International Municipal Lawyers Association

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Do's and Don'ts for ADA Reasonable Accommodations in the Workplace

What all Municipal Lawyers Should Know

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[1] These samples are for educational purposes and should be modified for the particular circumstances.

Reasonable Accommodation Model Policy

Note: *This model lists "human resources – HR" as the city's administrative contact on disability issues; however, in cities without an HR expert, it may be changed to "city administrator" or another official.*

Reasonable Accommodation to a Qualified Individual with a Disability

In addition to all city employees, this policy applies to city applicants.

City policy on access and accommodation
The city has a commitment to provide equitable access to qualified employees with disabilities. The city will provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment—unless such accommodation would cause the city an undue hardship. The process for determining reasonable accommodations is private and individualized. If you have any questions that are not answered here, please contact _____ [city contact].

What is a disability?
The Americans with Disability Act (ADA) defines an individual with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. While some disabilities are apparent, or visible, the majority of people have invisible disabilities. Most health conditions – as well as a history of a medical condition or being regarded as having a medical condition – constitute a disability.

While an invisible disability may not be apparent, the impact of the condition is real. Some individuals may be reluctant to disclose a disability because of the perceived stigma associated with having a disability. The following sections provide information regarding some common disability conditions. It is important to note individuals may experience multiple conditions.

Information about disabilities

- **Mental health disabilities**

Mental health disability or mental illness is a health condition that impacts an individual's thinking, feelings, or behavior (or all three) and may cause the individual distress and difficulty in functioning. The course of a mental illness is unique for each person and may limit one or more major life activities such as learning or working. Examples of mental health disability can include major depression, bipolar disorder, schizophrenia, anxiety disorder, or post-traumatic stress disorder.

- **Mobility impairments**

Mobility impairments include a broad range of disabilities that affect a person's independent movement and cause limited mobility. Some mobility impairments are acquired at birth, while accidents, illnesses, or the natural process of aging may cause others. Examples of mobility impairments may include paraplegia, multiple sclerosis, quadriplegia, amputation, cerebral palsy, and arthritis. Depending on the severity of the disability, individuals may have limitations related to stamina, manual dexterity, speech, and ability to stand or sit.

- **Systemic disabilities**

Systemic disabilities are medical conditions that affect one or more major body systems. These conditions constitute a disability if they significantly impact one or more major life activities, such as learning. The effects and symptoms of these conditions vary greatly; systemic conditions may include cancer, asthma, HIV/AIDS, epilepsy, chronic fatigue syndrome, or diabetes.

- **Pregnancy**

While pregnancy alone is not necessarily considered a disability for purposes of the ADA, most pregnancy-related conditions (gestational diabetes, preeclampsia, etc.) are considered protected disabilities. The Minnesota Human Rights Act (MHRA) and the Women's Economic Security Act (WESA) require employers to provide reasonable accommodations for pregnancy, including the following accommodations without having to provide a note from a medical provider:

- more frequent restroom breaks or food and water breaks;
- seating arrangements; and
- a limit on lifting more than 20 pounds.

- **Other disabilities**

There are many other types of disabilities, too numerous to list in this policy. If a person believes he or she may have a disability that is not listed here, the individual will want to consult with his/her doctor first, and then following that conversation, talk to his or her supervisor or HR.

- **Temporary health conditions**

Similar to chronic or permanent conditions identifed by the employee's health care provider that are expected to be permanent in nature and/or chronic with long term impact, the city will work together with employees who have temporary conditions that significantly impact major life activities to identify reasonable accommodations whenever possible. Please contact your supervisor or HR staff if you have further questions.

What is a Reasonable Accommodation?

An accommodation is a modification made to a job duty, activity, or facility that eliminates or minimizes disability-related barriers to allow equitable access and allow an employee to perform his or her job. A reasonable accommodation

enables an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits.

There is often more than one way to accommodate a situation or activity. In order for an accommodation to be considered reasonable, however, it must not:

- Compromise essential requirements of a job, activity, or facility;
- Cause an undue administrative or financial hardship;
- Compromise safety of the employee or others; or
- Fundamentally alter an essential job duty.

HR staff will work with an employee or applicant through an interactive process to determine if an accommodation is reasonable and available. Different jobs may require different accommodations and the city will utilize resources to identify potential reasonable accommodations, including, not limited to, the employee's medical provider, Job Accommodation Network (JAN) and others.

The city shall not retaliate against an employee for requesting or obtaining an accommodation. Each accommodation plan is tailored to the individual employee and their job duties. For example, an accommodation may be reasonable for one employee/position but not another. Whether an accommodation is reasonable for an employee will depend on his or her job, work restrictions, the effectiveness of the accommodation in addressing the work restriction, and other factors.

Examples of common accommodations

Examples of some common accommodations which may be requested include:

- Reduced or modified work schedule or a leave of absence.
- Ergonomically or otherwise altered office furniture and desk/workspace layout.
- Use of mechanical equipment, such as carts, to assist with carrying heavy materials.
- Ability to take more frequent breaks.
- A medical leave (even if the employee is not eligible for Family Medical Leave Act (FMLA) leave and/or has already exhausted the 12-weeks of FMLA leave). Typically, a leave is appropriate when an employee cannot perform the essential duties of a job, and no reasonable accommodation exists (including a light duty assignment, transfer to another position, etc.). While employers need not provide indefinite leaves, they may have to provide an extended leave – even above and beyond the leave required by FMLA and/or other laws. It is often difficult to determine when an extended leave becomes an indefinite leave, and cities should work closely with their city attorneys on this issue.

When an individual with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, he or she will be given the same consideration for

employment as any other applicant. The determination that an employee (or applicant) poses a direct threat must be based on an individualized assessment of the employee's present ability to safely perform the essential duties of the job.

The city will reasonably accommodate qualified individuals with a disability so they can perform the essential duties of a job, unless doing so causes a direct threat to these individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation, or if the accommodation creates an undue hardship to the city.

Generally, an applicant or employee must let the city know that he or she needs an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An applicant with a disability should contact [human resources] to request an accommodation in the application process.

The ADA prohibits employers from asking questions that are likely to reveal the existence of a disability before making a job offer. As a matter of practice, the city will not ask disability-related questions about an applicant’s visible disability or because the applicant has voluntarily disclosed a hidden disability or require medical examinations until after an applicant has been given a conditional job offer. Following a conditional job offer, the city may ask job-related and consistent with business necessity disability questions. The city may also conduct medical examinations; however, the city will still proceed with an interactive discussion to discuss reasonable accommodations.

Interactive Process

The city utilizes an interactive process for determining reasonable accommodations. The process is confidential and individualized. The city is committed to providing reasonable accommodations for employees with disabilities in a timely manner.

Determining and arranging employment accommodations is a partnership between the employee and the city (i.e., the supervisor, human resources, and others as needed). The individual requesting job accommodations is an active participant in an interactive process to provide reasonable accommodations that provide an equitable opportunity to engage in, while not fundamentally altering, the job duties.

Roles and Responsibilities for Requesting an Accommodation in the Workplace

Employee

The city provides accommodations for employees who experience disability-related work barriers. The interactive process typically begins when an employee contacts his/her supervisor [or human resources] to request an accommodation. It is usually best for the employer and employee to discuss potential accommodations as soon as the employee believes he or she will need them. The city may have an employee complete the "Employee Form to Request Reasonable Accommodation" to request reasonable accommodation and provide documentation describing the disability.

The employee's role in the interactive process is to discuss the impacts of his or her disability (including work restrictions), provide information and documentation on an as-needed basis, and share ideas about potential reasonable accommodations, including accommodations that have worked in the past.

The employee is responsible for providing documentation from an appropriately qualified health or other service professional who is knowledgeable about the employee's condition. Documentation can vary in length and format but should focus on the ways the condition currently affects the employee, especially in the work environment.

Documentation is private information from an appropriately qualified health or other service professional who is knowledgeable about the employee's condition. This professional might be a therapist, doctor, rehabilitation counselor, audiologist, nurse practitioner, mobility specialist, or other medical provider. Documentation can vary in length and format but should focus on the ways the condition currently affects the employee, especially in his/her work environment.

If an employee has documentation describing his/her disability, please have it faxed to HR staff at the city. In most cases, an employee will come to work as scheduled even if he or she does not have documentation, as the employee's supervisor and HR staff may be able to assist the employee in obtaining it. The employee's supervisor and HR use documentation to better understand an employee's experience of the condition, identify impacts in a work setting, and make informed decisions to determine reasonable and appropriate accommodations.

Generally, the employee, the HR representative, and the employee's supervisor will discuss how the employee's disability impacts his/her job duties, which accommodations are appropriate, and how accommodations will be implemented. If reasonable accommodations are identified for the employee, they will be outlined in a letter for the employee and his/her supervisor to use going forward.

If the employee or the employee's supervisor have any questions or concerns about proposed accommodations, this is a good time to discuss them.

When a reasonable accommodation is implemented, the employee, as soon as possible, must inform their supervisor if the accommodation is not effective.

Supervisor
The supervisor is responsible for contacting [human resources] when an employee requests an accommodation and/or when the supervisor possesses knowledge that the employee needs a reasonable accommodation. The supervisor's role in the interactive process is to share his or her knowledge of the essential elements of the job. It is also the supervisor's role to communicate with [human resources] and/or the employee about potential reasonable accommodations, including whether proposed accommodations are effective and workable, specifically whether they will allow an employee to perform the essential duties of the job, whether they will impose an undue hardship, etc. It is also the supervisor's role to ensure that other employees do not retaliate against the employee requesting an accommodation.

Human Resources [City Administrator]
The role of human resources in the interactive process is to work with the employee and their supervisor to identify barriers to accessing the job duties or city facilities, and assist in determining reasonable accommodations that address these barriers, but do not fundamentally alter the essential duties of the job.

It is important to also note the following points about the interactive process:

- It is usually best for the employer and employee to discuss potential accommodations as soon as the employee believes they will need them. The city is not required to provide retroactive accommodations.
- The employee, [HR/city administrator] and the supervisor maintain contact as necessary to discuss any questions or concerns that may arise regarding the requirements and implementing accommodations.

Confidentiality
Employers must keep protected medical information on separate forms and in separate files from regular personnel records. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

The ADA allows employers to disclose disability-related medical information to:

- Emergency and first-aid personnel, if a person's disability might require emergency treatment.

- Supervisors and managers, if they need information about restrictions about an employee's job duties or ability to work, or information on reasonable accommodations. When supervisors communicate about an accommodation (i.e. the employee will now be working such and such hours) the supervisor should not disclose that the reason for a change is because a person has a disability and requested an accommodation.
- Government officials who are looking into a city's compliance with the ADA or other disability laws
- State workers' compensation offices or insurance carriers as applicable.

Disputing an accommodation process or outcome

The city [city could list a specific department or job title here as well] will promptly respond to verbal or written notifications from an employee who is not receiving accommodations. The city [could list a specific department or job title here as well] will communicate in a timely fashion with the employee and supervisor to find out more about relevant circumstances and attempt to resolve the issue. The general process is described below:

- The employee contacts [human resources] as soon as possible if reasonable accommodations are not being implemented in an effective or timely way.
- [HR] will attempt to resolve the issue by working with the employee and his or her supervisor [and/or department head], or, in some cases, by bringing in a disability consultant.
- If [HR] is not able to successfully resolve the issue, the employee may file a grievance pursuant to the city's grievance procedure included in the city's personnel policy.

Alternative Duty Assignment Model Policy

This policy is to establish guidelines for temporary assignment of work to disabled employees who are medically unable to perform their regular work duties. Employees who are temporarily unable to perform regular duties but not totally incapacitated, and capable of returning to work in some capacity, may be assigned to light duty positions.

The city cannot guarantee the availability of a light-duty assignment. In considering potential light-duty assignments, the City will evaluate each request on a case-by-case basis and consider various factors, including the availability of light-duty work (including whether other employees are performing light duty work), the nature and expected duration of the employee's work restrictions, whether the employee is able and qualified to perform the light duty work, department and organization-wide needs, and other factors.

The purpose of this policy is to establish guidelines for the assignment of alternative duty work on a temporary basis.

Term of Light Duty Assignment
Employees capable of performing light duties may be reassigned during their recovery period and light duty assignment may require schedule changes, shift changes, and assignment changes. A light duty assignment will be based on documented physical or mental limitations issued by a licensed physician and must specify the nature, degree, and duration of any work restrictions. It is understood this status may change, depending on the injury or illness. A reasonable initial term of light-duty assigned will be determined by [position titles] but should be reviewed periodically (such as every 30 days).

The initial term may be shortened or extended depending on the individual circumstances of the employee, the availability of light duty, and other considerations. The employee may be required to provide additional documentation or information as requested to determine the appropriate length of light-duty assignment. Again, any light duty assignment may be discontinued at any time.

Light duty work assignment will be granted only when bona fide work is available. Light duty assignments that do not normally exist will not be created nor will employees be assigned to duties for which they are not qualified.

Restructuring of positions may also be a reasonable accommodation. Employers, however, are not required to eliminate the essential duties of a position.

Procedure
When an employee is unable to perform the essential requirements of their job, he or she will notify (supervisor/human resources]. [HR or the city administrator] may ask the employee to complete the "Employee Form to Request Reasonable Accommodation" form and obtain medical documentation stating what types of accommodations are needed using the "Reasonable Accommodation Request Health Care Provider's Certification" for subsequent interactive discussion(s) required under the ADA. The notice must include the expected time frame regarding the restrictions and expected date of return to the regular position. Upon receipt of the written request, the supervisor will forward a copy of the report to the [city council]. The [city council/city administrator] may require an independent evaluation conducted by a physician selected by the city to verify the diagnosis, current treatment, expected length of temporary disability and work restrictions.

Prior to beginning a light duty assignment, the employee will meet with his/her supervisor and department director to review the work restrictions.

Review of Light-Duty Assignments
Light-duty assignments may be reviewed periodically during the duration of the assignment to determine if the employee is able to return to his or her original position and perform the essential duties of the position, with or without an accommodation.

Return to Original Position
Upon return to an original position from a light-duty assignment, an employee shall be entitled to reasonable accommodation, if necessary, to enable the employee to perform the essential duties of the position.

Practical Considerations on ADA Accommodation for Administrators and Supervisors

Documentation:
Start a file or notebook on the employee's request for accommodation and document every step throughout the process, including phone calls, decisions and information as you take each action. Stay factual and objective; do not include opinions or subjective information. Document every step throughout the interactive process. Be mindful this information must be retained in accordance with the applicable employment laws (typically two years) as well as the city's retention schedule.

Recall, there are no magic words to request an accommodation; an employee does not have to use the words "accommodation" or "ADA" to put the employer on notice. If an employee indicates he/she is having a problem related to a medical condition, the City should consider whether the employee is making a request for accommodation. The Equal Employment Opportunity Commission's (EEOC's) enforcement guidance provides the following examples of situations where employees adequately requested an accommodation under the ADA:

- An employee tells her supervisor, "I'm having trouble getting to work at my schedule's starting time because of medical treatments I am undergoing."
- An employee tells his supervisor, "I need six weeks of leave to get a treatment for a back problem."
- An employee tells her supervisor, "I am sorry I forgot to include that in the city council packet. I keep having memory lapses."
- An employee tells a supervisor, "I wish my break was after the midday rush at the service counter. I get so stressed out and anxious."
- A new employee, who uses a wheelchair, informs his supervisor that his wheelchair cannot fit under his office desk.

However, a simple request for a new chair, or some other request, without information the need is related to a medical condition is probably not sufficient to be an accommodation request.

While the ADA does not require the request to be put in writing, having documentation of the request is a good practice. Consider using: "Employee Form to Request Reasonable Accommodation."

Determine Key Players:
Determine who needs to be kept informed as the situation proceeds (e.g., the employee, the supervisor, the workers' compensation insurer, the city administrator/manager, the city council, the city attorney). Limit the list to only

those individuals who need to have information about the specific disability to help determine reasonable accommodations, determine whether an employee poses a direct threat, or to help defend the city against litigation. Persons with disabilities have the right to privacy about their medical information, just like any other employee.

ADA-Covered Disability:
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 activities. 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 history of a disability, being regarded as having a disability, or association with a person with a disability.

- Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This definition also includes "major bodily functions."
- Major Bodily Functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Pregnancy
While pregnancy alone is not necessarily considered a disability for purposes of the ADA, most pregnancy-related conditions (gestational diabetes, preeclampsia, etc.) are considered protected disabilities. The Minnesota Human Rights Act (MHRA) and the Women's Economic Security Act (WESA) require employers provide reasonable accommodations for pregnancy, including the following accommodations without having to provide a note from a medical provider:

- more frequent restroom breaks or food and water breaks;
- seating arrangements; and
- a limit on lifting more than 20 pounds.

Under the revised ADA and MHRA most health conditions are covered disabilities and many of the protections extend to temporary disabilities, pregnancy, and pregnancy-related conditions; please consult with your city attorney.

Essential Duties:
Determine which essential duties the employee can still perform and which he or she can no longer perform without a reasonable accommodation. ("Essential duties" are defined in the ADA as "the fundamental job duties" of the position,

i.e., the “reason the job exists.”) A physician, psychologist, or other medical provider will usually need to be consulted at this phase.

Medical Documentation
The employee's health care provider may not disclose information or answer questions about the employee's disability without the employee's permission. Be sure to have the employee sign a medical release form before requesting medical information about physical or mental limitations. Also make sure the release form complies with all applicable laws. The League has a model release form on page 34 of this document.

Ask the employee to provide appropriate documentation from the employee's health care or rehabilitation professional regarding the nature of the impairment, its severity, the duration, the activities limited by the impairment(s) and the extent to which the impairment(s) limits the employee's ability to perform the job's essential duties. The “Reasonable Accommodation Request Health Care Provider’s Certification” form may be a useful tool for requesting medical documentation. Review the accommodation request from the employee as well as documentation received from his or her health care provider.

Keep all medical information in the employee's confidential medical file, that is separate from the employee’s personnel file. This information is private personnel data.

If a supervisor notices a performance problem or other behavior that could be the result of an impairment, the supervisor may ask the employee if there is any way that the supervisor can assist the employee in the performance of the job tasks.

Reasonable Accommodations
In most cases, cities are obligated to provide a reasonable accommodation of an employee or job applicant with a disability if it does not impose an undue hardship. The EEOC and Minnesota Department of Human Rights (MDHR) make it clear reasonable accommodations are <u>not</u> one size fits all. Instead, accommodations vary on the individual’s needs. Even employees with the same disability may require different accommodations, depending on the employee’s job position and other factors. In general, there are four categories of reasonable accommodations:

- **Changes to job application process** –Modifications or adjustments to enable a qualified individual with a disability to be considered for the position he or she desires.
- **Work environment modifications** – Modifications or adjustments (changes 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 duties of that position

- **Changes to benefits and privileges** – Adjustments so that an employee with a disability can enjoy privileges and benefits enjoyed by similarly situated employees without disabilities.
- **Leave –** A leave of absence when an employee cannot perform the essential duties of a job, and no reasonable accommodation exists (including a light duty assignment, transfer to another position, etc.). While employers need not provide indefinite leaves, they may have to provide an extended leave – even above and beyond the leave required by FMLA and/or other laws. It is often difficult to determine when an extended leave becomes an indefinite leave, and cities should work closely with their city attorney on this issue.

Interactive Process Regarding Reasonable Accommodations:
Often times, an employee will disclose to HR or the city administrator a medical condition and request a reasonable accommodation. HR [or the city administrator] may ask the employee to obtain medical documentation stating what types of accommodations are needed using "Employee Form to Request Reasonable Accommodation" form for a subsequent interactive discussion required under the ADA. Then there is a subsequent meeting, and ideally, the city has the documentation from the medical provider at this point. Depending on the circumstances, the employee's supervisor might also be a good person to have at the meeting to help determine appropriate accommodations. Keeping an open mind for this meeting is important.

When an employee is unable to perform the essential requirements of their job, he or she will notify [supervisor/human resources]. The notice must include the expected time frame regarding the restrictions and expected date of return to the regular position. Upon receipt of the written request, the supervisor will forward a copy of the report to the [city council/city administrator]. The city may require an independent evaluation conducted by a physician selected by the city to verify the diagnosis, current treatment, expected length of temporary disability and work restrictions.

The first step is to determine whether the employee can safely perform the essential duties with accommodations in place. In some cases, this may be easily determined by the employee's supervisor in consultation with the city's HR staff. In more complex cases, the city may wish to seek outside resources and/or hire a consultant. The city's workers' compensation administrator or managed care provider may be able to recommend an occupational rehabilitation specialist. (For cities who are insured by the League of Minnesota Cities Insurance Trust, the workers' compensation claims can be reached at (651-281-1220).

In this interactive process, a city will want to discuss possible accommodations with the following:

- The employee (it is essential the employee be consulted and involved in this process);
- Involved medical providers;
- Managers or supervisors who have knowledge of the work site and the job tasks;
- If you are not sure of an accommodation, consider calling in an expert. Job Accommodation Network (http://askjan.org/index.html) (JAN) is an organization that can assist employers in the accommodation process with information and accommodation ideas. Its consultative services are free to employers. If you do consult an outside resource, like JAN, be careful not to disclose the employee's name and identifying information;
- A vocational or rehabilitation counselor, if the employee has one; and/or
- HR and the city attorney.

Next the city should discuss both the employee's requested accommodations and other accommodations that may be less preferable to the employee, but still might allow him or her to perform the job duties safely. The employer may choose among reasonable accommodations as long as the chosen accommodation is effective. Thus, the chosen reasonable accommodations may not always be the one requested or preferred by the employee. However, the employee should always be given the opportunity to suggest accommodations and to explain why any given accommodation will or will not work. Also, make sure the city takes into consideration any guidance given by the medical provider on the "Employee Form to Request Reasonable Accommodation."

In the most ideal situation, the accommodation discussion is a back-and-forth process in which the employer and employee come to consensus about the best choice of accommodation(s).

Undue Hardship:
Determine if any of the accommodations would pose an undue hardship. An accommodation is not an undue hardship unless it is very expensive, disruptive, and extensive or fundamentally alters the nature or operation of the city. If there is no other source to pay for an accommodation (e.g., government programs, charitable organizations, etc.), the employee must be offered the option of paying for the portion of the cost that would result in an undue hardship. The EEOC does not see impact on employee morale as a reasonable undue hardship defense.

It can be difficult for employers, especially government employers, to argue that something imposes an undue hardship because it is too expensive and/or otherwise burdensome. Please work closely with your city attorney when making these determinations.

Effectiveness of Accommodations:
Determine the effectiveness of the accommodation being considered. Would the employee be able to perform reasonably well if the accommodations were made, or would the work be extremely slow, inaccurate or otherwise ineffective?

Direct Threat to Self/Others:
Determine whether the employee constitutes a direct threat to him/herself or others that cannot be reduced to an acceptable level by a reasonable accommodation. Whether a person is a direct threat depends upon an objective based evaluation of:

- The nature of the risk;
- The duration of the risk;
- The severity of the risk;
- The likelihood the risk will occur; and
- The imminence of the potential risk.

Almost always, a city will need to rely upon a medical provider's opinion in determining if an employee poses a direct threat.

Implementation:
If a reasonable accommodation is available, implement it and monitor the employee's performance, as you would any other employee.
Document/communicate the agreement in writing, whether by using the "Reasonable Accommodation Agreement" or in another way.

The interactive process does not end with the interactive process meeting. Once a reasonable accommodation has been determined and implemented, a best practice is to follow up with the employee on a regular basis to ensure the accommodation is effective. It is often common that the first accommodation will not be effective, and something else may need to be tried. A city's workplace policy should inform the employee they must inform their supervisor if the accommodation is not effective.

Do not retaliate against an employee who has requested accommodation by subjecting their work to a much higher level of scrutiny than conducted for other employees. Also, do not let other employees retaliate against an employee -- because they are unhappy about a provided accommodation or otherwise.

FMLA Leave:
If leave is requested or being considered as an accommodation, determine if the employee should be placed on Family and Medical Leave Act (FMLA) leave. Generally speaking, FMLA leave will run concurrently but be aware the city may have to provide leave even if the employee is not eligible for FMLA leave, or in the case where an employee has already exhausted his/her FMLA leave. The FMLA requires an employee with a serious illness or injury be given 12 weeks of unpaid leave and that the employer continues to pay its portion of health

insurance premiums. Additionally, an employee on FMLA must be returned to the same position he or she would have been in had he or she not take the leave. Please see the League's Memo on FMLA and the League's Model FMLA policy.

Light Duty:
If the employee can return to work with restrictions, consider whether "light duty" work is an option. Typically, employers have an obligation to provide available light duty to employees, but they do not have a duty to create a permanent light duty position or create work. When considering available light duty, consider not only the light duty work available in the employee's department but throughout the city as a whole. A city employer cannot give preference for light duty assignments to those injured on the job. But when making decisions about light duty, a city employer can consider the amount of light duty work available, the number of employees requesting/needing light duty work, an employee's work restrictions, an employee's qualifications, and other factors.

Directions for the Employee*:*

An employee who seeks an accommodation has the responsibility to make the request and provide reasonable documentation and adequate information for the need of an accommodation. Completion of this form is voluntary; however, failure to provide information may result in a denial of an accommodation request.

The enacting of an accommodation does not imply that the City of (_____) regards or considers an employee disabled. All information relating to an accommodation request, including medical documentation and this form, shall be maintained in a separate file and shall be treated as confidential medical records with access limited to those who need to be informed including, but not limited to, supervisors/managers, legal counsel, human resources, first aid personnel (when appropriate), and government officials investigating compliance issues.

Prior to completing these documents, please read the [City's] Reasonable Accommodation Policy and review this packet in its entirety. In accordance with the Americans with Disabilities Act (ADA) and Minnesota Human Rights Act (MHRA), requests for reasonable accommodations for qualified individuals may be approved as requested, modified from the original request, or denied by the employer. In all situations, the City of (_____) will work closely with the employee to determine what, if any, accommodation can be made.

Employees complete pages 1-3 and <u>submit to [human resources]</u> with the following attachments:

A) A copy of your current job description highlighting, where possible, the essential function(s) for which you are requesting accommodation; and

B) The attached Health Care Provider's Certification Form verifying a medical need for the accommodation(s) requested.

Name (please print) _____

Phone #_____

Job Title _____

Department _____

Work Location _____

Supervisor _____

ACCOMMODATION REQUESTED

Please list below the job task(s) for which you are seeking accommodation(s) and describe the specific accommodation you are requesting. Please review your current job description to assist you in completing this section.

_____

_____

_____

_____

REASONABLE ACCOMMODATION(S)

In addition to describing the accommodation in the question above, please check any of these categories you believe describes your requested accommodation:

- ☐ Making existing facilities readily accessible
- ☐ Job restructuring
- ☐ Part-time or modified work schedule
- ☐ Reassignment to a vacant position
- ☐ Acquisition of equipment or devices
- ☐ Modification of equipment or devices
- ☐ Appropriate adjustment or modifications of training materials or policies
- ☐ Qualified reader or interpreter
- ☐ Medical leave
- ☐ Elimination or modification of non-essential job duties
- ☐ Modification to a rule, policy or practice
- ☐ Other (please specify)

_____

_____

Please describe in detail the accommodation you are requesting:

_____

_____

How long do you anticipate this accommodation will be necessary?

- ☐ Permanent
- ☐ Temporary from _____ until_____

Have you received any accommodation in the past for this same limitation?

- ☐ No
- ☐ Yes (What were the accommodations and how effective were they?)

_____

_____

Briefly describe how your condition limits your ability to perform your job duties. Be specific. Then explain how the accommodation you are requesting will enable you to perform your duties.

_____

_____

_____

_____

Please provide any additional information, if necessary, that may help in processing your request or any suggestions on how the requested accommodation(s) can be provided. (Attach additional pages as needed)

_____

_____

_____

_____

Employee Signature _____

Date _____

Internal use only

Date received: _____

Received by: _____

Final disposition of accommodation request (e.g., approved, denied, or modified). If modified, describe modifications and give rationale. If denied, give rationale (attach additional pages as needed).

_____

_____

_____

_____

_____

(Attach Health Care Provider's Certification Form as described in "B" on Page 1.)

Tennessen Warning *(Minn. Stat. §13.04, Subd. 2)*

You are being asked to supply private or confidential information about yourself.

The purpose of these forms is to provide you with a formal opportunity to request an accommodation that will enable you to perform each of the essential duties of your job. In accordance with the Americans with Disabilities Act, as amended, it is our policy to provide reasonable accommodations, where possible, for our employees with disabilities. Reasonable accommodations are those that are both medically necessary and economically feasible.

Please understand we are not calling you disabled, nor do we perceive you to be so, simply because you fill out this form, or because we may provide you with an accommodation. Instead, we are trying to help you succeed at your job by working interactively with you to reasonably remove any barriers that may be in your way.

We cannot provide you with an accommodation without your help. Therefore, we need you to give us specific information pertaining to your condition and the accommodation you are requesting. You are not legally required to provide the information requested. However, failing to provide the information requested will hinder our ability to evaluate your request for accommodation. Keep in mind that

any information you give us regarding your medical condition will be kept in a confidential medical file. Access to this file will be limited to only those with a need to know as determined by human resources, your department, and federal or state law.

Please provide the information sought on the enclosed forms, giving as much detail as possible. Once we receive the information we need, we will be able to work with you to determine whether an accommodation is possible.

Reasonable Accommodation Request
Health Care Provider's Certification form

This request for reasonable accommodation is being made in accordance with the Americans with Disabilities Act, Title I, the Minnesota Human Rights Act, and the City's Accommodation Policy. This form should be completed by the Health Care Provider most knowledgeable about the patient's impairment and the effects of the impairment.

Health Care Provider:
The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. (29 C.F.R. 1635.8(b)(1)(i)(B))

An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities. Examples of major life activities include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others and working.

Major life activities include the operation of major bodily functions, including functions of the immune system, special sense organ and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions.

Employee's Name _____
(please print)

1) **Nature of Disability**. The employee identified above has asked for an accommodation for a disability that substantially limits a major life activity(ies). Please describe the general nature of the disability/impairment to the extent needed to determine reasonable accommodations on the job:

_____

_____

_____

(a). Describe the nature, severity and anticipated duration of the impairment

☐ Temporary (explain):

_____

_____

_____

☐ Temporary but will take longer than normal to heal (explain):

_____

_____

_____

Anticipated healing period:

_____

☐ Temporary with residual effects (explain):

_____

☐ Permanent(explain):

_____

☐ Chronic (explain)

_____

_____

(b) If your response to question 1 is that the employee has an impairment that materially or substantially limits one or more major life activities, please list what, if any medications and/or other corrective measures are

currently being prescribed to control or eliminate the individual's symptoms and/or limitations. Please describe how the impairment is mitigated and include information about any side effects the individual experiences in light of the use of the medication and/or corrective measures outlined.

2) **Impairment/Restrictions/Limitations.** The essential duties of this individual's current job include (see attachment from employer). How is the employee's disability/impairment likely to affect his or her ability to perform the essential duties of the job, as identified on the attached job description?

3) **Possible Accommodation(s).** What would you suggest as a possible accommodation(s) to assist in performing the identified essential duties of the job description? Please be specific and explain how the accommodation will allow the employee to perform essential duties.

4) How would your suggestions improve the employee's job performance?

5) How long will the employee need the reasonable accommodation? If unable to provide a date, when will he or she be medically reevaluated?

_____

_____

6) The employee's typical schedule is [***insert schedule here***]. What, if any, adjustments need to be made to the employee's work schedule to enable the employee to perform the essential duties of that position?

_____

_____

_____

Please note: In accordance with the Americans with Disabilities Act, requests for reasonable accommodations may be approved, modified, or denied by the Employer. For assistance in completing this document, you may contact the City's human resources staff – see contact information below.

By my signature below, I acknowledge I have received and read the employee's job description, including the essential duties of the position.

_____ _____

Health Care Provider Name (please print) Telephone Number

_____

Fax Number

_____

Health Care Provider's Address (please print)

Please summarize Health Care Provider's qualifications and state the nature and length of relationship with Employee:

_____

_____

_____

_____ _____

Signature of Health Care Provider Date

City of _____

Attn: _____, [Human Resources Director]

(city address)

([HR Director's] phone number)

Reasonable Accommodation Agreement

Employee name:

Job title:

Department:

Supervisor:

This form is in response to your request for an accommodation to perform the essential duties of your position. The health care provider's note that you provided to us on [date] stated you have the following work restriction(s):

[list restrictions].

Accommodation requested

We met with you on [date] to discuss the following requested/possible accommodations needed because of these restrictions.

[list accommodations requested and/or considered]

Accommodation approved

We have approved the following accommodation(s):

[list accommodations].

These accommodations are considered the most effective given your essential job duties and our operational necessities. These accommodations will be implemented and effective on [date].

Review date (if any):

Your records will be maintained in accordance with the Minnesota Government Data Practices Act. Please contact [name] at [phone number] if you have any questions

Signatures	**Date**
Employee:	
Employee's Union Representative:	
Supervisor:	
City Administrator:	

Sample Letter Requesting Fitness for Duty Exam

[Date]

[Name]

[Address]

[City, MN Zip Code]

Dear [Name]:

Based on [describe concerns/last few incidents], I have genuine concerns about your ability to safely perform all the essential duties of your [job position] position. The purpose of the letter is to assist the [name of employer] to (1) determine whether you can safely perform the essential duties of the job, with or without reasonable accommodation; and/or (2) identify and evaluate potential reasonable accommodations [in the event of a safety concern include this language and (3) determine whether you pose a direct threat to the health and safety of yourself, your co-workers and supervisors, and City residents.] Specifically, [employer's name] is requesting that you ask your treating medical provider to address the following questions:

1. What is the diagnosis of [employee's name]?
2. On what basis do you base this diagnosis (tests, examination, information obtained from employee, information obtained from others, etc.)?
3. Please review the enclosed job description for [employer's name] [employee's job title] position.

4 Is [employee's name] currently able to safely perform the essential duties of the enclosed job description(s), with or without reasonable accommodation? [If there are concerns about specific duties, it is recommended to specifically inquire about those duties.]

5. If the answer to Question 4 is no, please specify the duties which [employee's name] cannot safely perform at this time and what restrictions you would impose on his/her performance of those duties at this time.
6. If your answer to Question 4 is no, how soon will [employee's name] be able to perform the essential duties of the enclosed job description(s)? Please provide a specific date. If you are not able to provide a specific

date, please provide a date range and/or when you will reevaluate. If [employee's name] has any permanent work restrictions that preclude him/her from performing any essential duties, please describe those restrictions.

7. What type of accommodations (amount of time off, change in job duties, etc.) would [employee's name] need in order to perform the essential duties of the job? Please specify whether [employee's name] will need any accommodations in order to receive and/or participate in any treatment.

8. What is the expected duration of [employee's name] medical condition? Is the condition expected to change over the course of its duration? Please explain.

9. Does [the employee] pose a safety risk to himself/herself or others? Please explain, and specifically reference [employee's name] ability to [list specific safety-sensitive job tasks]. Can this safety risk be effectively addressed/mitigated with treatment and/or any recommendations? If so, please specify.

10. Do you have any other information that would assist [employer's name] in evaluating [employee's name] employment situation?

Please ask your doctor to provide the [employer's representative – typically a department head or human resources department employee] with this information at his/her earliest convenience but no later than [date] [Note: generally two to three weeks is reasonable, although more time may be necessary for a specialist.] If your medical provider cannot provide the information by [date], please let me know as soon as possible when we can expect this information. Enclosed are the following documents for you to give to your medical provider:

- A copy of the job description for the [job title] position; and
- A copy of the Authorization to Release Medical Information form which you should sign before giving to your doctor.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. (29 C.F.R. 1635.8(b)(1)(i)(B))

Please give a copy of this letter to your doctor as well. An extra copy is enclosed for your convenience.

[Employee's name], we want to make a determination as to whether or not you can safely perform your job duties. We very much appreciate your cooperation in helping us achieve this goal. If you or your medical provider have any questions, please feel free to contact [contact name] at [telephone number].

Sincerely,

[Name of employer's representative; typically, department head or HR employee, but should not be employee's supervisor]

Authorization to Release Medical Information

Informed Consent for Release of Information

League of Minnesota Cities Model Form

League staff thoughtfully develops models for a city's consideration. This model is based on the State of Minnesota's model data practices form, 'Request (to release) from an Individual'. Models should be customized as appropriate for an individual city's circumstances in consultation with the city's attorney. Helpful background information on this model may be found in the information memo "Data Practices: Analyze, Classify, Respond."

**This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. Make other changes, as needed, to customize the model for your city.**

CONSENT FOR THE RELASE OF INFORMATION

If you have a question or would like more explanation about anything on this form, before you sign, please talk to:

*Insert here the name of your Responsible Authority or his/her Designee and that person's contact information.*

I, _____, authorize _____ to release data about me to _____ as described on this form.

*Insert the name of the individual data subject in the first blank. In the second blank insert the city's name if the city is asked to provide private information, or the name of the organization or person holding a private record the city is seeking (such as medical information or information from a previous employer). In the last blank insert the name of the individual or entity that will receive the information.*

The specific data I want _____ to release is:

*Insert the organization authorized to release the data in the blank. Then describe the data in the space below. Cities request a release of information from employment applicants and employees for a variety of reasons. Some common examples, and additional language for you to consider are:*

1. Personnel information

Requests for city data about former employees require written authorization. Cities may also request personnel data to screen applicants for city positions. Possible language to describe the request includes:

"Any and all personnel information kept by _____ with regard to my employment at _____, that may be relevant in making a hiring decision."

Insert the city name, or the name of the applicant's previous employer, in the blanks.

2. Medical information

Cities may seek a release to receive medical information for fitness for duty determinations, reasonable accommodation request evaluations, return to duty authorization and other legitimate reasons. It is important to work with a city HR professional or attorney in drafting specific language for such requests because the law is strict in the limitations it places on medical information lawfully accessible depending on the situation. In addition, the Equal Employment Opportunity Commission (EEOC) suggests employers include the following language in all lawful requests for medical information in case genetic information is inadvertently shared with an employer from an employee's medical provider:

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

3. *Different use*

You must also seek permission to use an individual's private data in ways that are different from those you stated when you collected the data. The individual may let you use all, some, or none of the data. The permission section should list specific data that the city may use in a different way, the reason the city wants to use it differently, and the privacy status or other consequences of the additional use.

I understand that my records are protected under state and/or federal privacy regulations and cannot be disclosed without my written consent unless otherwise provided for by law.

I understand that I have asked _____ to release the data.

 *Insert the name of the entity asked to release the information.*

I understand that although the data is classified as private at _____, the classification or treatment of the data at _____ may not be the same and is dependent on laws or policies that apply to _____.

*Insert the name of the city or entity providing the information in the first blank. Insert the city name or entity to receive the information in the last two blanks.*

*For requests to release medical information add this statement: "I understand that I may inspect or copy the information used or disclosed."*

I also understand that I may cancel this consent at any time prior to the information being released by notifying _____ in writing and that, in any event, this consent form expires automatically _____ days after signing.

*Insert the name of your Responsible Authority or Designee in the first blank. Insert an appropriate amount of time in the second blank. For example, for employment reference-checking 60 days may be sufficient, while longer time periods may be needed for other purposes.*

*The consequences of giving informed consent must be communicated to the individual prior to affixing his or her signature. In particular, where the city is seeking an individual's private or confidential information (as opposed to releasing information) state law requires you to provide the following information: (1) the purpose and intended use of the requested data within the collecting government entity; (2) whether the individual may refuse or is legally required to supply the requested data; (3) any known consequence arising from*

supplying or refusing to supply private or confidential data; and (4) the identity of other persons or entities authorized by state or federal law to receive the data.

_____ Date: _____

(Signature of data subject)

_____ Date: _____

(Parent/Guardian's Signature, if needed)