Policy and Procedure #1.219

ADA Compliance for Staff

Authority: Wyoming Statute(s): 25-1-104; 25-1-105 ACA Standard(s): 4-4054; 2-CO-1C-09-1; 4-APPFS-3E-03	**Effective Date:** October 1, 2015 **Revision/Review History:** 06/01/14, 03/15/14, 03/15/13, 12/19/11 **Summary of Revision/Review: To** Updates existing policy pursuant to annual review.
Cross Reference of Policy: P&P #1.205, *Workplace Harassment and Discrimination*	**Supersedes Existing Policy :**
Approved: R.O. Lampert — 9-16-15 Robert O. Lampert, Director — Date	

REFERENCE

1. ATTACHMENTS

A. WDOC Form #172, *ADA Physicians Certification* – **Distributed by HR Only**

2. OTHER

A. *State of Wyoming Personnel Rules*, Department of Administration and Information, Human Resources Division

B. State of Wyoming Executive Order Number 1992-4, *Americans with Disabilities Act*

C. *State of Wyoming Americans with Disabilities Act Grievance Procedure*

D. *State of Wyoming Personnel Records Policy*, Department of Administration and Information, Human Resources Division

I. PURPOSE

A. Implementing American Disabilities Act. The purpose of this policy is to provide guidelines for Wyoming Department of Corrections (WDOC) staff relative to practices and procedures which comply with the Americans with Disabilities Act (ADA) of 1990 as amended by the American with Disabilities Amendments Act (ADAAA) of 2008, to provide staff with reference to State of Wyoming policies and practices related to the ADA, and to define those State policies in terms of responsibility, complaint procedures and actions as they apply to the WDOC.

II. POLICY

A. General Policy. It is the policy of the WDOC to prohibit discrimination toward qualified individuals with disabilities in regard to any employment practices or terms, conditions, and privileges of employment.

B. Compliance with ADA Provisions. It is the policy of the WDOC to comply with ADA provisions which apply to staff members.

1. WDOC shall provide a mechanism to process requests for reasonable accommodation to the known physical and/or mental impairments of a qualified individual with a disability, either an applicant or an employee. The accommodation need not be granted if it would impose an undue hardship or direct threat. (ACA 4-4054; 2-CO-1C-09-1; 4-APPFS-3E-03)

2. The WDOC shall comply with the *State of Wyoming Personnel Rules* and any other applicable state or federal rule or law as it applies to Equal Employment Opportunity and ADA~~AA~~ provisions.

III. DEFINITIONS

A. Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA): A federal civil rights law (Public Law 110-325) which was enacted in 2009 to amend the Americans with Disabilities Act of 1990. The purpose of the act is to establish a clear and comprehensive prohibition of discrimination on the basis of disability and to provide clarification of the law as it applies to the interests of employers and employees. Both acts are referenced in this policy as ADA.

B. ADAAA Liaison: (*For this policy only*.) The ADAA Liaison assists management's efforts to comply with and carry out the responsibilities defined in the ADAAA. The facility Human Resources Manager at each

WDOC correctional facility is the designated ADAAA liaison for his/her respective facility. Central Office Human Resources is the designated ADAAA liaison for Field Services and Central Office.

C. **Direct Threat:** (*For this policy only*.) A significant risk to the health, safety or well-being of individuals with disabilities or others when this risk cannot be eliminated by reasonable accommodation.

D. **Disability:** The ADA defines a disability as: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) and/or the employee having a record of having such impairment (such as an employee who is in recovery from cancer); or (3) being regarded as having an impairment.

E. **Essential Job Functions:** Term refers to those job activities that are determined by WDOC to be essential or core to performing the job; these functions cannot be modified.

F. **Healthcare Provider:** Physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for patients.

G. **Interactive Process.** A process where the employee, health care provider and employer each share information about the nature of the disability and the limitations that may affect the employee's ability to perform the essential job duties.

H. **Major bodily functions:** Physical or mental impairment(s) such as any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. This also includes mental or psychological disorders such as: intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

I. **Major Life Activities:** Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

J. **Qualified Individual:** An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

K. **Reasonable Accommodation (Title I):** (*For this policy only.*) Any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity. The Department is not required to provide the "best" or most desired accommodation, but is obligated to sufficiently accommodate so the individual can perform the essential job functions, unless the accommodation poses an undue hardship.

L. **Servicing Human Resources Office:** The human resources office which prepares and distributes payroll for an employee and provides other human resources services.

M. **Substantially Limits:** A condition that renders an individual unable to perform a major life activity (*e.g.*, caring for oneself, manual tasks, walking, seeing, hearing, speaking, breathing, learning, *etc.*), that the average person in the general population can perform, or significantly restricts the condition, manner or duration under which a major life activity can be performed.

N. **Undue Hardship:** (*For this policy only.*) An action that would require significant difficulty or expense, or that would fundamentally alter the nature or operation of a program, service or activity. "Significant difficulty" does not include the accommodation's impact on morale.

IV. PROCEDURE

A. General Provisions

1. Discrimination based on disability is prohibited as articulated in WDOC Policy and Procedure #1.205, *Workplace Harassment and Discrimination.*

2. According to the Equal Employment Opportunity Commission (EEOC), the ADAAA indicates there are impairments that would automatically be considered disabilities. They include (but are not limited to): deafness, blindness, intellectual disability, completely or partially missing limbs, mobility impairments that require the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV or AIDS, multiple sclerosis and muscular dystrophy, major depression, bi-polar disorder, post-traumatic stress disorder, obsessive-compulsive disorder and schizophrenia.

i. The following are not disabilities under the ADA or ADAAA: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive

gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

3. All employees are required to comply with WDOC's safety standards and regulations. Current employees who pose a direct threat to the health or safety of themselves or other individuals in the workplace will be placed on leave until an organizational decision is made regarding the employee's immediate employment situation.

4. Any employee who is currently using illegal drugs is not protected by the ADA and may be denied employment or fired on the basis of such use.

5. Nothing in this policy shall be construed as a limitation upon an employee's right to file any claim with the State of Wyoming, Division of Labor Standards, United States Equal Employment Opportunity Commission, United States Department of Justice, Civil Rights Division, or any other entity properly granted the legal authority to address such matters.

B. Request for Information/Accommodation. A WDOC employee may request information or make a request for an accommodation under the ADA by notifying the Facility Human Resources (HR) Office or Central Office Human Resources (HR). The following steps will be followed for each request.

1. Provide Medical Documentation. The employee must provide information from their healthcare provider using WDOC Form #172, *ADA Physician Certification.* This form shall be submitted to the servicing Human Resources (HR) office. This form requires the physician to provide a description regarding the nature of the disability, work restrictions, and recommendations for reasonable accommodation (if any).

2. Interactive Process. Once WDOC Form #172, *ADA Physician Certification*, is received; HR, the employee's supervisor and the employee shall engage in the interactive process to discuss the limitations and/or performance issues the employee's disability may pose. The purpose of this discussion is to determine what, if any, accommodations may be needed.

3. Determination of a Disability. HR and the supervisor will assess if the employee has a disability, as defined by the ADA. WDOC will consider whether the impairment substantially limits a person's ability to "work" or meet certain job-related requirements, even though the impairment may not impose substantial limitations outside the workplace.

4. **Determination of Accommodations**. An accommodation can be a change or modification to the workplace to allow the employee with a disability to perform his or her essential job duties. Examples include: job restructuring, reassignment or transfer to a vacant position, making existing facilities more readily accessible, modifying or using alternative work schedules, acquiring or changing equipment or devices, adjusting training materials or using interpreters for the hearing and/or visually impaired.

i. If determined there is a disability, HR and the supervisor will review the accommodation request from the employee or health care provider to determine whether the requested accommodation would create an undue hardship to the WDOC. HR and/or the supervisor may suggest alternatives to the requested accommodations, if the initial request creates an undue burden but there is another cost-effective way to provide the requested accommodation.

ii. The interactive process may continue until the accommodation(s) is/are agreed upon to meet the needs of the employee and does not create an undue hardship on the employer.

iii. In the event a reasonable accommodation cannot be determined or the needs for accommodation pose an undue hardship on the WDOC, the employee may be placed on paid or unpaid leave (as appropriate given the situation) until an organizational decision is made regarding the employee's immediate employment situation.

5. **Written Notification**. HR will notify the employee in writing that his or her requested accommodation has been approved or denied. If approved, the notification will include details of the accommodation and the anticipated start date. If denied, the notification will state the reason for the denial.

6. **Review and Modification**. Reasonable accommodations may need revision if the nature of the disability or needs of the WDOC change. ADA accommodations should be reviewed on an annual basis.

C. **Recordkeeping.** All information acquired during the process of making an ADA determination shall be maintained in the employee's medical file, separate from the employee's personnel record, in accordance with Section 7 of the *State of Wyoming Personnel Records Policy*.

1. All medical information shall be kept confidential.

2. Only persons involved in making the determination of a reasonable accommodation and/or assisting in the implementation of the accommodation shall have knowledge of the request.

3. Information shall be provided on a need to know basis.

D. **Reporting ADA Related Complaints.** When a WDOC staff member believes that he/she has been subject to disability discrimination, they shall report such to the WDOC for prompt investigation and appropriate action pursuant to WDOC Policy and Procedure #1.205, *Workplace Harassment and Discrimination*, and State of Wyoming Executive Order 2000-4: *Anti-Discrimination Policy*. Employees with questions or concerns with ADAAA compliance may contact the ADAAA liaison or the WDOC Central Office Human Resources Manager.

1. Accessibility of public buildings is addressed in Title III of the Americans with Disabilities Act of 1990 and is codified in Wyoming law at W.S. §16-6-501, *et seq*. Any employee who has concerns about the accessibility of WDOC facilities or offices may contact the WDOC Facilities Construction and Maintenance Manager.

2. Upon completion of any necessary investigation and/or follow-up, the Director or designee shall render a final decision regarding the request or complaint.

i. If the Director agrees with the conclusions and recommendations of the review, appropriate corrective actions shall be taken, and/or reasonable accommodation made.

3. Documentation pertaining to the request or complaint and the review, including all reports, shall be maintained by the Human Resources Office in a separate confidential file.

E. **ADA Grievance Procedure.** Pursuant to State of Wyoming Executive Order 1992-4, *Americans with Disabilities Act*, and the *State of Wyoming Americans with Disabilities Act Grievance Procedure*, the WDOC Central Office Human Resources Manager is designated as the ADA Coordinator for employee issues. This procedure is available for use by persons with disabilities to resolve complaints of discrimination on the basis of disability in programs, activities, services and employment provided by the State of Wyoming. It should be used responsibly and only when conditions or circumstances warrant its use. This procedure does not apply to employment related complaints of state employees and is not a substitute for or an alternative to the grievance procedure established by the *State of Wyoming Personnel Rules*.

1. **First Level Complaint.** The complainant and/or the complainant's representative shall present a written complaint to the ADA Coordinator within twenty (20) calendar days of the incident. The complainant shall describe the event including an explanation of the reasons why complainant believes that he/she has experienced discrimination and what relief is requested. The ADA Coordinator shall within ten (10) calendar days after receiving the complaint, in consultation with the Director and appropriate staff, reach a decision and communicate the decision in writing to the complainant or complainant's representative. WDOC shall make reasonable efforts to resolve the complaint at this level.

2. **Second Level Complaint.** If the complaint cannot be resolved at the first level, the complainant or his or her representative may submit the written complaint to the Office of Administrative Hearings. The Office of Administrative Hearings shall provide an informal, independent and non-adversarial forum for assistance in the resolution of the complaint.

V. TRAINING POINTS

A. Who is the designated ADAA liaison?

B. What is the process for requesting information/accommodation?

C. What should an employee do if they feel they have been subject to disability discrimination?