

## SECTION .0400 – PERSONS WITH A DISABILITY

### 25 NCAC 01L .0401 SPECIAL PROVISIONS RELATIVE TO PERSONS WITH A DISABILITY

(a) The definitions in G.S. 168A-3 apply to this Rule.

(b) Equal employment opportunity for persons with a disability includes the making of a reasonable accommodation to the known physical limitations of a qualified applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include:

- (1) making facilities used by employees accessible to and usable by such person;
- (2) job restructuring (reassigning non-essential duties or using part-time or modified work schedules);
- (3) acquisition or modification of equipment or devices;
- (4) provision of readers or interpreters; or other similar actions.

Agencies shall make such adjustments for the known limitations of otherwise qualified applicants and employees with a disability unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

(c) Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:

- (1) the nature and cost of the accommodation needed;
- (2) the type of the agency's operation, including the composition and structure of its work force; and
- (3) the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.

(d) Bona Fide Occupational Qualifications:

- (1) Age, sex or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification shall depend on the facts in each case. This exemption shall be construed very narrowly and the agency shall have the burden of proving the exemption is justified.
- (2) Physical fitness requirements based upon preemployment physical examinations relating to minimum standards for employment may be a reasonable employment factor, provided that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age or sex.
- (3) A differentiation may be based on a physical examination in job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.
- (4) To establish age, sex or physical requirements as a bona fide occupational qualification, it shall be necessary to submit a recommendation to the Office of State Human Resources setting forth all facts and justification as to why the requirement should be considered as an employment factor in each of the classifications in question.

(e) Special Provisions Relative to Communicable and Infectious Diseases:

- (1) Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are persons with a disability if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to persons with a disability are applicable to persons with communicable and infectious diseases, including the requirements for a reasonable accommodation to the known limitations of an otherwise qualified applicant or employee.
- (2) It is not discriminatory action to fail to hire, transfer, or promote, or to discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with private physicians and public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons. There is no evidence that employing a person with AIDS would present a health hazard to other persons in the usual workplace.

*History Note:* Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261;  
Eff. October 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,  
2016.