

1078.0.0 AMERICANS WITH DISABILITIES ACT

1078.1.0 Purpose

It is the policy of the Arkansas Department of Human Services that a Qualified Person with a Disability will not be excluded from participating in any program or be denied benefits of any program or be subjected to discrimination under any program, service, activity or employment opportunity in violation of the Americans with Disabilities Act of 1990 (ADA), as amended, or the Rehabilitation Act of 1973, as amended.

1078.2.0 Definitions

1078.2.1 ADA - means the Americans with Disabilities Act of 1990, including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009.

1078.2.2 DHS - The Arkansas Department of Human Services, its divisions, offices and programs.

1078.2.3 DHS ADA Coordinator - Person appointed by the DHS Director as the administrator of ADA compliance activities.

1078.2.4 Division ADA Coordinator - A person selected by each division or office of DHS to serve as a liaison between the Department ADA Coordinator and the public and division employees regarding ADA issues. Designees may also be assigned for institutional programs or county offices.

1078.2.5 Qualified Individual with a Disability - An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this policy, consideration shall be given to the hiring official's judgment as to what functions of a job are essential, and if the hiring official 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.

1078.3.0 Employment

1078.3.1 DHS does not discriminate on the basis of disability against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

1078.3.2 DHS will conduct medical examinations and inquiries as required by the ADA.

1078.3.3 DHS will make reasonable accommodations for qualified individuals with disabilities, if the reasonable accommodation does not create an undue hardship.

1078.3.4 DHS will conduct an interactive process for employees in accordance with the ADA.

1078.3.5 If the response to the request for a reasonable accommodation does not, in the opinion of the requesting party, satisfactorily resolve the issue, the requesting party may initiate a complaint in accordance with the complaint procedures set out in Attachment A.

1078.4.0 Program Accessibility

1078.4.1 DHS does not deny the benefits of its programs, activities and services to individuals with disabilities because its facilities are inaccessible whether owned, leased or utilized by DHS. The facilities must comply with the Handicapped Accessibility Standards developed by Arkansas State Building Services.

1078.4.2 DHS may not take actions related to program accessibility if it can demonstrate that to do so would result in a fundamental alteration to the nature of its programs or activities or cause an undue financial and administrative burden.

1078.5.0 Communications

1078.5.1 DHS will make appropriate auxiliary aids and services available when necessary to ensure effective communication.

1078.5.2 When an auxiliary aid or service is required, DHS will provide an opportunity for individuals with disabilities to request the auxiliary aid and service of their choice, unless it can demonstrate that another equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the service, program or activity or cause an undue financial and administrative burden.

1078.6.0 Contracting and Licensing

1078.6.1 DHS does not discriminate on the basis of disability in contracting for the purchase of goods and services.

1078.6.2 DHS does not discriminate on the basis of disability in its licensing certification and regulatory activities.

1078.7.0 Self-Evaluation Plan

The DHS ADA Coordinator shall, in conjunction with the Division ADA Coordinators, maintain and periodically update a self-evaluation plan. This plan is considered a part of DHS's ongoing program for monitoring DHS' activities and is an assessment of current policies and practices

1078.8.0 Complaint Procedure

Anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, benefits, employment opportunity, or employment by DHS shall use the complaint procedure outlined in Attachment A.

1078.9.0 Originating Section/Division Contact

Office of Chief Counsel
P.O. Box 1437 – Slot S260
Little Rock, Arkansas 72203-1437
Telephone: (501) 682-8934

I. DHS POLICY # 1078, AMERICANS WITH DISABILITIES ACT

A. Purpose

This complaint procedure is established to meet the requirements of the Americans with Disabilities Act (ADA). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, benefits, employment opportunity, or employment by DHS.

B. Definitions

1. ADA - means the Americans with Disabilities Act of 1990, including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009.
2. Complaint – A DHS Form 2808 filled out by the complainant or the complainant's representative. Documentation of disability or documentation supporting the allegation that the person is regarded as having a disability must be attached to the DHS Form 2808. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities upon request.
3. DHS - The Arkansas Department of Human Services, its divisions, offices and programs.
4. DHS ADA Coordinator - Person appointed by the DHS Director as the administrator of ADA compliance activities.
5. Division ADA Coordinator - A person selected by each division/office of DHS to serve as a liaison between the DHS ADA Coordinator and the public and division employees regarding ADA issues. Designees may also be assigned for institutional programs or county offices.

C. DHS Complaint Procedure under the ADA

1. Any person complaining that he or she has been discriminated against in a manner prohibited by the ADA may file a complaint with his or her Division ADA Coordinator or designee. Any person who receives an ADA complaint of discrimination shall immediately forward the complaint to his or her Division ADA Coordinator or designee.

2. Complaint Process:

- (1) Complaints must be filed within forty (40) business days of the day the complainant discovers or should have discovered the alleged violation. A representative may file a complaint on behalf of the injured party.
- (2) Within fifteen (15) business days of receipt of the complaint, the appropriate Division ADA Coordinator will:
 - a. Initiate an inquiry which may include a meeting with the complainant to discuss the complaint and the possible resolutions.
 - b. Upon completion of the inquiry but no later than twenty (20) business days from the receipt of the complaint, the appropriate Division ADA Coordinator or designee will contact the DHS ADA Coordinator to inform the DHS ADA Coordinator of the complaint and the results of the Division ADA Coordinator's inquiry.
- (3) Within forty (40) business days from the filing of the complaint, unless the DHS ADA Coordinator determines that the complexity of the issues gives rise to good cause for a delay, the DHS ADA coordinator will consult with the appropriate Division Director and issue a response that will:
 - a. Be in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape.
 - b. Explain the position of DHS and the alternatives available to DHS, if any, for substantive resolution of the complaint.
 - c. Reference this section and specify that a request for reconsideration must be directed to the DHS ADA coordinator.
- (4) Within five (5) business days of the response, the complainant may, if the response, in the opinion of the complainant, does not satisfactorily resolve the issue, make a request for reconsideration of the division's findings and response to the DHS ADA coordinator. The request for reconsideration will:
 - a. Be in writing.
 - b. Explain to the DHS ADA Coordinator why the response is incorrect.
 - c. Include any new or additional information that the complainant wants to be considered by the DHS ADA Coordinator.
- (5) The DHS ADA Coordinator shall consider the request for reconsideration and shall render a decision no later than thirty (30) days after receipt of the request for reconsideration. In reviewing the request,

the DHS ADA Coordinator shall review the record of the investigation and resolution by the Division Director, and any additional information submitted by the complainant or the Division.

- (6) All written complaints received by DHS, responses, and requests for reconsiderations will be retained by DHS for at least three years.
3. The complainant may, in addition to the complaint process in III.C. above, file a formal complaint directly with the Department of Justice or the Equal Employment Opportunity Commission (EEOC). The complaint must be filed within 180 days of the date of the alleged act(s) of discrimination, unless the time for filing is extended by the federal agency for good cause.

D. Remedies

1. Employment Discrimination –The ADA incorporates the remedies contained in Title VII of the Civil Rights Act of 1964. These remedies include hiring, promotion, reinstatement, back pay, and attorneys fees. Reasonable accommodation is also available as a remedy under the ADA.
2. Program Discrimination – To the extent possible, the victim of discrimination will be made whole. DHS will initiate a supervisory review to identify any employee misconduct which caused the discrimination, and will impose discipline as warranted pursuant to DHS's Personnel Policy.
3. Non-Program Contract Provider Discrimination – To the extent possible, the victim of discrimination will be made whole. DHS will determine appropriate contract amendments or sanctions which may include corrective action, withholding of funds, contract termination, contract debarment, or any combination thereof.
4. Discrimination by Licensed or Certified Persons or Entities – To the extent possible, the victim of discrimination will be made whole. DHS will determine appropriate licensure or certification program provision amendments, may impose sanctions as provided by the applicable licensure or certification laws or rules, or both.

II. ORIGINATING SECTION/DIVISION CONTACT

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