

# Malheur Education Service District

Code: **ACA-AR**  
Revised/Reviewed: 8/16/05; 7/15/14  
Orig. Code(s): ACA-AR

## **Americans with Disabilities Act**

In compliance with the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendment Act of 2008 (ADA), the following procedures shall be followed:

### **Compliance Officer**

1. The superintendent shall be designated as the ESD's ADA compliance officer. The compliance officer will:
  - a. Coordinate the ESD's ADA responsibilities and compliance efforts;
  - b. Make available to all interested individuals the name, office address and telephone number of the ADA compliance officer;
  - c. Investigate any complaint alleging noncompliance or actions prohibited under the ADA;
  - d. Administer the ESD's ADA grievance procedure to provide for the prompt investigation and equitable resolution of complaints.

### **Self Evaluation**

2. A self-evaluation study<sup>1</sup> shall be completed by the ESD to include:
  - a. An evaluation of all current Board policies and practices to ensure compliance with the requirements of the ADA;
  - b. A description of areas examined and identification of any barriers to accessibility and usability by qualified individuals with disabilities;
  - c. An opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities to participate in the self-evaluation study by submitting comments;
  - d. A plan(s) for the removal of any identified barrier and/or modification of Board policies and practices necessary to ensure ADA compliance;
  - e. A description of any modification made.

Self-evaluation records will be maintained and available for public inspection at the ESD office. The records will include a list of interested persons consulted, a description of the areas examined and the problems identified and a description of any modifications made.

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<sup>1</sup>If self-evaluation and/or transition plan requirements of Section 504 of the Rehabilitation Act of 1973 have been completed, these requirements apply only to the employment practices, services, programs and activities not included in the previous self-evaluation and/or transition plan. It is recommended that ESDs review their self-evaluation study and transition plan periodically for progress and continue to maintain and make available each document to interested individuals, organizations or agencies for verification purposes, as needed.

## **Transition Plan**

3. A transition plan<sup>1</sup> shall be developed by the ESD to address any structural changes required to achieve employment practices, services, programs and activities accessibility to include:
  - a. An opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities to participate in the development of the transition plan by submitting comments;
  - b. An identification of physical obstacles in facilities that limit accessibility to individuals with disabilities;
  - c. A description in detail of the methods that will be used in removing barriers and making facilities accessible and/or steps and schedule necessary to complete the identified changes;
  - d. An identification of the official responsible for implementation of the plan;
  - e. An identification of steps that will be taken during each year of the transition period if longer than one year.

## **Services, Programs, Activities Accessibility**

4. All ESD services, programs and activities shall be readily accessible to and usable by individuals with disabilities. In order to achieve accessibility, structural and nonstructural methods such as the acquisition or redesign of equipment, assignment of aides to beneficiaries and the provision of services at alternate accessible sites will be considered. Final decision of an appropriate method of providing program accessibility will be determined in accordance with the provisions of the ADA:
  - a. Physical changes to an existing building, acquisition or construction of additional facilities will be required only when there is no other feasible way to make the services, programs or activities accessible;
  - b. Priority will be given to the method that results in the most integrated setting to encourage interaction among all users of the services, programs or activities, including individuals with disabilities;
  - c. No action will be taken that would fundamentally alter the services, programs or activities or result in undue financial or administrative burden to the ESD. Any such determination will take place as follows:
    - (1) The decision will be made by the superintendent or his/her designee;
    - (2) All resources available for use in the funding and operation of the services, programs or activities will be considered;
    - (3) A written statement of the reasons for reaching such decision will be maintained on file;
    - (4) The ESD will take other action appropriate to ensure that individuals with disabilities receive the benefits of such services, programs and activities that would not result in such alteration or burden as determined by the ESD.

## **Job Descriptions**

5. Job descriptions shall be maintained and provided in oral, written and/or videotaped form, reviewed and revised annually as needed to include:
  - a. All essential job functions. Essential job functions are those job duties that include, but are not limited to, the following:

- (1) The function is essential because the reason the position exists is to perform that function;
  - (2) The function is essential because of the limited number of employees available among whom the performance of that job function can be distributed;
  - (3) The function is so specialized that the incumbent is hired for his/her expertise or ability to perform the particular function.
- b. Physical, mental and emotional skills for each position as appropriate, and only to the extent such skills are in fact required and in practice;
  - c. Vocational and/or educational preparation requirements;
  - d. Attendance standards;
  - e. A statement that new job descriptions supersede prior descriptions for the position. All past and present job descriptions that do not reflect current requirements of the position are rescinded;
  - f. A statement on job descriptions, "I have read this job description and agree with its contents.";
  - g. A provision for current employee signature and the date the job description was signed.

### **Job Posting**

6. Job postings shall be reviewed to ensure:

- a. All postings contain appropriate notice of the ESD's responsibilities under the ADA. For example:

"The Malheur Education Service District, in support of employment practices free of barriers to individuals with disabilities and in compliance with the Americans with Disabilities Act of 1990, provides reasonable accommodations necessary upon request and appropriate notice. For further information or assistance, contact the ESD office at 541-473-3138 or 363 A St W, Vale, Oregon, 97918-1305. Speech/Hearing impaired persons may reach the ESD through the Oregon Telecommunications Relay Service by dialing 1-800-735-2900 or 711."

OR

"Reasonable accommodations for the application and interview process will be provided upon request and as required in accordance with the Americans with Disabilities Act of 1990. Individuals with disabilities may contact the ESD office at 541-473-3138 or 363 A St W, Vale, Oregon, 97918-1305 for additional information or assistance. Speech/Hearing impaired persons may contact the ESD for assistance through the Oregon Telecommunication Relay Service at 1-800-735-2900 or 711."

- b. All postings eliminate any discriminatory references;
- c. All job advertisements provide, in addition to a telephone number to which applicants may apply for additional information, an address and/or TDD (telecommunications device for the deaf) or Oregon Telecommunication Relay Service phone number for the hearing impaired.

## **Job Application Forms**

7. Job application forms shall be reviewed and revised as appropriate to include:
  - a. Notice of the ESD's responsibilities under the ADA (see job posting notice);
  - b. A statement asking applicant whether he/she requires any reasonable accommodation for the hiring process. The hiring process may include, for example, an interview, a timed written test or job demonstration;
  - c. A request for applicant to provide documentation verifying the need for a reasonable accommodation, if deemed necessary by the ESD;
  - d. The elimination of any health questions such as:
    1. Have you ever had or been treated for any of the following conditions or diseases (followed by a checklist)?
    2. Please list any conditions or diseases for which you have been treated in the past three years.
    3. Have you ever been hospitalized? If so, for what condition?
    4. Have you ever been treated by a psychiatrist or a psychologist? If so, for what condition?
    5. Have you ever been treated for any mental or emotional condition?
    6. Is there any health-related reason that may prevent you from performing the job for which you are applying?
    7. Have you had a major illness in the past five years?
    8. Do you have any physical defects which prevent you from performing certain kinds of work? If yes, describe such defects and specific work limitations.
    9. Do you have any disabilities or impairments which may affect your performance in the position for which you are applying?
    10. Are you taking any prescribed drugs?
    11. Have you ever been treated for drug addiction or alcoholism?
    12. Have you ever filed for workers' compensation benefits or had a work-related injury?

## **Reasonable Accommodations - General**

8. The ESD will provide reasonable accommodations to qualified individuals with disabilities who are part-time, full-time or probationary employees or applicants for employment, unless to do so would cause undue hardship. Reasonable accommodations include:
  - a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position the qualified applicant desires; or
  - b. Modifications or adjustments to the work environment or to the manner or circumstances under which the position held is customarily performed that enable a qualified individual with a disability to perform the essential functions of that position; or
  - c. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

## **Reasonable Accommodations - Requests**

9. A qualified individual with a disability should request a reasonable accommodation when he/she knows there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job or gaining equal access to a benefit of employment.

Reasonable accommodation requests will be guided by the following provisions:

- a. To request a reasonable accommodation, an individual may use “plain English” and need not mention the ADA or use the phrase “reasonable accommodation”;
- b. A request for a reasonable accommodation may be made on behalf of an individual with a disability by a family member, friend, health care professional or other representative;
- c. Requests will not be required to be in writing;
- d. When the disability and/or the need for an accommodation is not obvious, the ESD may request reasonable documentation from a health care or rehabilitation professional. The documentation requested shall be related to the particular disability for which an accommodation is requested. In requesting documentation, the ESD will specify what types of information it is seeking regarding the disability, its functional limitations and the need for reasonable accommodation. The ESD recognizes it may not request an individual’s complete medical record;
- e. Documentation shall not be requested when both the disability and the need for the accommodation are obvious or the individual has already provided the ESD with sufficient information to substantiate that he/she has an ADA disability and needs the reasonable accommodation requested;
- f. The ESD may send an individual to a health care professional of the ESD’s choosing, at ESD expense, for the purpose of documenting a disability and/or the need for accommodation, only if the individual has provided insufficient information from his/her treating provider to substantiate that the disability exists or an accommodation is needed.

## **Job Interview Procedures**

10. Job interview procedures shall be reviewed to ensure:
  - a. Physical and/or other barriers in the interview setting have been eliminated. The availability of accessible locations and accessible formats, such as a reader, Braille, audio recordings, written materials, sign language and interpreters for individuals with vision and hearing impairments and personal assistance for individuals with manual impairments have been considered as appropriate;
  - b. Questions relating to the health of the applicant, the applicant’s disabilities and work-related injuries and benefits have been eliminated;
  - c. Applicant’s previous work history will be ascertained without reference to the applicant’s disability. The specifics of prior job functions and the applicant’s ability to perform those specific functions may be discussed;
  - d. Requirements that an applicant describe or demonstrate how he/she would perform any or all job functions are required for all applicants in that job category. A particular applicant may be asked to describe or demonstrate how he/she would perform the job only when the ESD reasonably believes the applicant will not be able to perform a job function because of a known disability. The applicant’s disability would be “known” either because it is obvious or because the applicant has voluntarily disclosed that he/she has a hidden disability;

- e. Questions related to the applicant's need to leave work to receive treatment or how often leave may be necessary as a result of a disability have been eliminated. Regular work hours, leave policies and attendance requirements may be explained and applicant asked if he/she will be able to meet those requirements. The ESD may ask about an applicant's prior attendance record (for example, how many days the applicant was absent from his/her last job). The ESD may also ask questions designed to detect whether an applicant abused his/her leave (for example, "How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?"). At the pre-offer stage, the ESD may not ask how many days an applicant was sick;
- f. Questions relating to applicant's current illegal use of drugs are not likely to elicit information about an applicant's lawful drug use, unless the ESD administers a test for illegal use of drugs and the applicant tests positive for illegal drug use. In such cases, the ESD may validate the test results by asking about lawful drug use or possible explanations for the positive result other than the illegal use of drugs;
- g. Questions relating to an applicant's prior illegal drug use are not likely to elicit information about a disability. The ESD may ask, for example, whether the applicant has ever used illegal drugs, when was the last time he/she used illegal drugs or if he/she has used illegal drugs in the last six months. The ESD will not ask questions about whether the applicant was a past drug addict. These questions are impermissible at the pre-offer stage;
- h. Questions relating to an applicant's drinking habits are not likely to elicit information related to how much alcohol an applicant drinks or whether he/she has participated in an alcohol rehabilitation program. The ESD may ask, for example, whether the applicant drinks alcohol or whether he/she has been arrested for driving under the influence;
- i. Questions relating to an applicant's arrest or conviction record have been included;
- j. Selection and administration of employment tests will take place in a manner that leads to test results that accurately reflect the skills, aptitudes and whatever factors the tests purport to measure, rather than the impaired sensory, manual or speaking skills of the test subjects. Performance of any nonessential skills during any testing will not be allowed;
- k. Physical agility/Physical fitness tests if required, will be specifically job related and administered to all applicants in a job category selected for interviews;
- l. Applicant provides medical certification that he/she can safely perform a physical agility or physical fitness test when required by the ESD;
- m. Applicant assumes responsibility and releases the ESD of liability for injuries incurred in performing physical agility/physical fitness test required by the ESD;
- n. Applicant requests for reasonable accommodations in testing will be allowed for qualified individuals with a disability:
  - (1) Tests or exercises will be postponed as needed so that a reasonable accommodation can be provided;
  - (2) Modified tests or exercises will be provided unless such accommodation would change the measurement of the essential job function being tested (i.e., provide reader to assist with written test unless ability to read is essential job skill).
- o. Drug screening tests, if required, will be administered to all applicants in a job category selected for interviews;
- p. Preemployment offer medical examinations shall not be conducted.

## Reference Check Procedures

11. Reference check procedures shall be reviewed to ensure:
  - a. Reference checks will be conducted on all applicants in a job category who meet the job requirements and are selected for interviews. Careful and complete notes will be taken and maintained. ESD officials conducting reference checks:
    - (1) Before making a conditional offer of employment, may not ask previous employers or other sources about an applicant's:
      - (a) Disability;
      - (b) Illness;
      - (c) Workers' compensation history;
      - (d) Other questions that the ESD itself may not ask of the applicant.
    - (2) May ask a previous employer or other sources about the applicant's:
      - (a) Job functions and tasks performed;
      - (b) The quality and quantity of work performed;
      - (c) How the job functions were performed;
      - (d) Other job-related issues that do not relate to disability.

## Job Offers

12. The process for all job offers shall be reviewed to ensure:
  - a. Job offers will be made to the most qualified applicant who with or without a reasonable accommodation can perform the essential functions of the job. The ESD will adhere to the following job offer procedures:
    - (1) After a conditional offer of employment is extended, the ESD may inquire as to whether the successful applicant will need a reasonable accommodation related to anything connected with the job (i.e., job performance or access to benefits/privileges of the job, etc.). If the ESD makes such an inquiry, it will consistently seek similar information from all other successful applicants in the same job category;
    - (2) The successful applicant will be informed of medical examination and/or medical history requirements after an offer of employment has been made and before the applicant begins his/her employment duties. All entering employees in the same job category will be subjected to such medical examination and/or medical history requirements. An individual's workers' compensation history will be included in all such medical history inquiries;
    - (3) The successful applicant will be informed that the job offer may be contingent upon disability-related questions, medical examination and/or medical history inquiries;
    - (4) A completed medical history form and release for medical records with the successful applicant's signature and date may be required;
    - (5) Information obtained from medical examinations and/or medical history inquiries may be used for such purposes as:

- (a) The verification of employment history;
  - (b) To screen out applicants with a history of fraudulent workers' compensation claims;
  - (c) To provide information to state officials as required by state laws regulating workers' compensation and "second injury" funds;
  - (d) To screen out individuals who would pose a direct threat to the health and safety of self or others in the workplace which could not be reduced to an acceptable level or eliminated by a reasonable accommodation.
- (6) Reasonable accommodations will be provided if the medical examination or medical history inquiry discloses the successful applicant is a qualified individual with a disability as defined by the ADA. Reasonable accommodations will be provided by the ESD if such accommodation would enable the individual with a disability to perform the essential functions of the job or otherwise meet eligibility requirements. The reasonable accommodation will be established by the ESD. In determining the appropriate reasonable accommodation the ESD will:
- (a) Determine the essential functions of the job;
  - (b) Consult with the individual who has the disability to determine his/her precise limitations and how they may be overcome;
  - (c) Identify, with assistance of the individual with the disability, potential reasonable accommodations and assess their effectiveness;
  - (d) Consider the preference of the individual with the disability, and then implement the reasonable accommodation that is most appropriate for the employee and the employer. (In order to be reasonable, an accommodation must be effective. It is not required that the best accommodation be selected as long as the selected accommodation provides an equal opportunity to perform the job.)
- (7) Reasonable accommodations considered may include:
- (a) Job restructuring;
  - (b) Modified work schedules;
  - (c) Job reassignment;
  - (d) Making existing facilities used by employees accessible to and usable by individuals with disabilities;
  - (e) Acquisitions and/or modification of work policies including:
    - (i) Modification of leave or attendance procedures or other such policies related to working conditions (i.e., modification of a policy prohibiting employees from eating or drinking for an employee with insulin-dependent diabetes, etc.);
    - (ii) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments;



- (iii) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials or other effective methods of making visually delivered materials available to individuals with visual impairments;
  - (iv) Acquisition or modification of equipment or devices;
  - (v) Other similar services and actions for individuals with hearing, visual and/or manual impairments.
- (8) A determination will be made whether an accommodation is reasonable or an undue burden by considering:
- (a) Nature and cost of accommodation;
  - (b) Overall financial resources of facility;
  - (c) Number of persons employed;
  - (d) Impact on operation of facility;
  - (e) Effect on expenses and resources;
  - (f) Type of operation. Composition and functions of workforce. Geographic separation, fiscal or administrative relationship of facilities.
- (9) The successful applicant who has been offered employment contingent on medical examination results and/or medical history inquiries will be rejected if the medical condition poses a direct threat to the health or safety of others in the workplace. The ESD shall consider whether the risk can be eliminated or reduced by a reasonable accommodation by considering the following:
- (a) The nature and severity of the potential harm to applicant or others in the workplace;
  - (b) The likelihood that the potential harm will occur;
  - (c) Specific risk is identified and documented;
  - (d) Risk is current and not speculative or remote;
  - (e) Assessment of risk is based on objective medical or factual evidence;
  - (f) Medical condition is a direct threat.
- (10) Should an offer of employment be withdrawn because of medical examination or medical history inquiry results, the exclusionary criteria must be job related and consistent with business necessity;
- (11) Documentation will also include any determination that no reasonable accommodation was available that would enable the individual to perform the essential job functions or that accommodation would impose an undue hardship on the ESD;
- (12) Medical information will be kept confidential:
- (a) Medical information must not be maintained in personnel file;
  - (b) Medical information will be released only to those with “need to know” and/or “need to reach in emergency situations” (i.e., immediate supervisors, etc.);
  - (c) Medical information records will be maintained a minimum of one year.

## Public Notice, Communications

13. Notice of the ESD's compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 shall be displayed at each ESD facility and provided, as necessary, in appropriate accessible formats to applicants, participants, beneficiaries, professional organizations and other interested persons to include:
  - a. Pertinent provisions, duties and requirements of the ADA and its applicability to the ESD's employment practices, services, programs and activities, including the duty to reasonably accommodate upon request and with advance notice. In its effort to provide communications with individuals with disabilities that are as effective as communications with others, the ESD will also provide the following:
    - (1) Individual to contact for services or questions, including office location and phone number;
    - (2) Notice of Equal Employment Opportunity Commission (EEOC) requirements displayed in conspicuous places for all job applicants and employees;
    - (3) Signage displayed at all inaccessible entrances to each of the ESD's facilities directing users to accessible entrances or to location at which information can be obtained about accessible facilities;
    - (4) Signage displayed at all accessible entrances to the ESD's facilities. The international symbol for accessibility shall be used;
    - (5) Appropriate auxiliary aids and services that may include:
      - (a) Qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), videotext displays and/or exchange of written notes for individuals with hearing impairments;
      - (b) TDD's, computer terminals and/or communications boards for individuals with speech impairments;
      - (c) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials and assistance in locating items for individuals with vision impairments;
      - (d) Telephone accessibility to enable individuals to seek immediate assistance from police, fire, ambulance and other emergency services;
      - (e) Other equally effective communications devices, services and actions.
    - (6) Consultation with the individual with a disability to determine the most appropriate auxiliary aid or service. Priority will be given to the auxiliary aid or service that results in the most integrated setting to encourage interaction among all users, including those with disabilities. Primary consideration will be given to the expressed request of the individual with a disability. The ESD may select an alternative auxiliary aid or service should it determine that another equally effective means of communication is available or that the means chosen by the individual with a disability would result in a fundamental alteration in the services, programs or activities or in undue financial and administrative burden to the ESD;
    - (7) Training to employees as needed on the acceptance and handling of telephone relay services for individuals with disabilities;

- (8) Information to employees through different means, including computers, bulletin boards, mailboxes, posters and public address systems. The ESD will ensure that employees with disabilities have access to information that is provided to other similarly situated employees without disabilities, regardless of whether they need such information to perform their jobs.

### **New Construction/Alterations**

14. All facilities designed, constructed or altered after January 26, 1992 shall be readily accessible and usable by individuals with disabilities. The ESD will ensure:
  - a. Alterations to existing facilities will take place in a manner that results in the altered portion of the facility being readily accessible to persons with disabilities. Alterations must not decrease accessibility;
  - b. Alterations deemed necessary to the path of travel in existing facilities requiring extensive restructuring or burdensome expense will be made in a timely fashion. Priority will be given to the following (in order):
    - (1) Entrances and routes to the altered area;
    - (2) One accessible restroom;
    - (3) Accessible drinking fountains;
    - (4) Additional, accessible parking.
  - c. Appropriate requirements of either the Uniform Federal Accessibility Standards (UFAS) or Americans with Disabilities Act Accessibility Guidelines (ADAAG) will be met, including accessibility requirements related to work areas, parking, signs, entrances, water fountains, storage and shelves, telephones, assembly areas, bathrooms, detectable warnings, carpet and carpet tile, curb ramps and visual alarms.

### **Posthires/Current Employees**

15. All posthire and current employee Board policies and practices shall be reviewed to ensure:
  - a. Medical examinations and/or medical history inquiries required by the ESD will be job related and consistent with business necessity. This will not prohibit the ESD from requiring proof of illness to substantiate a request for sick leave. Medical examinations and/or medical history inquiries may be administered when:
    - (1) An employee is having difficulty performing his/her job effectively. The medical examination may be necessary to determine if the employee can perform essential job functions with or without a reasonable accommodation;
    - (2) An employee becomes disabled. An employee injured on or off the job, who becomes ill or otherwise suffers any other condition that meets the requirements of a disability as defined by the ADA is protected by the Act if he/she can perform the essential functions of the job with or without a reasonable accommodation. Such an examination or inquiry may also be required when the employee wishes to return to work after an illness or injury. The ESD will:

- (a) Determine if the employee meets the ADA definition of an individual with a disability if a reasonable accommodation has been requested;
  - (b) Determine if the employee can perform the essential functions of the job currently held (or held before the injury or illness), with or without reasonable accommodation, and without posing a direct threat to the health or safety of others which could not be reduced or eliminated by a reasonable accommodation;
  - (c) Identify an effective accommodation that would enable the employee to perform the essential job functions in the current (previous) job or in a vacant job for which the person is qualified with or without a reasonable accommodation.
- (3) An employee requests a reasonable accommodation on the basis of disability;
- (4) Administered as part of a voluntary employee “wellness” and health screening program.
- b. Procedures for reporting and investigating employee on-the-job injury or illness will be implemented. The ESD will:
  - (1) Require employees complete workers’ compensation form;
  - (2) Investigate, as necessary, documenting circumstances that led to injury and review all employee work-related injury or illness on a case-by-case basis.
- c. Procedures for communicating with health care providers regarding employees off-work due to any injury or illness will be implemented. The ESD, as necessary, and at its discretion will:
  - (1) Provide health care provider with detailed description of regular job activities, physical movement, duration of physical exertions and job description;
  - (2) Write detailed questions for the health care provider to answer that may assist in determining any reasonable accommodation that may be necessary;
  - (3) Ask for employee written release authorizing ESD representative to consult with the employee’s own health care provider.
- d. Procedures for employees not able to perform essential job functions completely after illness or injury will be implemented. The ESD will:
  - (1) Determine whether temporary light duty assignment is possible. In accordance with the ADA, the ESD is not required to create a “light duty” position unless the “heavy duty” tasks an injured employee can no longer perform are marginal job functions which may be reallocated to co-workers as part of a reasonable accommodation;
  - (2) Determine whether job can be restructured, shifting or trading duties with other workers. Job restructuring as a reasonable accommodation may involve reallocating or redistributing the marginal functions of the job, altering when and/or how an essential or marginal function is performed. Marginal functions of a job that cannot be performed by an individual with a disability may be exchanged for marginal job functions performed by one or more other employees. The ESD is not required to reallocate essential functions of a job as a reasonable accommodation. The ESD may switch the marginal functions of two or more employees in order to restructure a job as a reasonable accommodation;
  - (3) Determine whether a modified or part-time work schedule may be selected as a reasonable accommodation unless modifications would cause an undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic

breaks, altering the time when certain functions are performed, allowing the employee to use accrued paid leave or providing additional unpaid leave. If modifying an employee's work schedule poses an undue hardship, the ESD shall consider reassignment to a vacant position that would enable the employee to work the hours requested. Requests for modified or part-time work schedules for an employee covered under both the ADA and Oregon Family Leave Act (OFLA) or Family Medical Leave Act (FMLA) will be considered separately. The ESD will determine the employee's rights under each statute to determine the appropriate actions to take;

- (4) Determine whether reassignment to a vacant position is possible. "Vacant" means that the position is available after the employee asks for a reasonable accommodation or that the ESD knows that it will become available within a reasonable amount of time. Reassignment is the reasonable accommodation of last resort and required only after it has been determined that there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position or all other reasonable accommodations would impose undue hardship.
    - (a) The employee must be qualified for the position- satisfy the requisite skill, experience, education and other job-related requirements of the position- but need not be the best qualified person to fill the position.
    - (b) The employee must be able to perform the essential functions of the position with or without a reasonable accommodation.
    - (c) The ESD is not required to bump an employee from a job in order to create a vacancy, nor does it have to create a new position.
  - (5) Gather information from employee, health care provider(s), consultants, etc. as to needed modifications in policies, facilities, equipment, special aids and services that may be provided as a reasonable accommodation;
  - (6) Document all ESD efforts to provide reasonable accommodations.
- e. Qualified individuals with a disability not fully recovered from injury will not be returned to work when:
- (1) The employee cannot perform the essential functions of the job he/she holds or desires with or without a reasonable accommodation;
  - (2) The return of the employee to work would pose a significant risk of substantial harm to self or others in the workplace and that could not be reduced to an acceptable level with a reasonable accommodation;
  - (3) The return of the employee to a light duty position involves a totally different job from the job that the employee performed before the injury. A vacant light duty position already available for which an injured employee is qualified may be a reasonable accommodation;
  - (4) It is demonstrated that the accommodation will cause an undue hardship or result in excessive financial and administrative burden as defined by the ADA, and as evidenced by the ESD.
- f. Unpaid leaves will be provided to qualified individuals with a disability when a reasonable accommodation cannot be made in the employee's current job. The ESD will comply with all workers' compensation reinstatement rights to available and suitable employment;

- g. Leave of absence or attendance policies will not discriminate against qualified individuals with disabilities. (Uniformly applied leave policies are not subject to challenge because they have a more severe effect on individuals due to their disability. “No leave” policies, such as those forbidding leave during the first six months of employment are also not subject to challenge because they may have a more severe impact upon individuals with disabilities. An employer with a “no-leave” policy, however, may have to consider providing leave as a reasonable accommodation unless doing so would impose an undue hardship on its operation.) The ESD will not provide additional paid leave, but accommodations may include leave flexibility and unpaid leave;
- h. Drug and alcohol policies will meet the requirements of the ADA. Policies will state:
  - (1) Illegal use of drugs and the use of alcohol at the workplace is prohibited by all employees;
  - (2) Employees will be required to behave in conformance with the requirements of the Drug-Free Workplace Act of 1988;
  - (3) Employees who engage in the illegal use of drugs or alcohol will be held to the same qualification standards for employment or job performance and behavior to which all other employees are held, even if unsatisfactory performance or behavior is related to employee’s drug use or alcoholism;
  - (4) Employees taking drugs under the supervision of licensed health care professionals will be protected by the provisions of the ADA;
  - (5) Employees who are no longer illegally using drugs and who have been either rehabilitated successfully or are in the process of completing a rehabilitation program will be protected by the provisions of the ADA (i.e., in-patient or out-patient programs, employee assistance programs, professionally recognized self-help programs, such as Narcotics Anonymous, or other programs that provide professional assistance and counseling for individuals).
- i. Health, life insurance, pension plans and other benefit plans offered by the ESD will not discriminate against qualified individuals with a disability (The ADA does not affect preexisting condition clauses in health insurance plans as long as the clauses are not used as a means to avoid complying with the ADA, and such clauses do not require that additional coverage be purchased to cover expenses related to a disability.). Employees will not be denied coverage for illness or injuries unrelated to the preexisting condition;
- j. Contractual or other business arrangements and relationships entered into by the ESD will not discriminate against qualified individuals with a disability. The ESD will:
  - (1) Not do indirectly what it is prohibited by the ADA from doing directly;
  - (2) Provide reasonable accommodations to enable access by employees with disabilities to training programs provided by the ESD and/or third parties, on ESD premises or elsewhere;
  - (3) Specify in contracts with outside entities providing training on behalf of the ESD, who have responsibility to fulfill the obligations of providing reasonable accommodations, as needed.