

Minnesota Department of Veterans Affairs  
Affirmative Action Plan 2016-2018

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STATE OF MINNESOTA

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MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

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Affirmative Action Plan

August 2016 – August 2018

5101 Minnehaha Avenue South  
Minneapolis, Minnesota 55417-1699

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I. EXECUTIVE SUMMARY

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The following table reflects underutilization based on US Census data and does not incorporate other factors used in determining MDVA hiring goals for this plan cycle. MDVA's current workforce reveals underutilization of the following protected group(s) as of June 2016:

Table 1. Underutilization Analysis of Protected Groups

PROTECTED GROUPS			
Job Categories	Women	Racial/Ethnic Minorities	Persons with Disabilities
Officials/Administrators	xx	xx	
Professionals			
Technicians			xx
Office/Clerical / Paraprofessionals			xx
Skilled Craft	xx		
Service Maintenance			xx

Upon approval, information about how to obtain or view a copy of this plan will be provided to every employee of the Minnesota Department of Veterans Affairs (MDVA). Our intention is that every employee is aware of the MDVA's commitments to affirmative action and equal employment opportunity. The plan will also be posted on the agency's website and maintained in the agency Diversity and Equality Office and each human resource office location.

This Affirmative Action Plan meets the requirements as set forth by Minnesota Management and Budget, and contains affirmative action goals and timetables, as well as reasonable and sufficiently assertive hiring and retention methods for achieving these goals. This plan also contains internal procedures for processing complaints of alleged discrimination by employees, and each employee is apprised of this procedure.

*Margaret M. Klein*

Date: 7/11/16

Margaret M. Klein, Director of Diversity and Equality

*Carol Ann Lynch*

Date: 7/14/16

Carol Ann Lynch, Human Resources Director

*Larry W. Shellito*

Date: 7/14/16

Larry W. Shellito, Commissioner

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II. STATEMENT OF COMMITMENT

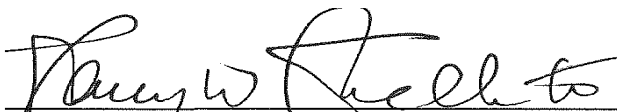
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It is my expectation that all of us here at the Minnesota Department of Veterans Affairs (MDVA) demonstrate our understanding, commitment and support to the following:

- No individual shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, sexual orientation, disability, marital status, status with regard to public assistance, or membership or activity in a local human rights commission.
- MDVA is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include, but are not limited to the following: hiring, promotion, demotion, transfer, recruitment, advertising, layoff, disciplinary action, termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.
- We will provide reasonable accommodation to employees and applicants with disabilities, residents of our Veteran Homes and members of the public accessing our programs, services, or events.
- MDVA will evaluate its efforts, including those of its directors, managers, and supervisors, in promoting equal opportunity and achieving affirmative action objectives contained herein. In addition, MDVA will expect all employees to perform their job duties in a manner that promotes equal opportunity for all.
- It is MDVA's policy to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve.
- The MDVA values the diversity of its workforce and strives to promote a work environment grounded in respect and appreciation for the individual differences of its employees. In addition, I confirm full support for the efforts of those I've appointed in the MDVA Diversity and Equality Office so MDVA may identify concerns and develop strategies to accomplish the goals of this plan.
- The Director of Diversity and Equality serves as this agency's Affirmative Action Officer, who oversees the agency ADA Coordinator, and reports to me. I have charged that position to provide agency-wide leadership and to manage the programs and services of the MDVA Office for Diversity and Equality.

I am committed to the implementation of the MDVA's Affirmative Action Plan. Our goal is to ensure that equal opportunity is provided on the basis of individual qualifications, to encourage all persons to strive for advancement, and to proactively support a work environment where all employees can thrive, free of discrimination and harassment.

I strongly encourage all MDVA employees to join me in reaching this goal while achieving our mission of serving Minnesota's Veterans and their families.



Larry W. Shellito, Commissioner

Date: 7/11/16

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### III. INDIVIDUALS RESPONSIBLE FOR DIRECTING/IMPLEMENTING THE AFFIRMATIVE ACTION PLAN

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#### **Commissioner**

Larry W. Shellito, Commissioner, Minnesota Department of Veterans Affairs

Responsibilities: The Commissioner is responsible for the establishment and implementation of an Affirmative Action Plan that complies with all federal and state laws and regulations.

Duties: The duties of the Commissioner include, but are not limited to, the following:

- Appoint an affirmative action officer who is a member of the agency leadership team, who will provide agency-wide leadership in the areas of diversity, equality, and inclusion. They will develop, implement and manage agency policy and procedures, serve as the agency Affirmative Action Officer and be accountable for the administration of the agency's Affirmative Action Plan;
- Ensure the Office for Diversity and Equality receives, investigates, and substantiates charges of discrimination and harassment. The Director of Diversity and Equality determines the best method to resolve charges whether by conducting an investigation, contracting with an external investigator, or conducting an alternative dispute resolution process;
- Ensure the Affirmative Action Plan is effectively communicated to all employees on an annual basis;
- Manage the Diversity and Equality program by making decisions and adjusting MDVA agency resources, policy, procedures, or accommodations as needed to facilitate effective affirmative action and equal employment opportunity;
- Actively promote equal opportunity employment and access to MDVA's programs and services; and
- Require agency Deputy Commissioners, Chief of Staff, Home Administrators, Directors, Managers, and Supervisors to include, and hold direct reports accountable to MDVA's responsibility statements that support affirmative action, equal opportunity, diversity, and/or cultural responsiveness in position descriptions, annual performance reviews and annual objectives;
- Provide sufficient support and resources to the Office of Diversity and Equality to provide agency level leadership to achieve MDVA's compliance with state and federal equal opportunity and nondiscrimination laws and regulations and for MDVA work environments to be free of bias and discrimination.

Accountability: The Commissioner is accountable directly to the Governor and indirectly to the Minnesota Management and Budget Commissioner on matters pertaining to equal opportunity and affirmative action.

#### **Deputy Commissioners and Chief of Staff**

Douglas Hughes, Deputy Commissioner of Veterans Health Care  
Brad Lindsay, Deputy Commissioner of Programs and Services  
Mike McEhliney, Chief of Staff

Responsibilities: Along with the Commissioner, Deputy Commissioners and Chief of Staff are responsible for carrying out the Commissioner's Affirmative Action Plan and for ensuring the agency complies with all federal and state laws and regulations.

Duties: The duties of the Deputy Commissioners and Chief of Staff include, but are not limited to, the following:

- Ensure directors, home administrators, managers, and supervisors are provided with clear expectations regarding their individual responsibilities in the areas of Equal Employment Opportunity and Affirmative Action and they are held accountable for their responsibilities;
- Ensure policies, procedures and practices are designed or changed as needed to remove barriers to ensure the success of this plan;
- Deputy Commissioners and Chief of Staff comply with the duties set forth below for Home Administrators, Directors, Managers, and supervisors.

Accountability: The Deputy Commissioners and Chief of Staff are accountable directly to the Commissioner.

### **Affirmative Action Officer**

Margaret Klein, Director of Diversity and Equality

Responsibilities: The Director of Diversity and Equality serves as the agency Affirmative Action Officer and is responsible for leadership and management of programs and services that encourage diversity, inclusion and equality across the MDVA, implementation of the agency's affirmative action and equal opportunity program, oversight of the agency's compliance with equal opportunity and affirmative action laws, and the diversity initiatives and the implementation of regulations at each MDVA work location.

Duties: The duties of the Director of Diversity and Equality, as Affirmative Action Officer, include the following:

- Provides agency level expertise in the areas of equal opportunity and non-discrimination laws, policies, and agency procedures in a complex environment to manage the MDVA's Diversity and Equality programs and services;
- Uses discretion to design, develop, implement, evaluate and adjust the MDVA's Diversity and Equality programs while understanding the unique needs and challenges of each MDVA site in Minnesota;
- Identify opportunities and design strategies for infusing a culture that values diversity and equality, equal opportunity, and affirmative action and develop initiatives to improve the agency's activities, programs, policies, and practices;
- Using qualitative and quantitative analysis and complex data and statistical analysis tools, analyze MDVA workforce data, develop the agency's Affirmative Action Plan, manage related programs and set agency-wide hiring goals;
- Inform the Commissioner of progress of the agency's implementation of the affirmative action plan and matters of equal opportunity and report potential concerns to the MDVA Commissioner;
- Review quarterly and annual progress towards reaching program and hiring goals, identify positive or concerning trends, and design strategies to adjust accordingly;
- Monitor MDVA compliance and fulfill all affirmative action reporting requirements;
- Oversee the monitoring of MDVA's Pre-Hire review process;
- Review the Affirmative Action Plan at least annually and provide revisions and updates as appropriate;



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- Serve as an active member of the Commissioners leadership team and provide an agency-wide perspective on issues relating to diversity, equality and inclusion while identifying and assisting in the design and implementation of effective solutions in problem areas related to affirmative action and equal employment opportunity;
- Identify agency needs, design and conduct training for MDVA and partner staff on equal opportunity and non-discrimination topics;
- Stay current on changes to equal opportunity and affirmative action laws and interpretation of the laws and communicate relevant changes as needed;
- Design, establish procedures and make decisions regarding policies, directives, and instructions to most effectively Manage internal and external statutory discrimination and harassment complaint procedures for the agency;
- Investigate alleged statutory discrimination complaints, identify issues, findings, conclusions, and make recommendations. Depending on the topic and location investigated, reports are presented to appropriate manager(s);
- Serve as the MDVA subject matter expert to provide consultation, technical guidance, and/or training for leadership, directors, supervisors, and staff regarding best practices and opportunities for improvement in areas such as recruitment, selection, retention, progress towards hiring goals, provision of reasonable accommodations, accessibility of agency services and programs and other non-discrimination and non-harassment laws;
- Advise MDVA management of the requirement to provide contract assurances of equal opportunity and non-discrimination to vendors, grantees, partners, and contractors;
- Identify and draft changes for incorporating affirmative action and equal opportunity into MDVA's policies and practices to ensure compliance with federal and state laws and regulations;
- Work closely with Human Resource staff to assist them in developing strategies to recruit individuals in protected groups for employment, promotion, and training opportunities;
- Serve as the agency liaison with Minnesota Management and Budget (MMB) regarding equal opportunity and non-discrimination employment laws and MMB's Office of Equal Opportunity and Diversity and;
- Serve as the MDVA agency contact with enforcement agencies such as E.E.O.C. and MDHR.

Accountability: The Director of Diversity and Equality is accountable directly to the Commissioner and will work closely with the Deputy Commissioners, Chief of Staff, Home Administrators, Managers and Supervisors and human resource staff on matters pertaining to affirmative action and equal opportunity.

**Americans with Disabilities Act Coordinator**

TBD, ADA Coordinator, within the MDVA Office for Diversity and Equality.

Responsibilities: The ADA Coordinator (AAO3) serves as the agency's Americans with Disabilities Act (ADA) Coordinator and is responsible for the oversight of the agency's compliance with the ADA Title I – Employment and Title II – Public Services, in accordance with the ADA- as amended, the Minnesota Human Rights Act, and Executive Order 96-09.

Duties: The duties of the ADA Coordinator include, but are not limited to, the following:

- Provide agency-wide guidance, coordination, and direction to agency management with regard to the Americans with Disabilities Act in the development and implementation of the agency's policy, procedures, practices, and programs to ensure they are accessible and nondiscriminatory;
- Provide consultation, technical guidance, and/or training to directors, managers, supervisors, and staff regarding best practices in recruitment, selection, and retention of Persons with disabilities, provisions of reasonable accommodations for employees and applicants, and other opportunities for improvement;
- Track and facilitate requests for reasonable accommodations for employees and applicants, as well as members of the public accessing the agency's services, and reports reasonable accommodations annually to Minnesota Management and Budget;
- Facilitate the interactive process to provide ADA reasonable accommodations for MDVA employees, applicants, Residents of Veteran Homes or members of the public accessing the agency's services; and
- Maintain organized records and communications to track reasonable accommodations and report reasonable accommodations provided annually to Minnesota Management and Budget.

Accountability: The MDVA ADA Coordinator reports to the Director of Diversity and Equality who reports directly to the Commissioner.

## **Human Resources Director**

Carol Ann Lynch, Human Resources Director

Responsibilities: The MDVA Human Resources Director is responsible for ensuring equitable and uniform administration of all personnel policies and procedures at each of the Veterans Homes and at Programs & Services work sites in accordance with the Affirmative Action Plan.

Duties: The duties of the MDVA Human Resources Director include, but are not limited to, the following:

- Provide leadership to human resources staff and others to identify and ensure personnel decision-making processes adhere to equal opportunity and affirmative action principles;
- Ensure education and training of supervisors in the development and utilization of selection criteria to be objective, uniform, and job-related;
- Initiate, and collaborate with the Director of Diversity and Equality, regarding specific program objectives that are conducted by human resource staff that may relate to initiatives, programs or services contained in the Affirmative Action Plan and ensure the Director of Diversity and Equality receives copies of related data and reports;
- Ensure the pre-hire review process is implemented in collaboration with the MDVA Office for Diversity and Equality and educate directors, managers, and supervisors so they may understand and participate in the process;
- Include the Director of Diversity and Equality in the decision-making process regarding personnel actions involving protected group members, including hiring, promotion, disciplinary actions, reallocation, transfer, termination, and department and division-wide classification studies;
- Include responsibility statements for supporting affirmative action, equal opportunity, diversity, and/or cultural responsiveness in all MDVA position descriptions and annual objectives;

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- Make available to the Director of Diversity and Equality, or designee, access privileges to human resource data systems and reports necessary to perform duties related to equal opportunity and affirmative action and to monitor programs under this plan;
- Assist in recruitment and retention of individuals in protected groups, and notify Supervisors, Home Administrators, Directors, and Managers of existing disparities;
- Maintain record systems that enable the analysis of all portions of the job selection process and make such records available to the Director of Diversity and Equality.

Accountability: The MDVA Human Resources Director is directly accountable to the Chief of Staff who is accountable to the Commissioner.

### **Home Administrators, Directors, Managers and Supervisors**

Responsibilities: Home Administrators, Directors, Managers, and Supervisors are responsible for administration and implementation of the Affirmative Action Plan at each of their respective Homes, work sites, or functional areas of responsibility.

Duties: The duties of Home Administrators, Directors, Managers, and Supervisors include, but are not limited to, the following:

- Serve as key leaders so MDVA reaches its goal of establishing a culture that values diversity, equality, and inclusion. Oversee the implementation of affirmative action and equal opportunity within designated areas of supervision and for compliance with the agency's affirmative action policies and programs.
- Communicate the MDVA's Affirmative Action Policy and forward the Affirmative Action Plan along with the Commissioner's written Statement of Commitment to assigned staff;
- Provide leadership to ensure the hiring practices follow established procedures as communicated by human resource staff, including the pre-hire review process, and that consultation with the Director of Diversity and Equality occur prior to selecting a candidate that may result in a missed opportunity for the agency;
- Ensure procedures in designated areas of responsibility comply with the Affirmative Action Plan with non-discrimination laws and with Equal Employment Opportunity policies and programs;
- Communicate and demonstrate to all employees in designated area of responsibility a personal commitment to MDVA's affirmative action and equal employment opportunity;
- Provide a respectful and inclusive work environment for all employees, and take appropriate timely steps toward resolving conflict situations in the work environment;
- Maintain consistent standards within the workforce to ensure employees are evaluated, recognized, developed, and rewarded on a fair and equitable basis;
- Discuss and document training needs and career planning goals for staff to reach a higher level of competency to support a diverse and inclusive workplace during scheduled performance evaluations;
- Select candidates for new positions or promotional opportunities on the basis of qualifications, training, experience, MDVA's affirmative action goals, and in accordance with MDVA's pre-hire review policies; and
- Refer complaints of discrimination and harassment to the Director of Diversity and Equality as soon as they are known.

Accountability: Home Administrators, Directors, Managers, and Supervisors are accountable to their designated manager, Deputy Commissioner, or Chief of Staff and indirectly to the Commissioner, or directly to the Commissioner.

## **MDVA Employees**

Responsibilities: All MDVA employees are responsible for conducting themselves in accordance with the agency's Affirmative Action Plan and equal opportunity policies and procedures. MDVA Veterans Homes employees are also responsible for conducting themselves in accordance with the Minnesota Veterans Home Code of Conduct.

Duties: The duties of all employees, regardless of classification or location, include, but are not limited to, the following:

- Exhibit an attitude of courtesy and cooperation toward all MDVA employees and treat all MDVA employees, Veterans and Veterans' family members, with professionalism, dignity, and respect;
- Create and maintain a work environment free from discrimination and harassment by refraining from any actions that would adversely affect the performance of a coworker with respect to their race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, or membership or activity in a local human rights commission; and
- Actively participate in promoting an inclusive workplace grounded in respect and appreciation for individual differences.

Accountability: Employees are directly accountable to their designated Supervisor and indirectly to the Commissioner.

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## **IV. COMMUNICATION OF THE AFFIRMATIVE ACTION PLAN**

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The following information describes the methods that the MDVA takes to communicate the Affirmative Action Plan to employees and the general public:

### **Internal Methods of Communication**

- A memorandum from the Commissioner detailing the location of the Affirmative Action Plan and the responsibility to read, understand, support, and implement equal opportunity and affirmative action is sent to all staff on an annual basis.
- The Affirmative Action Plan is available to all employees on the MDVA's internal website at <https://connect.mn.gov/sites/mdva/home>
- A print copy is available at the MDVA Office for Equity and Equality and each MDVA Human Resource Office. The Affirmative Action Plan may be posted in additional locations at each work facility at the discretion of the Home Administrator or Program Director. When requested, the agency will make the plan available in alternative formats.
- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented and accessible to employees.
- During orientation, or within the first 30 days of employment, new employees are informed of the Affirmative Action Plan and its location, and the name, telephone number and electronic mailing address of the Director of Diversity and Equality.

### **External Methods of Communication**

- The Affirmative Action Plan is available to all employees, employee applicants and members of the public on the agency's external website at <http://mn.gov/mdva/about/work-for-mdva.jsp>. A

print copy will also be made available at the MDVA Office for Diversity and Equality and at the MDVA Human Resources Offices. The agency will make the plan available in alternative formats upon request.

The agency's website, letterhead, publications, advertisements, and all job postings (other than those posted through MMB), include the statement:

"The Minnesota Department of Veterans Affairs is a Veteran-friendly, equal opportunity employer and service provider."

- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas accessible to members of the public. Examples of posters displayed include: Equal Employment Opportunity is the Law, Employee Rights under the Fair Labor Standards Act, and the Americans with Disabilities Act Notice to the Public.

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## V. POLICY PROHIBITING DISCRIMINATION AND HARASSMENT

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It is the policy of the State of Minnesota to prohibit harassment of its employees based on race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership, or activity in a local human rights, disability, sexual orientation, or age. This prohibition with respect to harassment includes both overt acts of harassment and those acts that create a negative work environment.

Any employee subjected to such harassment should file a complaint internally with the MDVA Office for Diversity and Equality. If the employee chooses, a complaint can be filed externally with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or through other legal channels. These agencies have time limits for filing complaints, so individuals should contact the agencies for more information. In extenuating circumstances, the employee should contact the statewide Director of ADA, Diversity and Inclusion within the Office of Equal Opportunity and Diversity at Minnesota Management and Budget for information regarding the filing of a complaint.

MDVA Employee Responsibilities.

Each employee is responsible for the application of this policy. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment, and compliance within the framework of this policy.

All employees must be informed that harassment is unacceptable behavior.

Any unintentional or deliberate violation of this policy by an employee will be cause for appropriate disciplinary action.

MDVA Office for Diversity and Equality responsibilities.

The MDVA Director of Diversity and Equality will be expected to keep the MDVA and its employees apprised of any changes in the law or its interpretation regarding this form of discrimination. The MDVA Director of Diversity and Equality is also responsible for:

- Notifying all employees and applicants of this policy; and
- Informing all employees of the complaint procedure and ensuring that all complaints will be investigated promptly and carefully.

Definitions:

Discriminatory harassment is any behavior based on protected class status which is not welcome, which is personally offensive, which, therefore, may affect morale and interfere with the employee's ability to perform. For example, harassment based on national origin has been defined by the U.S. Equal Employment Opportunity Commission as "Ethnic slurs and other verbal or physical conduct relating to an individual's national origin."

Sexual harassment has also been specifically defined by the Minnesota Human Rights Act, which states in regard to employment, that:

“Sexual harassment” includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment;
- Submission to or rejection of that conduct or communication by an individual is used as a factor in decision affecting that individual's employment; or
- That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

It is possible for discriminatory harassment to occur:

- Among peers or coworkers;
- Between managers and subordinates; or
- Between employees and members of the public.

Employees who experience discrimination or harassment should bring the matter to the attention of the MDVA's Office for Diversity and Equality. In fulfilling our obligation to maintain a positive and productive work environment, the Director of Diversity and Equality and all employees are expected to address or report any suspected harassment or retaliation.

Varying degrees of discriminatory harassment violations can occur and require varying levels of progressive discipline. Individuals who instigate harassment are subject to serious disciplinary actions up to and including suspension, demotion, transfer, or termination.

Additionally, inappropriate behaviors that do not rise to the level of discriminatory harassment, but are nonetheless disruptive, should be corrected early and firmly in the interests of maintaining a barrier-free workplace. Individuals who participate in inappropriate behaviors at work are also subject to disciplinary actions.

Any employee or applicant who believes that they have experienced discrimination or harassment based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint of discrimination.

Complaints of discrimination or harassment are filed using the MDVA internal complaint procedure.

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## VI. MDVA COMPLAINT PROCEDURES

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The MDVA has established the following discrimination/harassment complaint procedure to be used by persons who feel they have experienced discrimination or harassment by an MDVA employee. This procedure is followed for resolving complaints involving violations of the MDVA's non-discrimination and the state Sexual Harassment-Prohibited policies.

This policy and related procedure is made available on the MDVA internal SharePoint site. The agency will inform all employees that this non-discrimination policy can be made available in accessible formats.

### **Responsibility of All Employees:**

All employees will respond promptly to any and all requests by the Director of Diversity and Equality for information and for access to data and records for the purpose of enabling them to carry out their responsibilities.

### **Who May File:**

Any employee, applicant, or person seeking MDVA programs or services who believes they have been discriminated against or harassed by reason of race, color, creed, religion, national origin, sex, marital status, familial status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint. Employees who are terminated are encouraged to file their internal complaint prior to their actual separation; however, complaints will be taken for a reasonable period of time subsequent to the actual separation date.

- Supervisors and managers are responsible for taking affective action and immediately reporting all incidents of alleged sexual harassment to the MDVA Office for Diversity and Equality. The supervisor or manager will document all conversations with an employee or applicant who reports alleged sexual harassment incidents.
  - NOTE: Because the Supreme Court has found that, an employer is liable if the employer knew or should have known of sexual harassment and failed to take proper remedial action, the complaint form is not legally required.
  - NOTE: Even when an employee or applicant tells the employer not to take any action on alleged incidents of sexual harassment, the employer is required to take timely and appropriate action.

### **Complaint Procedure:**

The internal MDVA complaint procedure provides a method for resolving complaints involving violations of state or federal laws, or this MDVA's policies prohibiting discrimination and harassment. Employees and applicants are encouraged to use this internal complaint process. Any retaliation, including but not limited to, coercion, intimidation, harassment, or reprisal against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels is prohibited. This prohibition also extends to persons who serve as witnesses under this procedure. If needed, the MDVA Director of Diversity and Equality may consult with the Office for Diversity and Equal Opportunity at MMB.

### **Filing Procedures:**

1. The employee or applicant (hereafter referred to as the "charging party") may file a complaint with the MDVA Director of Diversity and Equality. Complaint forms are available on the MDVA internal SharePoint site, the external web site, MDVA Human Resources offices or from the Office of Diversity and Equality. The charging party may complete the form and submit it to the MDVA secure e-mail of [Diversity.MDVA@state.mn.us](mailto:Diversity.MDVA@state.mn.us) or may complete the form in person at the MDDVA Office for Diversity and Equality. Any employee filing a complaint may choose to include their union representative to assist them through the investigatory process. In these cases, findings that result from the investigation of a complaint are provided to both the employee and their union representative.
2. The charging party will review their allegations and concerns with the Director of Diversity and Equality. The Program Manager will also discuss the investigative process or alternative forms of dispute resolution with the charging party and will make the final determination as to how the complaint will be handled.
3. A charging party is encouraged to submit their written complaint in a timely manner because the passage of time can seriously impede the gathering of evidence. The Director of Diversity and Equality will determine if the complaint falls under anti-discrimination laws or Equal Employment Opportunity law, i.e., the complainant is alleging discrimination or harassment on the basis of race, color, creed,

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religion, national origin, sex, marital status, familial status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age.

4. If determined that the complaint is not related to discrimination or harassment based on protected class status, but is a workplace personnel concern, the Director of Diversity and Equality will, within ten days (10 calendar days), inform the charging party in writing and transfer the complaint to Human Resources for resolution.
5. If it appears the complaint is related to discrimination or harassment based on protected class status, the Director of Diversity and Equality will, within two weeks (14 calendar days), contact the charging party, and communicate the resolution process to be used such as investigation process or alternative dispute resolution.
6. If the charging party states that she/he is unable to function in the worksite from which the complaint arose, a preliminary investigation will be conducted within two (2) working days. If the preliminary investigation establishes a reasonable basis for the charging party's concern about continuing in the work situation, intervening action will be taken to defuse the situation. This action may include temporarily reassigning the charging party or the respondent until the complaint is fully investigated, there is a finding, and corrective action, if required, is implemented. If initial facts during the preliminary investigation indicate possible acts of physical contact or violence, the respondent should be placed on investigative leave.
7. The Director of Diversity and Equality will either investigate the complaint or contract an external party to conduct an investigation on MDVA's behalf. Based on the investigation findings, the Program Manager will determine if the complaint is substantiated and make recommendations for subsequent steps.

Within sixty (60) days, one of the following will occur:

- a. If an alternative dispute resolution process is used and results in an agreement between the charging party and the respondent, the agreement will be provided to the parties, in writing, within sixty (60) days after the complaint was filed. If an agreement is not reached, a written response will be provided to the charging party within sixty (60) days after the complaint was filed documenting the use of alternative dispute resolution procedures and providing additional resolution options such as investigation.
  - b. If an investigation is used to resolve the complaint, the Director of Diversity and Equality will notify the charging party and the respondent, within sixty (60) days after the complaint was filed, that the investigation is completed. If there is sufficient evidence to substantiate the complaint, appropriate action will be taken. If there is insufficient evidence and the complaint is not substantiated, a letter will be sent to the charging party and respondent, within sixty (60) days after the complaint was filed, dismissing the complaint.
  - c. If extenuating circumstances prevent completion of the investigation within sixty (60) days after the complaint was filed, the charging party will be notified.
8. Disposition of the complaint will be filed with the Commissioner of the Minnesota Management and Budget within 30 days following the final determination by the Director of Diversity and Equality.
  9. All documentation associated with a complaint shall be considered investigative data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the charging party and respondent. After an investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.
  10. All data collected may become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:
    - a. Interviews or written interrogatories with all parties involved in the complaint, i.e., complainants, respondents, and their respective witnesses; officials having pertinent records or files, etc.; and



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b. All records pertaining to the case i.e., written, recorded, electronic or in any other form.

11. The MDVA Office for Diversity and Equality shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

Table 2. Definitions:

Affirmative Action	Affirmative action means inclusion, not exclusion, or quotas.
Age	Refers to the prohibition against unfair employment practices based on age if the person is over the age of majority (18 years for employment).
Appointing Authority	A person or a group of persons empowered by the Constitution, statute, or executive order to employ persons in, or to make appointments to positions in the MDVA.
Charging Party	A person filing a charge alleging discrimination or harassment based on protected class status and pursuant to this policy.
Confidential, private, public and nonpublic data	Classification of data under the Minnesota Government Data Practices Act, Minn. Stat., §13. Classifications relate to information collected by the agency and who may see and request the information. (See AOP:Data Practices Management (AOP-A-01-003))
Disability	"Disability" means a person who has 1) has a physical or mental impairment, which substantially or materially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such impairment.
Discrimination (Statutory)	For purposes of this Affirmative Action Plan, discrimination is an act of segregating, separating, or treating an individual differently or unfairly based on an individual's protected class status. This type of discrimination is illegal in the employment environment. (See Protected Class Status)
Discriminatory Harassment (Statutory)	<p>Any unwelcomed behavior based on an individual's protected class that is personally offensive, and therefore may adversely affect morale and interfere with the employee's ability to perform his or her job responsibilities. Harassment based on protected class status is a type of discrimination and is illegal in the employment environment.</p> <p>Harassment can include, for example, offensive remarks about a person's protected class. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision.</p> <p>Harassment based on an individual's protected class may occur: 1) among peers or coworkers, 2) between managers and subordinates, or 3) between employees and members of the public.</p>

Diversity and Equality	A set of positive steps that employers use to promote equal employment opportunity and to eliminate discrimination. It includes expanded outreach, recruitment, mentoring, training, management development, and other programs designed to help employers hire, retain, and advance qualified workers from diverse backgrounds, including persons with disabilities.
Director of Diversity and Equality	The person designated by the Commissioner as having primary responsibility for developing, implementing, and maintaining the Agency's Affirmative Action Plan. The Director of Diversity and Equality shall report to the Commissioner regarding all administrative and policy issues.
General Harassment	Any unwelcomed, repeated behavior, which serves no legitimate business purpose and causes differential or unfair treatment or substantial emotional distress.  General harassment includes inappropriate verbal and/or physical behavior that is not based on a protected class status, but is abusive, offensive, insulting, or demeaning with the purpose or effect of interfering with an individual's employment or creating an intimidating, hostile, or offensive employment environment among employees.
Limited English Proficiency Plan	Limited English Proficiency Plan is required by federal law to ensure meaningful access to programs and services by those who are not proficient with the English language.
Protected Class Status	Status based on race, color, creed, religion, national origin, sex, marital status, familial status, status with regard to public assistance, activity or membership in a local human rights commission, disability, sexual orientation or age.
Respondent	A person against whom a complaint has been filed.
Retaliation	Includes, but is not limited to, any form of coercion, intimidation, harassment, or reprisal against a person who files a charge of discrimination or harassment, participates in an investigation, or opposes an unlawful employment practice.
Sex Discrimination	Discrimination that is based on a person's sexual orientation or sex. "Sex" includes, but is not limited to pregnancy, childbirth, or disabilities related to childbirth. Discrimination in payment of wages to women and men performing substantially equal work in the same establishment is also prohibited.

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## VII. REASONABLE ACCOMMODATION POLICY

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State agencies must comply with all state and federal laws that prohibit discrimination against qualified Persons with disabilities in all employment practices. All state agencies must provide reasonable accommodations to qualified applicants and employees with disabilities unless to do so would cause an undue hardship or pose a direct threat. Agencies must provide reasonable accommodation when:

- A qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- A qualified employee with a disability needs an accommodation to perform the essential functions of the employee's job; and

A qualified employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., trainings, office sponsored events).

### **Applicant**

A person who expresses interest in employment and satisfies the minimum requirements for application established by the job posting and job description.

### **Americans with Disabilities Act (ADA) Coordinator**

Each agency is required to appoint an ADA coordinator or designee, depending on agency size, to direct and coordinate agency compliance with Title I of the ADA.

### **Direct Threat**

A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.

### **Essential Functions**

Duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if:

- The job exists specifically to perform the function(s); or
- There are a limited number of other employees who could perform the function(s); or
- The function(s) is/are specialized and the individual is hired based on the employee's expertise.

### **Interactive Process**

A discussion between the employer and the individual with a disability to determine an effective reasonable accommodation for the individual with a disability. To be interactive, both sides must communicate and exchange information.

### **Individual with a Disability**

A person who:

- Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or
- Has a record or history of such impairment; or
- Is regarded as having such impairment.

### **Qualified Individual with a Disability**

A person who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires; and
- Can perform the essential functions of the position with or without reasonable accommodation.

## **Major Life Activities**

May 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.

Major life activities also include 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.

## **Medical Documentation**

Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what type of reasonable accommodation is needed when the disability or the need for accommodation is not obvious. Medical documentation can be requested using the standardized [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#).

## **Reasonable Accommodation**

An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include:

- Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or
- Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or
- Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment.

Modifications or adjustments may include, but are not limited to:

- Providing materials in alternative formats like large print or Braille;
- Providing assistive technology, including information technology and communications equipment, or specially designed furniture;
- Modifying work schedules or supervisory methods;
- Granting breaks or providing leave;
- Altering how or when job duties are performed;
- Removing and/or substituting a marginal function;
- Moving to a different office space;
- Providing telework;
- Making changes in workplace policies;
- Providing a reader or other staff assistant to enable employees to perform their job functions, where a reasonable accommodation cannot be provided by current staff;
- Removing an architectural barrier, including reconfiguring work spaces;
- Providing accessible parking; or
- Providing a reassignment to a vacant position.

## **Reassignment**

Reassignment to a vacant position for which an employee is qualified is a “last resort” form of a reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation, unless the employer can show that it will be an undue hardship.

## **Support Person**

Any person an individual with a disability identifies to help during the reasonable accommodation process in terms of filling out paperwork, attending meetings during the interactive process to take notes or ask clarifying questions, or to provide emotional support.

## **Undue Hardship**

A specific reasonable accommodation would require significant difficulty or expense. Undue hardship is always determined on a case-by-case basis considering factors that include the nature and cost of the accommodation requested and the impact of the accommodation on the operations of the agency. A state agency is not required to provide accommodations that would impose an undue hardship on the operation of the agency.

## **General Standards and Expectations**

### Individuals who may request a reasonable accommodation include

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified agency employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the agency must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

The agency must abide by the [Minnesota Government Data Practices Act, Chapter 13](#), in obtaining or sharing information related to accommodation requests.

### How to request a reasonable accommodation

An agency applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee’s chain of command;
- Agency Affirmative Action Officer/Designee;
- Agency ADA Coordinator;
- Agency Human Resources Office;
- Any agency official with whom the applicant has contact during the application, interview and/or selection process.

## **Timing of the request**

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any

communication in which an individual asks or states that he or she needs the agency to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

### **Form of the request**

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the agency that an accommodation is needed.

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."

Oral requests must be documented in writing to ensure efficient processing of requests.

The MDVA request forms can be found at:

<https://connect.mn.gov/sites/mdva/home>

["Employee/Applicant Request for Reasonable Accommodation Form"](#).

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required. Supervisors or managers should contact the MDVA ADA Coordinator to proceed.

When an employee needs the same reasonable accommodation on a repeated basis (e.g., the assistance of a sign language interpreter), a written request for accommodation is required the first time only. However, the employee requesting an accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the agency must make appropriate arrangements without requiring a request in advance of each occasion.

### **The interactive process entails**

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the agency to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process see the U.S. Department of Labor, Job Accommodation Network at <http://askjan.org/topics/interactive.htm>). This process is required when:

- The need for a reasonable accommodation is not obvious;
- The specific limitation, problem or barrier is unclear;
- An effective reasonable accommodation is not obvious;
- The parties are considering different forms of reasonable accommodation;
- The medical condition changes or fluctuates; or,
- There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the need for accommodation becomes known.

The process should ensure a full exchange of relevant information and communication between the individual and the agency. An individual may request that the agency ADA Coordinator, a union representative, or support person be present.

The MDVA ADA Coordinator shall be consulted when:

- Issues, conflicts or questions arise in the interactive process; and
- Prior to denying a request for accommodation.

### **MDVA responsibilities for processing the request**

As the first step in processing a request for reasonable accommodation, the person who receives the request must promptly forward the request to the MDVA ADA Coordinator. At the same time, the recipient will notify the requestor who the decision maker is.

#### Commissioner

The commissioner of the agency or agency head has the ultimate responsibility to ensure compliance with the ADA and this policy and appoint an ADA Coordinator.

#### ADA Coordinator

The agency ADA Coordinator is the MDVA's decision maker for reasonable accommodation requests for all types of requests outside of the supervisors' and managers' authority. The MDVA ADA Coordinator will work with the supervisor, the Diversity Program Manager and manager, and where necessary, with agency Human Resources to implement the approved reasonable accommodation.

#### Supervisors and Managers

MDVA ADA Coordinator makes determinations of reasonable accommodations for the agency. Unless an accommodation is determined an undue hardship, the ADA Coordinator will purchase and make arrangements for the provision of reasonable accommodations from the Office for Diversity and Equality budget.

### **Analysis for processing requests**

Before approving or denying a request for accommodation, the MDVA ADA Coordinator will:

1. Determine if the requestor is a qualified individual with a disability;
2. Determine if the accommodation is needed to:
  - a. Enable a qualified applicant with a disability to be considered for the position the individual desires;
  - b. Enable a qualified employee with a disability to perform the essential functions of the position; or
  - c. Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
3. Determine whether the requested accommodation is reasonable;
4. Determine whether there is a reasonable accommodation that will be effective for the requestor and the agency; and
5. Determine whether the reasonable accommodation will impose an undue hardship on the agency's operations.

An employee's accommodation preference is always seriously considered, but the MDVA is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation, or determines that accommodation would cause an undue hardship.

### **Obtaining medical documentation in connection with a request for reasonable accommodation**

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the agency will not seek further medical documentation.

If a requestor's disability and/or need for reasonable accommodation are not obvious or already known, the MDVA ADA Coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The MDVA ADA Coordinator may request medical information in certain other circumstances. For example when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation; or
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the MDVA ADA Coordinator must make the request and use the [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#). The agency ADA Coordinator must also obtain the requestor's completed and signed [Authorization for Release of Medical Information \(link to SharePoint form\)](#).

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner, or the agency may deny the reasonable accommodation request. The MDVA must not request medical records; medical records are not appropriate documentation and cannot be accepted. **Supervisors and managers *must not* request medical information or documentation from an applicant or employee seeking an accommodation.** Such a request will be made by the MDVA ADA Coordinator, if appropriate.

## **Confidentiality requirements**

### Medical Information

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only the MDVA ADA Coordinator or Director of Diversity and Equality. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by the agency ADA Coordinator or the Director of Diversity and Equality.

The MDVA ADA Coordinator may disclose medical information obtained in connection with the reasonable accommodation process to the following:

- Supervisors, managers or agency HR staff who have a business need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed, when appropriate, if the employee may require emergency treatment or assistance in an emergency evacuation;
- To consult with the State ADA Coordinator or Employment Law Counsel at MMB, or the Attorney General's Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources; or
- Government officials assigned to investigate agency compliance with the ADA.



Whenever medical information is appropriately disclosed as described above, the recipients of the information must comply with all confidentiality requirements.

#### Accommodation Information

The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation, such as the requestor's supervisor and the MDVA ADA Coordinator.

#### General Information

General summary information regarding an employee's or applicant's status as an individual with a disability may be collected by MDVA Office for Diversity and Equality as the agency equal opportunity officials to maintain records and evaluate and report on the agency's performance in hiring, retention, and processing reasonable accommodation requests.

#### **Approval of requests for reasonable accommodation**

As soon as the decision maker determines that a reasonable accommodation will be provided, the MDVA ADA Coordinator will process the request and provide the reasonable accommodation in as short of a timeframe as possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. If an approved accommodation cannot be provided within a reasonable time, the ADA Coordinator will inform the requestor of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the MDVA ADA Coordinator.

#### **Funding for reasonable accommodations**

Reasonable accommodations approved by the MDVA ADA Coordinator or Director of Diversity and Equality will be paid for through MDVA's Office for Diversity and Equality. If an accommodation request appears to pose an undue hardship, the ADA Coordinator will first consult with MMB as required by state policy.

#### **Procedures for reassignment as a reasonable accommodation**

Reassignment to a vacant position is an accommodation that must be considered if there are no effective reasonable accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other reasonable accommodations would impose an undue hardship.

The MDVA ADA Coordinator will work with agency Human Resources staff and the requestor to identify appropriate vacant positions within the agency for which the employee may be qualified and can perform the essential functions of the vacant position, with or without reasonable accommodation. Vacant positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, the agency will consider vacant lower level positions for which the individual is qualified. The EEOC recommends that the agency consider positions that are currently vacant or will becoming open within at least the next 60 days.

#### **Denial of requests for reasonable accommodation**

The MDVA ADA Coordinator must be contacted for assistance and guidance prior to denying any request for reasonable accommodation. The MDVA ADA Coordinator may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to the individual or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the agency ADA Coordinator; or

- Where no reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform all the essential functions of the job.

The explanation for denial must be provided to the requestor in writing. The explanation should be written in plain language and clearly state the specific reasons for denial. Where the decision maker has denied a specific requested accommodation, but has offered a different accommodation in its place, the decision letter should explain both the reasons for denying the accommodation requested and the reasons that the accommodation being offered will be effective.

### **Consideration of undue hardship**

An interactive process must occur prior to the agency making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the agency's ADA Coordinator. In determining whether granting a reasonable accommodation will cause an undue hardship, the agency considers factors such as the nature and cost of the accommodation in relationship to the size and resources of the agency and the impact the accommodation will have on the operations of the agency.

Agencies may deny reasonable accommodations based upon an undue hardship. Prior to denying reasonable accommodation requests due to lack of financial resources, the agency will consult with the State ADA Coordinator at MMB.

### **Determining direct threat**

The determination that an individual poses a "direct threat," (i.e., a significant risk of substantial harm to the health or safety of the individual or others) which cannot be eliminated or reduced by a reasonable accommodation, must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job with or without reasonable accommodation. A determination that an individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual's disability. Instead, the MDVA must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

### **Appeals process in the event of denial**

In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, the MDVA has designate at the Director of the Office for Diversity and Equality to handle an employee's appeal of a decision made by the MDVA ADA Coordinator. Employees also have the right to appeal a decision made by the MDVA Office for Director of Diversity and Equality to the MDVA Commissioner.

This process:

- Must include review by an agency official;
- May include review by the State ADA Coordinator; and/or
- Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights.

### **Information tracking and records retention**

Agencies must track reasonable accommodations requested and report once a year by September 1<sup>st</sup> to MMB the number and types of accommodations requested, approved, denied and other relevant information.

Agencies must retain reasonable accommodation documentation according to the agency's document retention schedule, but in all cases for at least one year from the date the record is made or the personnel action involved is taken, whichever occurs later. 29 C.F.R. § 1602.14.

The Minnesota Department of Veterans Affairs (MDVA) is committed to the fair and equal employment of Persons with disabilities. This policy, related procedures and forms are made available on the MDVA internal SharePoint site. The agency will inform all employees that this accommodation policy can be made available in accessible formats.

### **Supported Work:**

This agency will review vacant positions and assess the current workload and needs of the program to determine if job tasks might be performed by a supported employment worker(s). If appropriate, the agency will work with the ADA Coordinator and organizations that provide employment services to persons with disabilities to recruit and hire individuals for supported employment if such an opportunity exists.

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## **VIII. EVACUATION PROCEDURES FOR PERSONS WITH DISABILITIES**

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Each Veterans Home has a detailed evacuation plan that provides for the safe evacuation of both residents and staff. The plans detail the manner in which all residents and staff will be located and removed from the facility. The plans also address the evacuation of persons with physical, cognitive, visual, and hearing disabilities. The plans meet the standards identified by the American National Safety Institute and the Federal and State regulations for Long-term Healthcare Facilities.

Each Programs and Services building has an evacuation plan that provides for the safe evacuation of both customers and employees. The plans detail the manner in which all customers and employees will be located and removed from the building and also address the evacuation of persons with physical, cognitive, visual, and hearing disabilities.

Copies of each Veterans Home's evacuation plan and each Programs and Services building's plan are on file both electronically and in hard copy format at their respective locations.

Knowledge and preparation by both individuals needing assistance and those who do not is key to reducing the impact of emergencies. When developing a plan, safety needs should be determined on a case-by-case basis because it varies with each individual

MDVA's ADA Coordinator and Safety Administrator will work to develop a plan and consult with the appropriate building and safety personnel. Directors, managers, and supervisors should review emergency evacuation procedures with staff. In addition, every employee has a responsibility to develop their own personal emergency evacuation plan; this includes persons with disabilities or individuals who will need assistance during evacuation.

Although self-disclosure of a disability is strictly voluntary, individuals are encouraged to self-disclose and to provide information about any special assistance they may require. By providing this information to designated staff with emergency coordination responsibilities, persons with disabilities will help facilitate safe evacuation procedures in the event of an actual emergency situation. Individuals needing evacuation assistance or persons with disabilities should contact the agency representatives below to request the type of assistance they may need.

Mark Paulson  
MDVA Safety Administrator  
5101 Minnehaha Ave. S, Bldg 10  
Minneapolis, MN 55417

612-548-5960  
TBD  
MDVA ADA Coordinator  
5101 Minnehaha Ave. S, Bldg 10

### **Evacuation Options for Persons with Disabilities:**

Persons with disabilities have five evacuation options (Note: Not all of the options may vary based on location, building structure, and type of equipment available for an evacuation):

1. Horizontal evacuation: Using building exits to the outside ground level or going into unaffected wings of multi-building complexes;
2. Stairway evacuation: Using steps to reach ground level exits from building;
3. Shelter in place: Unless danger is imminent, remain in a room with an exterior window, a telephone, and a solid or fire resistant door. If the individual requiring special evacuation assistance remains in place, they should dial 911 immediately and report their location to emergency services, who will in turn relay that information to on-site responders. The shelter in place approach may be more appropriate for sprinkler-protected buildings where an area of refuge is not nearby or available. It may be more appropriate for an individual who is alone when the alarm sounds;
4. Area of rescue assistance: Identified areas that can be used as a means of egress for persons with disabilities. These areas, located on floors above or below the building's exits, can be used by persons with disabilities until rescue can be facilitated by emergency responders; and/or
5. For buildings equipped with an evacuation chair: Evacuation chairs or a lightweight solution to descending stairways can be used and generally require single user operation. If the building is equipped with an evacuation chair, best practice indicates that all employees are trained and have practiced evacuating using an evacuation chair.

### **General Evacuation Procedures for Persons with Disabilities:**

- A "buddy system" may be established to assist individuals who may need assistance and involves individuals working in teams so they can locate and assist each other in an emergency. The individual with a disability should identify two or more persons who would be available to provide assistance. The "buddies" will be trained by the employee as soon as they are recruited. A trained "buddy" is responsible for providing the appropriate level of assistance in an emergency.
- To assist in determining the appropriate level of assistance in an emergency, the individual with a disability will be asked what type of help they require before attempting any assistance.
- The individual with a disability will also be asked if there are any special considerations or if there are any special items that need to stay with them. Assistive aids should not be separated from the person.
- Extra time should be taken to communicate with people who are deaf, hearing impaired, or speech impaired.
- Staff with emergency responsibilities should be cognizant that a disabled person's equipment may not be working after an emergency occurs, or may have limited effectiveness in an emergency situation. This may alter the level of assistance required.
- Service animals may be temporarily confused in an emergency and may not be able to provide the level of assistance they would normally be able to, necessitating a greater level of assistance from emergency staff.

## **Specific Evacuation Procedures for Persons with Disabilities:**

### Visual Disabilities

- The agency's buildings utilize audible warnings, flashing strobes and an emergency paging system for notification during an evacuation. The audible warnings and emergency paging system will alert individuals who are blind or visually impaired of the need to evacuate.
- Verbal instructions will be given on the safest exit routes using estimated distances and directional terms.
- Tactile signage, where required, will be installed on doors to assist the blind or visually impaired in evacuating the building.
- Persons with visual disabilities will be asked if they would like assistance exiting, particularly if there is debris or other people along the exit route, which would make the route difficult to navigate.
- Other verbal instructions pertinent to the emergency will be provided as necessary based on the specific situation (e.g., elevators cannot be used).

### Hearing Disabilities

- The agency's buildings utilize audible warnings, flashing strobes and an emergency paging system for notification during an evacuation. The strobe lights will alert individuals who are deaf or hearing impaired of the need to evacuate.
- Touch and eye contact will be used to get the attention of an individual who has a hearing disability. The nature of the emergency will be clearly stated. Gestures and pointing, or written direction, will be provided if needed to ensure understanding.
- Visual instruction will be provided to advise the person of the appropriate exit routes, either by pointing towards exits or facility evacuation maps.

### Mobility Disabilities

- If an individual using a wheelchair cannot evacuate, the individual should be accompanied by an employee to an Area of Rescue Assistance or Shelter in Place when an alarm sounds. Safety and/or Security staff will respond to each rescue area or shelter to identify for safety personnel or emergency responders how many individuals need assistance to safely evacuate.
- Persons with mobility devices, but who are able to walk independently, may be able to climb or descend stairs in an emergency with minor assistance. If danger is imminent, the individual should wait until the heavy traffic has cleared before attempting the stairs. If there is no immediate danger (i.e., detectable smoke, fire, unusual odors, etc.), the individual with a mobility disability may choose to wait in or be directed to an Area of Rescue Assistance until safety personnel or emergency responders arrive to provide assistance.

### Cognitive Disabilities

- Persons with cognitive impairments may not have the ability to recognize, understand, and respond correctly to alarm systems. Clear and concise direction will be provided by a "buddy," coworker, or supervisor during an emergency to follow the appropriate exit route, exits the building, and stay in designated assembly area.

**Severe Weather Evacuation Options:**

Persons with disabilities or who are in need of assistance during an evacuation have three evacuation options based on their location in their building:

1. Horizontal evacuation: If located on the ground or basement floor, severe weather shelter areas are located throughout each floor;
2. Elevator evacuation: If there are no safe areas above the ground floor, the elevator may be used to evacuate to the ground or basement levels; and/or
3. Shelter in Place: Seeking shelter in a designated severe weather shelter and remaining there until the all clear is used.

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**IX. GOALS AND TIMETABLES**

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The MDVA’s utilization analysis was conducted using 2010 Minnesota Statewide Labor Force Availability census data. After categories in which underutilizations for women, minorities, and persons with disabilities within the agency were identified, additional data factors were considered. These include potential retirements, percentages of protected class employees reflected in turnover data, and anticipated addition of new positions in the agency. From this analysis, hiring goals were set for the next two years. Several factors were weighed to determine reasonable hiring goals and timeframes. The first step was to consider the number of vacancies that could reasonably be expected based on expressions of interest from employees who intend to separate from the MDVA within two years and based on the frequency with which vacancies in certain job categories generally become available. The MDVA hired for approximately 406 positions during fiscal years 2014 and 2015. Another factor was anticipated department expansion and growth.

MDVA’s hiring goals are optimistic and attempts will be made to meet these goals depending on availability and opportunity to hire. The below table provides a numerical representation of this information.

Table 3 - Underutilization Analysis and Hiring Goals for 2016-2018

Job Categories	UNDERUTILIZATION – # OF INDIVIDUALS			HIRING GOALS FOR 2016-2018		
	Women	Racial/Ethnic Minorities	Persons with Disabilities	Women	Racial/Ethnic Minorities	Persons with Disabilities
Officials/Administrators	1	2	0	1	1	0
Professionals	0	0	0	0	0	0
Technicians	0	0	10	0	0	6
Office Clerical, Para-professionals	0	0	13	0	0	7
Skilled Craft	1	0	0	1	0	0
Service Maintenance	0	0	8	0	0	4

**Availability:**

For this 2016-2018 plan as submitted, the MDVA has used statewide data. Early in this plan cycle, MDVA will work to refine the hiring and separations analysis by the local labor markets for each MDVA location. Plan goals and strategies will be applied to recruitment areas to be the 13 county metro area for its St. Paul, Minneapolis and Hastings locations and a 35-mile radius for its Luverne, Silver Bay, and Fergus Falls locations. The agency is experiencing significant hiring and retention challenges primarily in service maintenance and para-professional health care positions at its veteran homes. Local labor market data will help to evaluate agency hiring and recruitment strategies to improve persons with disabilities, women and minorities in the applicant pool. Through this plan period we will be watching for hiring trends using county availability data for each location in greater Minnesota.

In conducting the underutilization analysis, the two-factor analysis was used to better evaluate and establish goals that are more accurate because the agency uses both internal and external sources for hiring employees into a job group.

The two-factor analysis first uses the percentages of females, minorities, and persons with disabilities who were promoted, transferred, or moved within the agency. The second factor then looks at the percentages of women, minorities, and persons with disabilities who possess the requisite skills.

Underutilization Analysis worksheets are attached in the appendix. Numbers less than 10 are indicated with “<10” in accordance with Minnesota Management and Budget’s guidance on data privacy.

Officials & Administrators:

The Department of Veteran Affairs wishes to increase its numbers of women, minorities and persons with disabilities in the agency. At this time, MDVA is underutilized in both minorities and women within Officials and Administrators. Since the 2014-2016 Affirmative Action Plan the agency did not improve in this area. This is a small number of the MDVA employee base, approximately 1.6% of the overall workforce. MDVA will utilize the new executive statewide recruiter when openings occur in this category. Although the US Census indicates availability for 2 minority persons, a hiring goal of 1 has been set to help the agency incrementally move the agency forward. The MDVA will invite employees to update their race and disability status information, particularly where individuals are now able to identify with more than one race. (Note: previously, a bi-racial person may have only identified themselves as white but now have the option to identify as multi-racial.)

Professionals:

The Department of Veteran Affairs wishes to increase its numbers of women, minorities and persons with disabilities in the agency. MDVA is not underutilized for women, minorities nor persons with disabilities in this employment category. MDVA is pleased to be fully meeting and exceeding its goals with this group.

Technicians:

The Department of Veteran Affairs wishes to increase its numbers of women, minorities and persons with disabilities in the agency. The MDVA has improved since the 2014-2016 plan cycle. MDVA remains underutilized by 10 persons with disabilities in this category. Previous Affirmative Action Plans determined the availability for persons with disabilities to be 11%. Since the last plan the percentage of availability has moved to 7% to better reflect Minnesota’s labor market availability. (Note: for the 2016-2018 AAP the Para-professional category was moved from being grouped with Technicians to be included with Office Clerical in order to align with US Census data and federal EEO4 categories. For MDVA, this is a change of 517 people.) To bring the agency incrementally forward towards meeting the goal for persons with disabilities, the agency has set a hiring goal of 6.

Office Clerical / Para-professional:

The Department of Veteran Affairs wishes to increase its numbers of women, minorities and persons with disabilities in the agency. At this time, the MDVA has reached availability for women and minorities and is underutilized for persons with disabilities by 13. Over this past plan cycle, the MDVA hired 19 persons (4.6%)

persons with disabilities. Through the 2016-2018 plan cycle, the agency will focus attention on the recruitment and retention of persons with disabilities to not only hire at 7% or greater but to bring our current employee base to the 7% as recommended by the Governors Executive Order 14-14 by the year 2018. Acknowledging that MDVA is unlikely to achieve this goal over one plan cycle, the MDVA has set a hiring goal for this category of 7 in this plan; 50% of that needed to move towards a more representative workforce.

Skilled Craft:

The Department of Veteran Affairs wishes to increase its numbers of women, minorities and persons with disabilities in the agency. At this time, the MDVA has met availability for minorities and persons with disabilities in this category and is underutilized for women. In the 2014-2016 plan cycle, the agency also underutilized for women. Recruitment continues to be a challenge for this small group of employees within MDVA. As vacancies arise, attention to recruitment sources and applicant pools will be the focus to improve in this area. To reach availability the MDVA has set a goal of 1 woman for this category.

Service Maintenance:

The Department of Veteran Affairs wishes to increase its numbers of women, minorities and persons with disabilities in the agency. At this time, the MDVA has maintained utilization for women and minorities, and remains underutilized for persons with disabilities. Over 25% of MDVA's total hires were in this job category. With this hiring volume anticipated to remain the same, a full hiring goal of 8 appears attainable. To reach this goal, MDVA will reach out to utilize the new executive statewide recruiter for this category. The MDVA will invite employees to update their race and disability status information, particularly where individuals are now able to change their disability status and identify with more than one race.

**Activities and Strategies**

The following is designed to expand upon programs and services of the MDVA to further this agency's commitment to the principles and spirit of affirmative action. Objectives and Action Steps are organized under four main categories:

1. Recruiting, Hiring, and Retaining
2. Compliance
3. Training
4. Outreach and Community Partnerships

Objective #1: Bring MDVA Recruitment, hiring goals, and retention into alignment.

Action Steps:

- A. Work collaboratively on statewide efforts to improve the affirmative action hiring process.
- B. Identify underutilization of employees in the EEO4 categories that reflect the labor market from which qualified women, minorities and people with disabilities are reasonably available. Local labor market is considered to be a 35 mile radius of each MDVA Veteran Home in greater Minnesota. St. Paul, Minneapolis, and Hastings will be calculated using the 13 county metro area.
- C. Develop quarterly reports for MDVA managers that presents the hiring and turnover trends of women, minorities, and people with disabilities in their area of responsibility. Partner with managers to develop focused recruitment strategies to improve the number of qualified women, minorities, and persons with disabilities in the applicant pool and monitor progress through each step of the hiring process.
- D. Collaborate with MDVA human resource staff to educate supervisors and all human resource directors regarding the pre-hire review process and the agency's obligations to be affirmative in hiring decisions. This includes educating supervisors regarding the MDVA Human Resources



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procedures for posting positions, preparing interview questions and scoring interview candidates, using the pre-hire review process with justifications and approvals when hiring non-affirmatively, promoting, and consulting with the Director of Diversity and Equality when demoting, disciplining, and otherwise adjusting the employment status for persons of protected groups. This also includes assisting supervisors to identify and address workplace culture concerns and removal of process barriers that may inhibit protected group members from seeking or succeeding in employment with this agency.

- E. Collaborate with human resource staff to pursue targeted recruitment opportunities at job and career fairs held for minorities and persons with disabilities.

- F. Additional Recruitment Activities:

To assist in MDVA's outreach efforts the agency developed a brochure that showcases the agency's commitment to equal opportunity and reflects the agency's diverse workforce. The MDVA will actively seek funding grants for agency employee educational development opportunities.

The MDVA will form an internal working group to shape and promote an agency effort to use internship opportunities as a method of increasing diversity in its applicant pools. Because this is a new expansion effort, specific strategies and goals are yet undefined.

Responsibility: Director of Diversity and Equality, MDVA Human Resources Director, MDVA Managers

Evaluation: During the 2014-2016 plan years, MDVA participated in a very limited number of recruitment events that focused on employment for minorities, people with disabilities or women. Following the Monitoring the Hiring Process (MHP) during FY2014-FY2016 was difficult because of turnover in the agency Affirmative Action Officer role. During the 2016-2018 plan years there will be a renewed focus to educate managers and supervisors about the Pre-hire Review and MDVA will improve its practices with this process.

The agency has recognized a need to place a greater focus on this objective. To assist in this and other tasks, an additional position is being added in the Office for Diversity and Equality.

Objective #2: Improve compliance with State and Federal Laws and Regulations regarding affirmative action and equal employment opportunity.

Action Steps:

- A. Continue to evaluate and revise all affirmative action and equal employment opportunity policies, and procedures, including reformatting materials to meet the Minnesota State Accessibility Standards.
- B. Continue to evaluate and revise MDVA's Discrimination/Sexual Harassment Complaint resolution Procedures to utilize alternative dispute resolution. Design organization development strategies to reduce turnover rates and to further develop a culture that values diversity, inclusion, and equality.
- C. Co-facilitate the process to develop an MDVA IT Accessibility policy and an implementation plan to become compliant with the Minnesota State Accessibility Standards.
- D. Continue to submit timely and accurate compliance reports to MMB.
- E. In collaboration with the leadership team, research approaches to improve the work culture and identify methods to evaluate climate at each MDVA location. Work with area managers and leadership to address findings. Pursue increased workplace interventions that proactively address identified needs and reduce affirmative action complaints and turnover rates.

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- F. Continue to audit for compliance and train managers, supervisors, and staff on affirmative action and equal employment opportunity compliance issues including section 504 and 508 of the Rehabilitation Act, the Minnesota State Accessibility Standards, and Americans with Disabilities Act Titles I, II, and III.
- G. Collaborate with MDVA leadership to develop a Limited English Proficiency Plan and a related implementation strategy for agency-wide use.

Responsibility: Director of Diversity and Equality, ADA Coordinator, and MDVA Human Resources Director

Evaluation: The MDVA is currently completing some restructuring to position itself better for the future. In early 2016, MDVA appointed a Chief of Staff to align services of central offices to unify and better support agency-wide initiatives. The addition of this leadership position will be helpful as the Office for Diversity and Equality frequently requires agency-wide support to reach its objectives. MDVA has recently confirmed a new Deputy Commissioner for Veterans Health Care. Thirdly, the MDVA recognized the need to strengthen the level of staffing in the Office for Diversity and Equality sufficiently to address the frequent turnover in this important leadership position. Through these staffing decisions, the MDVA will be better positioned to achieve agency compliance requirements and the strategies set forth in this plan. The MDVA continues to strive for compliance through self-evaluation and diversity programs through the 2016-2018 AAP years.

Objective #3: Increase affirmative action and diversity training to foster a respectful and inclusive workplace.

Action Steps:

- A. Using updated trend data from the state SEMA4 system, employee surveys and results of audits conducted by the Office for Diversity and Equality, training opportunities are identify or design that address the particular needs of each MDVA work location. Plans are developed to conduct biennial training for managers, supervisors, and staff focused on diversity, respect and inclusion in the workplace, sexual harassment, conflict resolution, cultural competence, and diverse workforce management.
- B. Identify key leaders in each division unit to champion affirmative action, equal employment opportunity Minnesota State Accessibility Standards, and Americans with Disabilities Act (ADA) initiatives.
- C. Required training will be designed and available on-line, presented at staff development events and at new employee orientations.
- D. Trends in discrimination and harassment complaints are analyzed and applicable training or interventions to address concerns are presented.

Responsibility: Director of Diversity and Equality and ADA Coordinator

Evaluation: This objective was in the agency's 2014-2016 AAP and, due to turnover in the AAO role, was not achieved. MDVA believes this objective and its related action steps are important to carry forward into the next plan cycle. Affirmative action and diversity training did not increase as significantly as desired, biennial training for all managers, supervisors and staff was not completed. These, along with the Action Step to develop on-line training modules that may be used as part of unit training curriculums is moved to these next plan years and will be accomplished through a partnered approach with human resource staff.

Objective #4: Increase Outreach and Community Partnerships to ensure a highly qualified, diverse workforce.

Action Steps:

- A. Regularly attend Alliance for Cooperation and Collaboration in Employment and State Service (ACCESS) meetings.

- B. Partner with other state agencies to develop social media and on-line recruitment strategies to reach increased numbers of qualified women, minorities and people with disabilities. Partner with other agency Affirmative Action Officers to showcase diversity initiatives at the MDVA to designate this agency as an employer of choice.
- C. Explore an arrangement with the Department of Employment and Economic Development / Vocational Rehabilitation Services (VRS) to encourage applicants with disabilities and shape a process where VRS assisted referrals are guaranteed an interview.
- D. Expand relationships with local education institutions, community employment organizations, and sister agencies such as DEED. These activities will include a number of internal and external strategies such as:
  - I. MDVA's Veteran homes have similar recruitment and retention difficulties as other long term healthcare facilities. In recent years MDVA has shaped two new career path opportunities. The agency will begin to use the Resident Assistant classification for persons performing nursing assistance but who have not yet received their certification. Another is titled Veteran Care Specialist. This classification provides a career step between Certified Nursing Assistants (HST's) and Licensed Practical Nurses (LPN). While these steps are critical to developing internal career paths and pipelines of diverse staff to our agency, we also recognize these approaches require Registered Nurses (RN's) who can provide critical oversight for these clinical training experiences.
  - II. The MDVA Deputy Commissioner for Healthcare is establishing connections with St. Catherine's University and University of Minnesota to become a site providing clinical experiences for Registered Nurses, Occupational Therapists, Physical Therapists, and Nutritionists. Each of these connections are being made with an intended outcome of expanding the agency's recruitment and retention of minorities, persons with disabilities, and women.
  - III. When the nursing staff are expanded sufficient to oversee the clinical experiences of persons moving through our internal career tracks, the MDVA intends to formalize partnerships being discussed with Summit Academy, Rasmussen, Hennepin County Technical College and MCTC. The MDVA Office for Diversity and Equality, Human Resources, and agency healthcare management will partner to recruit persons from diverse community groups to these programs.
  - IV. The MDVA Veteran home in Silver Bay is exploring similar relationships with education programs in the state's northeast. In addition, the Silver Bay Veteran home is exploring an internal education program to train Resident Assistants, Human Service Technician (CNA's) and Veteran Care Specialists.
  - V. At each of the 5 Veteran homes across Minnesota, the agency is exploring expansion of Open Houses and internal job fairs. MDVA would invite people to attend via local community organizations, news media, and through the state web site. MDVA's Silver Bay and Minneapolis Veteran Homes developed a model where information about our jobs was presented, applicants gained assistance making application to our jobs, people received on-site interviews, and many were hired that same day. The MDVA is looking at duplicating this model at our other Veteran homes in Fergus Falls, and Luverne.
  - VI. MDVA recruiters will have a strong presence at the Minnesota state Fair, the Minnesota State Recruitment Fair, and at additional numerous local and state-wide recruitment efforts.

A few that will be upcoming in the 2016-2018 plan years include: South Metro Job Fair, Bloomington Job Fair, Hennepin County Nursing Job Fair, St. Paul Public Housing Career Fair, International Institute of Minnesota, Guadeloupe Alternative Program Career Fair and are discussing an expansion into communities through county fairs across Minnesota.

- E. Continue to support the MDVA's internship and student worker opportunities with emphasis on students from protected groups to encourage future employment with the MDVA. Model the value of this strategy by creating a student internship within the Office for Diversity and Equality to expand capacity for the training and recruitment objectives outlined in this plan
- F. Collaborate with the Deputy Commissioner for Healthcare, MDVA Home Administrators and MDVA human resource offices to participate in career fairs and community events that demonstrate the MDVA's commitment to diversity recruitment and hiring.
- G. Continue to seek outreach opportunities for the MDVA such as presentations to Minnesota state councils and diverse community organizations.
- H. Establish new and strengthen existing networking opportunities with post-secondary educational institutions who train students in occupations where MDVA has hiring goals.

Responsibility: Director of Diversity and Equality and MDVA Human Resources

Evaluation: The number of these Action Steps have been recognized as critical strategies and discussed over the past few years. MDVA retains these important action steps with some modifications to make them more applicable to current program needs. Progress will be evaluated and tracked by the Office for Diversity and Equality.

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## X. METHODS OF AUDITING, EVALUATING, AND REPORTING PROGRAM SUCCESS

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### **Pre-Employment Review Procedure/Monitoring the Hiring Process**

The MDVA will evaluate its position descriptions, job postings and selection process to determine if its requirements unnecessarily screen out a disproportionate number of women, minorities, or people with disabilities. The agency will use the Monitoring the Hiring form to track the number of women, minorities, and persons with disabilities in each state of the selection process. Directors, managers, and supervisors will closely work with human resources and the Diversity and Equality staff when assistance is needed to review qualifications of applicants, recruiting, interviewing and selection procedures to ensure objective criteria are established for determining candidates to interview and hire and equal opportunity and affirmative action principles are adhered to.

1. The Director of Diversity and Equality will provide quarterly status updates to agency managers and Human Resources staff on the progress of the MDVA's hiring goals and identified areas of underutilization.
2. When a position vacancy exists, the hiring manager will collaborate with Human Resources staff to ensure essential function in position descriptions and determine preferred qualifications. The hiring manager, Human Resources staff, and the Office for Diversity and Equality may collaborate with supervisors to ensure the selection does not unnecessarily screen out a disproportionate number of women, minorities, or persons with disabilities.
3. The position vacancy will be posted in accordance with collective bargaining agreement provisions.
4. If a position vacancy is to be announced externally and an underutilization exists, supervisors will be asked to expand recruitment strategies to create a more diverse applicant pool. Human Resources staff will affirmatively recruit for the position and will determine whether the applicant

pool contains protected group candidates who may qualify in reaching hiring goals where an underutilization exists.

5. Human Resources staff will refer candidates who meet the minimum qualifications as defined in the vacancy announcement to the hiring manager. If an affirmative hiring goal exists for a position in an EEO4 category, the human resource staff member will let the hiring supervisor know which candidates to consider when selecting applicants to interview.
6. If the number of candidates referred by Human Resources to the hiring manager is large and needs to be narrowed to a more reasonable number of candidates to be interviewed, the hiring manager will rank the candidates based upon the preferred qualifications as defined in the vacancy announcement. Hiring supervisors may use one or multiple selection criteria as long as they are applied consistently across all applicants.
7. When candidates are offered interviews, the employee scheduling the interviews will describe the interview format to the candidates and provide an invitation to request reasonable accommodations for individuals who may have a disability. For example, the employee scheduling the interviews may inform the candidates if skills testing will be conducted or what technology may be used during the interview process. This allows for persons with disabilities to determine if they may need a reasonable accommodation in advance of the interview. If reasonable accommodations to the hiring process are needed, the hiring supervisor will consult with the MDVA ADA Coordinator.
8. MDVA hiring supervisors, managers, and human resource staff will complete the Monitoring the Hiring Process (MHP form for each person hired by MDVA. In those cases where the candidate considered for hire is a non-affirmative hire, and if a hiring goal exists for that position, the supervisor will also complete the Pre-hire Review Process. The Pre-hire Review includes a Justification Form to be completed by the hiring supervisor. This form is reviewed for approval by their manager and submitted to the Office for Diversity and Equality. A review of the form and related attachments will occur within 24-48 hours of them being submitted. Approval must be obtained before a verbal offer may be extended. Attachments to the Pre-hire form include: resumes for the desired candidate and persons from protected class groups, interview questions/answers, and the job posting. If the Pre-hire request is approved, the Director of Diversity and Equality will forward their written approval to the hiring manager to continue the process. If the request is not approved, the Director of Diversity and Equality will contact the hiring supervisor to achieve resolution. The resolution will be forwarded to human resource staff to continue the hiring process. At any time the MDVA cannot justify a hire, the agency takes a missed opportunity. The agency will report the number of affirmative and non-affirmative hires as well as missed opportunities to MMB on a quarterly basis.
9. Human Resources staff will complete the MDVA Monitoring the Hiring Process Form for all positions filled and submit it electronically to [Diversity.MDVA@state.mn.us](mailto:Diversity.MDVA@state.mn.us) within 1 (one) week of the position offer being made.
10. All personnel involved in the selection process will be trained and accountable for the agency's commitment to equal opportunity and the affirmative action program and its implementation.

### **Pre-Review Procedure for Layoff Decisions**

The Appointing Authority may layoff an employee by reason of abolition of the position, shortage of work or funds, or other reasons outside the employee's control, not reflecting discredit of the service of the employee. The MDVA will follow the layoff procedures specified in the applicable bargaining unit agreements. Prior to implementation, all layoff decisions will be reviewed by the Deputy Commissioner of the area in which the layoffs are occurring, the Human Resources Director and the Director of Diversity and Equality to assess the effects on the MDVA's affirmative action goals and timetables.

### Other Methods of Program Evaluation

The Director of Diversity and Equality submits the following compliance reports to Minnesota Management and Budget as part of the efforts to evaluate the agency's affirmative action program:

- Quarterly Monitoring the Hiring Process Reports;
- Biennial Affirmative Action Plan;
- Annual Americans with Disabilities Act Report;
- Annual Internal Complaint Report; and
- Disposition of Internal Complaint (within 30 days of final disposition).

The Director of Diversity and Equality will evaluate the affirmative action plan progress in the following ways:

- Update the MDVA commissioner regarding progress reached towards diversity, inclusion or equality initiatives, progress and outcomes;
- Update the MDVA Commissioner regarding stated goals bi-annually;
- Monitor progress toward stated affirmative hiring goals by job category and update Deputy Commissioners, Chief of Staff, Home Administrators and others as needed on a quarterly basis;
- Periodically analyze employment activity (hires, promotions, and separations) by job category to determine if there is adverse impact;
- Periodically audit the accessibility of online systems, websites, and ensures that reasonable accommodations can be easily requested; and
- Brief agency leadership on progress toward affirmative action goals and other affirmative action and equal employment opportunity issues on a quarterly basis. Discuss initiatives and make recommendations for improvement.

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## XI. RECRUITMENT PLAN

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The objective of the MDVA's recruitment plan is to recruit and hire a qualified workforce that is representative of Minnesota's diversity. To meet this objective, the agency's recruitment programs will be marketed to: (1) attract and obtain qualified applicants, (2) enhance the image of state employment, and (3) assist in meeting the agency's established affirmative action goals.

The following are various recruitment methods or strategies utilized by the agency during the past year and plans for the upcoming plan years 2016-2018.

### Advertising Sources

#### Websites:

State of Minnesota – <http://mn.gov/mmb/careers>  
Minnesota Works – <https://www.minnesotaworks.net>  
Career Builder Recruitment – <http://www.careerbuilder.com>  
Smart Recruiters – <https://www.smartrecruiters.com>  
LinkedIn – <http://www.linkedin.com/jobs>  
Wounded Warriors - <http://www.woundedwarriorproject.org>  
Hispanic Job Board – <http://www.ihispano.com>  
African American Job Board – <http://blackcarenetwork.com>  
MDVA - <http://mn.gov/mdva/about/work-for-mdva.jsp>  
Indeed – <http://www.indeed.com>  
Simply Hired – <http://www.simplyhired.com>

Newspapers:

Minneapolis Star & Tribune  
St. Paul Pioneer Press  
City Pages  
Hastings Gazette  
Luverne Announcer  
Rock County Star Herald  
Pipestone County Star  
Worthington Daily Globe  
Duluth News Tribune  
North Shore Journal  
Two Harbors Chronicle

Email:

List of Diversity Organizations from State Recruiter at MMB

The advertising sources used by the MDVA have been effective in attracting diverse candidates as indicated by the agency's Monitoring the Hiring Reports and Workforce Summary reports. Strengthening the numbers of more qualified applicants is one strategy to improve retention of women, minorities and persons with disabilities. A greater overall effort is needed in the recruitment of people with disabilities. The MDVA will identify additional recruitment sources for people with disabilities by working with the Program Specialist with Vocational Rehabilitation Services at DEED and community organizations representing people with disabilities.

**Job and Community Fairs**

MLK Diversity Career Fair, Minneapolis Convention Center, 2014, 2015, 2016  
Healthcare On-Site Hiring Event, St. Paul Workforce Center, 2016  
Military Job Fair – Hiring Our Heroes, Excel Energy Center, 2016  
ADA 25<sup>th</sup> Anniversary Expo and Career Fair, Ramsey County Convention Center, 2015  
Minnesota Veterans Career Fair, Earle Brown Center, 2015  
Minneapolis Workforce Center Job Fair, Hennepin County Workforce Center, 2015  
South Metro Placement Partnership Disability Career Fair, 2014  
Minneapolis Community Interagency Committee Transition Job Fair for Individuals with Disabilities, 2014  
Minnesota Veterans Career Fair, Earle Brown Center, 2015, 2016  
5th Annual Northland Job Fair, Duluth, 2014,  
Government Job & Internship Fair, Coffman Union, 2014  
Detroit Lakes Veterans Career Fair, 2013

The MDVA will utilize more targeted recruitment strategies when deciding which job and community fairs to attend in 2016-2018. The agency will put additional emphasis on fairs targeting protected group members in the agency's job categories where an underutilization exists.

**College and University Recruitment Events**

North Minneapolis Job Fair at Hennepin Technical College, 2014  
Hennepin Technical College Diversity Career Fair, 2014  
St. Thomas Multicultural Fair, St. Thomas University, 2014

The MDVA will utilize more targeted recruitment strategies when deciding which college and recruitment events to attend in 2016-2018. The agency will put additional emphasis on fairs targeting protected group members in the agency's job categories where an underutilization exists.

## Recruitment for Persons with Disabilities

The MDVA has attended job fairs targeting persons with disabilities and will continue this type of targeted recruitment in the upcoming plan years. The agency will also continue to work directly with DEED's Vocational Rehabilitation Services in recruiting and hiring persons with disabilities. Notification of Minnesota's Disabled Veterans Preference laws and the MDVA's commitment to hiring disabled Veterans is posted on the agency's website. In addition to these methods, the MDVA will utilize the following strategies:

1. Review job postings and position descriptions to eliminate barriers for persons with disabilities
  - a. The MDVA human resource staff will review job postings for physical, mental, and sensory requirements and determine if the qualifications for the position are job-related and consistent with business necessity. The agency will also review position descriptions and determine if tasks pose unnecessary barriers for persons with disabilities. The agency human resource staff person will edit job postings, adjust listed minimum and preferred qualifications, and language within position descriptions to remove any unintended bias or barriers and to reflect inclusive language for job qualifications and tasks. The Director of Diversity and Equality will provide technical advice and consult with supervisors or human resource staff as needed.
2. Self-Identification
  - a. During training sessions and once a year via email notification, the MDVA will communicate to employees that the agency collects summary data related to the number of persons with disabilities who are in our workforce. The agency will inform employees that this data is collected to make determinations and decisions about where the agency needs to improve in terms of recruitment, selection, and retention of persons with disabilities. For MDVA applicants, the agency will notify applicants of the ability to self-identify at the time of application.
3. Supported Employment (M.S. 43A.191, Subd. 2(d))
  - a. The MDVA supports the employment of persons with disabilities and will review vacant positions to determine if job tasks can be performed by supported employment workers. The agency will work with community organizations that provide employment services to persons with disabilities to recruit for these positions.
4. Connect 700 Program
  - a. The MDVA, where possible, will utilize the 700-hour program, which allows the agency to employ an individual with a disability and provide them up to 700 hours of time to demonstrate their qualifications. At the point the candidate with a disability demonstrates they are qualified, they will be notified that their formal probation period begins.
5. Minnesota State Accessibility Standards
  - a. The MDVA will develop a policy and implementation plan to become in compliance with the Minnesota State Accessibility Standards. As part of this initiative, MDVA staff will distribute informational material and resources to create accessible electronic documents and systems. MDVA strives towards a culture where employees and customers of the agency with disabilities can equally contribute to the workforce and are able to access information and resources as readily as their non-disabled counterparts.
  - b. Employees will be informed that written materials and documents will be provided in alternative formats upon request.
6. Reasonable Accommodations
  - a. The MDVA will prominently display on its website that reasonable accommodations will be provided to qualified persons with a disability who apply for positions with this agency. Once hired, the agency will educate employees, supervisors, and managers on accommodating



employees in the workplace through orientation and training sessions, posted notices, periodic email notifications, and informational posters and presentations.

7. Strategic Partnerships

- a. The MDVA will continue to build strategic partnerships with DEED - Vocational Rehabilitation Services (“VRS”), DEED - State Services for the Blind (“SSB”), Minnesota’s Workforce Centers and other state agency partners to conduct job evaluations and to assist in recruitment or referral of candidates to open positions. The agency will work to inform VRS or SSB when a position is posted. Additionally, the agency will normally post positions for at least 7 days to ensure equal opportunity. However, in positions that attract large numbers of applicants, positions may be posted for less than seven days. The agency will also renew partnerships with the Minnesota Community Advisors on Recruitment and Retention Solutions (MnCARRS) and the Minnesota Department of Human Services (DHS) to build recruiting relationships and increase networking opportunities with educational institutions and community organizations dedicated to serving Persons with disabilities.

8. Self-Analysis

- a. The MDVA Office for Diversity and Equality will conduct periodic audits to ensure agency’s systems and documents are accessible, language in job postings are inclusive, supervisors are trained on how to understand reasonable accommodations, and reasonable accommodations have been provided when there is no undue hardship for the agency.

9. Reporting

- a. The MDVA will conduct a quarterly analysis of the number of persons with disabilities who have applied for positions and the number of persons with disabilities hired.

**Relationship Building and Outreach**

The MDVA will be proactive reaching out to Diversity Managers at other state agencies to leverage combined resources to more readily achieve our objectives. A wealth of knowledge exists amongst ACCESS group colleagues and many innovative strategies are underway.

**Internships**

In FY2016-FY2018 the MDVA will explore establishing internship opportunities with area post-secondary education institutions in areas where vacancies are likely to occur. Initial planning in this area had begun during FY2014-FY2016 but were placed on a temporary hold. This activity is expected to resume in plan years 2016-2018.

**Supported Employment (M.S. 43A.191, Subd. 2(d))**

The MDVA supports the employment of persons with disabilities and will review vacant positions to determine if job tasks can be performed by a supported employment workers.

**Additional Recruitment Activities**

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XII. RETENTION PLAN

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The MDVA is committed to not just the recruitment of women, minorities, and persons with disabilities, but also to the retention of these protected groups

**Individual(s) Responsible for the Agency’s Retention Program/Activities**

The Human Resources Directors and the Director of Diversity and Equality have the overall authority or oversight of the agency’s retention programs and activities.

**Carol Ann Lynch, Human Resources Director**

Phone: 651-757-1577

Email: [carol.lynch@state.mn.us](mailto:carol.lynch@state.mn.us)

**Deb Allen, Human Resources Director**

Phone: 651-757-1596

Email: [deb.allen@state.mn.us](mailto:deb.allen@state.mn.us)

**Margaret Klein, Director of Diversity and Equality**

Phone: 612-548-5961

Email: [margaret.klein@state.mn.us](mailto:margaret.klein@state.mn.us)

**Separation Analysis by Protected Groups**

In the combined years of FY2014-2016, the MDVA had a total of 529 separations.

The reasons for separation and the corresponding number and percentage of employees were as follows:

Resignation - 364 (68.81%)  
Dismissal or Non-Certification - 109 (20.6%)  
Retirement - 51 (9.64 %)  
Death - 4 (0.76%)  
Lay-off - 1 (0.19%)

The 529 separations were from EEO-4 job categories as follows:

Officials and Administrators: 4  
Professionals: 82  
Technicians: 80  
Office Clerical, Paraprofessionals: 267  
Skilled Craft: 4  
Service Maintenance: 92

The 529 separations were from protected groups as follows:

Women: 383 (72.4%)  
Ethnic Minority: 135 (25.52%)  
Persons with Disabilities: 19 (3.59%)

Taking each of the two plan years separately:

**Women:**

The agency's population of women has reduced slightly to an overall 64%, a drop of 6% since the FY2014-FY2016 plan. This is partly due to a greater percentage of women resigning or being non-certified than the number of women being hired. There were 272 resignations and 77 (28.3%) women who were non-certified from their positions.

MDVA will monitor hiring patterns of women because of the high turnover rate for this group that reflect resignations, non-certifications, and retirements. Separation data will be monitored quarterly to note if the trend of increasing numbers of resignations and non-certifications continues to reduce the overall percentage of women in the agency.

**Minorities:**

The MDVA is proud to be a very diverse agency where 286 (22.2%) of its current workforce are ethnic minorities. During the 2014-2016 plan years, 45.9% of persons who were non-certified and 22.8% of those who resigned were minorities. At the same time, 41.3% of new hires were ethnic minorities, with a combined 25.2% minorities separating employment. Given this turnover data in combination with anticipated hiring, hiring goals

for minorities have been set for the following EEO4 categories: Officials and Administrators, Office Clerical / Para-professional, and Skilled Craft. To meet its 2016-2018 goals MDVA will design intervention strategies to address potential work environment concerns brought forward to the agency. MDVA will also focus recruitment, hiring and on-boarding efforts to attract and retain qualified minorities in all categories.

**Persons with Disabilities:**

There are 74 (5.8%) of all employees, with disabilities employed by MDVA. The agency has 1.4% less than the goal of 7% directed by the Governor's Executive Order for state agencies. To reach this goal, MDVA has set a hiring goal to equal an additional 21 employees with disabilities. To meet its 2016-2018 goals, the agency is implementing additional outreach and recruiting efforts to attract qualified persons with disabilities to increase the availability of underutilized group members in the initial interview pool. In addition, MDVA will provide focused training for supervisors and human resource staff to ensure position descriptions reflect essential functions of the position and that preferred qualifications are appropriate to the job duties so as to not create barriers for qualified applicants to be considered.

In FY2014, the MDVA had a total of 264 separations.

The reasons for separation and the corresponding number and percentage of employees break down as follows:

- Resignation - 158 (66.86%)
- Dismissal or Non-Certification - 53 (22.36%)
- Retirement - 22 (9.3%)
- Death - 3 (1.26%)
- Layoff - 1 (.4%)

The 237 separations were from EEO-4 job categories as follows:

- Officials and Administrators: 4
- Professionals: 37
- Technicians: 34
- Office/Clerical / para-professional: 115
- Skilled Craft: 46
- Service Maintenance: 1

The 237 separations were from protected groups as follows:

- Women: 171 (72.15%)
- Ethnic Minority: 56 (23.63%)
- Persons with disabilities: 11 (4.64%)

In FY2015, the MDVA had a total of 292 separations.

The reasons for separation and the corresponding number and percentage of employees break down as follows:

- Resignation – 206 (70.5%)
- Dismissal or Non-Certification - 56 (19.18%)
- Retirement - 29 (9.9%)
- Death - 1 (.3%)
- Layoff - 0 (0%)

The 292 separations were from EEO-4 job categories as follows:

- Officials and Administrators: 0
- Professionals: 45
- Technicians: 46

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Office/Clerical / para-professional: 152  
Skilled Craft: 3  
Service Maintenance: 46

The 292 separations were from protected groups as follows:

Women: 212 (72.60%)  
Ethnic Minority: 79 (27.05%)  
Persons with Disabilities: 8 (2.74%)

**Evaluation:**

In contrast to separations noted in the 2014 AAP report, data from FYY2014-FY2016 presents a different picture. Women represent 69% of MDVA's workforce but 72.4% of those who left the agency were women. Similarly, we see a slightly higher rate of ethnic minorities leaving MDVA's workforce (25.52%) than the overall percentage of ethnic minorities that comprise MDVA's workforce (23.03%). MDVA's current workforce has 5.75% employees who have disabilities. While the separation rate was not statistically significant, it is higher than MDVA would like where the Governor's Executive Order sets a goal of 7% of the workforce to be people with disabilities. Most of the MDVA's separations consisted of resignations, dismissals and non-certifications.

**Methods of Retention of Protected Groups**

To increase retention of a highly qualified, diverse workforce to fulfill the MDVA's mission to serve Minnesota's Veterans and their families:

1. The MDVA will continue to promote and maintain a respectful and inclusive workplace environment by providing affirmative action, equal employment opportunity, diversity, and MDVA Code of Conduct training to employees.
2. The MDVA will continue the use of alternative dispute resolution to resolve employee conflicts, encourage effective communications, and help reestablish positive working relationships. The agency will also increase training opportunities for managers and supervisors on how to manage and resolve employee conflicts before they escalate to a higher level, and promote the use of the Employee Assistance Program (EAP) as another tool to address workplace disputes.
3. The Director of Diversity and Equality, Human Resources and Scheduling will collaborate on methods to increase the availability of religious accommodations to better meet the religious needs of the agency's diverse workforce.
4. The MDVA will continue to promote cultural understanding through guest speakers, ethnic observance presentations, community event notifications and other activities featuring women, minorities, and Persons with disabilities.
5. The Director of Diversity and Equality will collaborate with the MDVA's Quality Council and others in analyzing the annual Employee Satisfaction Survey and in developing initiatives to improve employee satisfaction and workforce retention. These initiatives may include improved employee communications, wellness programs, employee professional development opportunities, multiculturalism, and employee recognition strategies.
6. The Director of Diversity and Equality will work with human resource staff to analyze the overlap between ADA reasonable accommodations and employee's leave from work under the Family Medical Leave Act (FMLA) to evaluate if improved coordination might enable employees to be more productive and reduce employees' needs for FMLA.

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XIII. APPENDIX A

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**Complaint of Discrimination/Harassment Form**  
**Minnesota Department of Veterans Affairs**  
**Complaint Form**



**Please Read Before Completion of Form**

Any complaint of discrimination/harassment is considered confidential data under Minnesota Statute 13.39, Subd. 1 and 2. This information is being collected for the purpose of determining whether discrimination/harassment has occurred. You are not legally required to provide this information, but without it, an investigation cannot be conducted. This information may only be released to the MDVA Office for Diversity and Equality. The complainant, the respondent and those with a business need to know.

**Information about the individual filing the complaint (complainant)**

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Department Supervisor: \_\_\_\_\_

Work Telephone: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Email Address :( if desired as a means of confidential communication)

\_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Respondent (Individual Who Discriminated Against Harassed You)**

Respondent's Name: \_\_\_\_\_

Respondent's Job Title: \_\_\_\_\_

Respondent's Work Address: \_\_\_\_\_

\_\_\_\_\_

Respondent's Telephone: \_\_\_\_\_

Respondent's Supervisor: \_\_\_\_\_

The Complaint: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Basis of Complaint (Place and "X" next to all that apply):

Race:	Disability:	Sexual Orientation:
Sex:	Marital Status:	Status with Regard to
Public Assistance:	Age:	National Origin:
Color:	Creed:	Religion:

Membership or Activity in a Local Human Rights Commission:

Date most recent act of discrimination/ harassment took place:

If you filed this complaint with another agency, give the name of that agency:

Describe how you believe that you have been discriminated/harassed against (names, dates, places, etc.). Use a separate sheet of paper if needed and attach to this form:

List any potential witness (es):

1. Name: \_\_\_\_\_  
Work Location: \_\_\_\_\_  
Work Phone: \_\_\_\_\_
2. Name: \_\_\_\_\_  
Work Location: \_\_\_\_\_  
Work Phone: \_\_\_\_\_
3. Name: \_\_\_\_\_  
Work Location: \_\_\_\_\_  
Work Phone: \_\_\_\_\_
4. Name: \_\_\_\_\_  
Work Location: \_\_\_\_\_  
Work Phone: \_\_\_\_\_
5. Name: \_\_\_\_\_  
Work Location: \_\_\_\_\_  
Work Phone: \_\_\_\_\_

List any supporting physical evidence (documents, emails, etc.):

What resolution are you seeking?

Mediation/Facilitated Conversation is a voluntary process where individuals involved in a conflict meet with a neutral, third-party person in an informal, yet structured setting in order to resolve the conflict in a respectful and productive manner. Would you be interested in participating in a facilitated conversation in order to resolve this matter? Yes or No

If you have any questions or concerns about the process, please indicate them below:

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This complaint is being filed based on my belief that I have been discriminated against or harassed. I hereby certify that the information I have provided relative to my complaint is true, correct, and complete to the best of my knowledge and belief.

I understand that if it is found that this complaint has been filed for other than legitimate reasons, it may be considered to be a falsification of records and may subject me to disciplinary action.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**\*\*Submit this form to\*\***

MN Dept. of Veterans Affairs Office for Diversity and Equality  
5101 Minnehaha Ave. S., Bldg. 10  
Minneapolis, MN 55417  
Confidential Fax: (651) 797-1781  
Email: [diversity.mdva@state.mn.us](mailto:diversity.mdva@state.mn.us)

*\*\*This form is available in alternative formats for Persons with disabilities by calling (612)548-5961 or through your Preferred Relay Service. \*\**

XIV. Appendix B

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## ADA Reasonable Accommodation Request Form

The State of Minnesota and the Minnesota Department of Veterans Affairs (MDVA) are committed to complying with the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act ("MHRA"). To be eligible for an ADA accommodation, you must be 1) qualified to perform the essential functions of your position and 2) have a disability that substantially limits a major life activity or function. The MDVA ADA Coordinator will review each request on an individualized case-by-case basis to determine whether an accommodation can be made.

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Please submit this completed form to the MDVA Office for Diversity & Equality:

**By mail or in person:** MDVA Office for Diversity & Equality, 5101 Minnehaha Ave. S., Bldg 10, Minneapolis, MN 55417

**By email:** [diversity.mdva@state.mn.us](mailto:diversity.mdva@state.mn.us)

**By confidential Fax:** (651) 797-1781

\*\*This information is confidential and will only be shared with appropriate personnel to consider the implementation of a reasonable accommodation. Questions? Please call (612) 548-5961.

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### Employee Information

Employee Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Home Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Work Location: \_\_\_\_\_

Work Phone: \_\_\_\_\_

Home or Cell Phone: \_\_\_\_\_

Email (If Private, for communication): \_\_\_\_\_

**Data Privacy Statement:** This information may be used by your agency Human Resources representative, ADA Coordinator/Designee, your agency legal counsel or any other person who is authorized by your agency to receive medical information for purposes of providing reasonable accommodations under the ADA and MHRA may use this information. This information is necessary to determine whether you have a disability as defined by the ADA or MHRA, and to determine whether any reasonable accommodation can be made. The provision of this information is strictly voluntary; however, if you refuse to provide it, your agency may refuse to provide



reasonable accommodation.

### **Questions to clarify accommodation requested.**

1. Please describe the nature of your physical or mental impairment(s):
2. What specific accommodation are you requesting?
3. If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore? If yes, please explain.

### **Questions to document the reason for the accommodation request.**

*(Please attach additional pages as necessary).*

1. What, if any, job function are you having difficulty performing?
2. What, if any, employment benefit are you having difficulty accessing?
3. What limitation as result of your physical or mental impairment is interfering with your ability to perform your job or access an employment benefit?
4. How will your requested accommodation(s) be effective in allowing you to perform the functions of your job?

### **Information Pertaining to Medical Documentation**

In the context of assessing an accommodation request, medical documentation may be needed to determine if the employee has a disability covered by the ADA and to assist in identifying an effective accommodation.

The ADA Coordinator in each agency is tasked with collecting necessary medical documentation. In the event that medical documentation is needed, the employee will be provided with the appropriate forms to submit to their medical provider. The employee has the responsibility to ensure that the medical provider follows through on requests for **medical** information.

**Genetic Information Nondiscrimination Act of 2008 Disclosure:** This authorization does not cover, and the information to be disclosed should not contain, genetic information. **“Genetic Information”** includes: Information about an individual’s genetic tests; information about genetic tests of an individual’s family members; information about the manifestation of a disease or disorder in an individual’s family members (family medical history); an individual’s request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; and genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

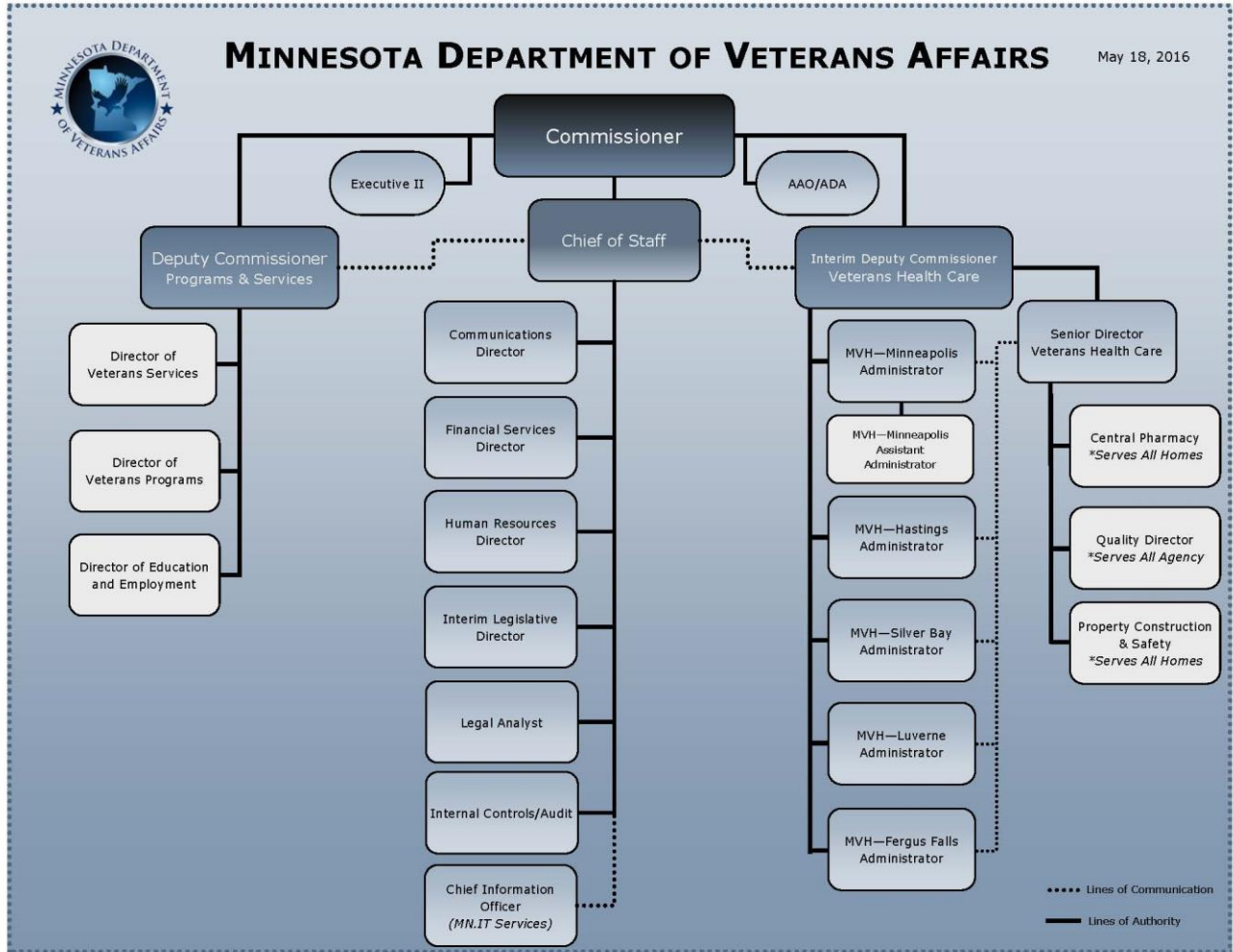
Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*\*\*This form is available in alternative formats for individuals with disabilities by calling (612)548-5916 or through your Preferred Relay Service. \*\**

XV. Appendix C

Agency Profile and Organizational Chart



XVI. Appendix D

**Underutilization Analysis Worksheets**

Table 4. Underutilization Chart: Women

Women	Total	Total Women	Percent Women	Census Percent	Census Underutilization	2016-2018 MDVA Underutilization	2014-2016 MDVA underutilization	Improved or Not Improved
Officials & Administrators	21	<10	43%	48%	10.07	<10	0	False
Professionals	302	217	73%	4.4%	132.9	0	0	Same
Technicians	150	125	83%	57%	85.18	0	--	--
Office Clerical / Para-professional	492	375	76%	63%	311.43	0	0	Same
Skill Craft	26	<10	4%	6%	1.58	<10	--	--
Service Maintenance	298	169	57%	44%	130.52	0	0	Same

Table 5. Underutilization Chart: Minorities

Minority	Total	Total Minorities	Percent Minorities	Census Percent	Census Underutilization	MDVA Underutilization	2014-2016 MDVA underutilization	Improved or Not Improved
Officials & Administrators	21	0	0	9%	1.9236	<10	--	--
Professional	302	36	12%	9%	27.66	0	--	--
Technicians	150	43	29%	11%	15.9	0	--	--
Office Clerical / Para-professional	492	140	28%	10%	48.4128	0	--	--
Skilled Craft	26	<10	8%	6%	1.47	0	0	Same
Service Maintenance	298	65	22%	16%	46.79	0	--	--

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Table 6. Underutilization Chart: Disabilities

Disability	Total	Total Disability	Percent Disability	Census Percent	Census Underutilization	MDVA Underutilization	2014-2016 MDVA underutilization	Improved or Not Improved
Officials & Administrators	21	<10	38%	7%	1.47	0	0	Same
Professional	302	27	9%	7%	21.14	0	0	Same
Technicians	150	<10	.01%	7%	10.5	10	33	True
Office Clerical / Para-professional	492	22	4%	7%	34.44	12	0	False
Skilled Craft	26	<10	12%	7%	1.82	0	--	--
Service Maintenance	298	13	4%	7%	20.86	8	--	--

XVII. Appendix E

**Separation Analysis by Protected Groups Worksheets**

Table 7. MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as total separations

TOTAL SEPARATIONS								
Types of Separation	Total	Total Percent	Total Women	Percent Women	Total Minorities	Percent Minorities	Total persons w/Disabilities	Percent persons w/Disabilities
Dismissal or Non-Certification	109	77	20.60%	70.64%	50	45.87%	<10	3.67%
Resignations	364	272	68.81%	74.73%	83	22.80%	11	3.02%
Retirement	51	33	9.64%	64.71%	<10	1.96%	<10	7.84%
Deaths	<10	0	0.76%	0.00%	<10	25.00%	0	0.00%
Lay-off	<10	<10	0.19%	100.00%	0	0.00%	0	0.00%
Total Separations	529	383	100.00%	72.40%	135	25.52%	19	3.59%

Table 8: MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as officials/administrators

OFFICIALS/ADMINISTRATORS								
Types of Separation	Total	Total Percent	Total Women	Percent Women	Total Minorities	Percent Minorities	Total persons w/Disabilities	Percent persons w/ Disabilities
Dismissal or Non-Certification	0	0	0.00%	0.00%	0	0.00%	0	0.00%
Resignations	<10	<10	100.00%	25.00%	0	0.00%	<10	25.00%
Retirement	0	0	0.00%	0.00%	0	0.00%	0	0.00%
Deaths	0	0	0.00%	0.00%	0	0.00%	0	0.00%
Lay-off	0	0	0.00%	0.00%	0	0.00%	0	0.00%
Total Separations	<10	<10	100.00%	25.00%	0	0.00%	<10	25.00%

Table 9: MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as professionals

PROFESSIONALS								
Types of Separation	Total	Total Percent	Total Women	Percent Women	Total Minorities	Percent Minorities	Total persons w/Disabilities	Percent persons w/ Disabilities
Dismissal or Non-Certification	13	15.85%	<10	69.23%	<10	15.38%	<10	23.08%
Resignations	49	59.76%	34	69.39%	<10	18.37%	<10	8.16%
Retirement	19	23.17%	13	68.42%	0	0.00%	<10	5.26%
Deaths	<10	1.22%	0	0.00%	0	0.00%	0	0.00%
Lay-off	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total Separations	82	100.00%	56	68.29%	11	13.41%	<10	9.76%

Table 10: MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as office/clerical/paraprofessionals

OFFICE/CLERICAL / PARAPROFESSIONALS								
Types of Separation	Total	Total Percent	Total Women	Percent Women	Total Minorities	Percent Minorities	Total persons w/Disabilities	Percent persons w/ Disabilities
Dismissal or Non-Certification	71	26.59%	53	74.65%	37	52.11%	0	0.00%
Resignations	183	68.54%	143	78.14%	51	27.87%	<10	2.73%
Retirement	13	4.87%	<10	61.54%	0	0.00%	<10	7.69%
Deaths	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Lay-off	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total Separations	267	100.00%	204	76.40%	88	32.96%	<10	2.25%

Table 11: MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as technicians

TECHNICIANS								
Types of Separation	Total	Total Percent	Total Women	Percent Women	Total Minorities	Percent Minorities	Total persons w/Disabilities	Percent persons w/ Disabilities
Dismissal or Non-Certification	12	15.00%	10	83.33%	<10	41.67%	<10	8.33%
Resignations	65	81.25%	52	80.00%	11	16.92%	0	0.00%
Retirement	<10	2.50%	<10	50.00%	0	0.00%	0	0.00%
Deaths	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Lay-off	<10	1.25%	<10	100.00%	0	0.00%	0	0.00%
Total Separations	80	100.00%	64	80.00%	16	20.00%	<10	1.25%



Table 12: MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as skilled craft

<b>SKILLED CRAFT</b>								
<b>Types of Separation</b>	<b>Total</b>	<b>Total Percent</b>	<b>Total Women</b>	<b>Percent Women</b>	<b>Total Minorities</b>	<b>Percent Minorities</b>	<b>Total persons w/Disabilities</b>	<b>Percent persons w/ Disabilities</b>
Dismissal or Non-Certification	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Resignations	<10	50.00%	0	0.00%	0	0.00%	0	0.00%
Retirement	<10	50.00%	0	0.00%	0	0.00%	<10	50.00%
Deaths	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Lay-off	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total Separations	<10	100.00%	0	0.00%	0	0.00%	<10	25.00%

Table 13: MDVA SEPARATION ANALYSIS Worksheet for conducting separation analysis of protected group members as service maintenance

<b>SERVICE MAINTENANCE</b>								
<b>Types of Separation</b>	<b>Total</b>	<b>Total Percent</b>	<b>Total Women</b>	<b>Percent Women</b>	<b>Total Minorities</b>	<b>Percent Minorities</b>	<b>Total persons w/Disabilities</b>	<b>Percent persons w/ Disabilities</b>
Dismissal or Non-Certification	13	14.13%	<10	38.46%	<10	46.15%	0	0.00%
Resignations	61	66.30%	42	68.85%	12	19.67%	<10	1.64%
Retirement	15	16.30%	11	73.33%	<10	6.67%	<10	6.67%
Deaths	<10	3.26%	0	0.00%	<10	33.33%	0	0.00%
Lay-off	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total Separations	92	100.00%	58	63.04%	20	21.74%	<10	2.17%

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**TWO-FACTOR AVAILABILITY ANALYSIS**

Table 14: Worksheet for calculating job group availability percentages, considering internal and external availability for Officials and Administrators.

Job Category:		Officials and Administrators							
		A		ASSIGNED WEIGHT (%)					
		Internal Availability		30.00%					
		External Availability		70.00%					
		Total Assigned Weight (must equal 100%)		100.00%					
		WOMEN		MINORITIES		PERSONS WITH DISABILITIES			
		Initial Statistics (%)		Weighted Statistics		Initial Statistics (%)		Weighted Statistics	
Internal Availability	<b>B</b>	33.00%		9.90%	<b>D</b>	0.00%		0.00%	<b>F</b>
External Availability	<b>C</b>	67.00%		46.90%	<b>E</b>	100.00%		70.00%	<b>G</b>
		JOB GROUP AVAILABILITY (%)							
		Women			Minorities			Persons with Disabilities	
		56.80%			70.00%			52.40%	

Table 15: Worksheet for calculating job group availability percentages, considering internal and external availability for Professionals.

Job Category:		Professional							
		A		ASSIGNED WEIGHT (%)					
		Internal Availability		33.00%					
		External Availability		67.00%					
		Total Assigned Weight (must equal 100%)		100.00%					
		WOMEN		MINORITIES		PERSONS WITH DISABILITIES			
		Initial Statistics (%)		Weighted Statistics		Initial Statistics (%)		Weighted Statistics	
Internal Availability	<b>B</b>	38.50%		12.71%	<b>D</b>	7.10%		2.34%	<b>F</b>
External Availability	<b>C</b>	61.50%		41.21%	<b>E</b>	92.90%		62.24%	<b>G</b>
		JOB GROUP AVAILABILITY (%)							
		Women			Minorities			Persons with Disabilities	
		53.91%			64.59%			65.06%	

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Table 16: Worksheet for calculating job group availability percentages, considering internal and external availability for Technicians.

Job Category:		Technicians							
		A		ASSIGNED WEIGHT (%)					
		Internal Availability		36.00%					
		External Availability		64.00%					
		Total Assigned Weight (must equal 100%)		100.00%					
		WOMEN		MINORITIES		PERSONS WITH DISABILITIES			
		Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics		
Internal Availability	B	68.00%	24.48%	D	20.00%	7.20%	F	0.00%	0.00%
External Availability	C	32.00%	20.48%	E	80.00%	51.20%	G	100.00%	64.00%
JOB GROUP AVAILABILITY (%)									
			Women		Minorities		Persons with Disabilities		
			44.96%		58.40%		64.00%		

Table 17: Worksheet for calculating job group availability percentages, considering internal and external availability for Office Clerical/Para-Professional.

Job Category:		Office Clerical/Para Professional							
		A		ASSIGNED WEIGHT (%)					
		Internal Availability		15.00%					
		External Availability		85.00%					
		Total Assigned Weight (must equal 100%)		100.00%					
		WOMEN		MINORITIES		PERSONS WITH DISABILITIES			
		Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics		
Internal Availability	B	14.20%	2.13%	D	4.50%	0.68%	F	4.00%	0.60%
External Availability	C	85.80%	72.93%	E	95.50%	81.18%	G	96.00%	81.60%
JOB GROUP AVAILABILITY (%)									
			Women		Minorities		Persons with Disabilities		
			75.06%		81.85%		82.20%		

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Table 18: Worksheet for calculating job group availability percentages, considering internal and external availability for Skilled Craft.

Job Category:		Skilled Craft					
		<b>A</b>	<b>ASSIGNED WEIGHT (%)</b>				
		Internal Availability	55.00%				
		External Availability	45.00%				
		Total Assigned Weight (must equal 100%)	100.00%				
		<b>WOMEN</b>		<b>MINORITIES</b>		<b>PERSONS WITH DISABILITIES</b>	
Internal Availability	<b>B</b>	Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics
External Availability	<b>C</b>	0.00%	0.00%	<b>D</b> 50.00%	27.50%	<b>F</b> 50.00%	27.50%
		100.00%	45.00%	<b>E</b> 50.00%	22.50%	<b>G</b> 50.00%	22.50%
<b>JOB GROUP AVAILABILITY (%)</b>							
		Women		Minorities		Persons with Disabilities	
		45.00%		50.00%		50.00%	

Table 19: Worksheet for calculating job group availability percentages, considering internal and external availability for General Maintenance.

Job Category:		General Maintenance					
		<b>A</b>	<b>ASSIGNED WEIGHT (%)</b>				
		Internal Availability	40.00%				
		External Availability	60.00%				
		Total Assigned Weight (must equal 100%)	100.00%				
		<b>WOMEN</b>		<b>MINORITIES</b>		<b>PERSONS WITH DISABILITIES</b>	
Internal Availability	<b>B</b>	Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics	Initial Statistics (%)	Weighted Statistics
External Availability	<b>C</b>	21.60%	8.64%	<b>D</b> 4.00%	1.60%	<b>F</b> 2.70%	1.08%
		78.40%	47.04%	<b>E</b> 96.00%	57.60%	<b>G</b> 97.30%	58.38%
<b>JOB GROUP AVAILABILITY (%)</b>							
		Women		Minorities		Persons with Disabilities	
		55.68%		59.20%		59.46%	

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XVIII. Appendix F

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**Harassment Prohibited Policy**

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DEPARTMENT OF EMPLOYEE RELATIONS  
ADMINISTRATIVE PROCEDURE 1.2

STATUTORY  
REFERENCE 43A.01

EFF. DATE 03-29-82  
REV. DATE 04-07-88

Subd. Xx

COMMISSIONER'S SIGNATURE *Uma E. Mitchell* \_

**HARASSMENT PROHIBITED**

**Description and Scope** - In order to provide and maintain a productive work environment consistent with merit principles, free of discriminatory practices, and in accord with M.S. § 43A.01, Subd. 2, (Precedence of Merit Principles and Nondiscrimination) it is necessary to remove and eliminate all forms of harassment. Harassment is a form of discrimination and in general is the display of behavior by one employee toward another employee which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Of particular concern is sexual harassment which is unwelcome sexual advances by an employee toward another employee, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

An employee's submission to such conduct is made either explicitly and/or implicitly a term or condition of an individual's employment.

An employee's submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual.

**Objective** - To provide a work environment free of verbal or physical harassment based on race, color, creed, religion, national origin, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, veteran status or any belief or attribute unrelated to job performance.

**Responsibility** -

A. Appointing Authorities

- Establish a procedure for internal resolution of harassment complaints that are not based on protected status.
- Ensure that each employee who makes or recommends employment and other personnel decisions is fully aware of and complies with this policy.
- Notify all employees and orient each new employee to this policy.
- Establish a complaint procedure for timely and thorough investigation of all complaints of harassment.
- Inform each employee of the procedures for filing and investigating complaints of harassment.
- Managers and Supervisors are accountable for ensuring that their work units are free of harassment.

B. MMB Department of Employee Relations:

- Ensure that all Affirmative Action Officers are aware of the need to differentiate between protected status and general harassment.

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- Inform agencies of the statewide policy prohibiting harassment.
- Upon request, provide training to agencies on the content and implementation of the statewide policy prohibiting harassment.

C. Employees:

- Utilize the established affirmative action complaint procedure when subjected to harassment.

**Other Relevant Laws, Rules, Contracts and Administrative Procedures:**

The following items have an impact on material contained in this procedure. Review of these items is essential for a total understanding of the subject.

- A. M.S. § 363.03, Subd. 1 - Unfair Discriminatory Employment Practices, Department of Human Rights
- B. Section 703 of Title VII of the Civil Rights Act of 1964 as amended in 1972, 42 U.S.C. 2000e et seq., prohibiting discrimination on the basis of race, color, religion, sex, or national origin
- C. Equal Employment Opportunity Commission Sex Discrimination Guidelines dated March, 1980, 29 CFR Part 1604.
- D. Continental Can Company, Inc. vs. State of Minnesota, 297 N.W. 2d 241 (Minn. 1980), establishing the potential liability of the employer for acts of harassment by one employee towards another.

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XIX. Appendix G

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**Sexual Harassment Prohibited Policy**

**HR/LR Policy #1329**  
**Sexual Harassment Prohibited**

Issued 06/17/1996  
Revised 02/08/2016  
Authority Enterprise Human Resources

**OVERVIEW**

Objective	To create a work environment free from sexual harassment of any kind.
Policy Statement	Sexual harassment in any form is strictly prohibited. Individuals who believe they have been subject to sexual harassment are encouraged to file a complaint with an appropriate authority. Any form of retaliation directed against an individual who complains about sexual harassment or who participates in any investigation concerning sexual harassment is strictly prohibited and will not be tolerated. Violations of this policy by State employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.
Scope	This policy applies to all employees of, and third parties who have business interactions with, executive branch agencies and the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.
Definitions	Complainant: An individual who complains about sexual harassment or retaliation.  Public service environment: A location that is not the workplace where public service is being provided.  Sexual harassment: Unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, written, or physical conduct or communication of a sexual nature.  Third party: Individuals who are not State employees but who have business interactions with State employees, including, but not limited to: <ul style="list-style-type: none"><li>• Applicants for State employment</li><li>• Vendors</li><li>• Contractors</li><li>• Volunteers</li><li>• Customers</li><li>• Business Partners</li></ul>
Exclusions	NA
Statutory References	42 U.S.C. § 2000e, et al. M.S. Ch. 363A M.S. Ch. 43A Minn. Rule 3905.0500

**GENERAL STANDARDS AND EXPECTATIONS**

**I. PROHIBITION OF SEXUAL HARASSMENT**

Sexual harassment of any employee or third party in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited.

Sexual harassment under this policy is any conduct or communication of a sexual nature which is unwelcome. The victim, as well as the harasser, can be of any gender. The victim does not have to be of the opposite sex as the harasser. Sexual harassment includes, but is not limited to:

1. Unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, degrading sexual remarks, threats;
2. Unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures;
3. Unwelcome physical contact, such as rape, sexual assault, molestation, or attempts to commit these assaults; unwelcome touching, pinching, or brushing of or by the body;
4. Preferential treatment or promises of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit an individual to submit to sexual activity for compensation or reward;
5. Negative treatment or threats of negative treatment for refusing to submit to sexual conduct.
6. Subjecting, or threatening to subject, an individual to unwelcome sexual attention or conduct.

## II. EMPLOYEE AND THIRD PARTY RESPONSIBILITIES AND COMPLAINT PROCEDURE

Sexual harassment will not be tolerated. All employees and third parties are expected to comply with this policy.

Employees and third parties are encouraged to report all incidents of sexual harassment. Individuals are encouraged to report incidents of sexual harassment as soon as possible after the incident occurs. Individuals may make a complaint of sexual harassment with:

1. An agency supervisor;
2. The agency's affirmative action officer;
3. An agency's human resource office;
4. Agency management, up to and including the commissioner.

If the complaint concerns an agency head, the complainant may contact Minnesota Management & Budget, Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion.

## III. SUPERVISOR RESPONSIBILITY

Supervisors are responsible for the following:

1. Modeling appropriate behavior;
2. Treating all complaints of sexual harassment seriously, regardless of the individuals or behaviors involved;
3. When a complaint of sexual harassment has been made to the supervisor, or when the supervisor is otherwise aware that a problem exists, the supervisor must appropriately respond to the complaint or problem;
4. Immediately report all allegations or incidents of sexual harassment to the MDVA Office for Diversity and Equality, Human Resources or manager so that prompt and appropriate action can be taken;
5. Complying with MDVA's complaint and investigation procedures and the MDVA Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

Supervisors who knowingly participate in, allow, or tolerate sexual harassment or retaliation are in violation of this policy and are subject to discipline, up to and including discharge.



#### IV. HUMAN RESOURCES RESPONSIBILITIES

Agency human resources offices are responsible for the following:

1. Modeling appropriate behavior;
2. Distributing the sexual harassment policy to all employees, through a method whereby receipt can be verified;
3. Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
4. Complying with the agency's complaint and investigation procedures and/or their Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

#### MDVA's Office for Director of Diversity and Equality, as the agency AFFIRMATIVE ACTION OFFICER RESPONSIBILITIES

On behalf of MDVA, this position is responsible for the following:

1. Modeling appropriate behavior;
2. Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
3. Complying with the agency's complaint and investigation procedures to ensure the prompt and appropriate action in response to complaints of sexual harassment;
4. Keeping the agency apprised of changes and developments in the law and updating agency policies and procedures accordingly.

#### V. INVESTIGATION AND DISCIPLINE

All complaints of sexual harassment will be taken seriously, and prompt and appropriate action taken. When the MDVA Office for Diversity and Equality or their designee conduct an investigation, supervisors, human resources, and employees must follow their agency's investigation procedures.

Timely and appropriate corrective action will be taken when there is a violation of this policy. Employees who are found to have engaged in sexual harassment in violation of this policy will be subject to disciplinary action, up to and including discharge.

Third parties who are found to have engaged in sexual harassment in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

Employees who knowingly file a false complaint of sexual harassment will be subject to disciplinary action, up to and including discharge.

#### VI. NON-RETALIATION

Retaliation against any person who reports sexual harassment or participates in an investigation of such reports is strictly prohibited. Retaliation will not be tolerated. Any employee who is found to have engaged in retaliation in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

## RESPONSIBILITIES

Agencies are responsible for:

Adopting this policy.

Disseminating this policy to agency employees through a method whereby receipt can be verified.

Posting this policy in a manner that can be accessed by third parties.

Including this policy in their Affirmative Action Plan.

Implementing this policy, including developing:

- An educational program;
- A process for reporting complaints; and
- A procedure under which complaints will be addressed promptly.

Enforcing this policy.

MMB is responsible for: Ensuring that state agencies carry out their responsibilities under this policy and updating this policy as necessary.

## FORMS AND SUPPLEMENTS

See acknowledgement form, below, which can be used to verify receipt by agency employees.

Contacts Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion

References MMB Equal Opportunity, Diversity, and Inclusion Office:

<http://www.mn.gov/mmb/employee-relations/equal-opportunity/>.

## ACKNOWLEDGEMENT

I acknowledge that I have received and read the policy, Sexual Harassment Prohibited, and accompanying complaint procedure. I understand that sexual harassment and retaliation are strictly prohibited. I understand that if I engage in conduct in violation of the policy toward any State employee, applicant for employment, vendor, contractor, volunteer, customer, or business partner, I will be subject to disciplinary action, up to and including discharge.

I understand that if I believe that I have been subjected to sexually harassing or retaliatory conduct as defined by this policy by any State employee, applicant for employment, vendor, contractor, volunteer, customer or business partner, I am encouraged to report that behavior. I understand that I can make a report to agency managers/supervisors, agency human resources, or agency management, up to and including the commissioner. I understand that if my complaint concerns an agency head, I may contact Minnesota Management & Budget.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_

XX. Appendix H

**Respectful Workplace Policy**

<p><b>HR/LR Policy #1432</b> <b>Respectful Workplace</b></p>		<p>Issued April 10, 2015</p> <p>Revised N/A</p> <p>Authority Enterprise Human Resources</p>
<p>OVERVIEW</p>		
Objective	To build and maintain a workplace that is respectful and professional toward all employees, volunteers, contractors, and other persons visiting the workplace and public service environment.	
Policy Statement	The State of Minnesota is committed to providing a positive environment in which all staff, members of the public and others doing business with the state are treated with professionalism and respect.	
Scope	This policy applies to employees of executive branch agencies and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System. It also applies to non-status employees and non-employees such as volunteers and contractors.	
Definitions	<p><b>Professionalism:</b> Displaying the good judgment and proper behavior that is reasonably expected in the workplace.</p> <p><b>Public Service Environment:</b> A location that is not the workplace where public service is being provided.</p> <p><b>Respect:</b> Behavior or communication that demonstrates positive consideration and treats individuals in a manner that a reasonable person would find appropriate.</p> <p><b>Third Parties:</b> Volunteers, contractors, customers and other non-employees in the workplace or public service environment.</p>	
Exclusions	This policy solely addresses communications and behavior that do not involve protected class status. Communications and behavior that involve protected class status are addressed in the State of Minnesota Policy on Zero Tolerance of Sexual Harassment and Administrative Procedure, 1.2 Harassment.	
Statutory References		
<p>GENERAL STANDARDS AND EXPECTATIONS</p>		
<p><b>OBJECTIVE</b></p> <p>The State of Minnesota is committed to providing a respectful and professional workplace and public service environment for employees and third parties. Respect for one another is fundamental to working in an effective, efficient and innovative manner. Disrespectful or unprofessional communications and behavior can disrupt the proper functioning of work units. Therefore, it is the intent of the State of Minnesota to:</p>		

- Ensure a respectful workplace and public service environment free of disrespectful or unprofessional communications or behavior; and
- Provide effective and non-retaliatory problem-solving processes that address concerns regarding respectful or professional communications or behavior.

## **RESPONSIBILITIES**

Employees and third parties are expected to:

- Conduct themselves in a manner that demonstrates professionalism and respect for others in the workplace and public service environment;
- Use informal means to address issues with the individual(s) involved whenever possible;
- Participate fully and in good faith in any informal resolution process or formal complaint and investigative process for which they may have relevant information; and
- Report incidents that may violate this policy in accordance with processes identified by the agency.

In addition to their responsibilities as employees as described above, agency heads, managers and supervisors are also expected to:

- Inform their employees and third parties for whom they are responsible of the expectations outlined in this policy;
- Achieve and maintain compliance with this policy; and
- Take timely and appropriate action when a complaint is made alleging violation of this policy.

Failure to comply with this policy and its procedures may result in disciplinary action, up to and including termination, or ending a contractor or volunteer relationship with the agency.

## **RETALIATION PROHIBITED**

Retaliation is prohibited against any employee or third party who:

- Initiates a complaint;
- Reports an incident that may violate this policy;
- Participates in an investigation related to a complaint; or
- Is associated or perceived to be associated with a person who initiates a complaint or participates in the investigation of a complaint under this policy.

## **RESPECTFUL AND/OR PROFESSIONAL BEHAVIOR**

Context is important in understanding the difference between respectful and/or professional behavior and disrespectful and/or unprofessional behavior. Individuals may experience stress or discomfort in the workplace that is not related to disrespectful and/or unprofessional behavior. For example, disrespectful and/or unprofessional behavior does not include any of the following:

- The normal exercise of supervisory or managerial responsibilities, including, but not limited to performance reviews, work direction, performance management, and disciplinary action provided they are conducted in a respectful, professional manner.
- Disagreements, misunderstandings, miscommunication, or conflict situations where the behavior remains professional and respectful.

Disrespectful and/or unprofessional behavior may or may not be intentional. Unintentionally disrespectful and/or unprofessional behavior may still violate this policy. Examples of *disrespectful and/or unprofessional* behavior include but are not limited to:

- Exhibiting aggressive behaviors including shouting, abusive language, threats of violence, the use of obscenities or other non-verbal expressions of aggression;
- Behavior that a reasonable person would find to be demeaning, humiliating, or bullying;
- Deliberately destroying, damaging or obstructing someone's work performance, work product, tools, or materials; and/or
- Use of this policy and procedure to make knowingly false complaint(s).

## **PROCEDURES**

As with all allegations of misconduct, informal resolution and formal investigatory processes related to this policy will be conducted in a timely, fair, and objective manner.

Individuals are encouraged to informally resolve concerns whenever possible. In addition to the options provided in this procedure and those identified within the agency, the involved parties and the agency, by mutual agreement, may at any point seek mediation through the Bureau of Mediation Services (BMS).

### **Informal Resolution**

If possible, the employee or third party who feels a violation has occurred should have a conversation with the other individual(s) involved.

Employees and third parties are encouraged to speak with their supervisor, agency Human Resources office, union representative, or Employee Assistance Program (EAP) representative for assistance or guidance on how to resolve the situation.

If a direct approach is not possible or does not resolve the concern, employees and third parties are encouraged to meet with their supervisor or manager to discuss next steps.

If the concern is about the supervisor or manager, parties are encouraged to contact the Human Resources office or an EAP counselor to determine options for resolution.

### **Formal Complaints**

Any employee or third party may choose to initiate a formal complaint under this policy. Complaints should be submitted to the Human Resources office or as provided by agency procedure. If the complaint concerns a member of the Human Resources office, the complainant may contact their supervisor or manager or the Human Resources Director. If the complaint concerns an agency head, the complainant may contact the Assistant Commissioner of Enterprise Human Resources at MMB.

- Complaints must contain details of the situation and the identity of the person or persons against whom the complaint is being made.
- A person against whom a formal complaint is made may be informed of the complaint.
- As a matter of best practice, the agency or Human Resources office receiving a complaint made pursuant to this policy is encouraged to acknowledge receipt of any complaint in writing, to the complainant, with a statement that would include:
  - The date that the complaint was made;
  - A statement that the agency or Human Resources office retains the discretion to determine whether an investigation is warranted;
  - A statement that if it is determined that an investigation is warranted, all investigations will be conducted in a timely, fair and objective manner; and

- A statement that all data associated with a complaint, including any investigation and any outcome, are government data, and that the release or non-release of data is governed by the Minnesota Government Data Practices Act (MGDPA).
- MMB Labor Relations and Enterprise Human Resources are available to consult and offer guidance on implementation of this policy and procedure.

This process does not supersede any applicable grievance or dispute resolution process under a collective bargaining agreement or plan.

#### RESPONSIBILITIES

Agencies are responsible for:	Achieving and maintaining agency compliance with this policy and procedure.
MMB is responsible for:	Maintaining the statewide policy and procedure.

#### FORMS AND INSTRUCTIONS

Recommended content for an agency Complaint Form and Complaint Acknowledgment Form are included below. As a matter of best practice, agencies are encouraged to update their existing complaint forms consistent with the guidelines of this policy.

#### SAMPLE COMPLAINT FORM

Name:

Date:

Summary of Concerns:

Summary of any Documentation Related to Allegations (please include with complaint):

Witnesses (please describe what they might know re: allegations.):

#### SAMPLE COMPLAINT ACKNOWLEDGMENT FORM

This form acknowledges receipt of a complaint made under the Respectful Workplace policy on \_\_\_\_ (date). Responsible authorities will review the complaint to determine whether an investigation is warranted. If an investigation proceeds, it will be conducted in a timely, fair, and objective manner.

Investigations and other actions taken in response to this complaint are subject to any applicable processes under applicable collective bargaining agreements and plans, including applicable review and/or appeal procedures.

All data associated with this complaint, including any investigation and any outcome, are government data. The release or non-release of this data is governed by the Minnesota Government Data Practices Act (MGDPA).

MMB Labor Relations and MMB Enterprise Human Resources are available to consult and offer guidance on implementation of this policy and procedure. As provided by relevant collective bargaining agreements, union representatives may also be available to assist.

Contacts	Director, Human Resource Management
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References

**ADA Reasonable Accommodation Form**



**HR/LR Policy #1433**

**ADA Reasonable Accommodation**

Issued	03/09/1999
Revised	12/16/2015
	07/26/2002 (supersedes <i>Policy 3.2</i> )
Authority	Equal Opportunity, Diversity, and Inclusion

**OVERVIEW**

**Objective**

The goals of this policy are:

- To ensure compliance with all applicable state and federal laws;
- To establish a written and readily accessible procedure regarding reasonable accommodation, including providing notice of this policy on all job announcements;
- To provide guidance and resources about reasonable accommodations;
- To provide a respectful interactive process to explore reasonable accommodations; and
- To provide a timely and thorough review process for requests for reasonable accommodation.

**Policy Statement**

State agencies must comply with all state and federal laws that prohibit discrimination against qualified Persons with disabilities in all employment practices. All state agencies must provide reasonable accommodations to qualified applicants and employees with disabilities unless to do so would cause an undue hardship or pose a direct threat. Agencies must provide reasonable accommodation when:

- A qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- A qualified employee with a disability needs an accommodation to perform the essential functions of the employee's job; and
- A qualified employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., trainings, office sponsored events).

**Scope**

This policy applies to all employees of the Executive Branch and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.

**Definitions**

**Applicant**

A person who expresses interest in employment and satisfies the minimum requirements for application established by the job posting and job description.



**Americans with Disabilities Act (ADA) Coordinator**

Each agency is required to appoint an ADA coordinator or designee, depending on agency size, to direct and coordinate agency compliance with Title I of the ADA.

**Direct Threat**

A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.

**Essential Functions**

Duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if:

- The job exists specifically to perform the function(s); or
- There are a limited number of other employees who could perform the function(s); or
- The function(s) is/are specialized and the individual is hired based on the employee's expertise.

**Interactive Process**

A discussion between the employer and the individual with a disability to determine an effective reasonable accommodation for the individual with a disability. To be interactive, both sides must communicate and exchange information.

**Individual with a Disability**

An individual who:

- Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or
- Has a record or history of such impairment; or
- Is regarded as having such impairment.

**Qualified Individual with a Disability**

An individual who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires; and
- Can perform the essential functions of the position with or without reasonable accommodation.

**Major Life Activities**

May 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.

Major life activities also include 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.

**Medical Documentation**

Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what type of reasonable

accommodation is needed when the disability or the need for accommodation is not obvious. Medical documentation can be requested using the standardized [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#).

### **Reasonable Accommodation**

An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include:

- Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or
- Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or
- Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment.

Modifications or adjustments may include, but are not limited to:

- Providing materials in alternative formats like large print or Braille;
- Providing assistive technology, including information technology and communications equipment, or specially designed furniture;
- Modifying work schedules or supervisory methods;
- Granting breaks or providing leave;
- Altering how or when job duties are performed;
- Removing and/or substituting a marginal function;
- Moving to a different office space;
- Providing telework;
- Making changes in workplace policies;
- Providing a reader or other staff assistant to enable employees to perform their job functions, where a reasonable accommodation cannot be provided by current staff;
- Removing an architectural barrier, including reconfiguring work spaces;
- Providing accessible parking;
- Providing a sign language interpreter; or
- Providing a reassignment to a vacant position.

### **Reassignment**

Reassignment to a vacant position for which an employee is qualified is a “last resort” form of a reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation, unless the employer can show that it will be an undue hardship.

### **Support Person**

Any person an individual with a disability identifies to help during the reasonable accommodation process in terms of filling out paperwork, attending meetings during the interactive process to take notes or ask clarifying questions, or to provide emotional support.

### **Undue Hardship**

A specific reasonable accommodation would require significant difficulty or expense. Undue hardship is always determined on a case-by-case basis considering factors that include the nature and cost of the accommodation requested and the impact of the accommodation on the operations of the agency. A state agency is not required to provide accommodations that would impose an undue hardship on the operation of the agency.

Exclusions N/A

Statutory References [Rehabilitation Act of 1973, Title 29 USC 701](#)  
[Americans with Disabilities Act \(1990\)](#)  
[29 C.F.R. 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act](#)

## **GENERAL STANDARDS AND EXPECTATIONS**

### ***Individuals who may request a reasonable accommodation include***

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified agency employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the agency must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

The agency must abide by the [Minnesota Government Data Practices Act, Chapter 13](#), in obtaining or sharing information related to accommodation requests.

### ***How to request a reasonable accommodation***

An agency applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee's chain of command;
- Agency Affirmative Action Officer/Designee;
- Agency ADA Coordinator;
- Agency Human Resources Office;
- Any agency official with whom the applicant has contact during the application, interview and/or selection process.

### ***Timing of the request***

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any communication in which an individual asks or states that he or she needs the agency to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

### ***Form of the request***

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the agency that an accommodation is needed.

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."

Oral requests must be documented in writing to ensure efficient processing of requests.

Agency request forms can be found at: "[Employee/Applicant Request for Reasonable Accommodation Form](#)".

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required.

Supervisors or managers should consult with the agency ADA Coordinator for advice on how to proceed.

When an employee needs the same reasonable accommodation on a repeated basis (e.g., the assistance of a sign language interpreter), a written request for accommodation is required the first time only. However, the employee requesting an accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the agency must make appropriate arrangements without requiring a request in advance of each occasion.

### ***The interactive process entails***

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the agency to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process see the U.S. Department of Labor, Job Accommodation Network at <http://askjan.org/topics/interactive.htm>). This process is required when:

- The need for a reasonable accommodation is not obvious;
- The specific limitation, problem or barrier is unclear;
- An effective reasonable accommodation is not obvious;
- The parties are considering different forms of reasonable accommodation;
- The medical condition changes or fluctuates; or,
- There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the need for accommodation becomes known.

The process should ensure a full exchange of relevant information and communication between the individual and the agency. An individual may request that the agency ADA Coordinator, a union representative, or support person be present.

The agency ADA Coordinator shall be consulted when:

- Issues, conflicts or questions arise in the interactive process; and
- Prior to denying a request for accommodation.

### ***Agency responsibilities for processing the request***

As the first step in processing a request for reasonable accommodation, the person who receives the request must promptly forward the request to the appropriate decision maker. At the same time, the recipient will notify the requestor who the decision maker is.

#### Commissioner

The commissioner of the agency or agency head has the ultimate responsibility to ensure compliance with the ADA and this policy and appoint an ADA Coordinator.

#### ADA Coordinator

The agency ADA Coordinator is the agency's decision maker for reasonable accommodation requests for all types of requests outside of the supervisors' and managers' authority. The agency ADA Coordinator will work with the supervisor and manager, and where necessary, with agency Human Resources, to implement the approved reasonable accommodation.

#### Supervisors and Managers

Agencies have the authority to designate the level of management approval needed for reasonable accommodation requests for low-cost purchases. For example:

- Requests for standard office equipment that is needed as a reasonable accommodation and adaptive items costing less than \$100. [Agencies can adjust the dollar amount based on their needs]; and
- Requests for a change in a condition of employment such as modified duties, or a change in schedule, or the location and size of an employee's workspace. [Agencies can choose to delegate specific requests to supervisors or managers or require these types of requests to work through the agency ADA Coordinator].

### ***Analysis for processing requests***

Before approving or denying a request for accommodation, the agency decision maker with assistance from the agency ADA Coordinator will:

1. Determine if the requestor is a qualified individual with a disability;
2. Determine if the accommodation is needed to:
  - Enable a qualified applicant with a disability to be considered for the position the individual desires;
  - Enable a qualified employee with a disability to perform the essential functions of the position; or
  - Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
3. Determine whether the requested accommodation is reasonable;
4. Determine whether there is a reasonable accommodation that will be effective for the requestor and the agency; and
5. Determine whether the reasonable accommodation will impose an undue hardship on the agency's operations.

An employee's accommodation preference is always seriously considered, but the agency is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation, or determines that accommodation would cause an undue hardship.

### ***Obtaining medical documentation in connection with a request for reasonable accommodation***

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the agency will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are not obvious or already known, the agency ADA Coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The agency ADA Coordinator may request medical information in certain other circumstances. For example when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation; or
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the agency ADA Coordinator must make the request and use the [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#). The agency ADA Coordinator must also obtain the requestor's completed and signed [Authorization for Release of Medical Information](#).

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner, or the agency may deny the reasonable accommodation request. Agencies must not request medical records; medical records are not appropriate documentation and cannot be accepted. **Supervisors and managers *must not* request medical information or documentation from an applicant or employee seeking an accommodation.** Such a request will be made by the agency ADA Coordinator, if appropriate.

### ***Confidentiality requirements***

#### Medical Information

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only the agency ADA Coordinator. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by the agency ADA Coordinator.

The agency ADA Coordinator may disclose medical information obtained in connection with the reasonable accommodation process to the following:

- Supervisors, managers or agency HR staff who have a need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed, when appropriate, if the employee may require emergency treatment or assistance in an emergency evacuation;
- To consult with the State ADA Coordinator or Employment Law Counsel at MMB, or the Attorney General's Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources; or
- Government officials assigned to investigate agency compliance with the ADA.

Whenever medical information is appropriately disclosed as described above, the recipients of the information must comply with all confidentiality requirements.

#### Accommodation Information

The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation, such as the requestor's supervisor and the agency ADA Coordinator.

#### General Information

General summary information regarding an employee's or applicant's status as an individual with a disability may be collected by agency equal opportunity officials to maintain records and evaluate and report on the agency's performance in hiring, retention, and processing reasonable accommodation requests.

#### ***Approval of requests for reasonable accommodation***

As soon as the decision maker determines that a reasonable accommodation will be provided, the agency ADA Coordinator will process the request and provide the reasonable accommodation in as short of a timeframe as possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. If an approved accommodation cannot be provided within a reasonable time, the decision maker will inform the requestor of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the agency ADA Coordinator.

#### ***Funding for reasonable accommodations***

The agency must specify how the agency will pay for reasonable accommodations.

#### ***Procedures for reassignment as a reasonable accommodation***

Reassignment to a vacant position is an accommodation that must be considered if there are no effective reasonable accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other reasonable accommodations would impose an undue hardship.

The agency ADA Coordinator will work with agency Human Resources staff and the requestor to identify appropriate vacant positions within the agency for which the employee may be qualified and can perform the essential functions of the vacant position, with or without reasonable accommodation. Vacant positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, the agency will consider vacant lower level positions for which the individual is qualified. The EEOC recommends that the agency consider positions that are currently vacant or will be coming open within at least the next 60 days.

#### ***Denial of requests for reasonable accommodation***

The agency ADA Coordinator must be contacted for assistance and guidance prior to denying any request for reasonable accommodation. The agency may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to the individual or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the agency ADA Coordinator; or
- Where no reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform all the essential functions of the job.

The explanation for denial must be provided to the requestor in writing. The explanation should be written in plain language and clearly state the specific reasons for denial. Where the decision maker has denied a specific requested accommodation, but has offered a different accommodation in its place, the decision letter should explain both the reasons for denying the accommodation requested and the reasons that the accommodation being offered will be effective.

### ***Consideration of undue hardship***

An interactive process must occur prior to the agency making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the agency's ADA Coordinator. In determining whether granting a reasonable accommodation will cause an undue hardship, the agency considers factors such as the nature and cost of the accommodation in relationship to the size and resources of the agency and the impact the accommodation will have on the operations of the agency.

Agencies may deny reasonable accommodations based upon an undue hardship. Prior to denying reasonable accommodation requests due to lack of financial resources, the agency will consult with the State ADA Coordinator at MMB.

### ***Determining direct threat***

The determination that an individual poses a "direct threat," (i.e., a significant risk of substantial harm to the health or safety of the individual or others) which cannot be eliminated or reduced by a reasonable accommodation, must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job with or without reasonable accommodation. A determination that an individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual's disability. Instead, the agency must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

### ***Appeals process in the event of denial***

In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, agencies must designate a process for review when an applicant or employee chooses to appeal the denial of a reasonable accommodation request. This process:

- Must include review by an agency official;
- May include review by the State ADA Coordinator; and/or
- Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights.

### ***Information tracking and records retention***

Agencies must track reasonable accommodations requested and report once a year by September 1<sup>st</sup> to MMB the number and types of accommodations requested, approved, denied and other relevant information.

Agencies must retain reasonable accommodation documentation according to the agency's document retention schedule, but in all cases for at least one year from the date the record is made or the personnel action involved is taken, whichever occurs later. 29 C.F.R. § 1602.14.



## RESPONSIBILITIES

**Agencies are responsible for:** Adoption and implementation of this policy and development of reasonable accommodation procedures consistent with the guidance in this document.

**MMB is responsible for:** Provide advice and assistance to state agencies and maintain this policy.

## FORMS AND INSTRUCTIONS

Please review the following forms:

- [Employee/Applicant Request for ADA Reasonable Accommodation](#)
- [Authorization of Release of Medical Information for ADA Reasonable Accommodations](#)
- [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#)

**Contacts** Equal Opportunity, Diversity, and Inclusion Office, Minnesota Management and Budget.

**References** [U.S. Equal Employment Opportunity Commission](#), *Enforcement Guidance*

- Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995).
- Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996).
- The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997).
- Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002), (clarifies the rights and responsibilities of employers and Persons with disabilities regarding reasonable accommodation and undue hardship).
- Disability-Related Inquiries and Medical Examinations of Employees (explains when it is permissible for employers to make disability-related inquiries or require medical examinations of employees).
- Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 4055:7371.

The [Genetic Information Nondiscrimination Act \(GINA\) of 2008](#) and [M.S. 181.974](#) prohibit employers from using genetic information when making decisions regarding employment.

[Minnesota Human Rights Act \(MHRA\)](#) prohibits employers from treating people differently in employment because of their race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation, or local human rights commission activity. The MHRA requires an employer to provide reasonable accommodation to qualified Persons with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others. The MHRA prohibits requesting or requiring information about an individual's disability prior to a conditional offer of employment.

The [Family and Medical Leave Act](#) is a federal law requiring covered employers to provide eligible employees twelve weeks of job-protected, unpaid leave for qualified medical and family reasons.

[Executive Order 14-14, Providing for Increased Participation of Persons with Disabilities in State Employment](#), directs agencies to make efforts to hire more Persons with disabilities and report on progress.