

Office of Chief Counsel's Procedures for Processing Requests for Personal Assistance Services (PAS)

As required by 29 Code of Federal Regulations (C.F.R.) § 1614.203(d)(5), a regulation implementing Section 501 of the Rehabilitation Act of 1973, as amended, federal agencies are required to provide PAS, during work hours and work-related travel, to qualified employees with targeted disabilities unless doing so would, among other things, impose an undue hardship. Counsel affirms its commitment to providing PAS to allow all to enjoy the opportunities and benefits of employment.

PAS allows individuals to perform activities of daily living that an individual would typically perform if he or she did not have a disability, such as assistance with removing and putting on clothing, eating, and using the restroom.

The procedures outlined below are to be used when a Counsel employee makes a request for PAS. Requests for reasonable accommodation (RA) and PAS may be made simultaneously, but are processed separately using appropriate procedures. This procedure applies to PAS only.

Counsel shall not discriminate against individuals (either current or new employees) in employment decisions based on their need for, or perceived need for, PAS.

Definitions

Personal Assistance Services (PAS): Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including assistance with removing and putting on clothing, eating, and using the restroom. These services are needed by individuals whose specific disabilities make it difficult for them to perform such activities on their own. PAS does not include services of a medical nature such as administering shots or monitoring blood pressure, and does not include assistance with commuting to and from work. PAS does not include helping an employee perform his or her specific job duties/functions.

Personal Assistance Services (PAS) Provider: An employee or independent contractor whose primary job functions includes provision of personal assistance services. The PAS provider can provide the service to more than one individual, and can perform tasks unrelated to PAS, but only to the extent that doing so does not result in failure to provide services in a timely manner. If Counsel is hiring a PAS provider to assist a single individual, then the employee's preferences shall be primarily considered to the extent permitted by law. The PAS provider may not provide assistance to employees with performing their specific job duties/functions.

Qualified Employee: An employee in Counsel who requires services because of a targeted disability and who, with or without reasonable accommodation, can perform the essential functions of the employee's position.

Reasonable Accommodation (RA): A change to the work environment or the way things are usually done that allows an individual with a disability to apply for a job, perform the

essential functions of the position, or enjoy equal access to benefits available to other individuals in the workplace. RA differs from PAS, as the assistance or modification provided as an accommodation is directly related to the performance of job-related tasks. Examples of an accommodation include providing a reader to enable individuals who have visual impairments to read printed text, or a Sign Language interpreter to facilitate deaf-to-hearing communication.

Section 501 of the Rehabilitation Act of 1973, as amended: A federal civil rights law that prohibits federal agencies from discriminating against job applicants and employees based on disability, and requires agencies to engage in affirmative action for individuals with disabilities. The Equal Employment Opportunity Commission (EEOC) issued a final rule on January 3, 2017 to amend the regulations implementing Section 501 of the Rehabilitation Act of 1973. These regulations require federal agencies to provide personal assistance services to certain employees who need them because of a targeted disability. 29 C.F.R. § 1614.203.

Targeted Disabilities: A subset of disabilities under the Rehabilitation Act deemed to be severe. The federal government has recognized that qualified individuals with targeted disabilities face significant barriers to employment, above and beyond the barriers faced by people with the broader range of disabilities. The targeted disabilities are provided on the Office of Personnel Management's Standard Form 256 (SF-256), "Self-Identification of Disability," The October 2016 version of the form identifies the following as targeted disabilities:

- Developmental Disability, for example, autism spectrum disorder;
- Traumatic Brain Injury;
- Deafness or serious difficulty hearing, benefitting from, for example, American Sign Language, CART, hearing aids, a cochlear implant and/or other supports;
- Blindness or serious difficulty seeing even when wearing glasses;
- Missing extremities (arm, leg, hand and/or foot);
- Significant mobility impairment, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports;
- Partial or complete paralysis (any cause);
- Epilepsy or other seizure disorders;
- Intellectual disability;
- Significant Psychiatric Disorder, for example, bipolar disorder, schizophrenia, PTSD, or major depression;
- Dwarfism; and
- Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders.

Note: Not everyone 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.

Interactive Process: A dialogue between the employee requesting PAS, his or her supervisor, and/or EEO, that enables Counsel to determine the employee's eligibility to receive PAS and the services required in order to participate in the workplace or in work-

related travel. The interactive process begins upon receipt of an employee's request for PAS, occurs throughout the processing of the request, and continues after PAS has been approved to ensure that the employee's need for PAS has been met.

Extenuating Circumstances: Factors that could not reasonably have been anticipated or avoided in advance of the request for PAS, or situations in which unforeseen or unavoidable events prevent prompt processing and delivery of PAS.

Dispute Resolution Process: Any voluntary mechanism through which an individual can request reconsideration of denial of PAS, regardless of whether the individual has started the EEO complaint process.

Equal Employment Opportunity (EEO) Complaints: Federal employees are protected from discrimination because of their disability under the Rehabilitation Act of 1973, as amended, and have a right to file an EEO complaint if they believe that they have been discriminated against. An individual, whose request for PAS has been denied, will be advised of their opportunity to pursue the EEO complaint process in accordance with the provisions of 29 C.F.R. Part 1614.

The denial letter must state that the individual is required to initiate contact with an EEO Counselor within 45 calendar days of the date the request for PAS was denied. Please note that the amended Section 501 regulations do not take a position on the availability of a private remedy for affirmative action obligations, but the EEOC believes that its procedural regulations governing complaints of discrimination are an appropriate place to address the question.

Negotiated Grievance Procedures: A bargaining unit employee, whose request for PAS has been denied, will be advised of their option to file a grievance if this matter is not excluded under the collective bargaining agreement.

Undue Hardship: Significant difficulty or expense, considering the nature, extent, and cost of PAS in relation to an agency's overall resources and the impact of providing PAS on the operation of the agency's business. Counsel is not obligated to provide PAS when provision of the services poses an undue hardship on the agency. The determination of undue hardship is made on a case-by-case basis. When evaluating budgetary or administrative concerns to determine if undue hardship exists, Counsel will follow the standards outlined in the regulations and in the "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the American with Disabilities Act."

STEP 1 – THE INITIAL REQUEST

An employee's initial request for PAS can be made orally or in writing to the first-line supervisor (or other management official in the employee's chain of command) or Counsel's Equal Employment Opportunity Office (EEO). If EEO receives the request directly from the employee, EEO shall immediately inform the employee's first-line supervisor of the request.

Additionally, a family member, spouse or partner, friend, or medical health professional

may request PAS on behalf of an individual with an eligible targeted disability. If possible, the employee with the targeted disability should be contacted to confirm that he/she in fact wants PAS. The employee with the targeted disability may decline to make a request or refuse to accept services.

It is the responsibility of all Counsel managers to timely process a request for PAS and to understand when such a request is being made. There is no requirement that the request specifically state that it is a request for PAS. The circumstances of the request should be considered by the person receiving the request. If anyone other than the first-line supervisor or EEO receives a request for PAS, they should immediately notify the first-line supervisor and/or EEO.

While a written request is preferable, it is not required. To ensure accurate records, the first-line supervisor (or other management official in the employee's chain of command) or EEO, must confirm in writing the receipt of a request made orally, documenting when they received the request and the nature of the request. Once the request is reduced to writing, the employee making the request will be given an opportunity to review the writing for accuracy. (See *Appendix A*). All requests for PAS, like requests for RA, must be documented in writing, signed and dated by the recipient(s) of the request, for inclusion in the PAS request file which will be maintained by the employee's first-line supervisor/management chain.

The employee's management chain is responsible for ensuring that the Counsel PAS procedures are followed. Management must submit a request for PAS to EEO as soon as practicable, but no later than two (2) business days of receipt of the initial request. The Counsel EEO office will serve as neutrals to facilitate the processing of the request consistent with the law and Counsel's expectations. All documents related to the request for PAS shall be maintained by the requester's first-line supervisor and maintained in a marked, locked and/or password protected file, separate from the employee's official personnel record and supervisory drop file. It is permissible to maintain PAS documents in the same, locked and/or password protected file as medical documents relating to the employee's RA file, if applicable. Any information relating to the employee's request for PAS is to be kept confidential and may be shared only with individuals involved in the PAS process who have a need to know. The PAS file must include, at a minimum, all requests and related communications. (e.g., emails, interactive process notes, etc.).

STEP 2 – THE INTERACTIVE PROCESS

The interactive process is a discussion between the individual requesting PAS, the individual's representative, if any, and the first-line supervisor/management chain, with the assistance of EEO.

The employee's targeted disability and the need for PAS may be obvious; however, if the targeted disability or the need for PAS is not evident, the employee's first-line supervisor/management chain may, through EEO, request medical documentation to support the request for PAS. The EEO Office will seek information or documentation about the functional limitations from the employee, and/or ask the employee to obtain such information from an appropriate health care professional, such as a doctor, social worker, or rehabilitation counselor. Once medical documentation is received, the bureau

EEO Office and any other appropriate bureau official will evaluate the documentation. If the employee does not provide appropriate documentation or does not cooperate in the bureau's efforts to obtain such documentation, the bureau may deny the requested PAS.

A continuing dialogue throughout the PAS request process is required to ensure an effective interactive process. When a delay in processing a request for PAS occurs, the employee's first-line supervisor/management chain or EEO must notify the employee of the reason for the delay and continue to provide updates as to when the PAS process is expected to be complete.

STEP 3 – DECISION ON REQUEST FOR PAS

Note: As discussed below, the EEO Decision Form (see Appendix B) must be pre-reviewed by EEO before it is shared with the employee.

Decision to Approve the Requested PAS

If the employee's management chain decides to approve the specific PAS as requested without modification, the decision will be memorialized using EEO's Decision Form (see *Appendix B*) denoting the acceptance/approval of the requested PAS. A copy of the EEO Decision Form should be provided to the employee as soon as possible, but no later than **thirty (30) business days** from the date management received the PAS request. If PAS cannot be provided immediately, management must inform the employee of the projected time frame for providing the services.

Requests Involving Extenuating Circumstances

When extenuating circumstances are present (e.g. need to obtain supporting medical information; a security clearance and/or background investigation), the time for processing a request for PAS and providing the services will be extended as deemed necessary. All officials are expected to act as quickly as reasonably possible in processing requests and providing PAS. When extenuating circumstances are present, management must notify the employee, in writing, of the reason for the delay, and the approximate date on which decision, or provision, of the PAS, is expected.

If there is a delay in providing an approved PAS, management must decide whether temporary measures can be taken to assist the employee. This could include providing the requested services on a temporary basis.

Decision to Approve an Alternative or Modified PAS

The Decision Form (see *Appendix B*) should also be used to document that a PAS, other than the requested PAS (alternative PAS), was offered to the employee. The management chain must also include an explanation of how it reached the conclusion that the alternative or modified PAS is an effective option. The employee's acceptance or rejection of the alternative PAS should be noted on the Decision Form.

Decision to Deny Request for PAS

There is no obligation to provide PAS if the employee does not have, among other things, a targeted disability, or if providing PAS would pose as an undue hardship on the agency. If the employee is not eligible to receive PAS, the employee must be notified of this decision as soon as possible, but no later than **thirty (30) business days** from the date

management received of the PAS request. The denial must be documented using the EEO Decision Form (see *Appendix B*). A copy of the denial must be provided to the EEO office.

Disputing the Decision

The Decision Form explains the available avenues of redress, if the employee disagrees and wants to dispute the decision related to the request for PAS. The Decision Form explains what needs to be filed, the deadline for filing a dispute and where the dispute should be filed.

STEP 4 – OBTAINING THE PAS PROVIDER

A PAS provider may be a federal employee or independent contractor, or a combination of both, whose primary job functions includes the provision of personal assistance services. In general, the training or skills that a PAS provider should have will depend on the specific services needed by the employee and the contractual arrangement with the Agency.

Counsel is entitled to consider all available resources when arranging for PAS, including outside sources that are already providing PAS or are willing to provide PAS at their own expense, such as a state or veteran's rehabilitation agency. The goals are to ensure that this step does not delay the process and that the services are provided in a timely manner. However, Counsel cannot rely on the fact that an outside source has promised to, or is otherwise obligated, to provide PAS as a reason for denying or delaying an employee's request.

Providing PAS to One Employee

In determining who will provide the PAS to one employee, Counsel shall give primary consideration to the requestor's preferences to the extent permitted by law. See 29 CFR 1614.203(d)(5)(C)(iv). In some cases, the employee who needs PAS will be able to recommend a provider, and may also be able to get a referral from a local center for independent living or a state vocational rehabilitation agency. The option of using a family member or spouse as a PAS provider can also be considered, and the family member would have to meet all eligibility and qualification requirements. However, it should be noted that different qualified people may show up to provide the services if a company is contracted to provide PAS.

Providing PAS to More than One Employee in the Organization

If there is more than one employee requiring PAS in the organization, Counsel may use a pool of PAS providers, rather than assign one PAS provider to each employee, as long as the services are provided in a timely manner.

PAS for Official Travel

When work-related travel is required, Counsel must provide PAS at all times (during duty hours and off-duty hours) during the work-related travel. Counsel is required to pay any additional costs related to providing PAS while on travel, such as transportation costs for the PAS provider. Depending upon the circumstances, Counsel may have the option of arranging for PAS at the destination site, rather than paying for the employee's own PAS provider to travel with him/her, as long as it is considered effective. Absent work-related

travel issues discussed here, Counsel is generally not required to provide PAS to help employees commute to and from work.

Counsel may cover the PAS provider's travel costs in various ways, depending on the type of PAS provider (e.g., family member or spouse or other provider, federal employee, or contractor).

PAS during Telework

Counsel is required to provide PAS during telework if the individual is entitled to PAS and is eligible for telework. The determination of whether PAS can be provided to an employee while teleworking should be made on a case-by-case basis. All policies and procedures related to PAS that occur in the workplace would also apply at the telework location.

Other PAS Considerations

Co-workers that do not provide PAS or similar services as part of their official duties cannot be required to provide these services, even if they volunteer to do so. However, the regulations do not prohibit agencies from assigning the responsibility to perform a personal assistance service to an existing employee who already performs a similar service as part of his or her regular job duties.

STEP 5 – ONGOING INTERACTIVE PROCESS

If the request for PAS has been approved and later needs to be modified, the employee shall be informed, in writing, of any changes in providing PAS. Changes may include delays due to the nature of federal recruitment or contracting, the unavailability of the primary PAS provider and no alternative arrangements have been made, among other situations. In addition, the employee must promptly inform his or her supervisor or EEO of any changes needed to the services in place to allow management to address and assess the requested changes. These interactions must be documented and retained in the PAS file.

Appendix

- (A) Personal Assistance Services Request Form
- (B) Personal Assistance Services Decision Form

Resources

- 29 C.F.R. § 1614.203 Rehabilitation Act
- EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act
- EEOC's Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services under Section 501 of the Rehabilitation Act
- EEOC's Questions and Answers: The EEOC's Final Rule on Affirmative Action for

People with Disabilities in Federal Employment

- Department of Treasury, Civil Rights & Diversity Issuance, CRD -008, Policy for Personal Assistance Services (July 20, 2018)
- The Job Accommodation Network's (J AN) Accommodation and Compliance Series: Personal Assistance Services in the Workplace