



**JOINT FORCE HEADQUARTERS
DISTRICT OF COLUMBIA NATIONAL GUARD
OFFICE OF THE COMMANDING GENERAL
2001 EAST CAPITOL STREET, SE
WASHINGTON, DC 20003-1719**

NGDC-CG

28 October 2021

MEMORANDUM FOR All DCNG Full-Time Personnel

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

1. References. See Enclosure A.

2. Supersedes and cancellation. None.

3. Purpose. This instruction establishes the RA procedures for current employees and job applicants. The procedures under this instruction will support the prompt, fair, and efficient processing of requests for RA; while ensuring that civilian and military managers and supervisors comply with the mandates of the Rehabilitation Act of 1973, and Americans with Disability Act of 2008, as amended. This instruction complies with federal requirements of Executive Order 13164 to provide RA to qualified employees and applicants with disabilities to ensure they have full access to resources as employees of the DCNG.

4. Applicability. This instruction applies to all DCNG federal employees and applicants, Title 32 Dual Status Technicians (DST) and Title 5 Federal civilian employees. DST employees are still required to meet the physical standards and employment criteria for Army or Air National Guard membership.

5. Policy. It is DCNG policy to provide RA to qualified individuals with disabilities, absent undue hardship. All supervisors and selecting officials of job applicants will comply with applicable Federal laws, Chief National Guard Bureau Instructions (CNGBI) (formerly Technician Personnel Regulations (TPR)), and Equal Employment Opportunity Commission guidance. Active Guard and Reserve (AGR) employees are entitled to reasonable accommodations, but must follow applicable service regulations.

a. Definitions. See Enclosure B.

b. Responsibilities.

(1) Director, Human Resource Office (HRO). Responsible for the development, implementation and administration of the DCNG RA Program and reviewing RA requests.

(2) Labor Relations Specialist (LRS). Responsible for assisting and advising supervisors, commanders, directors and approving authority in reviewing requests for RA.

(3) State Equal Employment Manager (SEEM). Responsible for tracking and reporting of RA requests, advising supervisors, commanders, directors and approving authorities, reviewing and coordinating on RA requests, conducting RA training, disseminating information on available RA resources, assisting employees with RA requests, and ensuring copies of the RA program are available to employees and job applicants in written and accessible formats.

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

(4) Supervisors, Commanders, Directors and Approving Authorities. Responsible for supporting the RA process in a fair and timely manner. Ensuring employees are aware that RA program exists for individuals with disabilities, receiving and reviewing RA requests from employees, consulting with LRS and SEEM in determining whether it is appropriate to approve, modify or deny an employee's RA request.

c. Approval Authority.

(1) The only approval authority for RA requests is either the Land Component Command, Chief of Staff, Wing Vice Commander, Director of the Joint Staff or The Adjutant General as applicable determined by the employee's chain of command/supervision.

d. RA Request Process.

(1) Initiating a RA Request. An employee may request a RA verbally or in writing at any time; however, once initiated the DCNG RA Request Form (Encl C) must be completed in order to properly track and account for the RA request. The process always begins with the employee. Supervisors should not unilaterally ask employees if they have a disability or if they need an accommodation. The requestor does not have to use any particular words, cite the Rehabilitation Act, this instruction, or even use the term 'reasonable accommodation'.

(a) A RA request may be made on behalf of an employee, by a family member, health professional, or other representative who is acting on behalf of the employee

(b) An employee does not have to have a particular accommodation in mind before initiating a request.

(c) RA requests should be addressed to the individual's immediate supervisor; however, an RA request may be initiated with any supervisor, commander, director within the employee's rating chain, HRO or the SEEM. Requests for RA made to individuals or offices other than those listed here cannot be properly tracked and will not be processed.

(d) The individual's initial request, whether verbal or written, starts the RA process. Failure to initiate the processing of a verbal request may result in undue delay in providing RA in violation of the Rehabilitation Act.

(e) If a RA is needed on a repeated, recurring basis, the individual does not need to submit a new RA request each time the accommodation is needed. For example, the assistance of a sign language interpreter or reader. In such cases, the individual may obtain the RA by providing notice to their supervisor once the RA is approved the first time.

(2) Receipt of a RA Request. If received verbally the supervisor will request the employee to complete the DCNG Reasonable Accommodation Request Form. Supervisors will not delay the interactive process while waiting for the completed form.

(a) Supervisor, commander or director will then begin the interactive process by discussing the following with the employee: the underlying disability or medical issue, the specific functional limitations resulting from the disability or medical issue and how they relate to or affect the

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

employee's job functions, and any suggestions the employee has for a RA. The supervisor/representative will document the conversation in writing.

(b) Supervisors, commanders and directors are encouraged to seek guidance from the Staff Judge Advocate (SJA), LRS, HRO and SEEM at any time during the process.

(c) Information obtained from the employee regarding the medical issue and related facts, documents, etc. will be kept confidential to the extent required by applicable law and regulations but will be shared with those individuals within the DCNG involved in determining whether to grant a request for a RA.

(d) In situations where the employee's disability and the need for a RA are reasonably obvious, the supervisor should assure the employee that they will determine whether the requested accommodation is available within 30 calendar days, absent extenuating circumstances. Where the employee has not requested a specific accommodation, the supervisor will inform the employee that he or she will determine whether there is an RA that could be made, again within 30 calendar days.

(e) Decisions on reasonable accommodations will be expedited when the RA is needed to enable an applicant to apply for a job or the RA is needed for a specific DCNG activity that is scheduled to occur shortly.

(f) The DCNG is entitled to know that an employee has a covered disability that requires a RA. Thus, when a disability or the need for a RA is not obvious, the DCNG can require that the employee provide reasonable documentation about the disability and functional limitations. The requested documentation must come from an appropriate professional, depending upon the type of claimed disability, such as doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals. The documentation must contain the following information:

- i. The nature, severity, and duration of the employee's impairment.
- ii. The activity or activities that the impairment limits.
- iii. The extent to which the impairment limits the employee's ability to perform the activity or activities.
- iv. Why the employee requires an RA or the particular RA requested, as well as how the RA will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

(g) Supervisors will not request medical documentation when: both the disability and the need for RA are obvious; or the employee has already provided the DCNG with sufficient information to document the existence of the disability and their functional limitations. Supervisors will require only the documentation that is needed to establish that the employee has a disability, and that the disability necessitates a RA. Thus, supervisors will not ask for information that is unrelated to determining the existence of a disability and need for a RA.

(h) Supporting medical documentation must be provided to the requesting official within ten (10) work days after the individual is informed that it is required, absent extenuating circumstances. Medical information will be kept confidential to the extent required by applicable law but will be

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

shared only with agency officials within the DCNG involved in determining whether to grant a RA. These officials include: supervisors, managers and approving officials who need to know about necessary restrictions and about the necessary accommodation(s); first aid and safety personnel may be told if the disability might require emergency treatment; government officials to investigate the agency's compliance with the Rehabilitation Act; worker's compensation offices or insurance carriers; and agency EEO officials may be given the information to maintain records.

(i) The DCNG may request supplemental medical documentation if the information submitted does not clearly explain: the nature of the disability, or the need for the RA, or otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the job, or assist with the application process. In such cases, supervisors or requesting officials should describe for the employee in writing why the submitted documentation was insufficient and identify the information that is needed. The supplemental medical documentation must be received by the requesting official within seven (7) work days of its request.

(j) If the employee requesting an RA still fails to provide sufficient information and supporting documentation, the DCNG may have a physician from the DCNG review all of the documentation that the individual requesting the RA submitted to ensure that it is, in fact, insufficient. If the DCNG physician concurs that the documentation is insufficient, deny the RA request IAW para. 5. d. (3) (d) of this instruction.

(k) The employee does not need to have a particular accommodation in mind before making a request. Once it is determined that the employee has a qualifying disability (and is therefore, an individual with disability (IWD)), the supervisor will consult with the LRS and SEEM to determine whether a requested RA is appropriate under the circumstances.

(l) In considering whether a RA can be provided, supervisors and the LRS should identify the essential job functions of the IWD's position, the IWD's functional limitations to completing the essential job functions, and whether there are any reasonable alternative approaches to meeting essential job functions. A modification or adjustment is 'reasonable' if it is feasible or plausible under the circumstances. An accommodation must also be effective in meeting the needs of the IWD. This means that an RA enables an IWD to perform the essential functions of their position. The RA also allows an IWD an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

(m) The DCNG has the authority to choose among possible RAs as long as the chosen RA is effective. Thus, as part of the interactive process, supervisors may offer the IWD alternative suggestions for RA and discuss their effectiveness in removing the workplace barrier that is impeding the IWD. If there are two possible RAs, and one costs more or is more burdensome than the other, supervisors may choose the less expensive or burdensome accommodation as long as it is effective. Similarly, when there are two or more effective accommodations, supervisors may choose the one that is easier to provide. In either situation, the supervisor is not required to show that is an undue hardship to provide the more expensive or more difficult accommodation. The preference of the IWD should be given primary consideration, but the supervisor and/or approving authority has the ultimate discretion to modify the RA request and choose an alternate accommodation.

(n) There are several modifications or adjustments to which supervisors do not have the authority to agree to. First, supervisors may not agree to eliminate an essential function, i.e., a

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a 'qualified' individual with a disability within the meaning of this instruction. Second, a supervisor is also prohibited from agreeing to lower production standards as a form of accommodation whether qualitative or quantitative that are applied uniformly to other employees with or without disabilities.

(o) RA requests will be denied where the requested RA would cause 'undue hardship' to the DCNG. Undue hardship, which generally involves significant difficulty or expense, is to be determined on a case-by-case basis. Undue hardship analysis focuses on the resources and circumstances of the DCNG in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship references not only financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the agency. The supervisor, approving authority and LRS must assess on a case-by-case basis whether a particular accommodation would cause undue hardship.

(p) The DCNG will not provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, the DCNG will not provide an employee with a prosthetic limb, wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, personal use amenities, such as a refrigerator, will not be provided, if those items are not provided to employees without disabilities.

(q) The reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation. The agency must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. DCNG HRO must notify the supervisor and other officials that they are to conduct searches for available vacancies when considering reassignment as a RA

(3) Approval, Alternative or Denial of RA Requests.

(a) Approving officials will forward all finalized RA Requests to HRO to initiate record keeping activities.

(b) If there is a delay in either processing a RA or providing a RA, the initiating supervisor, commander or director must notify the individual in writing of the reason for the delay, including extenuating circumstances that justify the delay. If the agency cannot provide the accommodation immediately, the agency must provide an interim accommodation that allows the individual to perform some, or all essential functions of his or her job. If it is possible to do so without imposing undue hardship on the agency

(c) When the approving authority, with input from LRS, SEEM and employee's supervisor, makes a determination that they will approve a requested RA, the supervisor will notify the individual in writing and document the date and circumstances of the notification. The supervisor will implement the approved RA at the earliest possible moment. Failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. A copy of the approving authority's written notification will be placed in a separate file for the employee.

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

(d) When the approving authority, with input from LRS, SEEM and employee's supervisor, makes a determination that they will offer an alternative RA or deny the requested RA, the supervisor will notify the IWD in writing and will document the circumstances of the notification. Notification must contain the reason(s) for the denial, as well as notice of IWD's rights to appeal the decision through the Informal Resolution Process or to contact the SEEM office to file an EEO complaint within forty five (45) days of receipt of decision. A copy of the approving authority's written notification will be placed in a separate file for the employee.

e. Informal Resolution Process.

(1) An IWD may appeal a denial or alternative accommodation that they do not concur with to the Commanding General (CG), DCNG within ten (10) work days of receipt of the final decision from the approving authority. The appeal must be in writing and should contain any additional information or documentation that the IWD would like the CG to consider. There is no requirement for the IWD to utilize the Informal Resolution Process before contacting the SEEM office or before filing an EEO complaint. Appeals will be forwarded to the HRO to be routed to the CG for consideration.

(2) The CG may consult with approving authority, LRS, SEEM and HRO in order to render a decision on the appeal within fifteen (15) work days. The CG should review the original supervisor, director, commander and approving authority notes and documentation submitted by the IWD. There is no requirement that the CG meet with the IWD unless they believe it is necessary in the interests of fairness. Notice of the CG's decision will be in writing and will contain the reason(s) for the determination and a reminder to contact the SEEM office within forty five (45) days of receiving the initial denial of the RA request should they want to file an EEO complaint.

f. EEO Discrimination Complaint Process.

(1) Regardless of whether or not the employee has utilized the Informal Resolution Process, the IWD must contact the SEEM office within forty five (45) days of receiving the initial denial of the RA request if they desire to file an EEO complaint. An applicant or employee has the right to file an informal EEO complaint if they believe the denial of the RA request was discrimination or harassment based on disability. The SEEM office will guide the employee through the EEO complaint process.

(2) Whenever possible and in accordance with the desires of the complainant, the matter will be resolved in an informal setting. Informal dispute resolution may include mediation when parties agree. These mediation services may include consultation with the complainant and any other parties involved, either separately or jointly. Confidentiality in mediation shall be maintained.

g. Record Keeping Requirements.

(1) The SEEM office will maintain RA records and assign a tracking number to the RA Request form. Example: DCNG-RA-FYXX (fiscal year)-XX (number). The SEEM will notify the individual in writing of their tracking number within seven (7) calendar days of the RA request initiation. The individual can track their RA request processing by calling the SEEM.

(2) The SEEM office is responsible for tracking 1) the number and types of RA requested in the application for employment process and whether those requests were granted or denied; 2) The jobs (occupational series, grade level, and organization) for which RAs have been requested; 3) Types of

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

RAs that have been requested for each of those jobs; 4) By organization (unit), the number and types of RAs for each job that have been approved and denied; 5) The number and types of requests for RAs that relate to benefits or privileges of employment, and whether those requests have been granted or denied; 6) The reasons for denial of RA requests; 7) The amount of time taken to process each RA request; 8) The source of technical assistance consulting in trying to identify possible RAs.

h. Disposition of Reasonable Accommodation Request Data.

(1) Documentation related to an individual who has requested RA is to be filed apart from other personnel records, safeguarded regarding confidential requirements and maintained for the duration of the employee's application/employment. Records concerning requests, approval, and denial are maintained by the EEO office.

(2) The tracking information data should be maintained for a period of 5 years. This data will assist the agency in evaluating its performance regarding adequate and timely processing of RA requests and corrective action, if required.

4. Effective Date. This policy is effective immediately.

5. Expiration. This policy will expire when rescinded or superseded by the DCNG-CG.

6. Points of Contact (POCs). Questions regarding this policy may be directed to the Director, Human Resource office at sandy.m.smith.mil@mail.mil or 202-685-9774. Questions regarding reasonable accommodations and persons with disability may be directed to the SEEM at 202-685-9768.

SHERRIE L. MCCANDLESS, Maj Gen, USAF
Commanding General (Interim)

CF:
TAG
Director, Joint Staff
Commander, Land Component Command
Commander, 113th Wing
HRO
SEEM

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

Enclosure A

References

1. Rehabilitation Act of 1973, as amended.
2. Americans with Disabilities Act (ADA) of 1990; and ADA Amendments Act of 2008 (ADAAA).
3. Executive Order 13164, 26 July 2000, "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation."
4. 29 CFR Part 1630, Regulations to implement equal employment provisions of Americans with Disabilities Act of 1990, as amended.
5. EEOC Policy, Guidance on Executive Order 13164.
6. Chief National Guard Bureau Instruction (CNGBI) 1400.25 Vol 715, National Guard Technician And Civilian Personnel Voluntary and Non-Disciplinary Actions Program, 15 Sep 2021.
7. Executive Order 13518, 9 November 2009, "Employment of Veterans in Federal Government."
8. Executive Order 13548, 26 July 2010, "Increasing Federal Employment of Individuals with Disabilities."
9. Executive Order 13583, 18 August 2011, "Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce."

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

Enclosure B

PART I – ABBREVIATIONS AND ACRONYMS

ANG	Air National Guard
DCNG	District of Columbia National Guard
ARNG	Army National Guard
EEO	Equal Employment Opportunity
IWD	Individual with Disabilities
RA	Reasonable Accommodation

PART II – DEFINITIONS

Auxiliary Aids and Services – Auxiliary aids and services includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

Eligible Persons – Persons eligible for Reasonable Accommodation and therefore covered by this policy are applicants for employment and employees.

Essential Functions – The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be essential if, among other things: 1) the position exists specifically to perform that function; 2) There are a limited number of employees available among whom the performance of that job function can be distributed; and/or 3) The function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Extenuating Circumstances – Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the RA request, such as back order of necessary equipment.

Individual with a Disability (IWD) – An IWD has one or more of the following: a physical or mental impairment substantially limiting at least one of that individual's major life activities, e.g., breathing, seeing, thinking, performing manual tasks, interaction with others, caring for oneself; has a record of such an impairment; or is regarded as because of a perceived impairment.

Interactive Process – The interactive process is the process by which an individual making an RA request and the individual receiving the RA request communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting the requestor's needs.

Major Life Activities - Major life activities include, but are not limited to, the following: in general, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and

NGDC-CG

SUBJECT: District of Columbia National Guard (DCNG) Reasonable Accommodation (RA) Program

working; and the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Episodic impairments or medical conditions that are in remission are nonetheless disabilities if they would substantially limit a major life activity when active.

Personal Assistance Services – Services that help individuals who, because of a targeted disability require assistance to perform basic activities of daily living, like eating and using the restroom, during work hours and job related travel.

Qualified Individuals with a Disability – The individual satisfies the requisite skill, experience, education, and other job-related requirements of the employment position and can perform the essential functions of the position with or without a reasonable accommodation.

Reasonable Accommodation (RA) – In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of RA: modifications or adjustments to a job application process that enable a qualified applicant desires; or modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment.

Regarded as Having such Impairment – An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This paragraph shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

Targeted Disability – Targeted disabilities represent a subset of conditions that would be considered disabilities under the Rehabilitation Act. The Federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment, that are above and beyond the barriers faced by people with a broader range of disabilities. A list of targeted disabilities can be found at https://www.opm.gov/Forms/pdf_fill/sf256.pdf

Undue Hardship – In general, undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the DCNG, when considered in light of the following factors: the resources and circumstances of the DCNG in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.