



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF EQUITY, DIVERSITY AND INCLUSION

March 27, 2020

**Control #: 01-0320-0001**  
**Affected IRM: 1.20.x (new)**  
**Expiration Date: 03/20/2022**

MEMORANDUM FOR DISTRIBUTION

FROM: Elita I. Christiansen  
Chief Diversity Officer

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Date: 2020.03.31 11:44:12 -0400

SUBJECT: Interim Guidance concerning 29 C.F.R. §1614.203(d)(5)  
Personal Assistance Services

This memorandum establishes Service-wide interim guidance and procedures for compliance with 29 C.F.R. §1614.203(d)(5) until IRM 1.20 is updated and published.

**Background/Source(s) of Authority:**

- A. 29 C.F.R. §1614.203(d)(5) Personal assistance services allowing employees to participate in the workplace.
- B. Section 501 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 791.

**Procedural Change:** The IRS has not previously operated a Personal Assistance Services program. Therefore, prior internal guidance on this topic does not exist. This Interim Guidance assists employees with targeted disabilities as well as managers/supervisors with understanding the process for requesting personal assistance services, the process for determining whether such services are required, and the agency's right to deny such requests when provision of the services would pose an undue hardship

- **Effect on Other Documents:** This interim guidance is being issued until IRM 1.20 (Equal Employment Opportunity) is revised and published. This guidance should be incorporated into the above IRM by March 20, 2022.

**Effective Date:** The attached procedures are effective the date of this memorandum.

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**Attachment:** Policies and Procedures for Personal Assistance Services

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- Chief of Staff

cc: Business Unit Specific EDI Directors  
Associate Director EDI Disability Services Branch  
EDI IMD Program Manager

## **Attachment**

**Interim Guidance Control #: 01-0320-0001**

### **Policies and Procedures for Personal Assistance Services**

#### **Introduction to Personal Assistance Services (PAS)**

The following policies and procedures apply to all divisions, functions and offices of the IRS. These policies and procedures supplement the Equal Employment Opportunity Commission Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999) and EEOC Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000). Both documents are available on EEOC's internet site at <http://irm.web.irs.gov/common/scripts/ExitScript.asp?GOTO=http://www.eeoc.gov>

#### **Authority**

On January 3, 2017, the Equal Employment Opportunity Commission (EEOC or Commission) issued a final rule to amend the regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501). The final rule provides that agencies of the federal government must adopt employment goals for individuals with disabilities, with sub-goals for individuals with targeted disabilities, provide personal assistance services to certain employees who need them because of a disability, and meet a number of other requirements designed to improve the recruitment, hiring, retention, and advancement of individuals with disabilities in the federal workforce.

#### **Coordination and Support**

The Office of Equity, Diversity and Inclusion's (EDI) Reasonable Accommodation Services (RAS) Section is responsible for processing all requests from IRS employees for Personal Assistance Services (assistance with feeding or dressing oneself, using the restroom - See the Definitions section below for further explanation). Once a request is received by RAS; the RAS POC will work closely with the employee or their representative and management to facilitate decision making and fulfillment of approved requests.

#### **Requesting Personal Assistance Services (PAS)**

An employee (not an applicant) with a targeted disability may request assistance with daily life activities that the individual cannot perform because of the targeted disability. The request does not have to use any special words, such as "PAS," "Section 501," "disability," "EEOC's regulations" or "Rehabilitation Act." Requests for PAS may be made to any Receiving Official, including an employee's immediate supervisor; a supervisor or manager in his/her immediate chain of command, or the EDI Office.

A family member, friend, health care professional, or other representative may request PAS on behalf of an employee with a targeted disability. The request shall be made to one of the persons listed in the Definition Section. If possible, the employee with the targeted disability should be contacted to confirm that they in fact want PAS. The employee with the targeted disability may decline to make a request or refuse to accept services.

An official to whom a request for PAS is made should refer the request to EDI within two business days (Referrals may be emailed to \*RA Form 13661).

EDI is responsible for (1) acknowledging the request; (2) explaining to the employee that management will be making the decision on the request for Personal Assistance Services; (3) describing what will happen in processing of the request. (i.e. delays and/or extenuating circumstances).

### **The Interactive Process**

Communication is a priority throughout the entire process. The Deciding official (determined by the employing Business Unit) involved in the Personal Assistance Services process should consult with EDI. The official involved in the interactive process should record their activities. The employee requesting the Personal Assistance Services (and any chosen representative) should also participate, to the extent possible, in helping to identify the skill set required from the Personal Assistance Service provider.

On-going communication is particularly important where the specific need or skill set, or extenuating circumstance is unclear. In those cases where the Personal Assistance Services that should be provided are clear, extensive discussions are not necessary. Even so, the Deciding Official and requesting individual should discuss the matter to make sure that there is a full exchange of relevant information.

If after engaging in the interactive process the parties cannot agree on the Personal Assistance Services that should be provided, the deciding official should offer the individual the Personal Assistance Services that the deciding official has determined to be effective. If through the interactive process the parties agree on a Personal Assistance Services (alternative) that is different than what was originally requested, that should be documented.

### **Granting Personal Assistance Services and Time Frames for Processing Requests**

When the Deciding Official determines Personal Assistance Services will be provided, the decision should be communicated within five business days to the individual by the Deciding Official. EDI shall take a proactive approach to ensure PAS providers have the necessary skill sets for the services required. If the Personal Assistance Services cannot be provided immediately EDI shall inform the individual of the projected time frame for providing the Personal Assistance Services.

PAS providers may be procured via a Blanket Purchase Agreement established by the Department of the Treasury and funded by the IRS. A request for a specific PAS provider (e.g., a family member or a PAS provider with whom the employee has previously worked) will be considered and, where the PAS provider is dedicated to a single employee, given primary consideration to the extent permitted by law.

All PAS providers must satisfy applicable security clearance and background investigation requirements. These requirements apply to any PAS provider delivering services on a temporary or indefinite basis if the provider, due to their presence in the workplace (IRS facility, telework location etc.), might see or hear tax, sensitive but unclassified, or personally identifiable information:

- a. A moderate risk background investigation

- b. A non-disclosure agreement
- c. UNAX training

Refer to Publication 4812 for contractor requirements.

### **Time Frames for Processing Personal Assistance Services Requests.**

The time necessary to process a request will depend on the nature of the request and whether it is necessary to obtain supporting documentation. At a minimum, however, requests shall be processed as outlined in "Requests Not Involving Extenuating Circumstances" and "Requests Involving Extenuating Circumstances."

### **Personal Assistance Services Requests Not Involving Extenuating Circumstances**

If the manager receiving the request is the Deciding Official, they should immediately engage in the interactive discussion with the employee and the EDI POC.

If the manager or management official receiving the request, is not the Deciding Official, they shall forward the request to the Deciding Official as soon as possible but in no more than five business days.

If the request does not require that supporting medical information be obtained, the request shall be processed and if approved, should be provided as soon as possible but no more than 30 business days from the date the Deciding Official receives the request. Since the Deciding Official may need the full 30 business days to engage in the interactive process and collect all relevant information about possible provided PAS, they should not delay beginning this process. Failure to meet this time frame solely because a Deciding Official delayed processing the request is not an extenuating circumstance.

If the request requires that supporting medical information be obtained to determine whether the individual has a Targeted Disability requiring PAS EDI will request the medical documentation and the above-referenced 30 business day timeframe will be tolled until the needed documentation is received. The IRS recognizes that the need for documentation may not become apparent until after the interactive process has begun.

### **Personal Assistance Services Requests Involving Extenuating Circumstances**

When extenuating circumstances (e.g. the PAS provider will have access to classified or sensitive information and will require a specific type of background investigation) are present, the time for processing a PAS request will be extended as deemed necessary. All IRS officials are expected to act as quickly as reasonably possible in processing requests and providing PAS.

Where extenuating circumstances are present, EDI shall notify the employee requesting PAS, in writing, of the reason for the delay, and the approximate date on which a decision, or provision of the PAS, is expected. Any further developments or changes should also be communicated promptly to the employee.

If there is a delay in providing an approved PAS, the Deciding Official must decide whether temporary measures can be taken to assist the employee. This could include providing the requested services on a temporary basis with limited access to facilities/information by PAS

providers.

### **Expedited Process**

In certain circumstances, a request for PAS requires an expedited review and decision in a time frame that is shorter than the 30 business days discussed above (e.g. to enable an employee to attend a meeting scheduled to occur shortly). Therefore, the Agency will need to take appropriate steps as quickly as possible to determine, if appropriate, to provide PAS.

### **Denial of Personal Assistance Services Request**

When the Deciding Official determines that a request for PAS is denied, they must notify the employee/representative in writing (with a copy to EDI) of the decision. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. The explanation may include the following:

- a. Requestor does not meet the definition of an individual with a disability, as defined in §501 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA), as amended by the Americans with Disability Act Amendments Act (ADAAA) or the medical documentation is inadequate to establish the individual has a targeted disability and/or needs Personal Assistance Services;
- b. The requested Personal Assistance Services would not be effective;
- c. Providing the requested Personal Assistance Services would result in undue hardship. Before reaching this determination, the Deciding Official must have explored whether other effective measures exist which would not impose undue hardship and therefore can be provided (See definition of undue hardship below);
- d. Individual requiring PAS is not an employee;
- e. Employee does not have a targeted disability, as defined in OPM SF-256, or the targeted disability does not create a need for PAS;
- f. Employee is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations and
- g. Employee would create a direct threat to safety on the job, even with PAS and any reasonable accommodation.

The written decision denying a request for Personal Assistance Services must also inform the employee of options to file an EEO complaint, pursue Merit Systems Protection Board (MSPB) and/or union grievance procedures. The notice must also explain the Agency's procedures available for dispute resolution.

### **Appeal Process**

An employee who based on new medical documentation or other pertinent information seeks reconsideration by the Deciding Official of a denial should appeal to the Deciding Official within ten (10) business days of receiving the written denial. The employee must present additional documentation/information in support of their request. Any request for reconsideration received after ten (10) business days of the denial will be treated as a new request for Personal Assistance Services. This new request will not require the applicant to resubmit any documentation previously submitted in a prior request. Rather, this "new request" only affects the timeframes for processing in compliance with the procedures. The Deciding Official will respond to the appeal within five (5) business days of the receipt of the appeal.

If the Deciding Official does not upon reconsideration reverse the initial denial or if due to the

absence of new medical documentation or other pertinent information reconsideration was not requested the employee may initiate a final appeal within ten business days of receiving the Deciding Official's denial of the request for PAS. The appeal shall be decided by the Business Unit Commissioner/Chief or his/her executive-level designee. The Business Unit Commissioner/Chief or his/her executive-level designee may consult with the Chief EEO & Diversity Officer or their designee prior to rendering a final decision. The Business Unit Commissioner/Chief or his/her executive-level designee will issue a response to the final appeal within fifteen business days of receipt of the appeal request.

Individuals should follow up any oral reconsideration/appeal requests in writing. If the individual chooses not to submit a written reconsideration/appeal request, the request must be documented in writing and dated by the receiving official, the RAS POC or other responsible individual.

Pursuing this appeal process, including seeking reconsideration from the Deciding Official or filing an appeal under this process, will toll the time limits for initiating claims under the Parties' collective bargaining agreement. However, pursuing this appeal/reconsideration process will not toll statutory time frames for filing an EEO complaint or Merit Systems Protection Board appeal.

### **Relationship of Procedures to Statutory and Collective Bargaining Claims**

Executive Order 13164 does not create new rights for employees or applicants for employment; nor does it limit an individual's rights under the Rehabilitation Act of 1973. The policies and requirements described in these procedures are in addition to statutory and collective bargaining protections for persons with disabilities. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of Personal Assistance Services Request must comply with the following:

- a. EEO Complaint - Contact an EEO counselor within 45 calendar days from the date of receipt of the written notice of denial.
- b. Collective Bargaining Claim - File a grievance in accordance with the provisions of the controlling Collective Bargaining Agreement (under the IRS-NTEU National Agreement, Article 41, a grievance must be filed within 15 workdays of the denial); or
- c. Merit System Protection Board Appeal - Initiate an appeal within 30 days of an appealable adverse action as defined in 5 CFR §1201.154.

### **Confidentiality and Disclosure**

All medical information, including information about PAS needs, obtained in connection with a request for PAS must be kept confidential. The information shall be kept in files separate from the individual's personnel file. In addition, employees who obtain or receive such information are bound by these confidentiality requirements. EDI will maintain custody of all records obtained or created during the processing of a PAS request, including medical records, and will respond to all requests for disclosure of the records. The information may be disclosed to the following individuals:

- a. Deciding Officials, supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee, but medical information should only be disclosed if absolutely necessary.
- b. First aid and safety personnel, when appropriate, if the disability might require

emergency treatment or special arrangements in emergency situations such as building evacuations.

- c. Government officials when the information is necessary to investigate compliance with the Rehabilitation Act.
- d. In certain circumstances, to workers' compensation offices or insurance carriers
- e. Treasury and IRS legal counsel in connection with providing legal advice to agency officials.
- f. Those Agency Officials with the need to know the information to carry out official duties of their position.

Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that apply.

Note: The Rehabilitation Act confidentiality obligation is not limited to the medical diagnosis. The fact that someone has requested a PAS, or that something is being provided as PAS, also constitutes confidential medical information.

### **Nondisclosure of GINA Protected Information**

The Genetic Information and Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting, requiring, or purchasing genetic information of employees or their family members, except as specifically allowed by this law. To comply with GINA, the request for medical information must state that the agency is asking that genetic information not be provided when responding to the request for medical information, unless the information is allowable as explained below:

Genetic information: as defined by GINA, includes information concerning the manifestation of disease/disorder in family members "family medical history", information about an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

The general prohibition against requesting or requiring genetic information does not apply where an employer requests documentation to support a request for PAS as long as the request for documentation is lawful. Such a request is lawful only where the targeted disability and/or the need for PAS is not obvious; the documentation required contains no more information than what is sufficient to establish that an individual has a targeted disability and needs PAS; and the documentation relates only to the impairment that the individual claims to be a targeted disability that requires PAS.

### **Collective Bargaining Obligations**

As called for in the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (ADA) (which has also been applied to the Rehabilitation Act of 1973), prior to providing Personal Assistance Services Request that would violate any collective bargaining agreement between the IRS and NTEU (e.g., the IRS-NTEU National Agreement, mid-term agreements or LOUs, local agreements, etc.) the Service will notify NTEU at the appropriate level and seek to negotiate, in good faith, a variance to the agreement to allow the Personal Assistance Services Request. The parties are encouraged to work cooperatively to reach such agreements, but only if they do not unduly burden the

expectations or rights of other workers.

The Service acknowledges that under the ADA 2008 Amendments Act (ADAAA) and Rehabilitation Act case law, providing Personal Assistance Services Request that conflict with collectively bargained seniority systems are unreasonable, absent special circumstances.

The Service will notify and bargain, to the extent required by law, with NTEU prior to implementing any Personal Assistance Services Request that would require more than de minimis change in other bargaining unit employees' conditions of employment.

If granting Personal Assistance Services Request would conflict with a collectively bargained agreement, or would necessitate a change in other employees' conditions of employment, and thus require negotiations, consistent with paragraph 3 above, the Service will consider such situations as presenting extenuating circumstances (as defined in the PAS procedures) requiring a delay in implementation of the Personal Assistance Services Request, and perhaps requiring the Service to take temporary measures.

The Service will consider Personal Assistance Services Request that do not conflict with collective bargaining agreements or require changes to other employees' conditions of employment before proposing or approving Personal Assistance Services Requests that would cause such conflicts or changes.

### **Information Tracking and Reporting**

The Chief EEO & Diversity Officer will annually evaluate the Agency's Personal Assistance Services Program. Results must be included in Part J (Special Program Plan for the Recruitment, Hiring, and Advancement of Individuals with Targeted Disabilities) of the bureau's Management Directive (MD) - 715. The Agency must describe in Part J of MD-715 (Section V.D.), the effectiveness of the policies, procedures, or practice to implement the PAS requirement, which includes the following:

- a. Accessibility of the PAS request policy to employees with or without a targeted disability, e.g., posted on the Internet, Intranet, disseminated in employee handbooks, or available in alternative formats, such as Braille;
- b. The number of PAS requests approved; of that, the number approved within the timeframes set out in the Agency's procedures;
- c. The number of PAS requests denied;
- d. Tracking PAS requests, from the date of the request through closure;
- e. Training for managers and supervisors on providing PAS and;
- f. Monitoring PAS request for trends.

### **Definitions**

- A. Activities of Daily Living. Activities that an individual would typically perform if he/she did not have a disability, and that are not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.
- B. Deciding Official. An individual who has authority to approve or deny PAS requests.
- C. Department. The Department of the Treasury, including all of its bureaus and offices.
- D. Dispute Resolution Process. Any voluntary mechanism through which an individual can request reconsideration of a denial of a request for PAS.
- E. Essential Functions. The basic duties of the job that an employee must be able to

perform, with or without reasonable accommodation. A function can be "essential" if, among other things, the reason the position exists is to specifically perform that function; there are a limited number of other employees who could perform the function; the function is specialized and the individual is hired based on his/her ability to perform it; or the position requires an employee to be physically located in a particular place. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed.

- F. 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.
- G. Genetic Information. As defined by the Genetic Information Nondiscrimination Act of 2008 (GINA), includes information concerning the manifestation of disease/disorder in family members ("family medical history"), information about an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
- H. Interactive Process. Discussions between the Requester and the Receiving Official and/or any official designated to process requests for PAS. The information shared during the interactive process is used to determine whether PAS will be provided and to examine potential temporary assistance services.
- I. 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 targeted disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, drinking, and using the restroom. For example, someone providing PAS might assist someone with getting into or out of a vehicle at the worksite. Note: PAS does not include medical services. For example, it does not include performing medical procedures such as administering injections or medical monitoring (e.g., monitoring blood sugar).
- J. Personal Assistance Service Provider. An independent contractor or an employee whose primary job function is to perform assistance with the daily living activities requested by the employee entitled to PAS.
- K. Qualified Employee. An employee of the Department 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.
- L. Processing Official (PO). The office or individual(s) responsible for processing requests for PAS received by Receiving Officials, and managing the requests through to closure. The Office of Equity, Diversity and Inclusion (EDI)'s Reasonable Accommodation Services Section is responsible for processing all requests for PAS.
- M. Receiving Officials. Treasury personnel designated to receive a PAS request, such as an employee's immediate supervisor; a supervisor or manager in his/her immediate chain of command; the EDI Office or any office designated to officially receive a request for PAS from an employee (or an individual acting on his/her behalf).
- N. Requester. A qualified employee with a targeted disability or an individual acting on his or her behalf who requests PAS
- O. Targeted Disability. A subset of conditions that would be considered disabilities under the Rehabilitation Act. The Department follows the list of targeted disabilities (below) as set forth by OPM on the Standard Form (SF) 256.
  - 1. Developmental Disability, for example, autism spectrum disorder
  - 2. Traumatic Brain Injury
  - 3. Deaf or serious difficulty hearing, benefiting from, for example, American

Sign language, CART, hearing aids, a cochlear implant and/or other supports

4. Blind or serious difficulty seeing even when wearing glasses
  5. Missing extremities (arm, leg, hand and/or foot)
  6. Significant mobility impairment, benefiting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other support.
  7. Partial or complete paralysis (any cause)
  8. Epilepsy or other seizure disorders
  9. Intellectual disability
  10. Significant Psychiatric Disorder, for example, bipolar disorder, schizophrenia, TSD, or major depression
  11. Dwarfism
  12. Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders
- P. Undue Hardship. An action requiring significant difficulty or expense when considered in light of factors such as the Department's size, financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors such as the nature and cost to provide PAS needed and the impact of the PAS on the operations of the Department. An undue hardship based on cost should rarely be an issue. The inability to find a PAS provider with the security clearance level of the employee may, under some circumstances, be sufficiently difficult as to constitute an undue hardship.