

**BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA**

RESOLUTION APPROVING AMERICANS WITH DISABILITY ACT POLICY

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104(6), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103, the powers of the County as a body are exercised by the County Board;

WHEREAS, Sarpy County previously approved an Equal Employment Opportunity Plan for Sarpy County on February 1, 2014, via Resolution 2014-47, said Plan included an “Americans with Disabilities Act Policy”;

WHEREAS, a revised Equal Employment Opportunity Plan was approved via Resolution 2018-052; said Plan does not include an “Americans with Disabilities Act policy,” thus the County desires to adopt an updated “Americans with Disabilities Act Policy” separate from the already approved Equal Employment Opportunity Plan (Resolution 2018-052);

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the “Americans with Disabilities Act Policy” attached hereto.

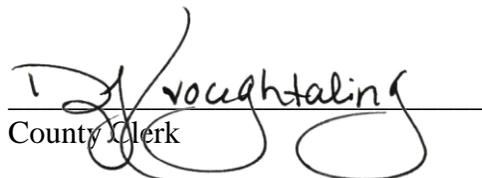
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with the applicable law on the 27th day of February, 2018.


Sarpy County Board Chairman



Attest:

SEAL


County Clerk

**AMERICANS WITH DISABILITIES ACT (ADA) POLICY
FOR SARPY COUNTY, NEBRASKA**



February 2018

American's With Disabilities Act Policy

I. Employment

- a. Background: The Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA) are federal laws that require employers with 15 or more employees to not discriminate against applicants and individuals with disabilities and, when needed, to provide reasonable accommodations to applicants and employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position.
- b. Policy Statement: It is the policy of Sarpy County to comply with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). Furthermore, it is Sarpy County's policy not to discriminate against qualified individuals with disabilities in regards to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions and privileges of employment.
- c. Procedures for Requesting a Reasonable Accommodation:
 - i. Generally, an applicant or employee must let his or her supervisor or Human Resources know that he or she needs an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An applicant or employee may request a reasonable accommodation at any time, orally or in writing, however, for record keeping purposes, employees are encouraged to use an "Accommodation Request Form."
 - ii. An individual's receipt or denial of an accommodation does not prevent the individual from making another request at a later time if circumstances change and he or she believes that an accommodation is needed due to limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different reasonable accommodation).
 - iii. A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication in which an individual asks or states that he or she needs the County to provide or to change something because of a medical condition. A supervisor or Human Resources should ask an individual whether he or she is requesting a reasonable accommodation if the nature of the initial communication is unclear.

- iv. A family member, health professional, or other representative may request an accommodation on behalf of an employee or applicant. For example, a doctor's note outlining medical restrictions for an employee constitutes a request for reasonable accommodation.
 - v. When an individual (or third party) makes an oral request, the supervisor or Human Resources should ensure that the request is confirmed in writing.
 - vi. An employee needing a reasonable accommodation on a recurring basis, such as the assistance of a sign language interpreter, must submit the request in writing only for the first request. However, the employee requesting 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), Human Resources should ensure that an employee's supervisor makes the appropriate arrangements without requiring a request in advance of each occasion.
- d. Processing the Request:
- i. Human Resources is responsible for processing requests for reasonable accommodations. Therefore, if a supervisor receives a request, he or she should forward the request to Human Resources for processing.
 - ii. Human Resources may work closely with an employee's supervisor in responding to the request, particularly those involving performance of the job. Human Resources will need to consult with an employee's supervisor to gather relevant information necessary to respond to a request and to assess whether a particular accommodation will be effective.
- e. The Interactive Process:
- i. After a request for accommodation has been made, the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and Human Resources must communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.
 - ii. Human Resources will contact the applicant or employee to begin discussing the accommodation request. In some instances, Human

Resources may need to get information to determine if an individual's impairment is a "disability" under the Rehabilitation Act or to determine what would be an effective accommodation. Such information may not be necessary if an effective accommodation is obvious, if the disability is obvious (e.g., the requestor is blind or has paraplegia) or if the disability is already known to Human Resources (e.g., the requestor previously asked for an accommodation and information submitted at that time showed a disability existed and that there would be no change in the individual's medical condition).

- iii. When practicable, both the individual making the request and the decision maker should work together to identify effective accommodations.
- iv. When a third party (e.g., an individual's doctor) requests accommodation on behalf of an applicant or employee, Human Resources should, if possible, confirm with the applicant or employee that he or she wants a reasonable accommodation before proceeding. Where this is not possible, Human Resources will process the third party's request if it seems appropriate (e.g., by granting immediate leave) and will consult directly with the individual needing the accommodation as soon as practicable.
- v. Human Resources may need to consult with other County personnel (e.g., Facilities Management, Information Systems, etc.) or outside sources to obtain information necessary to make a determination about the request.
- vi. When an applicant with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, he or she will be given the same consideration for employment as any other qualified applicant. Applicants who pose a direct threat to the health, safety and well-being of themselves or others in the workplace when the threat cannot be eliminated by reasonable accommodation will not be hired. Current employees who pose a direct threat to the health or safety of themselves or other individuals in the workplace will be placed on leave until an organizational decision has been made in regard to the employee's immediate employment situation.
- vii. Individuals who are currently using illegal drugs are excluded from coverage under the County ADA policy.

- f. Requests for Medical Information:
- i. If a requestor's disability and/or need for accommodation are not obvious or already known, Human Resources is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by Human Resources where the disability and/or need for accommodation are not obvious or already known.
 - ii. Only Human Resources may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health professional. Even if medical information is needed to process a request, Human Resources does not necessarily have to request medical documentation from a health care provider; in many instances the requestor may be able to provide sufficient information that can substantiate the existence of a "disability" and/or need for a reasonable accommodation. If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform Human Resources. Human Resources will then determine whether additional medical information is needed to process the current request.
 - iii. If the initial information provided by the health professional or volunteered by the requestor is insufficient to enable Human Resources to determine whether the individual has a "disability" and/or that an accommodation is needed, Human Resources will explain what additional information is needed. If necessary, the individual should then ask his or her health care provider or other appropriate professional to provide the missing information. Human Resources may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, Human Resources may ask the individual requesting accommodation to sign a limited release permitting Human Resources to contact the provider for additional information. Human Resources may have the medical information reviewed by an appropriate medical or occupational provider of the County's choosing, at the County's expense.

- iv. In determining whether documentation is necessary to support a request for reasonable accommodation and whether an applicant or employee has a disability within the meaning of the Rehabilitation Act, Human Resources will be guided by principles set forth in the ADAAA. Specifically, the ADAAA directs that the definition of “disability” be construed broadly and that the determination of whether an individual has a “disability” generally should not require extensive analysis. Notwithstanding, Human Resources may require medical information in order to design an appropriate and effective accommodation.

- g. Confidentiality:
 - i. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that Human Resources obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual’s personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any County employee who obtains or receives such information is strictly bound by these confidentiality requirements.

 - ii. Human Resources may share certain information with an employee’s supervisor or other necessary parties as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, Human Resources will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, Human Resources will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability.

 - iii. In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:
 - 1. Supervisors are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
 - 2. First aid and safety personnel may be informed, when appropriate, *if* the disability might require emergency treatment or assistance in evacuation; and
 - 3. Government officials may be given information necessary to investigate the agency’s compliance with the Rehabilitation Act.

- h. Time frame for processing requests and providing reasonable accommodation:
 - i. Human Resources will strive to process and complete requests as soon as reasonably possible.
 - ii. If Human Resources must request medical information or documentation from a requestor's doctor, the time frame to process the request will be extended.
 - iii. Extenuating Circumstances: These are circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond Human Resource's ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the interactive process will take longer than expected.
- i. Resolution of the Reasonable Accommodation Request:
 - i. All decisions regarding a request for reasonable accommodation will be communicated to an applicant or employee in writing.
 - 1. If Human Resources grants a request for accommodation, Human Resources will inform the requestor in writing of the accommodation decision and any implementation information.
 - 2. Human Resources will explain both the reasons for the denial of the individual's specific requested accommodation and why Human Resources believes that the chosen accommodation will be effective.
 - 3. If the request is approved but the accommodation cannot be provided immediately, Human Resources will inform the individual in writing of the projected time frame for providing the accommodation.
 - ii. If Human Resources denies a request for accommodation, Human Resources will inform the requestor in writing. The explanation for the denial will clearly state the specific reason(s) for the denial. This means that Human Resources cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective." Rather, the form will state and Human Resources will explain specifically why the accommodation would result in undue hardship or why it would be ineffective.
 - 1. If there is a legitimate reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation

Act), Human Resources will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation.

2. If Human Resources offers an accommodation other than the one requested, but the alternative accommodation is not accepted, Human Resources will record the individual's rejection of the alternative accommodation. The law does not require the County to provide the requested accommodation; rather, the County if providing an accommodation need only provide an effective accommodation.
- iii. A supervisor who believes that an employee may no longer need a reasonable accommodation should contact Human Resources. Human Resources will decide if there is a reason to contact the employee to discuss whether he or she has a continuing need for reasonable accommodation.

II. Programs, Services, and Activities

- a. Policy Statement: Sarpy County will ensure that no qualified disabled individual shall, solely on the basis of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any of its programs, services, or activities as provided by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). Sarpy County further ensures that every effort will be made to provide nondiscrimination in all of its programs or activities regardless of the funding source.
- b. Organization: The Acting Human Resource Director will serve as Sarpy County's ADA and Section 504 Compliance Coordinator. The Acting Human Resource Director will rely on other key staff members, including the County's Facilities Management Director, County Engineer, Deputy County Attorney, and Deputy County Administrator for assistance and support in the development, implementation, and monitoring of the County's Plan.
- c. Section 504/ADA Coordinator Responsibilities:
 - i. Serve as principal coordinator for ADA programs, policies, and procedures;
 - ii. Publicize the contact information of the designated ADA Coordinator;

- iii. Monitor and ensure compliance with ADA/504 and identify shortcomings and develop remedies;
 - iv. Coordinate complaint procedures to ensure due process and provide prompt resolutions;
 - v. Conduct reviews and prepare reports of accomplishments and problem areas as needed;
 - vi. Coordinate and conduct training programs and provide assistance to managers and employees; and
 - vii. Identify, investigate, and eliminate ADA/504 discrimination when found to exist.
- d. Section 504/ADA Notice to the Public:
- i. Sarpy County does not discriminate on the basis of disability in admission to its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations and also does not discriminate on the basis of disability in its hiring or employment practices.
 - ii. This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Questions, complaints, or requests for additional information or accommodation regarding the ADA and Section 504 may be forwarded to the Human Resources Director at 402-593-4465.
- e. Section 504/ADA Self-Evaluation and Transition Plan: The Sarpy County Board of Commissioners adopted a self-evaluation and transition plan on October 21, 2014 by Resolution 2014-394. Before passage of the Resolution, the County Board Held a Public Hearing on the self-evaluation and transition plan on September 30, 2014 followed by an open public comment period from October 1, 2014 through October 15, 2014. The self-evaluation and transition plan documents are available at <http://www.sarpy.com/humanresources/ada.html> or inspection in hard copy form in the Human Resources Department.

III. Complaint Procedures applicable to Sections I and II

- a. Individuals who believe they have been the victims of conduct prohibited by this Policy or believe they have witnessed such conduct shall discuss their concerns with their immediate supervisor or Human Resources. In order to have the complaint considered for review, the complainant must file the complaint no later than 60 days after:
 - i. The date of alleged act of wrongdoing; or
 - ii. Where there has been a continuing course of conduct, the date on which that alleged conduct was discontinued.
 - iii. In either case (i) or (ii), Sarpy may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

- b. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed Policy violation. In the event that a person makes a verbal complaint to an official or employee of Sarpy, the person shall be interviewed by the Human Resources Director and encouraged to reduce the complaint to writing.
- c. Within 10 calendar days, the Human Resources Director will acknowledge receipt of the allegation.
- d. Within 30 calendar days after receipt of the allegation, if necessary, the Human Resources Director will begin to conduct an investigation of the allegation and will thereafter timely render a final decision for action in a report of findings. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.
- e. Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action.
- f. Retaliation against an individual for reporting an alleged Policy violation or for participating in an investigation, is a serious violation of this Policy and will be subject to disciplinary action. Acts of retaliation should be reported immediately and will be promptly investigated and addressed.
- g. False and malicious complaints of wrongdoing (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate disciplinary action.
- h. Responsive action will be recommended as warranted and may include training, referral to counseling or disciplinary action such as a warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, or termination.
- i. The Human Resources Director will notify the complainant in writing of the final decision reached and will advise the complainant of his/her appeal rights.

IV. Index

- a. Definitions applicable to Sections I and II¹

¹ The examples provided in the above terms are not meant to be all-inclusive and should not be construed as such. They are not the only conditions that are considered to be disabilities, impairments or reasonable accommodations covered by the ADA/ADAAA policy.

- i. Disability: A physical or mental impairment that substantially limits one or more major life activities of the individual, a record of such an impairment, or being regarded as having such an impairment.
- ii. Major life activities: Term includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.
- iii. Major bodily functions: Term includes physical or mental impairment such as any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. Also covered are any mental or psychological disorders, such as intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness and specific learning disabilities.
- iv. Substantially limiting: In accordance with the ADAAA final regulations, the determination of whether an impairment substantially limits a major life activity requires an individualized assessment, and an impairment that is episodic or in remission may also meet the definition of disability if it would substantially limit a major life activity when active. Some examples of these types of impairments may include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder and schizophrenia. An impairment, such as cancer that is in remission but that may possibly return in a substantially limiting form, is also considered a disability under EEOC final ADAAA regulations.
- v. Direct threat: A significant risk to the health, safety or well-being of individuals with disabilities or others when this risk cannot be eliminated by reasonable accommodation.
- vi. Qualified individual: An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- vii. Reasonable accommodation: Includes any changes to the work environment and may include making existing facilities readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, telecommuting,

reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

- viii. Undue hardship: An action requiring significant difficulty or expense by the employer. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
 - 1. The nature and cost of the accommodation.
 - 2. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact of such accommodation on the operation of the facility.
 - 3. The overall financial resources of the employer; the size, number, type and location of facilities.
 - 4. The type of operations of the County and/or applicable Department, including the composition, structure and functions of the workforce; administrative or fiscal relationship of the particular facility involved in making the accommodation to the employer.
- ix. Essential functions of the job: Term refers to those job activities that are determined by the employer to be essential or core to performing the job; these functions cannot be modified.
- x. Supervisor: Elected Official, Department Head, Chief Deputy, or designee.

b. Authorities applicable to Sections I and II (non-exhaustive):

- i. Section 504 of the Rehabilitation Act of 1973, as amended, provides that “No otherwise qualified disabled individual in the United States, as defined in section 7(6), shall, solely by reason of his disability, be excluded for the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- ii. 29 USC 794 (October 29, 1992 to the Rehabilitation Act of 1973) substitutes “a disability” for “handicaps” and “disability” for “handicap.”

- iii. 49 CFR Part 27.13 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, "This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance."
- iv. 49 CFR Part 28.102 (Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Transportation) states, "This part applies to all programs or activities conducted by the Department of Transportation except for programs and activities conducted outside the United States that do not involve individuals with disabilities in the United States."
- v. 28 CFR Part 35 (Judicial Administration) states that: "The purpose of this part is to effectuate Subtitle A of Title II of the ADA which prohibits discrimination on the basis of disabilities by public entities."
- vi. 49 CFR Part 27 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, "The purpose of this part is to carry out the intent of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) as amended, to the end that no otherwise qualified disabled individual in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits or, or be subjected to discrimination under any program or activity receiving Federal financial assistance."
- vii. 49 CFR Part 28-140 (Employment) states that, "(a) No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Department," and "(b) The definitions, requirements, and procedures of Section 504 of the Rehabilitation Act of 1973 (29 USC 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities."
- viii. 29 CFR Part 1613 (Equal Employment Opportunity in the Federal Government) states that: "It is the policy of the Government of the United States...to provide equal opportunity in employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, or national origin and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency."

ix. 42 USC Part 12101-12213 (The Americans with Disabilities Act of 1990) states that: “No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

c. Assurances applicable to Section II

- i. Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), Sarpy County, desiring to avail itself of federal financial assistance from the US Department of Transportation, hereby gives assurance that no qualified disable person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives benefits from this federal financial assistance.
- ii. Sarpy County further assures that its programs will be conducted, and its facilities operated, in compliance with all requirements imposed by or pursuant to 49 CFR Part 27, 28 CFR Part 35, and 42 USC 12101-12213.

V. **Policy Dissemination:** A copy of this Policy shall be available within the Human Resources Department and on www.sarpy.com.