

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 16-02

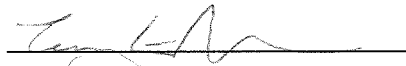
For the purpose of adopting changes to the MERC Personnel Policies.

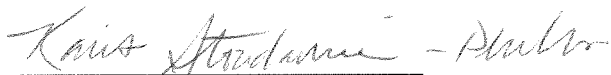
WHEREAS, the Metropolitan Exposition Recreation Commission (MERC) is authorized to adopt personnel policies pursuant to Metro Code Sections 2.02.010 (b) and 6.01.040 (a); and

WHEREAS, MERC periodically updates the MERC Personnel Policies (the Personnel Policies) in accordance with both legal requirements and agency-wide policies.

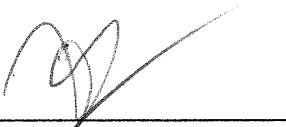
BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission adopts the changes to the Personnel Policies in a form substantially similar to the attached Exhibit B.

Passed by the Commission on February 3, 2016.


Chair


Secretary-Treasurer

Approved As To Form:
Alison R. Kean, Metro Attorney

By: 
Nathan A.S. Sykes, Deputy Metro Attorney

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of adopting changes to the MERC Personnel
Resolution No.: Policies. **16-02**
Date: February 3, 2016
Presented by: Mary Rowe, Metro Human Resources Director

Background and Analysis:

The MERC Commission last approved a complete personnel policy manual for venues staff in August 2007. Beginning in 2011, Metro's Human Resources Department began a project to review and update both the MERC policy manual and Metro's policy manual, Executive Order #88, with the goal of developing one set of agency-wide personnel policies and procedures. The policies are being updated and implemented on a rolling basis in an order determined by legal changes and business needs. Human Resources staff developed these policies in consultation with department managers, the Office of Metro Attorney, and the Metro Senior Leadership Team. This policy was presented to the Commission for discussion on January 6, 2015.

Resolution:

This resolution seeks the MERC Commission's approval of the following personnel policy:

- Americans with Disabilities Act

Long range fiscal impact:

There is no additional fiscal impact projected for implementation of the Americans with Disabilities Act Policy changes.

Recommendation: The Metropolitan Exposition Recreation Commission adopts the change to the Personnel Policies in a form substantially similar to the attached Exhibit B.

**EXHIBIT A: SUMMARY OF PROPOSED PERSONNEL POLICY FOR MERC COMMISSION
FEBRUARY 3, 2016**

Below is a list of the draft policy for your review. This proposed policy is intended to supersede the one included in the All-Metro Policy adopted January 2014. New edits made at the recommendation of the Commission, Office of Metro Attorney, and/or the Metro Senior Leadership Team following the January 6, 2016, Commission meeting are noted in bold italics.

Policy	Existing MERC Policy	Existing Metro Policy	Applicable Legal Provisions	Policy Summary/Explanation of Change	Fiscal Impact	Business Impact
Americans with Disabilities Act	Americans with Disabilities Act	<ul style="list-style-type: none"> • Americans with Disabilities Act • ORS 659A.103 – 659A.142 	<ul style="list-style-type: none"> • Revised procedures and guide/forms for requesting an accommodation. • Revised interactive process for discussing reasonable accommodations and documentation • Change in terminology from employee to individual • OMA must be involved if an accommodation is denied 	N/A	Process improvement	Americans with Disabilities Act

DRAFT

1/13/16



Subject Americans with Disabilities Act (ADA)
Section Human Resources
Approved by

POLICY

Metro complies with the Americans with Disabilities Act and corresponding state law. In keeping with Metro’s commitment to equal opportunity, Metro will not discriminate against any individual based on disability and will ensure that reasonable disability accommodation is provided to allow qualified individuals with disabilities to perform the essential functions of their positions and enjoy equal benefits and privileges of employment.

Applicable to

All employees, interns and applicants.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Americans with Disabilities Act (ADA): A federal law designed to protect individuals with disabilities from discrimination. For purposes of this policy, the focus will be on the employment-related portion of the ADA.

Disability: A substantial impairment of a major life activity. Temporary impairments of short duration, such as colds, flu, sunburn, or broken bones that heal normally, are typically not disabilities.

Essential function: The fundamental duties of a position that an individual with a disability holds or desires. Considerations in determining essential functions include the time it takes to perform the function; the consequences of not performing that function; whether the position exists to perform that function; and whether there are others who can perform that function.

Genetic information: For the purposes of this policy, genetic information 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 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.

Interactive process: An informal process between an individual with a disability and an employer in an effort to identify potential reasonable accommodation.

Major life activity: Major life activities include, but are not limited to: caring for oneself; performing manual tasks; seeing; hearing; eating; drinking; sleeping; walking; standing; lifting; bending; twisting; speaking; breathing; cognitive functioning; learning; education; reading; concentrating; remembering; thinking; communicating; operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; working. To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

Qualified individual: An individual who is able to perform the essential functions of his or her position with or without reasonable accommodation.

Reasonable accommodation: Any modification or adjustment to a position or the work environment that will enable a qualified individual with a disability to participate in the application process or perform essential job functions. Reasonable accommodation also includes adjustments to provide a covered individual the same employment rights and privileges enjoyed by those without disabilities.

Substantially limits: Restricts one or more of an individual's major life activities as compared to most people in the general population. This analysis is made without regard to whether the individual can reduce the effects of the impairment through the use of mitigating measures, with the exception of ordinary eyeglasses and contact lenses.

Undue hardship: A significant difficulty or expense.

Guidelines

1. Metro will not discriminate against any employee, intern or applicant because the individual has a disability or a record of disability; is regarded as having a disability; is associated with a person with a disability; or has inquired about, received, or requested reasonable accommodation.
2. Metro will provide reasonable accommodation to employees, interns and applicants with disabilities unless to do so would result in an undue hardship. When an otherwise qualified employee or intern has a disability, Metro will engage in an interactive process to determine whether he or she can perform the essential functions of his or her position with reasonable accommodation.
3. In accordance with the Genetic Information Non-Discrimination Act of 2008, no genetic information, including family medical history, will be requested or considered as part of the accommodation process.

Procedures

Applicants for employment or promotion

1. Reasonable accommodation will be provided to disabled applicants for employment, internship or promotion if necessary to complete the application process.

- a. If a physical capacities test is necessary before beginning regularly scheduled work, the test will be required only after a conditional offer of employment has been made, consistent with the requirements of the ADA.
- a. If the results of a physical capacities test indicate that an employee is unable to perform essential functions of the position, Metro will initiate an interactive process with the employee to determine whether disability accommodation is appropriate.
- b. Disabled applicants are required to make a request for reasonable accommodation to their recruiter and the recruiter is responsible for ensuring that a complete Request for Reasonable Accommodation Form is on file.

Current employees and interns

- 2. An individual with a disability may request an accommodation if needed to perform the essential functions of his or her position.
 - a. The individual should initiate the request by contacting his or her supervisor or the Human Resources Benefits Manager.
 - b. Upon receipt of a request for accommodation, the supervisor shall immediately notify the HR Benefits Manager.
 - c. The individual is required to complete the Request for Reasonable Accommodation Form and submit it to the HR Benefits Manager within 14 calendar days.
 - d. The HR Benefits Manager is responsible for providing an overview of the ADA accommodation process to the individual initiating the request utilizing the following documents: Guide to Interactive Process for Reasonable Accommodation and Checklist for Reasonable Accommodation Requests.
- 3. Upon receipt of a completed Request for Reasonable Accommodation Form, the HR Benefits Manager is responsible for determining whether the individual has a disability. The HR Benefits Manager can request that the individual provide documentation to support what the impairment is and how the impairment substantially limits a major life activity unless the impairment is obvious or substantiating documents is already on file or due to other applicable reasons.
 - a. If documentation is required to support what the impairment is and how the impairment substantially limits a major life activity, the HR Benefits Manager will write a letter outlining the duties of the position to the employee's or intern's health care provider and will request a signed medical release from the employee or intern. The release will authorize the health care provider to provide a medical opinion and relevant medical information as to whether the individual can perform the full scope of the essential duties of the position and what, if any, accommodation(s) are recommended.
 - b. If documentation is required to support what the impairment is and how the impairment substantially limits a major life activity, the HR Benefits Manager will review the health care provider's responses. If the documentation is insufficient to establish the existence of a disability and the need for

accommodation, the HR Benefits Manager will explain why the documentation is insufficient and allow an opportunity to provide the missing information.

- i. With the employee's or intern's written consent, the HR Benefits Manager may request follow-up information directly from the employee's health care provider.
 - ii. If necessary to confirm or clarify the need for accommodation, Metro may require the employee or intern to go to a second health care provider chosen by Metro for an independent medical opinion at Metro's expense.
 - c. Metro will reimburse the employee or intern for out-of-pocket costs for providing medical documentation required under this policy in accordance with applicable law
4. The employee or intern will be asked to meet with the HR Benefits Manager and/or his/her supervisor to engage in an interactive process to discuss the disability in relation to the essential functions of the position and to identify reasonable adjustments or changes that may allow the individual to perform these essential functions.
 - a. Prior to the meeting, HR will inform the individual that they may have a union representative, family member, or other appropriate person present during interactive process meetings.
 - b. An employee or intern may choose to decline participation in the interactive process at this point or at any other time. This decision will suspend Metro's further assessment of potential disability accommodations until the employee or intern re-initiates a request. HR will twice seek to initiate such a dialogue before closing the matter due to non-participation. A closure of this nature will not prevent the employee from initiating the ADA process at a later date for the same or different medical reasons.
5. The HR Benefits Manager, the employee or intern, and the supervisor will meet to discuss the accommodation **the employee/intern is requesting** and, if appropriate, other potential accommodations that may allow the employee or intern to perform the essential functions of his or her position. HR and the employee's supervisor will jointly determine if a reasonable accommodation is available, and if so, they will arrange for timely implementation.
6. If a reasonable accommodation cannot be made so that an employee may continue to successfully perform in his or her current position, the HR Recruitment and Selection Manager will conduct a thorough review of available **and suitable** positions to determine if there is an available, suitable position for which the employee may be eligible.
7. If the suggested accommodations will create an undue hardship to Metro's operations as defined by the ADA, the HR Benefits Manager will meet with an employee to determine if any other benefit options, **including a review of available and suitable positions**, may be appropriate. If no other options are found, Human Resources will meet with the department Director and Office of Metro Attorney to determine if a termination is necessary due to inability to perform the job.

8. **An employee who has a disability that may cause performance or conduct problems is encouraged to seek reasonable accommodation before problems arise.**
9. **Consistent with the ADA, Metro will not accommodate or extend job protections based on current use of illegal drugs or being under the influence of alcohol at the workplace.**
10. Metro will provide reasonable accommodation to help employees meet performance and conduct standards; however, Metro is not required to waive **or lower** performance or conduct standards that are job-related and consistent with business necessity or to rescind discipline or an evaluation warranted by poor performance if the employee has not requested accommodation.
11. At the conclusion of the interactive process, the HR Benefits Manager is responsible for completing the Resolution of Request for Reasonable Accommodation Form. The Office of Metro Attorney must be consulted before denying an accommodation request.
12. Information obtained regarding an individual's medical condition or history will be kept in separate medical files and treated as confidential, except as follows:
 - a. Supervisors and managers may be informed regarding necessary restrictions on the individual's duties and necessary accommodations.
 - b. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
 - c. Officers and employees of the Equal Employment Opportunity Commission and the Bureau of Labor and Industries investigating compliance will be provided relevant information upon request.
13. Anyone with concerns about the ADA process, including the outcome of the interactive process, may contact the Director of Human Resources or Office of Metro Attorney to discuss the matter.
14. Anyone who experiences or observes discrimination, harassment, or retaliation related to disability should report the offending conduct using the procedures specified in Metro's Discrimination and Harassment Policy.

Responsibilities

Employee/Intern:

- Notify the supervisor or HR Benefits Manager that an accommodation is being requested.
- Meet with the HR Benefits Manager to begin the ADA interactive process and follow up as requested.
- Provide a medical release for Metro to obtain relevant medical information if applicable.
- Report any discrimination, harassment, or retaliation related to disability using the procedures specified in Metro's Discrimination and Harassment Policy.

Supervisor:

- Timely respond to all ADA requests by notifying HR.
- Participate in a discussion with the employee or intern and HR regarding reasonable accommodation.
- Coordinate with the Human Resources Department and the employee or intern to implement any necessary accommodations.
- Refer any reports or observations of discrimination, harassment, or retaliation related to disability to the HR Department.
- Maintain the confidentiality of medical information.

HR Benefits Manager:

- Provide the employee or intern with the appropriate forms and procedures.
- Obtain necessary medical information from the applicable health care professional(s) if necessary in order to verify the need for accommodation and identify potential solutions.
- Ensure that genetic information is not requested or considered during the accommodation process.
- Work with the employee or intern and the supervisor to determine if reasonable accommodation(s) can be made.
- **Consult with Office of Metro Attorney prior to denying an employee's accommodation request.**
- Coordinate implementation of any necessary accommodations.
- Ensure completion of process documents including the Checklist for Reasonable Accommodation Requests, Guide to Interactive Process for Reasonable Accommodation, and Resolution of Request for Reasonable Accommodation Form.
- Maintain medical information in a confidential file separate from the personnel file.

References

Americans with Disabilities Act of 1990 (ADA) as amended- 42 U.S.C. 12101 et seq., 29 C.F.R. 1630 et seq.

ORS 659A.103 – 659A.142; OAR 839-006-0200 – 839-006-0265 (Oregon disability law).

2013 Oregon Laws Ch. 379 (House Bill 2669)

Genetic Information Nondiscrimination Act of 2008 (GINA) - Pub.L. 110-233, 122 Stat. 881 (2008).