

To: All Department of Fish and Wildlife Staff
Subject: Reasonable Accommodation

This Bulletin replaces the Office of Equal Employment Opportunity's (EEO) Reasonable Accommodation provisions represented by Sections 12594 through 12597.1 of the California Department of Fish and Wildlife (CDFW) Operations Manual. The Human Resources Branch (HRB) will now administer the Reasonable Accommodation Program with the exception of reasonable accommodation public accessibility requests to CDFW facilities, services, programs, and activities, which will continue to be administered by the EEO Office. The revised text follows:

Reasonable Accommodation Policy **12540**

CDFW's Reasonable Accommodation Policy provides equal employment opportunities, expectations, considerations, and privileges to qualified applicants and employees with a disability or those who observe religious beliefs or practices, and prohibits discrimination.

The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability.

Authority **12540.2**

- Americans with Disabilities Act (ADA) of 1990 as amended
- Federal Rehabilitation Act of 1973
- Federal Civil Rights Act of 1964 as amended
- California Fair Employment and Housing Act [(FEHA), Government Code section 12900, et seq. as amended]
- California State Civil Rights Act (Government Code section 19230, et seq.)
- California Code of Regulations, Title 2, sections 10, 64.1-64.6
- Pregnancy Discrimination Act
- Unruh Civil Rights Act

Definitions of Key Terms **12540.3**

Definitions for the following can be found in the Americans with Disability Act (ADA) and Fair Employment and Housing Act (FEHA).

- | | |
|-----------------------|------------------------|
| • Assistive Device | • Medical Condition |
| • Disability | • Mental Impairment |
| • Direct Threat | • Physical Impairment |
| • Essential Functions | • Qualified Individual |

- Interactive Process
- Major Life Activity
- Reasonable Accommodation
- Undue Hardship

Interactive Process

12540.4

To ensure compliance with applicable laws, CDFW management must initiate an “interactive process” when an applicant or employee requests reasonable accommodations. CDFW must also offer to initiate an interactive process when the employer becomes aware of the possible need for an accommodation. This awareness might come through a third party, by observation, or because the employee has exhausted leave benefits but still needs reasonable accommodation. This process requires active participation and engagement of the applicant, employee, supervisor and the Human Resources Branch (HRB) Medical Disability Services Unit (MDSU) in a timely and good faith manner until one of the following occurs.

- An effective reasonable accommodation is implemented
- The applicant/employee discontinues to participate
- The applicant/employee is no longer qualified
- There is no reasonable accommodation available without causing an undue hardship
- The reasonable accommodation imposes a significant risk to the health and safety of the applicant/employee and others in the workplace that cannot be eliminated by a reasonable accommodation.

Pre-Employment

12540.41

The California Department of Human Resources (CalHR) provides standard language for use in job opportunity and examination announcements that promote equal employment opportunities. All announcements must include a contact person to request a reasonable accommodation upon advanced notice. The hiring and examination units must contact HRB’s MDSU when a qualified individual requests a reasonable accommodation to take part in the examination or selection process. HRB MDSU will provide the applicant a written response letter and copy to HRB’s Examination Selection Unit.

Conditional Job-Offer

12540.42

HRB may authorize a hiring supervisor to make a bona fide conditional job offer when applicants in a similar position, as a condition of their employment, undergo a medical or psychological examination to determine their physical, mental, or emotional fitness for the job. The retention of confidential medical information is separate from other HR files.

Withdrawal of Job-Offer

12540.43

HRB may authorize a hiring supervisor to withdraw an offer of employment to an unqualified individual based on the results of a medical/psychological examination when the individual is unable to perform the essential functions of the job with or without a reasonable accommodation. Likewise, when the reasonable accommodation imposes an undue hardship on CDFW’s operation or imposes a significant risk to the health and safety of the employee and others in the workplace.

On the Job

12540.44

Reasonable accommodations are used by CDFW to provide qualified employees equal employment opportunities and privileges on the job and in the workplace. Please contact HRB's MDSU and/or submit your Reasonable Accommodation Request form (DFW 261) to begin the process of determining an effective and reasonable accommodation to assist in performing the essential functions of the job.

Training

12540.45

Training announcements should notify employees that a reasonable accommodation (e.g., sign language interpreter, captioned film or videos, large print or braille material, etc.) will be provided upon advance notification and include a TTY number and/or phone number of the California Relay Service. In addition, training facilities need to be accessible to employees with disabilities.

Services and Privileges

12540.46

Services and privileges must be accessible to applicants and employees including, but not limited to, in-house and off-site sponsored events.

Medical Confidentiality

12540.47

Obtained medical information is subject to specific protection under federal and state laws. CDFW is entitled to limited job-related information (e.g., prognosis, work limitation and/or restriction, return to work dates, duration of leave). The "need to know rule," limits information to only persons with authority to direct the employee and formulate decisions about their leave and benefits (e.g., supervisors or HRB). HRB may **only** share an employee's work limitation and/or restriction with other CDFW supervisors to determine an effective reasonable accommodation on a need-to-know basis.

Record Retention

12540.5

The retention of confidential medical information obtained through the reasonable accommodation process are stored separate from the employee's Official Personnel File (OPF) and retained for five (5) years from the employee's separation from CDFW.

Retained medical and disability information must not be stored in any other non-medical employment related files, including supervisory drop files.

Purchasing

12540.6

Upon receipt, CDFW's Business Management Branch (BMB) Procurement Section is responsible for accurate and timely processing of procurement orders, scheduling of work orders to modify the workstation and/or install ergonomic equipment, and ensuring compliance with all statutory, control agency, and procedural requirements for acquisitions.

Types of Reasonable Accommodation **12540.7**

Reasonable accommodation needs vary and are determined on a case-by-case basis. The reasonable accommodation must effectively accommodate both the needs of the employee with a disability and CDFW's business operational needs. Employees may exercise their right to request a reasonable accommodation at any time.

Alternate Job Placement **12540.71**

When an employee is unable to perform the essential functions of their current job with or without an effective reasonable accommodation, CDFW will consider the availability of true vacant positions as an alternate job placement. This includes, but is not limited to; job transfer, demotion, or separation. Employees must meet the minimum qualifications for placement in an alternate position as CDFW is not required to create a position.

Alternate Work Schedule **12540.72**

An alternate work schedule, when operationally feasible, may allow a qualified employee with a disability the opportunity to work the same number of hours in a week. Likewise, an earlier/later work shift may accommodate the public transportation systems' schedule in accordance with departmental policy.

Assistive Devices **12540.73**

An assistive device does not assure successful job performance. Before purchasing any assistive device, supervisors, in consultation with HRB's MDSU and/or the Data Technology Division (DTD), should consider the necessity and compatibility of the device. CDFW is not required to provide an assistive device when the employee also uses the device outside of the workplace (e.g., wheel chair, hearing aid, prescription glasses, etc.).

Job-Restructuring or Modifying **12540.74**

Job restructuring or modifying is an effective and reasonable accommodation to enable an employee with a disability perform their essential job functions. Employees with and without a disability must be able to perform their essential job functions with or without a reasonable accommodation.

Leave of Absence and Reduced Work Schedule **12540.75**

A qualified employee with a disability may seek leave as a reasonable accommodation. The leave is for employees who intend to return-to-work after a reasonable recovery period from a temporary disability. CDFW does not provide indefinite leave. Leave may be restricted if it imposes an undue hardship on CDFW's business operations. In addition, an employee with a disability may be entitled to unpaid job-protected leave for a serious health condition under statutes and regulations, including but not limited to; the Family and Medical Leave Act (FMLA), Pregnancy Disability Leave (PDL), and the California Family Rights Act (CFRA) provisions. Represented employees may have leave rights pursuant to their collective bargaining agreement.

In consultation with the HRB's MDSU, a supervisor may consider a reduced work schedule on a temporary or permanent basis while taking into consideration business operational needs. A reduced work schedule is considered on a case-by-case basis when a fractional

based position is vacant and the employee meets the conditions of employment of the position.

Modified Worksite **12540.76**

A modified work environment is a reasonable accommodation that can be simple and inexpensive. Such accommodation may include rearranging files, shelves, lowering or raising equipment and work surfaces, and moving controls or adapting them from hand operated to foot operated, and using telecommunication devices or amplifiers, etc.

Personal Care Assistant **12540.77**

It is not required for CDFW to provide a personal care assistant to assist a qualified employee with their personal care (e.g., feeding, hygiene, or restroom assistance, etc.).

Pregnancy **12540.78**

When necessary due to a pregnancy-related disability, the employee, may request a reasonable accommodation.

Religious **12540.79**

An employee's accommodation requests will be considered by CDFW based on their religious beliefs or practices consistent with other requests. This may include a schedule change or leave for a religious observance, dress, or grooming practice that an employee has for religious reasons. An accommodation may include wearing a particular head covering or other religious dress, or wearing a certain hairstyle or facial hair. It may also include an employee's observance of a religious prohibition against wearing certain garments. To request a religious accommodation, follow the reasonable accommodation process.

Support Services **12540.791**

A properly trained assistive animal meets the minimum standards required to assist an employee with a disability in the workplace. A personal pet, not trained to be an assistive animal, is prohibited from the workplace. An assistive animal may include a "guide," "signal," and "service" dog. A "support" dog or other animal provides emotional, cognitive, or other support to an individual with a disability, including, but not limited to, a traumatic brain injury or mental disability.

Requesting a Reasonable Accommodation **12540.8**

Employee Responsibilities **12540.81**

Informal reasonable accommodations are prohibited by CDFW. Therefore, employees are expected to clearly communicate any work limitation and/or restriction and document their need for a reasonable accommodation by completing and submitting the [Reasonable Accommodation Request form \(CDFW 261\)](#) and providing medical substantiation to the HRB's MDSU.

Upon HRB's MDSU receipt of the request and substantiation, the assigned analyst will review the information provided and continue the interactive process as necessary. Employees may be required to obtain medical clarification. Untimely submission of

requested medical information may close the reasonable accommodation request. Employees may reopen their request at any time and provide the requested information.

Employees may voluntarily choose to withdraw their request for a reasonable accommodation in writing to HRB's MDSU. In response, the assigned analyst will consult with the employee to verify their reason(s) for the withdrawal, and prepare an appropriate written response letter. The employee may reconsider their withdrawal at any time.

An employee's approved reasonable accommodation on file with the HRB's MDSU **does not** transfer with them from job-to-job, because it was determine based on the essential functions of the former position's duty statement.

In addition, employees are responsible for notifying their supervisor and HRB's MDSU when the reasonable accommodation is ineffective. This will reinstate the interactive process.

Reasonable Accommodation Response

12540.82

A written response will be prepared by HRB's MDSU to address the request, interactive process, and reasonable accommodation determination (e.g. approval, denial, closure, or withdrawal). All formal written responses include:

- The reasonable accommodation determination and justification
- The duration of the reasonable accommodation
- Provide instructions to procure and/or implement the reasonable accommodation, if applicable
- Provide monitoring instructions to assess the effectiveness of the reasonable accommodation
- Provide instruction if any medical/disability changes occur
- Define the employee's appeal rights should the employee disagree with the decision or outcome

Supervisor Responsibilities

12540.83

Supervisors are required to engage in the interactive process upon notice of an employee's request for a reasonable accommodation, and maintain communication with the employee and HRB's MDSU throughout the process. If the employee has not submitted their [Reasonable Accommodation Request form \(DFW 261\)](#), provide the form ([DFW 261](#)) and document when it occurred.

Supervisors are responsible for maintaining employee's right to medical privacy and securely safeguarding this confidential information used to substantiate the need for a reasonable accommodation. This privacy and confidentiality extends to the purchase of assistive or adaptive equipment, and directing a service provider to their workstation.

The supervisor is responsible for making expedited and timely arrangements in accordance with CDFW's BMB Procurement Section and applicable contract and procurement provisions. Accommodation purchases and related expenses are the responsibility of the employees' respective Region, Division, Office, or Branch program.

When a new employee, or an employee assuming a new position within the department, presents a reasonable accommodation based on their previous position, supervisors must contact HRB's MSDU for further direction and guidance.

Supervisors are responsible for monitoring and discussing the effectiveness of the reasonable accommodation with the employee and contacting HRB's MDSU when it is no longer effective for either the employee, CDFW, or both.

Contacts

12540.9

<p><u>Examination Applicants</u> HRB Selection and Certification Unit 1416 9th Street, Suite 1217B Sacramento, CA 95814 (916) 654-8763</p>	<p><u>Job Interview Applicants</u> <i>Refer to the contact person referenced on the Job Opportunity Bulletin</i></p>
<p><u>CDFW Employees</u> HRB Medical Disability Services Unit P.O. Box 944209 Sacramento, CA 94244-2090 (916) 657-2405</p>	<p><u>Training Accommodations</u> Office of Training Development 1740 North Market Blvd. Sacramento, CA 95834 (916) 928-8330</p>
<p><u>CDFW Business Management Branch (Procurement/Facility Issues)</u> P.O. Box 944209 Sacramento, CA 94244-2090 (916) 445-5111</p>	<p><u>Language/Speech Interpreter</u> CDFW, EEO Office P.O. Box 944209 Sacramento, CA 94244-2090 (916) 651-7559 EEO@wildlife.ca.gov</p>
<p><u>Complaint and Appeal</u> CDFW, EEO Office P.O. Box 944209 Sacramento, CA 94244-2090 (916) 653-9089 EEO@wildlife.ca.gov</p>	<p><u>Public Access Accommodation</u> CDFW, EEO Office P.O. Box 944209 Sacramento, CA 94244-2090 (916) 653-9089 EEO@wildlife.ca.gov</p>

Complaint and Appeal Process

12540.10

Applicants and CDFW employees who reasonably believe that they have been denied a reasonable accommodation for a qualified disability, or who believe to be subject to discrimination, may file a complaint with CDFW's Office of Equal Employment Opportunity (EEO). Complaints must be resolved within 90 days from the date of formal filing with CDFW's EEO Office. If the complaint is not resolved within 90 days, the EEO Office will advise the complainant of the status of the complaint, the reason for the delay, and the adjusted estimated date of completion.

Employees may appeal for remedial action with the State Personnel Board (SPB) Appeal Division within 30 days from the date of receipt of CDFW's EEO Office decision. However, in either instance, the SPB appeal must be filed no more than 150 days after the complaint was filed with CDFW's EEO Office.

California Department of Fish and Wildlife
DEPARTMENTAL BULLETIN

Applicants and employees also have the right to pursue a complaint with other agencies simultaneously, such as the Department of Fair Employment and Housing (DFEH), and the U.S. Equal Employment Opportunity Commission (EEOC).

For more information about filing a complaint, please contact CDFW's EEO Office at (916) 653-9089 or EEO@wildlife.ca.gov, or refer to the department's EEO policies located the intranet webpages.

Violations

12540.11

Failure to comply with any of the provisions and procedures of CDFW's Reasonable Accommodation policy may result in disciplinary action.

Questions

12540.12

Please direct questions regarding this policy to CDFW's Human Resources Branch (HRB) Medical Disability Services Unit (MDSU) at (916) 653-3612.

signature on file

Gabe Tiffany
Deputy Director, Administration Division