

UNITED STATES FEDERAL TRADE COMMISSION
Affirmative Employment of Persons with Targeted Disabilities
and Personal Assistance Services Procedures

Chapter 3, Section 305 – Personal Assistance Services

Part I – General Provisions

1. Purpose

This section fulfills the Federal Trade Commission's (FTC)'s affirmative employment obligations that Section 501 of the Rehabilitation Act of 1973 imposes on Federal employers for the hiring, placement, and advancement of individuals with disabilities and providing Personal Assistance Services (PAS) to individuals with targeted disabilities, who need them during work hours. PAS refers to assistance performing the activities of daily living that an individual would typically perform if he or she did not have a targeted disability, and that is not otherwise required as a reasonable accommodation, including, but not limited to, assistance with removing and putting on clothing, eating, and using the restroom (*see also* FTC Policy at Chapter 3, Section 300 – Disability Antidiscrimination Policy and Reasonable Accommodation Procedures). Provision of such assistance are intended to enable FTC employees with targeted disabilities to participate in the workplace.

2. Policy

The FTC's policy is to ensure that its employees will not be subjected to unlawful employment discrimination based on a targeted disability. Accordingly, the FTC takes affirmative action to recruit, hire, develop, and promote employees with targeted disabilities, to the fullest extent possible and ensures that all individuals with targeted disabilities are accorded equal employment opportunities.

3. Authority

Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.);

Section 501 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 791);

Equal Employment Opportunity Commission's Federal Sector Regulations (29 C.F.R. Parts 1614 and 1630); and

EEOC's Management Directive 715 (October 2003).

4. Coverage

This policy applies to FTC employees with targeted disabilities. Agency employees include all employees, regardless of appointment type, career status, occupation, or work

schedule (full-time, part-time, or temporary). In the case of PAS, coverage of this policy is limited to individuals who require such services because of a targeted disability.

5. Responsibilities

A. *The Chairman.* The Chairman is responsible for EEO programs at the FTC to include:

- (1) Ensuring that all FTC management officials are held accountable for achieving the purpose of this policy to provide PAS to certain employees who have targeted disabilities and fulfilling EEO requirements to increase the number of individuals with disabilities, including targeted disabilities, employed at the FTC.
- (2) Ensuring that agency operations adhere to EEO requirements in the employment, development, advancement, and treatment of FTC employees with targeted disabilities.

B. *Director of Equal Employment Opportunity and Workplace Inclusion (EEOWI).* The Director of EEOWI is responsible for the development and implementation of the FTC's plan for affirmative action and provision of PAS to employees with targeted disabilities consistent with relevant statutory and regulatory provisions, along with any applicable sub-regulatory guidance produced by the EEOC. Specific responsibilities include:

- (1) Advising and reporting findings to the Chairman on targeted disability hiring and advancement, and providing PAS to employees with targeted disabilities, and other matters arising from this policy's implementation;
- (2) Providing guidance and advice concerning equality of opportunity for persons with targeted disabilities in all aspects of employment, including information about new requirements and changes in disability laws, regulations, and guidance;
- (3) Proposing, developing, and reviewing FTC policies for increasing the number of employees with targeted disabilities and procedures to provide PAS, including generating reports to track the agency's compliance with legal requirements;
- (4) Collaborating with the Human Capital Management Office (HCMO) to ensure guidance and training is provided to employees and management officials concerning the agency's PAS procedures, and hiring programs and other resources available for recruiting, promoting, and retaining persons with targeted disabilities; and

- (5) Collaborating with HCMO to address barriers that affect recruitment, hiring, retention, and promotion of individuals with targeted disabilities and recommending specific remedies to remove such barriers.

C. *The Chief Human Capital Officer (CHCO).* The CHCO is responsible for supervising the administration of the agency's PAS procedures, coordinating the affirmative employment of persons with targeted disabilities, and providing advice as it relates to the employment of individuals with targeted disabilities. Specific responsibilities include:

- (1) Reviewing and updating the agency's plan for increasing employment and retention of individuals with targeted disabilities, and monitoring implementation of the plan;
- (2) Taking affirmative employment actions to promote equality of opportunity for individuals with targeted disabilities in all stages of employment including recruitment, hiring, placement, training, and career development (*e.g.*, providing written material in an accessible format);
- (3) Collaborating with the Director of EEOWI to ensure that guidance and training are provided to agency personnel regarding matters covered under this policy; and
- (4) Delegating responsibilities to the Disability Program Manager for the operation of the agency's PAS procedures.

D. *Disability Program Manager (DPM).* The DPM is responsible for providing assistance and guidance on implementing the requirements of this policy. Specific responsibilities include:

- (1) Implementing the FTC's PAS procedures;
- (2) Providing guidance and delivering training to employees and management officials concerning the FTC's PAS procedures and serving as a resource on targeted disability issues that affect the agency;
- (3) Establishing an effective tracking systems to monitor the processing of PAS requests and complying with all reporting and record retention requirements as provided for in Part IV of this policy;
- (4) Regularly reviewing and analyzing the FTC's PAS procedures and reporting such results through the CHCO to the Director of EEOWI on an annual basis;
- (5) Managing the FTC's PAS procedures, to include assisting in the timely processing of PAS requests, providing necessary guidance and technical

assistance to managers, supervisors, and employees regarding PAS requests, and consulting with other agency offices and officials (*i.e.*, the CHCO, EEOWI Director, and Office of the General Counsel), as necessary;

- (6) Assisting FTC management officials in evaluating PAS that have been provided to ensure their continued effectiveness;
- (7) Requesting and reviewing medical information if an impairment or need for PAS is not obvious. Requesting an external Medical Review Official (MRO) of the agency's choosing to review medical information at the agency's request and expense;
- (8) Assisting management officials with the proper handling of sensitive medical information and documents that may be submitted by employees in connection with a PAS request; and
- (9) Participating in and conducting training related to the provision of PAS.

E. *Managers and Supervisors.* All managers and supervisors are responsible for ensuring equality of opportunity in the workplace for individuals with targeted disabilities. Specific responsibilities include:

- (1) Consulting with the DPM in connection with all PAS requests, including options for an employee whose limitations or need for PAS is obvious, even when the employee has not submitted a PAS request;
- (2) Receiving and promptly responding to employee PAS requests, including contacting the DPM when a PAS request is received, engaging in the interactive process, identifying potential PAS, and maintaining confidentiality;
- (3) Serving as the deciding officials for PAS requests from employees;
- (4) Providing approved PAS and regularly evaluating the effectiveness of such PAS in consultation with the DPM;
- (5) Consulting with the DPM to ensure the confidential handling of medical information, in the event that this information is provided to a manager or supervisor by an employee who makes a PAS request;
- (6) Adhering to the policies and procedures in this policy when recruiting, interviewing, selecting, hiring, and supervising employees who have targeted disabilities; and

- (7) Ensuring there is no retaliation or adverse action taken against any employee based on need or perceived need for a PAS.

F. *Employees.* Employees are responsible for:

- (1) Keeping informed of their rights and obligations as outlined in this policy;
- (2) Informing FTC management officials of the need for PAS when an employee's targeted disability and need for such service is not obvious;
- (3) Providing FTC's management officials, or the DPM, with specific information, and providing appropriate medical information, when requested, related to a need for a PAS for a targeted disability and identifying PAS when the limitations or need for PAS is not obvious;
- (4) Cooperating with the DPM's requests for medical documents when the limitations or need for PAS is not obvious; and
- (5) Cooperating and communicating with FTC management officials during the PAS interactive process.

G. *Office of the General Counsel (OGC).* OGC is responsible for providing legal advice to the DPM and other agency management officials regarding PAS requests and affirmative employment obligations under the Rehabilitation Act. OGC also serves as the agency's legal representative in discrimination complaints against the FTC regarding PAS requests or the PAS process.

H. *Administrative Services Office (ASO).* In response to requests from management officials, ASO is responsible for coordinating with the DPM, management officials, and employees to identify and help provide services in connection with PAS requests.

6. Definitions

A. *Disability.* The term "disability" means, with respect to an individual:

- (1) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

A person must satisfy at least one of these three parts of the definition to be considered a person with a disability.

- B. *Essential Functions.* This term refers to job duties that are so fundamental to a position that the employee holds or seeks to hold that he or she cannot do the job without performing them. A function can be essential if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or if the function is specialized and the person is hired based on his or her ability to perform it. As it relates to this policy, provision of PAS services, together with any reasonable accommodation required, should enable the employee to perform the essential functions of his or her job. Determination of the essential functions of a position must be done on a position-by-position basis so that it reflects the job as it must actually be performed, and not simply the components of a generic position description.
- C. *Interactive Process.* The procedure in which the supervisor, manager, or DPM works collaboratively with the employee requesting a PAS because of a targeted disability.
- D. *Personal Assistant Services.* The services that help individuals who, because of targeted disabilities, require assistance to perform basic activities of daily living, like eating and using the restroom.
- E. *Targeted Disabilities.* A subset of disabilities that includes, but is not limited to, deafness, blindness, missing extremities, partial paralysis, complete paralysis, compulsive disorders, intellectual disabilities, developmental disability, traumatic brain injury, significant psychiatric disorder, and genetic or physical conditions affecting the limbs or spine. *Note:* Not every employee with a targeted disability will be entitled to PAS, because only some individuals with targeted disabilities require assistance with basic activities like eating and using the restroom.
- F. *Undue Hardship.* A determination made on a case-by-case basis that a specific PAS would cause significant difficulty or expense for the agency to provide when taking into account the resources available to the agency. In such instances, the agency does not have to provide the service. The factors considered in assessing undue hardship include but are not limited to: the nature and cost of the PAS requested or service needed; the overall financial resources of the agency offering the PAS; and the effect of the PAS on the operation of the agency. Because the typical cost of PAS is often minimal, undue hardship based on cost should rarely be an issue.

Part II – Procedures for Providing PAS

1. Requests for PAS

A requester is an employee, or someone acting on the employee's behalf, who is seeking a workplace-related PAS based on a targeted disability. The following procedures are applicable to PAS requests from such persons.

- (1) An employee must advise a management official that he or she needs assistance to perform basic activities of daily living at work due to a targeted disability, unless the employee's limitations or need for PAS is obvious. Alternatively, the employee may request PAS through the agency's DPM, who will then notify the appropriate supervisory or management official(s) of the request. A PAS request does not have to include any special words, such as "personal assistance services," "targeted disability," or "Rehabilitation Act."
- (2) An employee may submit a PAS request at any time, orally, or in writing. The employee must also complete FTC Form 645, "Request for Personal Assistance Services," and submit it to his or her supervisor, manager, or the DPM, confirming the request. A PAS request submitted directly to the DPM will be forwarded to the employee's supervisor.
- (3) An employee needing PAS on an intermittent basis should submit FTC Form 645, "Request for Personal Assistance Services," only for the first request. However, the employee must give appropriate and sufficient advance notice each subsequent time PAS are needed. If PAS are needed on a regular basis (e.g., a weekly staff meeting), the employee's supervisor or manager should ensure that the appropriate arrangements are made without requiring a request for each occasion.

2. Processing a PAS Request

- A. When receiving a PAS request, the recipient must process the request swiftly and appropriately, in consultation with the DPM.
- B. The PAS request process begins as soon as the employee makes an oral or written request for a PAS. If an employee makes an oral PAS request, the official receiving the request must inform the requester to complete FTC Form 645, "Request for Personal Assistance Services," and subsequently, initiate the interactive process described below.

3. The Interactive Process

Generally. After an employee submits a PAS request, the official responsible for making the decision regarding the request must engage in a discussion with the requester. Specifically, the discussion should include: the basic activities of daily living that are limited by the targeted disability; how those limitations could be overcome with PAS; and potential PAS that is being sought. Often such discussion will occur in the context of considering provision of a reasonable accommodation as required under the FTC's Disability Antidiscrimination Policy and Reasonable Accommodation Procedures, *Administrative Manual*, Chapter 3, Section 300.

- (1) The manager or supervisor must begin this discussion by contacting the employee within **three (3) business days** after the PAS request is received.
- (2) Ongoing communication via the interactive process is particularly critical when the targeted disability, need for PAS, or type of PAS needed, is not obvious or management is considering alternatives to the requested PAS. However, even cases where such information is clear and the need obvious, the management official and the requesting employee should still thoroughly discuss all relevant information.
- (3) Managers and supervisors must consider the PAS request submitted by the employee. Managers and supervisors must consult with the DPM and, if appropriate OGC, or other resources (*e.g.*, EEOWI) for guidance.
- (4) As part of the interactive process, managers and supervisors may offer alternative PAS and discuss their effectiveness with the employee. The FTC is not required to provide the exact PAS requested by the employee. If more than one PAS would be effective, the agency may provide a PAS that is different from the one requested.
- (5) If the FTC is hiring a PAS provider who will be assigned to a single individual, and that individual prefers a particular provider, the agency must give primary consideration to the employee's preference to the extent permitted by law. The FTC retains the right to choose a different provider if, for example, the individual's preferred provider is not qualified or less qualified than another provider, if the agency decides to utilize a pool of shared providers instead of dedicated providers, for reasons of cost or convenience, or if the agency decides to have appropriate, existing employees provide PAS.
- (6) The FTC retains the right to deny PAS when provision of the services would pose an undue hardship. The undue hardship standard for denying PAS is the same as for reasonable accommodations, which considers the nature, extent, and cost of the service in relation to the FTC's overall resources and the impact of the PAS on the operation of the agency's business.

4. Medical Documentation

- A. If an employee's targeted disability or need for PAS is not obvious or already known, the FTC may ask for medical documentation to establish that the requester has a targeted disability and needs PAS.
- B. The DPM is the only FTC official authorized to request medical documentation secondary to a PAS request. In determining whether medical documentation is

necessary, the DPM should be guided by the principles set forth in the ADA, as amended, the Rehabilitation Act, the EEOC's associated rules and guidance, and relevant legal precedent. In addition, the DPM may seek advice from OGC.

- C. The DPM may only request medical documentation related to the impairment at issue in the PAS request and may not ask for unrelated or general medical information (*e.g.*, access to the requester's medical records). Typically, medical documentation sought will include information regarding the employee's targeted disability, the extent to which the targeted disability limits the employee's ability to perform activities of daily living that an individual would typically perform if he or she did not have a disability; and whether there are specific PAS that would be effective.
- D. Pursuant to the Genetic Information Nondiscrimination Act of 2008 (GINA), the FTC may not request or require genetic information of an individual or family member of the individual, except as specifically allowed by this law. Employees may not be asked to provide genetic information in response to a request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services or participated in genetic research, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
- E. In most instances, the employee will be able to furnish medical information sufficient to substantiate the existence of a targeted disability or need for PAS as part of the interactive process. If the information furnished by the employee is insufficient to make a determination, the DPM may require additional information from a healthcare provider. When necessary, the DPM may also prepare a list of questions for the healthcare provider to answer, or ask the employee to sign a limited release permitting the DPM to contact the healthcare provider directly. In some cases, the DPM may arrange for an external MRO to review medical documentation and provide a medical opinion related to a PAS request. If the employee has signed a limited release as described above, the DPM may authorize the MRO to contact the employee's healthcare provider directly for any required information.
- F. The DPM will review the requested medical documentation upon receipt. The documentation may also be evaluated by the MRO and reviewed by OGC and other appropriate agency officials as necessary, subject to the confidentiality requirements below.
- G. If the employee does not want to share his or her medical documentation with their manager or supervisor, the employee must submit it directly to the DPM. The DPM will advise the supervisor or manager whether the medical

documentation received demonstrates that the employee has a targeted disability and whether PAS is appropriate. The DPM will provide any relevant information about the employee's disability to the management official to permit processing of the PAS request.

- H. The ultimate responsibility for providing medical documentation rests with the employee. If the employee requesting PAS fails to provide sufficient medical documentation or cooperate in the FTC's efforts to obtain such documentation, the agency may deny the request.
- I. In cases where the targeted disability is obvious or otherwise already known to the manager or supervisor, and the need for PAS continues, the FTC will not seek any further medical documentation. *Note:* In limited instances, the FTC may require updated medical documentation to ensure that PAS remains effective or is still needed.

5. Confidentiality Requirements

- A. Medical documentation must be kept confidential.
 - (1) All medical documentation related to the PAS process must be kept confidential and in a file separate from the employee's official personnel file.
 - (2) The following information must also be kept confidential: the employee's decision to request PAS, that PAS was approved or denied, and information about functional limitations of the employee.
 - (3) Any FTC employee who obtains or receives medical information associated with a PAS request is strictly bound by these confidentiality requirements.
- B. The DPM will maintain custody of records obtained or created during the processing of a PAS request, including medical records, in accordance with the Privacy Act, 5 U.S.C. § 552a, *et. seq.*, and 29 C.F.R. §§ 1611 and 1630.14.
- C. Certain information may be shared with appropriate officials to enable them to make a determination concerning a PAS request. However, only specific information required to process the PAS request should be disclosed to agency officials who are subject to the confidentiality requirements related to the PAS process.

6. Time Limits

- A. Within **20 business days** after receiving a PAS request, the responsible management official must make a decision and provide PAS, if granted.

- (1) The responsible management official must grant the PAS within **10 business days** of receiving it under the following circumstances: if the targeted disability is obvious or already known to the responsible official; if the need for PAS is obvious; if medical documentation is not required to evaluate a PAS request; or if PAS can be provided quickly.
 - (2) If medical documentation is requested, the 20-day period will be extended by the amount of time necessary to request, receive, and evaluate such documentation.
 - B. *Expedited Processing.* In certain situations, the processing of a PAS request must be expedited. This may be necessary, for example, where the agency's assignment of work-related travel results in an employee's inability to rely on his or her usual source of PAS during work hours.
 - C. *Extenuating Circumstances.* The requisite time for processing a PAS request may be extended due to circumstances that could not reasonably have been anticipated or avoided, or that are beyond FTC's ability to control. Extenuating circumstances include, but are not limited to, the need to obtain and evaluate medical information. The manager or supervisor must consult with the DPM prior to taking any of the actions described in this section.
 - (1) The supervisor or manager should notify the employee in writing of the reason for any delay and the approximate timeframe in which a decision should be expected or when the FTC will provide PAS.
 - (2) If there is a delay in deciding or providing PAS, the supervisor or manager should consider whether there are any temporary measures that could be taken. A temporary PAS can be provided if: (1) they do not interfere with the operations of the FTC; and (2) the employee is informed that they are being provided only on a temporary basis.
7. Resolution of a Request for PAS Request
- A. Approving a Request for PAS
 - (1) All decisions regarding requests for PAS will be communicated to the employee in writing. A decision to approve a request for PAS will be communicated to an employee using FTC Form 645, "Request for Personal Assistance Services." The responsible official will complete this form, return it to the employee, and discuss implementation of the approved PAS. A copy of this completed form must be provided to the DPM.

- (2) Managers and supervisors should follow-up with the employee after a request for PAS has been approved to ensure that it meets the employee's needs. In addition, managers and supervisors must evaluate PAS that have been provided, in consultation with the DPM, to ensure that they continue to be effective and necessary.
- (3) A decision to provide PAS that are different from what has been requested must be made in consultation with the DPM and based on legal advice provided by OGC. FTC Form 646, "Denial of Request for Personal Assistance Services," will explain the specific reason(s) for declining the requested PAS and the reason(s) the management official selected the chosen PAS.

B. Denying a Request for PAS

- (1) A decision to deny a request for PAS is a final action and must be made in consultation with the DPM and based on legal advice provided by OGC.
- (2) The manager or supervisor will complete FTC Form 646, "Denial of Request for Personal Assistance Services," which provides the employee with the specific reason(s) for any denial and applicable appeal rights. A copy of this completed form must be provided to the DPM.
- (3) The FTC may deny a request if: the requestor is not an employee; the requestor does not have a targeted disability; the targeted disability does not create a need for PAS; the requestor is not able to perform the essential functions of the job, even with PAS and any reasonable accommodation; the requestor would create a direct threat to safety on the job, even with PAS and any reasonable accommodation; or providing PAS would impose undue hardship on the agency.
- (4) If the manager or supervisor chooses a PAS provider that is different than the one requested by the employee and the employee refuses to accept it, the FTC will record the refusal using FTC Form 646, "Denial of Request for Personal Assistance Services," and the decision will be recorded as a PAS denial. The denial document will explain why the PAS provider requested was not chosen.

Part III – Reporting Requirements, Information Tracking, and Recordkeeping Systems

- A. To ensure compliance with this policy and its procedures as well as the Rehabilitation Act and EEOC policy guidance, the DPM will collect and maintain the following information:
 - (1) The number and types of PAS requests that the FTC receives and whether those PAS requests have been granted or denied;

- (2) The jobs (occupational series, grade level, and agency component) for which PAS requests have been received;
 - (3) The types of PAS requests for each of those jobs;
 - (4) The number and types of PAS requests for each job, by agency component, that have been approved, and the number and types that have been denied;
 - (5) The reasons for denial of PAS requests;
 - (6) The amount of time taken to process each PAS request; and
 - (7) The sources of technical assistance that have been consulted in trying to provide PAS.
- B. The DPM will provide copies of all FTC Forms involving PAS requests (*i.e.*, FTC Forms 645 and 646) to the CHCO and the Director of EEOVI on a quarterly basis. Upon request, the DPM will also provide other relevant materials to the CHCO and the Director of EEOVI.
- C. The DPM, through the CHCO, will provide a written assessment of the agency's PAS procedures to the Director of EEOVI on a quarterly basis. This report must include the number and types of PAS requests approved or denied, the amount of time to process the requests, reasons for denials, other relevant tracking information, and any recommendations for improving the agency's procedures.
- D. Because it is imperative that the FTC evaluate the effectiveness of its PAS program, the Director of EEOVI, in consultation and collaboration with the CHCO and the DPM, will periodically review the program and issue written reports regarding the status of the agency's PAS procedures, including recommendations for improvement. The EEOVI Director will disseminate all written reports to the FTC Chairman, the CHCO, the DPM, and other appropriate agency officials. The reports must not contain confidential information about specific PAS requests, but will include general information sufficient to provide a qualitative assessment of the agency's targeted disability program.
- E. The DPM will keep appropriate records and documentation to substantiate an employee's targeted disability in the event that there is a new manager or supervisor, and will take the necessary steps to apprise the new manager or supervisor of direct reports who have been provided with a PAS.
- F. Recordkeeping Systems
- (1) The DPM, and not the supervisor or manager, will keep all medical records related to a particular employee who has submitted a PAS request for the duration of his or her employment with the FTC. These records

include any documentation of the employee's targeted disability, as well as information about the disposition of the employee's PAS request(s).

- (2) The DPM will keep any information or cumulative records used to track the FTC's performance with regard to providing PAS for at least three years. The DPM will use this tracking information to evaluate whether and where the FTC needs to improve its handling of PAS requests. Upon request or in the fulfillment of EEOC requirements, the EEOWI Director will assess the FTC's targeted disability program.

Appendix – Personal Assistance Services Forms

FTC Form 645 – Request for Personal Assistance Services

FTC Form 646 –Denial of Request for Personal Assistance Services