

Americans With Disabilities Act/Minnesota Human Rights Act

Cottonwood County is committed to ensuring equal employment opportunities to all individuals, including disabled individuals who may need reasonable accommodations to enable them to perform the essential functions of their jobs.

For the purposes of this policy, "disability" is a physical or mental impairment, which substantially limits a major life activity. "Qualified individual with a disability" is one who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Applicants

Accommodations will be made in the application, testing and interview process for disabled individuals, consistent with the Americans With Disabilities Act (ADA). Applicants who may require accommodations are encouraged to contact the Department Head to make arrangements. Accommodations may include, for example, written questions rather than oral, written responses rather than oral, interpreter for hearing impaired applicants, and conducting interviews in an accessible facility. Requests for accommodation in the application process shall not be grounds for refusing to hire an individual.

The County may ask an applicant about the applicant's ability to perform job related functions. An employer may state the attendance requirements of the job and inquire whether or not the applicant can meet them. The employer may also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions, as long as everyone applying for a job in the job category is asked the same question.

The County is not required to omit relevant, job-related testing requirements unless it can otherwise be demonstrated in an alternate manner that the applicant is able to perform the job function the test is designed to evaluate.

The County will not refuse to hire an individual because that individual requires reasonable accommodation to perform the job that he/she is applying for, if the individual is otherwise qualified.

Nothing in this policy shall be construed as requiring the County to hire individuals who are not able, with or without reasonable accommodation, to perform the essential function of the position. Further, applicants must otherwise be qualified for the position.

Nothing in this policy shall be construed as granting preference to disabled applicants in the hiring process. The County is free to hire the most qualified applicant for the position.

Employees

Cottonwood County will work with any qualified employee who, due to a disability, needs a reasonable accommodation in order to perform the functions of his or her job. Employees will not be discriminated against due to a request for an accommodation.

Request for Accommodation

The burden of requesting an accommodation rests with the employee. The County and its supervisory employees are not obligated to, and are in most cases prohibited from, asking

whether an employee has a disability or needs an accommodation. Therefore, in the event that an employee with a disability needs an accommodation, the employee must approach the Human Resources Office and Department Head to make a request. The employee is encouraged to, but not required to, set forth the nature of the disability and requested accommodation in writing. If the employee is uncertain what accommodation could be made, the request may be general in nature and discussed with the Human Resources Office, Department Head and immediate supervisor.

The Human Resources Office and Department Head or immediate supervisor receiving a request for accommodation, whether formal or informal, shall document the request, the date it was made and whether immediate accommodation could be granted. Simple accommodations, such as raising a desk to make it accessible for a wheelchair, are obvious and should be made immediately.

For accommodations which are not simple to achieve, are costly or are not obvious, the Human Resources Office and Department Head may require the employee to provide medical documentation as to: 1) the nature of the disability; 2) whether and how it affects the employee's major life activities; 3) whether the employee can perform the essential functions of the position with or without accommodation; 4) what accommodations are necessary and why. These questions should be set forth in writing in a letter to be given to the employee, which the employee should forward to the physician. The letter should request that the physician provide a response directly to the Human Resources Office. When such a medical certification is required, the Human Resources Office shall provide the employee with a current position description which sets forth the essential functions of the position and any other information regarding the working environment which the physician may need to respond fully, which should be forwarded along with the letter to the physician.

All medical information shall be kept in a confidential medical file, separate from the personnel file, in a locked cabinet accessible only to the Human Resources Office. The information in the medical report(s) may be shared with a Non-Department Head immediate supervisor to the extent necessary to determine accommodations and for first aid and safety purposes.

The Human Resources Office, Department Head, immediate supervisor and employee should meet to discuss what accommodations could be made to enable the employee to perform the essential functions of the position. These meetings should be informal and candid, and be designed to encourage an open dialogue with the employee to resolve any problems or concerns, which might exist. Subsequent to accommodation being proposed and implemented, the Human Resources Office and Department Head should check with the employee regarding the effectiveness of the accommodation. A brief written summary of these meetings should be made by the Human Resources Office, with the original placed in the confidential medical file and a copy given to the employee. All meetings, documents and records should be handled in a manner to protect the confidentiality of the employee's medical information and request for accommodation.

The County is not required to provide the specific accommodation requested by the employee if another accommodation will also work.

If the employee fails or refuses to have the requested information forwarded from his or her physician or refuses to participate in discussions with the employer regarding the accommodations, the County has no obligation to provide a reasonable accommodation.

The County is not required to eliminate an essential function of an employee's job as a reasonable accommodation. It is, however, required to remove marginal job functions.

Reasonable accommodations may include, but are not limited to:

- making existing facilities used by employees readily accessible,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position for which the employee is qualified,
- acquisition or modifications of equipment or devices,
- appropriate adjustment or modifications of examinations, training material, or policies,
- the provision of qualified readers or interpreters; and
- other similar accommodations.

However, these accommodations (other than reassignment) are not required if they result in the elimination of an essential job function.

Reasonable accommodations do not include:

- providing time off during the workday for an employee to attend a program that is offered in the evening,
- an accommodation that would require the creation of a new position,
- an accommodation that requires a promotion,
- an accommodation that would pose a significant health or safety risk to the employee or anyone else, or
- an accommodation that would "bump" someone who currently holds that job.

Direct Threat to Health or Safety: The County may refuse to hire, or terminate, a person who poses a direct threat to the health or safety of others, regardless of the existence of a disability.

The County is not required to provide an accommodation which is not reasonable or which creates and undue hardship on the County.

If it is determined that an employee is unable to perform the essential functions of the position, with or without reasonable accommodation, and no vacant position exists for which the employee is qualified to which the employee could be transferred as an accommodation, the employee may be terminated.

Other Protected Categories

The following categories of individuals are protected by the ADA, although not currently suffering from a disability. These people may also not be discriminated against in hiring, discipline, discharge or job assignments.

- **Record of Impairment:** If a person does not currently have a disability, they may still be protected from discrimination in hiring and discharge under the ADA as a qualified disabled person if they have a record of a disability about which the employer knows. No reasonable accommodation is required.
- **Being Regarded as Having an Impairment:** Individuals who are regarded, rightly or wrongly, by an employer as having an impairment that substantially limits a major life activity are covered under the ADA definition of a disability. This was intended to protect those individuals with stigmatic conditions that are viewed as physical impairments when in fact they do not result in a substantial limitation of a major life activity.

Example: An employee has controlled high blood pressure that is not substantially limiting. If the employer reassigns such an employee to less strenuous work because of unsubstantiated fears that he or she will suffer a heart attack if more strenuous work is performed, the individual would be perceived by the employer as having a substantially limiting impairment.

Individuals improperly regarding as having an impairment, are not entitled to reasonable accommodation but are protected from a refusal to hire or employment action taken.