

## **PRO-301.1 AMERICANS WITH DISABILITIES ACT (ADA) ADMINISTRATIVE PROCEDURE**

### **1.0 Purpose.**

The purpose of this Administrative Procedure is to implement Section 301.6 of TRWD Board Policy 301 Employment Practices and TRWD's compliance with the Americans with Disabilities Act (ADA) and the disability laws of the State of Texas. TRWD complies with Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, which is a federal law prohibiting employers with 15 or more employees from discriminating against applicants and individuals with disabilities and, when needed, to provide reasonable accommodations to applicants and employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position. It is the policy of TRWD to comply with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance related to the employment of persons with disabilities issued by the Equal Employment Opportunity Commission (EEOC).

### **2.0 Scope.**

This ADA Administrative Procedure applies to all departments, divisions, and offices within TRWD, and to all TRWD employees.

### **3.0 Definitions.**

The following definitions apply to this ADA Administrative Procedure.

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 that an individual poses a “direct threat” shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence.

Disability – A physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment. The definition of disability shall be construed in accordance with the following:

- In favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the law.
- The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
- An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures including, but not limited to, medication, medical supplies, and medical equipment or devices. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

Essential job function – Fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential job function” does not include the marginal functions of the position.

Fundamental alteration – A modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

Impairment – A physical impairment is a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems. A mental impairment is any mental or psychological disorder.

Interactive process – An informal dialogue between the employer and employee used to identify the precise limitations resulting from the disability and determine potential reasonable accommodations that could overcome those limitations.

Qualified individual with a disability – An individual with a disability who satisfies the requisite skills, experience, education, and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential job functions of such position. Consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job. A qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when an employer is acting on the basis of such use.

Reasonable accommodation – A modification or adjustment to the application process, the work environment, or to the manner or circumstances under which the position held or desired is customarily performed that enables a qualified individual with a disability to perform the essential functions of the position and enjoy an equal employment opportunity.

Reasonable modification – Modification to policies, practices, or procedures to avoid discrimination unless the modification would fundamentally alter the nature of its service, program, or activity.

Undue hardship – With respect to the provision of accommodation, significant difficulty or expense incurred, when considered in light of the factors set forth in the law.

#### **4.0 Discrimination Prohibited.**

TRWD will not discriminate against a qualified individual with a disability in its job application procedures, hiring, advancement, or discharge of employees, compensation, job training, or other terms, conditions, and privileges of employment.

## **5.0 Reasonable Accommodations.**

TRWD will reasonably accommodate qualified individuals with a disability so that they can perform the essential functions of a job unless (1) doing so causes a direct threat to these individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation; or (2) if the accommodation creates an undue hardship to TRWD. For purposes of reasonable accommodations, TRWD is required to provide reasonable accommodations to otherwise qualified individuals with a disability or those with a record of such impairment. TRWD is not required to accommodate individuals that do not have a disability but instead assert that they are regarded as having such impairment.

**Duty to accommodate known disabilities.** TRWD is obligated to make reasonable accommodations only to the physical or mental limitations resulting from the disability of an individual that is known to TRWD. TRWD is not expected to accommodate disabilities of which it is unaware. If an employee with a known disability is having difficulty performing his or her job, TRWD may inquire whether the employee is in need of a reasonable accommodation. In general, however, it is the responsibility of the individual with a disability to inform TRWD that an accommodation is needed. TRWD encourages individuals with disabilities to come forward and request reasonable accommodations

## **6.0 Procedures for Requesting an Accommodation.**

**Making the request.** Applicants or employees with a disability who believe they require a reasonable accommodation to perform the essential functions of their job must inform their supervisor or the Human Resources Department of the need for an accommodation. A request does not have to be a formal request that mentions the ADA or uses the phrase "reasonable accommodation." Rather, the individual must let the supervisor, or the Human Resources Department, know that he or she needs an adjustment for a reason related to a physical or mental condition. If an employee informs his or her supervisor, the supervisor must contact the Human Resources Department promptly to inform it of the request. An individual's request need not be in writing, but the Human Resources Department may request that it be put in writing or will document the oral request in writing itself. Each request will be considered on a case-by-case basis.

**Preliminary documentation.** When the need for an accommodation is not obvious, TRWD, before providing a reasonable accommodation, may require that the individual provide documentation of a covered disability that requires a reasonable accommodation. This includes documentation or communication with an individual's healthcare provider to determine the nature of the disability and necessary accommodations. Appropriate healthcare professionals may include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocation rehabilitation specialists, and licensed mental health professionals.

**Interactive process.** Upon receipt of an accommodation request, a member of the Human Resources Department and the supervisor will meet with the applicant or employee to initiate an interactive conversation about the individual's limitations and needs. This process may include analysis of the particular job involved and a determination of its purposes and essential functions; consultation with the individual with a disability to ascertain the precise job-related limitations imposed by the disability; identification of potential accommodations and assessment of their effectiveness; consideration of the preference of the individual to be accommodated; and selection and implementation of the accommodation that is most appropriate for TRWD and the individual. This interactive process will continue after an accommodation is provided to ensure it is working and make adjustments accordingly. The Human Resources Department will maintain documentation of the interactive process.

**Reasonableness of requested accommodations.** TRWD will determine the reasonableness of a requested accommodation considering various factors, including but not limited to, the nature and cost of an accommodation; the availability of tax credits and deductions; outside funding; TRWD's overall financial resources and organization; and the impact on the operation of TRWD, including its impact on the ability of other employees to perform their duties and on TRWD's ability to conduct business. TRWD is not required to provide the best possible accommodation, to reallocate essential job functions, or to provide personal use items used both on and off the job (e.g., eyeglasses, hearing aids, wheelchairs, etc.). If there are two possible reasonable accommodations, TRWD may choose which accommodation to provide, as long as it is effective.

**Decision and appeal.** TRWD will inform the individual of its decision regarding accommodations within a reasonable period of time. If the accommodation request is denied, the individual will be advised of his or her right to appeal the decision by submitting a written statement to the Chief Human Resources Officer explaining the reasons for the request, and any documentation of the disability and need for accommodation that the individual may have. If the request on appeal is denied, the decision is final.

## **7.0 Medical Examinations and Inquiries.**

TRWD will not conduct a medical examination of an applicant or employee or make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability except as provided below.

**Pre-employment inquires and employment entrance examinations.** TRWD may make pre-employment inquiries into the ability of an applicant to perform job-related functions, such as asking an applicant to describe or demonstrate how, with or without reasonable accommodations, the applicant will be able to perform job-related functions. TRWD may require a medical examination (and/or inquiry) after an offer of employment has been made to a job applicant and prior to the beginning of employment duties and may condition the offer on the results of such examination (and/or inquiry), provided all entering employees in the same job category are subjected to such an examination (and/or inquiry), regardless of disability.

**Examination during employment.** If TRWD has a reasonable belief that an employee is unable to perform the essential functions of their job or return to work following an absence, it may require further information, including additional information regarding medication(s) and treatment, or request a medical examination. This also applies should TRWD hold a reasonable belief that the employee will pose a direct threat to themselves or coworkers. The results of such medical examination or inquiry may only be used to determine the employee's ability to perform job-related functions.

### **8.0 Accommodation of Pregnant Employees.**

A pregnant employee requiring a temporary change to how, when, or where the employee works due to pregnancy or related conditions may request an accommodation. TRWD will approve such a request so long as the accommodation requested is reasonable and will not create undue hardship for TRWD. This determination will be made on a case-by-case basis, considering whether a requested accommodation is reasonable or would create undue hardship after considering the nature of the accommodation, the business needs of TRWD and its customers, the needs of TRWD's other employees, TRWD's operations, and TRWD's resources.

### **9.0 Confidentiality.**

Information obtained regarding the medical condition or history of an applicant or employee shall be collected and maintained on separate forms and in separate medical files and shall be treated as confidential medical records. However, supervisors and managers may be informed regarding necessary restrictions on the employee's work or duties and necessary accommodations; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

### **10.0 Genetic Information Nondiscrimination Act of 2008 (GINA).**

GINA prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. In the event that an employee provides medical documentation including this information, or the employer otherwise inadvertently acquires this information, it will be immediately disregarded.