

CMWD POLICY 05-2020

Reasonable Accommodation and Interactive Process

Once adopted by the Board of Directors all previous policies, handbook references, or MOU references will be null and void and replaced by this updated policy. All policy changes will be presented to the SEIU Union and will be bargained, to impasse, if necessary prior to being brought forth for adoption by the Board of Directors.

05.01 Reasonable Accommodation

Absent undue hardship or direct threats to the health and safety of employee(s), Casitas provides employment-related reasonable accommodations to:

1. Qualified individuals with disabilities, both applicants and employees, to enable them to perform essential job functions (Gov. Code § 12940(m)); and
2. Employees with conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, and with the advice of her health care provider (Gov. Code § 12945(3)(A)); and
3. Employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work (Labor Code § 230(f)(4)); and
4. Employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement (Gov. Code § 12940(l)).

05.02 Reasonable Medical Documentation of Disability

If the disability or the need for reasonable accommodation is not obvious, Casitas may require the individual to provide reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation, along with the name and credentials of the individual's health care provider. If the individual provides insufficient documentation, the agency will: 1) explain the insufficiency; 2) allow the employee or applicant to supplement the documentation; and 3) pursue the interactive process only to the extent that the request for reasonable accommodation is supported by the medical documentation provided. (2 Cal.Code Regs § 11069(c)(2) & (d).)

05.03 Medical Certification Indicating the Need for a Reasonable Accommodation or Transfer Due to Pregnancy or Related Conditions

If a pregnant employee, or an employee with a pregnancy-related condition, requests a reasonable accommodation or transfer due to pregnancy, Casitas will provide the employee with notice of the need for a medical certification within two business days after the employee's request for accommodation. A medical certification confirming the need for a reasonable accommodation, including transfer, is sufficient if it contains: a description of the requested accommodation or transfer; a statement describing the medical advisability of the accommodation or transfer due to pregnancy; and the date that the need for the accommodation or transfer will become necessary and the estimated duration of the accommodation or transfer. (2 Cal.Code Regs § 11050(b)(3).)

05.04 Certification of Victim Status

An employee who is a victim of domestic violence, sexual assault, or stalking and who requests an accommodation to provide for his or her safety while at work must provide both of the following:

1. A written statement signed by the employee or an individual acting on the employee's behalf, to certify that the accommodation is to address victim-safety concerns while at work; and
2. A certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking, which can be in the form of: a police report indicating the employee's victim status; a court order separating the perpetrator from the employee or that the employee has appeared in court for that purpose; or documentation from a medical professional or counselor that the employee is undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, or stalking. (Labor Code § 230(f)(7).)

05.06 Fitness for Duty Examinations: Authorization for Use of Medical Information

During the course of a fitness for duty examination, Casitas will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization.

05.07 Fitness for Duty Examinations: Applicants

After a conditional offer of employment has been extended to an applicant, Casitas may require the applicant to submit to a fitness for duty examination that is job-related; necessary for efficient operations of the agency; and required of all applicants for the job classification. (Gov. Code § 12940(e) &(f).) An applicant or employee who is required to pass a medical and/or psychological examination will be notified of his/her right to obtain a second opinion at his/her expense and that he/she may submit such second opinions for consideration. (2 Cal.Code Regs § 11071(b)(2).)

05.08 Fitness for Duty Examinations: Current Employee

The Human Resources Manager may require an employee to submit to a fitness for duty examination to determine if the employee has a disability and is able to perform the essential functions of his or her job when there is significant evidence that:

1. The employee's ability to perform one or more essential functions of his or her job has declined; or
2. Could cause a reasonable person to question whether an employee is still capable of performing one or more of his or her essential job duties, or is still capable of performing those duties in a manner that does not harm him or herself or others. (Gov. Code § 12940(e) &(f).)

05.09 Fitness for Duty Examinations: Role of Health Care Provider

Casitas may request the applicant's or employee's health care provider to conduct a fitness for duty exam on the applicant or employee, or may request a Casitas selected health care provider to do so at Casitas expense. Casitas will allow an employee paid time off to attend the exam. Casitas will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the job. The examination will be limited to determining whether the applicant or employee can perform the essential functions of his/her position and any work

restrictions and/or functional limitations that apply to the applicant or employee. The health care provider will examine the employee and provide Casitas with non-confidential information regarding whether:

1. The applicant or employee has a disability within the meaning of the California Fair Employment and Housing Act;
2. The applicant or employee is fit to perform essential job functions;
3. Workplace restrictions or functional limitations apply to the applicant or employee, and the duration of the work restrictions or functional limitations;
4. There are any reasonable accommodations that would enable the employee to perform essential job functions; and
5. The employee's continued employment poses a threat to the health and safety of him or herself or others.

Should the health care provider exceed the scope of Casitas request and provide confidential health information, without valid consent of the applicant or employee, Casitas will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that was requested. (2 Cal.Code Regs § 11069(c) & (d).)

05.10 Fitness for Duty Examinations: Medical Information from the Employee or Applicant

If an employee or applicant submits medical information to Casitas from his or her own health care provider, the Human Resources Manager will not forward that information on to the health care provider who conducted the examination for Casitas, without the employee or applicant's written authorization. Upon receipt of the written authorization, the Human Resources Manager will request the Casitas paid health care provider to determine whether the information alters the original fitness for duty assessment.

05.11 When to Initiate the Interactive Process

The Human Resources Manager will initiate the interactive process when:

1. An applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s) (2 Cal.Code Regs § 11069(b)(1)); or

2. Casitas otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor's note requesting an accommodation), or by observation of the employee's work (2 Cal.Code Regs. § 11069(b)(2)); or
3. Casitas becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee's health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation (2 Cal.Code Regs. § 11069(b)(3)); or
4. An employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider (2 Cal.Code Regs § 11040(a)(1)); or
5. An employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave (2 Cal.Code Regs § 11047); or
6. An employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for his or her safety at work (Labor Code § 230(f)(1)); or
7. An employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement (Gov. Code § 12940(l)); or
8. An employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices. (2 Cal.Code Regs § 11060(b).)

05.12 Interactive Communication

After the occurrence of any of the above-stated circumstances that trigger the need to conduct an interactive process meeting, the Human Resources Manager will promptly arrange for a discussion or discussions, in person or via conference telephone call, with the applicant or employee and his or her designated representative, (if any). The purpose of the interactive communications will be to discuss in good faith all feasible potential reasonable accommodations. The Human Resources Managers will document these communications in writing. (Gov. Code 12940(n); 2 Cal.Code Regs § 11069(a).)

05.13 Potential Accommodations for Applicants or Employees with Disabilities

Depending on the facts of each case, the interactive process analysis will generally begin with a review of possible reasonable accommodations that would enable the

individual to retain his or her current job. The process will generally then move on to possible reasonable accommodations in other vacant jobs, for which the individual is qualified, if there is no reasonable accommodation in the current job that does not cause undue hardship, or that does not present a risk of harm to the individual or others. Casitas will consider accommodations that the applicant or employee suggests, but has the right to select and implement any reasonable accommodation that it deems effective. The range of potential reasonable accommodations includes, but is not limited to:

- making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities, including: acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, and/or the provision of qualified readers or interpreters;
- job restructuring;
- part-time or modified work schedules (Gov. Code § 12926(p));
- paid or unpaid leave of absence of a finite duration that is likely to enable the employee to return to work at the end of the leave (2 Cal.Code Regs § 11068(c));
- preferential consideration to reassignment to a vacant, comparable position, except when such preference would violate a bona fide seniority system (2 Cal.Code Regs § 11068(d)(5));
- reassignment to a vacant lower-paid position if there is no funded, vacant comparable position for which the individual is qualified for (2 Cal.Code § 11068(d)(2)); or
- reassignment to a temporary position, if the individual agrees. (2 Cal.Code Regs § 11068(d)(3).)

05.14 Potential Accommodations for Employees Affected by Pregnancy and Related Medical Conditions

Depending on the facts of each case, the interactive process will attempt to identify and implement a reasonable accommodation that is consistent with the medical certification applicable to the applicant or employee. Whether an accommodation is reasonable is a case-by-case analysis that takes into account several factors, including, but not limited to: the employee's medical needs; the duration of the needed accommodation; and the employer's legally permissible past and current practices. (2 Cal.Code Regs. § 11040(a)(2)(A).) The range of potential accommodations includes, but is not limited to:

- transfer to a less strenuous or hazardous position for the duration of the pregnancy (Gov. Code § 12945(a)(3)(C));
- change in or restructuring of work duties, such as modifying lifting requirements (2 Cal.Code Regs § 11040(b));
- providing more frequent breaks;
- providing seating;
- time off for medical appointments;
- transfer temporarily to a job with equivalent pay and benefits that the employee is qualified to perform in order to accommodate reduced work schedule or intermittent leave. (2 Cal.Code Regs. § 11041(c).) (However, a reduction in work hours may be considered a form of pregnancy disability leave and deducted from the employee's four month pregnancy disability leave entitlement.) (2 Cal.Code Regs § 11040(b).)

05.15 Potential Accommodations for Employee-Victims of Domestic Violence, Sexual Assault, or Stalking

Depending on the facts of each individual case, the interactive process analysis will review all possible accommodations that would enhance the safety of the employee victim at work. In determining what accommodation is reasonable, Casitas will consider the exigent circumstance or danger facing the employee. Casitas will consider the preferences of the employee to be accommodated, but has the right to select and implement any accommodation that it deems effective. The range of potential safety measure accommodations includes, but is not limited to:

- transfer, reassignment, modified schedule;
- change in work telephone number;
- change in location of work station;
- installation of locks;
- assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace;
- the implementation of a safety procedure(s);
- adjustment to job structure, workplace facility, or work requirement; and
- referral to a victim assistance organization. (Labor Code § 230(f)(2).)

05.16 Potential Accommodations for Religious Creed, Religious Dress Practice, or Religious Grooming Practice

Depending on the facts of each case, the interactive process analysis will review all possible accommodations that would resolve the conflict between the religious belief or observance and any employment requirement. Casitas will consider the preference of the employee or applicant, but has the right to select and implement any accommodation that it deems effective. The range of potential accommodations includes, but is not limited to:

1. Job restructuring or job reassignment (but not segregation from other employees or the public) (Gov. Code § 12940(l)(2));
2. Modification of work practices, including dress or grooming standards (2 Cal.Code Regs § 11062(c)(2));
3. Allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances (2 Cal.Code Regs § 11062(a));
4. Allowing alternatives to union membership or payment of union dues (2 Cal.Code Regs § 11062(c)(3)).

“Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. “Religious dress practice” is construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. “Religious grooming practice” is construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed. (Gov. Code § 12926(q).)

05.17 Determination

After the interactive process communications, the Human Resources Manager will review the information received, and determine: whether all available information has been reviewed; whether all potential accommodations that the applicant or employee has suggested have been considered; whether additional discussions with the applicant or employee would be helpful; whether the applicant’s or employee’s preferences have been taken into account; if there is a reasonable accommodation that would enable the applicant or employee to perform essential job functions without harming him or herself

or others; and if the accommodations would pose an undue hardship on Casitas finances or operations. The Human Resources Manager will inform the applicant or employee of his or her determination in writing. The Human Resources Officer will use his or her discretion based upon the particular facts of each case.

05.18 Access to Medical Information Regarding Fitness for Duty

Medical records and information regarding fitness for duty, or the need for an accommodation, will be maintained separately from non-medical records and information. Medical records and information regarding fitness for duty and the need for accommodation will be accessible only by the Human Resources Manager, Casitas legal counsel, first aid and safety personnel in case of emergency, and supervisors who are responsible for identifying reasonable accommodations. Medical records and information contained therein may be released pursuant to state and federal law. (2 Cal.Code Regs § 11069(g).)