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>> Welcome to the FAS "How To" guide for the reasonable accommodation process. I'm David Walton, the Reasonable Accommodations Program Coordinator, and this is my coworker Carol Griffith. We will be giving an overview of the reasonable accommodation process. We will move to the next slide.

>>Let's talk about a warm-up exercise. -- I realize this is being recorded so I know you won't actually be able to answer the warm up questions in real time but I want you to think about them. What are some of the biggest barriers that individuals face with disabilities? What do you think is the average cost of a reasonable accommodation? Many times people think accommodations are very costly. They think you will have to redesign a building or add an automatic door or something huge like that. However in my experience I can tell you that the cost of the accommodations provided is minimal. In most cases you are talking about being able to modify the requester's tour or allow them to telework. Most of the cost of accommodations really runs around \$500. Cost is not a big barrier. What we find in our caseload is the biggest barrier to accommodations is people's attitude. Often the requester has a fear of disclosing their disability. They are afraid of how their coworkers will react.

>> Let's talk about learning objectives. If you are a supervisor, we will talk about your role versus an employee's role versus the RA Coordinator role. What are the steps in the process, what are the benefits of reasonable accommodations, what are the confidentiality requirements, as well as who to contact for assistance.

>> If you are the supervisor, we will make sure you understand how to identify when for a request for RA is made and that you are aware that there are time frames that must be met. Also we will review how managers should engage in the interactive process. We want to make sure when you do that that you are doing it based on the requester's job description. It's your role as a supervisor to determine what the actual accommodation will be. Don't be nervous or scared about that because Carol and I will act as your advisors and assist you in determining what an appropriate accommodation may be so you don't have to come up with that on your own. We want to encourage everyone, employees and supervisors, to use available resources and to be flexible.

>> If you are the requester in the reasonable accommodations process, we will also review your role. The employee's role is to request reasonable accommodations. It is your role, as the requester, to

## Reasonable Accommodation FAS RA Overview Transcript

cooperate with the process. It is not a one-way thing. You won't tell management what you want and management has to do it. It's not like that. It's your responsibility to be cooperative with the process, to provide input into the interactive process, meaning you must provide requested medical documentation, discuss limitations with your supervisor, and work with your supervisor to go over what possible options there may be to accommodate you.

>> The role that Carol and I have is that we are neutrals. We don't work for management or the employee. What we are is process people. We are about making sure this process is compliant. We want to follow all the steps and meet all of our time frames. We will assist the supervisor and the employee with an interactive process meeting if needed. In a lot of cases you won't need Carol or me either but if you need us we are available.

>> This is a graphic that shows how the three roles in the process, and how they mesh together. The supervisor makes the final determination.

>> This next graphic provides an overview of the accommodation process. The employee's role is to provide the documentation and cooperate with the process. The RA Coordinator's role is to review the documentation, make determination of disability, and participate in the interactive process session if requested. The supervisor with the input of the RA Coordinator determines what the accommodation will be and when it will be delivered.

>> Let's talk about a brief history of reasonable accommodations law in the federal government. The main accommodation law in the federal government is the Rehabilitation Act by 1973 as amended by the Americans with Disabilities Act (ADA) of 1990 and then later by the Americans With Disabilities Act Amendments Act (ADAAA) of 2009. Those three laws and court decisions got us to where we are now. Between 1973 and the early 2000's court decisions eroded the congressional intent of the Rehabilitation Act and the ADA making it difficult for individuals to qualify under the law. This led to the passage and enactment of the ADAAA. The ADAAA broadened the definition of disability to ensure that many more people would qualify to be considered under the law, eliminating the requirement for an extensive disability analysis and well as making clear in the law that mitigating measures, with the exception of eyeglasses, may not be considered in making the disability determination.

>> We will also discuss the definition of disability. We will also discuss substantially limits, as well as define a major life activity and how major bodily functions are defined. What do we mean when we say an individual is a qualified individual for a position? And what is the definition of essential functions with regard to the requester's current position?

>> With respect to an individual, disability means a physical or mental impairment that substantially limits a major life activity or the individual has a record of that impairment, such as a history of cancer or epilepsy. They may not necessarily be symptomatic when they make the request to the supervisor. We will talk about that a little bit later.

>> Substantially limits, under the current laws, doesn't need to significantly restrict performance of a major life activity as long as there is a restriction that the requester can point to. In order to be an

effective accommodation the individual has to be able to perform the key functions of the job as well as you would expect an average person to be able to do so. The conditions have to be expected to last or projected to last more than three months. If they are less than three months they are a temporary condition and not covered under the accommodation law.

>> We discussed major life activities but let's talk about that more in detail. These are everyday activities which include caring for one's self, performing manual tasks, seeing, hearing, eating, and sleeping. What we see now under the newer broader ADA of 2009 is that the major list of activities is becoming more extensive, including looking at biological systems. The main thing to remember is that more people will be qualified to at least be considered for an accommodation because the requirements are much broader than they used to be.

>> These are examples of what is covered under the more current law: the immune system, digestive, neurological issues, brain, respiratory, circulatory, and skeletal. Eventually this list will be so expansive that we will not be able to put it on a page.

>> These are conditions that are automatically deemed as disabilities. Carol and I love this list because we have to do a lot less work. When I first started in the field nine years ago, under the previous legal framework we had to do a lot more disability analysis than we do today. If we see an individual has a history of AIDS, is an epileptic, or has cerebral palsy, it means they are automatically eligible. The list includes such mental health problems as schizophrenia, major depression, and bipolar disorder. More and more of the employee population has mental health issues which are more difficult to accommodate. We will talk about that more later.

>> In order to be eligible for an accommodation the individual must be a qualified individual with a disability and able to perform essential job functions with or without an accommodation. We talked about this before and also the fact that the individual must be able to perform at the same level you expect an average person to be able to do so, which Carol and I most often interpret to mean that the requester must be able to perform the essential job functions of their position at a fully successful level. The individual must meet all education and experience requirements as people who are hired through the regular competitive process. There are no special breaks.

>> Let's talk more about the essential duties. You as a supervisor will determine these. The essential duties are the ones that without which there is no job. We want to make sure and this is why we use the PD, position description, as a guide because the essential functions should be listed in the PD or the employee's performance plan. If you are trying to argue that something is an essential function and it's not listed in the PD or requester's performance plan we have a problem. They need to be in either of those two documents.

>> This next slide provides us with the generally accepted definition of accommodation, which is a change in the work environment or application process that would enable a person with a disability to enjoy equal benefits of employment. I will give you another definition. A reasonable accommodation is really the elimination or mitigation of the marginal functions of the job to allow the individual to do the essential functions. Accommodation never removes the essential functions. The other interesting thing

about this definition is that also applies to the application process. If you have someone who, for example, was unable to apply for a job online you may be able to allow them to apply on paper. If they need an interpreter for the job interview because they are deaf, you have to provide that. It also applies to training. Let's say, for example, we had a deaf employee was going to an outside vendor for a training course. The question arose - who pays for the sign language accommodation? The interesting thing we learned is that there are two conflicting disability regulations - one that require us to pay and another that would require the vendor to pay. Basically they have to be able to take the same training as everyone else and have the same advancement opportunities.

>> Let's continue discussing a few different categories of accommodation. We talked about this a little bit earlier. One is making changes to the application process. Changes to give disabled people equal access and privileges applies to trainings but also to things like officially sponsored events away from the agency, retirement parties, and things like a picnic held here away from the facility. We have to provide accommodations where the event is being held.

>> We talked about various accommodation options already. Cost is not a barrier. Everyone will want one. We hear that a lot but not everyone is eligible for one. I had a boss when I first started in the government who loved my Dragon Dictate (a speech to text word processing software package) and would have loved to have had it for himself. He wasn't eligible to receive it for the same rationale I had but if he wanted to provide it for all the staff as a workplace enhancement he could have done that. Lack of trust. If the employee wins, I will lose. The bottom line if you are the supervisor, you want the employee to win so that you will win. If you do not accommodate an employee properly they will not be productive and you will spend more of your time trying to deal with that which is not what you want to be doing.

>> Properly accommodated employees have solid productivity that's comparable to other employees in the competitive population. Studies have been done that show that once an individual is probably accommodated they are more likely to stay in the position, which lowers retention and retraining costs. We want to comply with the law. Carol and I are all about legal compliance because we don't want the agency subject to a finding from the EEOC that would require them to take away money from program funds and pay someone back pay or some other kind of legal fees.

>> Exceptions to the rule are that the employer provides a reasonable accommodation to a qualified individual with a disability unless one or two conditions exist - it's an undue hardship or the individual provides a direct threat.

>> When people think about undue hardship they often think about the financial cost. That's not how you win an undue hardship claim – you must prove detrimental impact on the work unit. Let's use an example from a case we had a few years ago from an inspection station. There were two inspectors and one of them got a note from his psychiatrist saying he couldn't do urgent inspections anymore. I met with the supervisor and we determined that 80% of the inspections that were done at that station were urgent inspections. It's unreasonable and an undue hardship to expect the other inspector to do all but 20% of the work. That is how you win an undue hardship claim. You don't win an undue hardship claim

on a financial basis because EEOC will not just look at the budget of your office or your division. They will look at the entire budget of the Department of Agriculture. We want to be careful that when we are citing undue hardship that we're not trying to cite the financial impact.

>> Direct threat. There is a provision within the regulations that says we don't have to accommodate people that are a direct threat to themselves or others. The bar for direct threat is very high. It's not just an employee has PTSD and the supervisor is afraid he will go off and assault someone in the workplace. It's that the employee has not had his medication for three days and will go off right now. The threat has to be imminent. It can't be fear that something may happen. It has to be something IS going to happen and right now. I will give you another example. A few years ago I had an accommodation discussion with an employee who had PTSD who was in Oregon and I was here in Riverdale. He got into an argument with me. His boss was in the office with him and she was so concerned that she contacted the workplace violence coordinator because she was worried about my safety. Now as long as he is not proximal to me, how was he going to be a direct threat to me? He is not. Unless he can figure out a way to teleport to Riverdale or jump through the phone, that will not meet the definition of direct threat. The key thing to remember with direct threat is the threat is imminent.

>> Identifying a request. This is a critical job for someone in a supervisory role. In order for an employee to make a reasonable accommodation request, he or she doesn't have to say "I want to make a reasonable accommodation request." They might say "My hands hurt from carpal tunnel that I was just diagnosed with and I can't write reports or use the keyboard to write weekly activity reports." That would be a request. What makes it a request is that it shows the impact of the position on the ability to do the job. If I go into my supervisor's office and tell her my hands hurt, that is not a request. It's not a request until I illustrate how it affects my ability to do an essential function of my job. The employee can make the request to anyone in the chain of command. There may be tension between you as a supervisor and a requester. In that case the law allows the individual to have a family member or coworker make the request or they can go to someone else in the management chain and make a request.

>> Here are examples: An employee is working a 12-hour shift and brings a note to the supervisor which reads "To whom it may concern, I can only work part-time shifts until I show improvement." We take the note from the requester and get more clarification on the duration of the condition and how it affects the ability to work.

>> Let's look at other examples. "I am a deaf employee and I need an interpreter." "I was diagnosed with severe arthritis and I have a difficult time typing on the computer." "I have a back injury. I just want to let you know." The last one is not an accommodation request because the employee has not told how the back injury affects his ability to drive his government vehicle. What makes it a request is the employee's linkage of their inability to do their job to their condition.

>> Act promptly. Please act as promptly as possible and call the RA Coordinator as quickly as possible. It's easier if RA was involved at the beginning rather than the end of the process to make sure we're going in the right direction. There are no stupid questions. Carol and I are here to help you and we want

to help. We will help you begin the interactive process but just because the individual may not have submitted to us their medical information does not mean we cannot informally accommodate them. If the individual has an obvious disability, we can accommodate them. Please accommodate them on your own if you feel comfortable with that. If not we can help you. We don't want to hold the process up and if we're fairly sure the individual needs an accommodation and is acting in good faith we want to try to accommodate them on an interim basis.

>> The interactive process is the requester's opportunity to communicate with the supervisor and is the supervisor's opportunity to receive input from the employee and use that to make the determination of what to grant the employee. Individuals who request accommodations often make two mistakes. They think the agency is required to grant exactly what they are asking for. We are not required to grant what specifically was requested as long as we grant something that is designed to meet the need of their disabling condition. Accommodation is a voluntary process, but if the employee doesn't want to request an accommodation the supervisor must hold them accountable and then they will most likely request accommodation. If an employee turned down an accommodation that is offered by a supervisor, then they are expected to return to full duty. The employee may not refuse an accommodation and wait until the preferred one is provided. The supervisor decides what the accommodation will be; it doesn't have to be the accommodation the individual requested.

>> We want to make sure we include the union in all of our interactive process discussions. The reason is that reasonable accommodations are sometimes about a change in working conditions. That doesn't necessarily mean that the union has to agree to the accommodation, but the union has to be informed about it. In most cases they will agree because in most cases the individual seeking the accommodation is also a union member.

>> This is another one of our graphics that illustrates the interactive process. The meeting will go over physical elements and mental elements of the job that will be listed in the PD. Provide the individual the opportunity to discuss limitations and give you their ideas as to what a successful accommodation might be for them. The key is how limitations affect the ability to do the essential functions of the job and what marginal functions we can eliminate to allow the employee to do the essential functions. We only remove marginal functions and never remove essential functions. When you remove an essential function what you are really doing is improperly giving the person another job and we don't want to do that.

>> Examples of accommodation: Relocating the workspace; making existing facilities accessible which may include moving someone's cubicle closer to a restroom; providing sign language interpreting; and modifying work schedules to include telework. Reassignment is the accommodation of last resort when the individual can no longer perform the essential functions of their job.

>> We never remove an essential function from a position. We never lower performance standards because the requester has to be able to perform at least at a fully successful level in order for the accommodation to be granted. If an employee has PTSD and doesn't request an accommodation, resulting in behavior that earns a letter of reprimand, the employee is liable for the discipline because

he did not disclose his condition. Even so, having an accommodation does not give an employee a pass on discipline or corrective action. The other thing we don't provide is what we consider to be personal use items. These would include shoes or a scooter. In rare cases we have provided work shoes for individuals but we make sure they are only used at work. In one case we had a lab employee who was hard of hearing so we had to provide a hearing aid for him to use in the lab. He was not allowed to take it home.

>>The accommodation must be effective. It doesn't have to be the most effective. It doesn't have to be what was requested. Here is an example: Most individuals who request an accommodation want the coolest thing. That is what is on the left. That is the \$20,000 Segway. On the right is the \$1500 standard scooter that is utilized most often.

>> In many cases a medical condition is not a disability. It doesn't meet the threshold in terms of the number of months. Occasionally people request wheelchairs for short-term conditions such as they have broken their foot. That doesn't mean that you can't provide it, but it means you have provided it as a workplace enhancement and not as an accommodation.

>> The interactive process is where we reiterate the essential functions versus the limitations and identify solutions. Many times there may be ineffective communications between the supervisor and the requester. In that case please use the Collaborative Resolutions staff which is part of our office.

>> Confidentiality. This is the key to a successful accommodation process. Medical records that are confidential may include certifications, notes, excuses, medical histories of employee and their family, results of medical examinations, written requests for accommodation, drug screening results, and fitness for duty exams. Medical information may not be shared with other employees. Medical information must be kept in a separate file and is not part of the individual's personnel file. Please limit the number of reply-all emails that we send to limit the number of people that are aware of the condition and the accommodation.

>> A need-to-know basis is what we use to decide how many people besides the supervisor need to know about the employee's accommodation. We want to limit the number of people that are aware of the accommodations and the individual's limitation to as few as possible. First responders are going to need to know. If the employee has to be evacuated in a fire, those first aid and safety personnel need to know that the employee will need assistance. Workers comp records are allowed to be shared.

>> The interesting thing about this is the employee can disclose to whatever they want. But if a manager wants to disclose any information about an accommodation, s/he must make sure to get written permission from the employee to do so. The employee will most likely be glad to tell any of the other employees. Other employees will ask why another employee's day starts 2 hours after normal hours. You can't tell them. All you can say is I can't discuss it unless I have written permission, or say I am not at liberty to discuss.

>>So, what can a supervisor do when requesting medical information? The answer is request what is allowed - if an employee is out for more for than three business days they can request a doctor's note

from the employee. FMLA documents may also be used for accommodation requests. The interesting thing about FMLA is it doesn't have to be used at the same time. It can be intermittent and used over the course of a calendar year.

>> Here is a case study: An employee who is an administrative assistant has major depression and attention deficit disorder and migraine headaches. The employee's depression is controlled with medication but she's easily distracted. The employee requests a private office away from other employees and the sounds of the copy machine, fax machine and entrance. What does the supervisor do? Engage in the interactive process, produce possible accommodations, consider requesting help from the conflict resolution staff, determine effective accommodation, and provide the documentation. In this instance we wouldn't have to provide a private office. You might move the individual's cubicle back to a low traffic area and provide noise canceling headphones. There are other options.

>> What else can we do? Reassignments. The end of the accommodation process. A lot of people who request an accommodation and have a conflict with her supervisor say they want to be reassigned. Reassignment is always the accommodation of last resort which means we have to provide every other accommodation first. It's a lengthy process. It's a month-long program-level search followed by a 2-month MRP level search and a month-long Departmental search. If a job is identified in any of the phases of search the employee must be offered the job. If not the Employee Relations specialist will require additional time to provide the options letter for the supervisor to sign which gives the employee the option to resign or retire. It is a very lengthy process, and in most cases a job will not be found that the employee can perform.

>> These are our resources and this is our contact information. We are available and here to help. We want to be involved at the beginning. We would rather be involved at the beginning more than we would like to be involved at the end. I encourage you to contact the Conflict Resolution staff or the Civil Rights office. The contact information is listed on the slide. The last item on the list is for Barbara Harris who is the sign language interpreting contact. If you need interpreting services please contact her.

>> These are some great resources. The contact information and the websites are listed on the slides. We also have the DOD's accommodation center - the CAP Center. They can provide things like word processing software, low vision software, and readers, but you need to get to them early in the fiscal year as they often run out of money. Remember that the agency is responsible for providing the accommodation to the employee. If the CAP Center runs out of money it's not their obligation. Another complementary program is the APHIS ergonomics program. I encourage you to contact Ginger Dorsey to evaluate the work area of an employee with a back or leg issue. If you have questions that Carol and I were unable to address today please feel free to contact us.

>> Here is additional information on the leave donor program. You will need to work with Tara Jones if there is a work-related injury. She will help you accommodate the employee with a work-related injury. If it's not work-related, then you need to go through Carol or me.

>> Questions? If you have questions please contact me or Carol either by phone or by email. We hope to hear from you soon.