

SECTION 4.67:
REASSIGNMENT TO A VACANT POSITION AS A REASONABLE ACCOMMODATION
Last Update: 05/13

Background

The [Americans with Disabilities Act, as Amended \(ADAAA\)](#), requires that an employee with a disability be provided necessary reasonable accommodations in order to perform the essential functions of an assigned position.

The ADAAA specifically lists reassignment to a vacant position as a form of reasonable accommodation. This type of reasonable accommodation must be provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.

This information is intended to establish a clear, orderly method for placing employees into an alternate position when they are not able to perform the essential functions of a position and other reasonable accommodations are not available.

Reassignment as an Accommodation of Last Resort

Before reassigning an employee, agencies should first consider accommodations that would enable the employee to remain in his/her current position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that:

- A. There are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or
- B. All other reasonable accommodations would impose an undue hardship on the employer.

However, if both the agency and the employee agree that reassignment is more appropriate than accommodation in the present job, then the agency may reassign the employee.

When Reassignment Applies

When an employee with a disability becomes unable to perform the essential functions of his or her position even with reasonable accommodation, the agency shall offer to reassign the individual to an available funded vacant position. Reassignment as an accommodation must be made unless the agency can demonstrate that the reassignment would impose an undue hardship on the operation of its program. The individual should be able to perform the essential functions of the position with reasonable accommodation, if necessary.

Reassignment Criteria

The following criteria must be met when making a reassignment as a reasonable accommodation:

- A. The individual has a disability that meets ADA requirements.
- B. Other attempts at accommodation are documented as not possible or not reasonable, or reassignment is identified as the most reasonable alternative.
- C. There is a vacant clean position equivalent to the one presently held in terms of pay and other job status, or a position will be vacant within a reasonable amount of time.

1. "Vacant" means that the position is available when the employee asks for reasonable accommodation, or that the agency knows the position will become available within a reasonable amount of time. A position is considered vacant even if an employer has posted a notice or announcement seeking applications for that position.
 2. A "clean" vacancy is a permanent vacancy that has been posted for transfer/recall under an applicable collective bargaining agreement and all possible transfers/recalls have occurred; or, when the recall process has been applied as required in the DAS-HRE administrative rules.
 3. A "reasonable amount of time" should be determined on a case-by-case basis, considering factors such as:
 - a. The types of jobs for which the employee would be qualified;
 - b. The frequency with which such jobs become available;
 - c. Whether the employer, based on experience, can anticipate that an appropriate position will become vacant within a short period of time.
- D. The employee is "qualified" for the new position. An employee is qualified for a position if s/he:
1. Satisfies the requisite skill, experience, education, and other job-related requirements of the position, and
 2. Can perform the essential functions of the new position, with or without reasonable accommodation.

The employee does not need to be the best-qualified individual for the position in order to obtain it as a reassignment.

- E. The agency may reassign the employee to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no positions vacant or soon to be vacant for which the employee is qualified (with or without an accommodation). In this situation, the employee's salary does not have to be maintained at the level of the higher graded position.

Creation of New Positions

There is no requirement to create a position if no vacant positions exist. The agency may:

- A. Voluntarily create a position in accordance with applicable merit rules and collective bargaining agreement requirements on filling a position,
- B. Transfer, demote, reassign, or promote the individual into a clean vacant position.

Resources

For more information on Reasonable Accommodations, refer to:

- [Job Accommodation Network](#)
- [EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#)
- Managers and Supervisors Manual [Section 4.66](#)