> • Does the accommodation seem effective in eliminating the person’s limitation so that the person is able to perform the essential functions of the position? 	
<p>Step 4 – Evaluate the effectiveness of the accommodation</p> <ul style="list-style-type: none"> • Determine a date that the effectiveness of the accommodation will be evaluated. • Is the accommodation enabling the employee to perform the essential functions of the position? • If no, Steps 2-4 may be repeated. 	

Employee Signature: _____

Date: _____

Supervisor Signature: _____

Date: _____