

Chapter 12: Procedures for Reasonable Accommodation and Personal Assistance Services for Individuals with Disabilities

Section 1. POLICY

Executive Order 13164 requires all federal agencies to establish procedures for processing requests for reasonable accommodation. The Equal Employment Opportunity Commission's (EEOC) amended regulations implementing section 501 of the Rehabilitation Act of 1973 require federal agencies to engage in affirmative action by providing personal assistance services to employees who need them because of certain disabilities.

In accordance with the Rehabilitation Act of 1973, the National Indian Gaming Commission (NIGC) is committed to providing reasonable accommodations to its employees and applicants for employment, and/or personal assistance services (PAS) to its employees, to ensure that individuals with disabilities enjoy equal access to all employment opportunities. This chapter sets forth the NIGC's policy and procedures for the provision of reasonable accommodations to individuals with disabilities, and PAS for its employees with targeted disabilities.

This chapter fully complies with the requirements of the Rehabilitation Act of 1973. Under that law, the NIGC must provide reasonable accommodations to qualified employees or applicants with disabilities, unless to do so would cause the agency undue hardship. "Undue hardship" means that a specific accommodation would require significant difficulty or expense.

All references in this chapter to the term "disability" refer only to those impairments that meet the ADA/Rehabilitation Act definition of "disability," as amended by the ADA Amendments Act of 2008 (ADAAA), which states that the term "disability" is to be interpreted in favor of broad coverage of individuals with disabilities and does not require an extensive analysis. The term "targeted disability" means a disability that is on the list of "targeted disabilities or serious health conditions" on the Office of Personnel Management's Standard Form 256.

Section 2. REASONABLE ACCOMMODATIONS

A reasonable accommodation is any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. The NIGC provides reasonable accommodations:

- when an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- when an employee with a disability needs an accommodation to perform the essential

functions of the job (“essential functions of a job” are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them) or to gain access to the workplace; and

- when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., kitchens, parking lots, details, trainings, office-sponsored events, etc.).

The NIGC will process requests for reasonable accommodation and will provide reasonable accommodations where appropriate in a prompt and efficient manner in accordance with the time frames set forth in this chapter. Common types of reasonable accommodations include:

- modifying work schedules or supervisory methods;
- granting breaks or providing liberal leave;
- altering how or when job duties are performed;
- removing and/or substituting a marginal function;
- moving to different office space;
- providing liberal telework;
- making changes in workplace policies;
- providing assistive technology (e.g., information technology (IT), communications equipment, or specially designed furniture);
- hiring a reader or other staff assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff;
- removing an architectural barrier, including reconfiguring work spaces;
- providing accessible parking;
- providing materials in alternative formats (e.g., Braille, large print); and
- providing a reassignment to a vacant position.

There are some changes or things that are not considered reasonable accommodations, such as the removal of an essential job function or the provision of personal use items (e.g., hearing aid that is needed on and off the job, eyeglasses, etc.).

Section 3. PERSONAL ASSISTANCE SERVICES (PAS)

PAS means 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 but not limited to, assistance with removing and putting on clothing, eating, and using the restroom. Such services do not include medical care. The NIGC will provide PAS where appropriate in a prompt and efficient manner. An employee is not entitled to a PAS provider of his or her choice.

The NIGC is only required to provide PAS to an individual if the following conditions are met:

- the individual is an NIGC employee;
- the NIGC employee has a targeted disability;
- the NIGC employee requires the PAS because of his or her targeted disability;
- the NIGC employee will be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any required reasonable accommodations have been provided; and
- providing the PAS will not impose undue hardship on the NIGC.

PAS is not the same as services that help employees perform job-related tasks, such as sign language interpreters for employees who are deaf or readers for employees who are blind or have learning disabilities to read printed text. Those services are required as reasonable accommodations, if the individual needs them because of a disability and providing them does not impose undue hardship on the agency. In short, PAS do not help individuals with targeted disabilities to perform their specific job functions.

Section 4. RESPONSIBILITIES

The NIGC has designated the Human Resources Coordinator as the Disability Program Manager (DPM) to oversee the agency's reasonable accommodation and PAS programs.

Under this policy, supervisors and managers are authorized to approve requests for reasonable accommodation and/or PAS whenever possible. Therefore, all NIGC management personnel must be familiar with the procedures contained in this chapter, as well as the EEOC's "*Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*" (rev. Oct. 17, 2002), and the *Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act* (September 18, 2017) which can be found on the EEOC website at <www.eeoc.gov>. These documents contain significant information on the responsibilities of agency personnel involved in responding to a request for reasonable accommodation and/or PAS, as well as the rights and responsibilities of those individuals requesting an accommodation and/or PAS. Applicants and employees may also wish to consult this guidance to better understand the reasonable accommodation and the PAS process. The EEOC also has additional resource materials available on its website, including but not limited to, "*Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act*" (July 27, 2000).

Whenever requests made to a supervisor or manager cannot be decided by him or her due to the nature of the request (e.g., the accommodation requires the purchase of additional services, computer programs, equipment, reassignment, or the hiring of a new PAS

provider, etc.), the request must be referred by the supervisor or manager to the DPM within two (2) business days of receiving the request. While the DPM will process all requests referred or made directly to him or her, the DPM may often consult with the first-line supervisors about specific requests to ensure that an appropriate response is provided that meets the individual's disability-related needs as to the essential functions of the job.

If a request for reasonable accommodation and/or PAS is made to, and can be approved by, a supervisor or manager, said supervisor or manager must still keep the DPM informed of the request, the interactive process, and the approval or denial of the request. To ensure proper information filing, tracking, and reporting by the agency, the supervisor or manager must transfer to the DPM all documentation related to the reasonable accommodation and/or PAS request within two (2) business days of issuing a written *Resolution of Request for Reasonable Accommodation and/or Personal Assistance Services (PAS)* form (Appendix D) to the requesting individual.

Once the conditions set forth in Section 3 above have been met, the NIGC is required to provide PAS to an employee who requires personal assistance services to perform basic activities of daily living whenever and wherever the employee is performing work for the NIGC. This includes providing PAS during official temporary duty travel, including off-work hours during the travel. In the case where an employee is approved for telework under the NIGC telework policy or as a reasonable accommodation, the NIGC is required to provide PAS during the telework hours.

Section 5. REASONABLE ACCOMMODATION AND PAS PROCEDURES

a. Requesting reasonable accommodation and/or PAS.

If an individual with a disability needs an adjustment or change concerning some aspect of the application process, the job, a benefit of employment, or an employee needs assistance with performing activities of daily living during work hours, the individual or his or her representative can submit his or her request for reasonable accommodation and/or PAS to the individual's first-line supervisor, a supervisor or manager in his or her immediate chain of command, or directly to the DPM by emailing him or her at <disability_program_manager@nigc.gov>. Applicants for employment may contact the DPM directly (contact information will be provided in the vacancy announcement), or they may submit their requests for reasonable accommodation to any NIGC employee or HR servicing contractor employee with whom the applicant has contact in connection with the application process. The NIGC is not required to provide PAS to applicants for employment. The reasonable accommodation and/or PAS process begins as soon as the oral or written request for accommodation and/or PAS is made to any supervisor or manager in an employee's chain of command, or directly to the DPM.

A request for reasonable accommodation and/or PAS may be submitted at any

time, orally or in writing. The request does not have to include any specific words, such as “reasonable accommodation,” “disability,” “Section 501,” “Rehabilitation Act,” or “personal assistance services.” A request for reasonable accommodation and/or PAS is any communication in which an individual asks or states that he or she needs the NIGC to provide or to change something because of a medical condition, or that he or she needs assistance performing daily life activities because of a medical condition. In addition, a family member, health care provider, or other representative may request an accommodation and/or PAS on behalf of an individual. For example, a doctor’s note outlining medical restrictions for an employee or assistance with daily life activities could constitute a request for reasonable accommodation and/or PAS.

If the nature of the initial communication is unclear, the NIGC official to whom the request was made should ask an individual whether he or she is requesting a reasonable accommodation and/or PAS. If an NIGC official knows with certainty that a disability, such as an intellectual disability, prevents a person from requesting a reasonable accommodation and/or PAS, and it appears that an accommodation or PAS may be needed, the official should ask the individual whether an accommodation or PAS is needed. The time frame for processing unclear requests begins when the NIGC official makes the inquiry.

When a third party (e.g., an individual’s doctor or other representative) requests an accommodation and/or PAS on behalf of an applicant or employee, the NIGC official to whom the request was made should, if possible, confirm with the individual or employee that he or she wants a reasonable accommodation and/or PAS before proceeding. When this is not possible because the employee is incapacitated, the NIGC official will process the third party’s request if it seems appropriate (e.g., by granting immediate leave) and will consult directly with the individual needing the accommodation and/or PAS as soon as practicable.

When an individual (or third party) makes an oral or email request, the supervisor, manager, or the DPM should ask the requestor to fill out the *Confirmation of Request for Reasonable Accommodation and/or Personal Assistance Services (PAS)* form (Appendix A). The NIGC official to whom the request is made must fill out the form if the requestor fails or refuses to do so. An NIGC official may not refuse to process a request for reasonable accommodation and/or PAS if an individual refuses to fill out the form.

An employee needing an accommodation on a recurring basis need only make the initial request. However, in particular instances, the employee requesting a recurring accommodation must give appropriate advance notice for each subsequent time that the accommodation is needed. “Appropriate advance notice” depends on the type of recurring accommodation needed, i.e., longer advance notice may be needed when the agency must contact outside contractors to schedule the accommodation services. If the accommodation is needed on a regular basis, the DPM should ensure that an employee’s supervisor makes the

appropriate arrangements without requiring the employee to submit a request in advance of each occasion.

b. Processing the request for reasonable accommodation and/or PAS.

Supervisors and managers are authorized to approve requests for reasonable accommodation and/or PAS whenever possible. However, when requests are made directly to the DPM, the DPM will initiate the required interactive process as described below. The DPM will not provide a reasonable accommodation involving the performance of a job function without ensuring that the interactive process occurred.

c. The interactive process.

After a request is made, the NIGC official and the employee should engage in an interactive process to determine whether and what type of accommodation and/or PAS would be effective. As part of this interactive process, it is important that the individual with a disability tell the official precisely how limitations from a disability affect the ability to perform a job and/or perform basic daily living activities. If the individual knows what type of reasonable accommodation and/or PAS would be helpful, he or she should tell the official. The NIGC official can suggest alternative accommodations and/or PAS providers and the individual should consider whether they would be effective. The NIGC is not required to provide the specific accommodation and/or PAS provider requested by the individual, it is only required to offer an effective alternative.

- (1) Communication. The most important aspect throughout the interactive process is the continued communication between the parties, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering alternative forms of reasonable accommodation and/or PAS provider. The supervisor, manager, or the DPM and the requesting individual should work together to identify effective accommodations and PAS providers. Appendix F of this chapter lists some suggested resources for identifying reasonable accommodations.
- (2) Time frame. The NIGC official to whom the request was made will contact the individual within ten (10) business days after the request is made to begin discussing the accommodation and/or PAS request.

The supervisor, manager, or the DPM may need to consult with other NIGC personnel (e.g., IT staff or an Office of the General Counsel attorney) or outside sources to obtain information necessary to make a determination about the request. The NIGC expects that all agency personnel will give a high priority to responding quickly to the NIGC

official's request for information or assistance. Any delays by NIGC personnel may result in the agency failing to meet the required time frames.

- (3) Reassignment. There are specific considerations during the interactive process when an employee needs or requests a reassignment. Generally, a reassignment will only be considered if no other accommodation is available to enable the employee to perform the essential functions of his or her current job, or if the only effective accommodation would cause the agency undue hardship. This is the reason that reassignment is known as "the accommodation of last resort."

A reassignment may only be made to a vacant position. The NIGC is not required by law to create new positions for individuals or to move employees from their positions in order to create a vacancy. In considering whether there are vacant positions available for reassignment, the DPM will work with the Chief of Staff or General Counsel and the employee requesting the reassignment to search for: (1) vacant positions within the NIGC for which the employee may be qualified, with or without a reasonable accommodation; and (2) positions which the Chief of Staff or the General Counsel have reason to believe will become vacant within 60 days from the date the search is initiated and for which the employee may be qualified. For example, if a search begins on May 1st, the DPM will inquire about any positions that are currently vacant or will become vacant between May 1st and June 30th (60 days). If the DPM completes his or her search on May 15th and learns that no vacancies are available or anticipated by June 30th, then the search is over and the results will be conveyed to the employee.

Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the NIGC will not pay for the employee's relocation costs if the employee accepts reassignment as an accommodation.

d. Requests for medical information pertaining to requests for reasonable accommodation.

In some instances, the NIGC official may need to obtain medical information from the individual to determine: if the impairment is a "disability" under the Rehabilitation Act; the effectiveness of a particular accommodation; or whether the individual has a disability. Such medical information may not be necessary if the disability is obvious (e.g., the individual is blind or has paraplegia), if the disability is already known to the NIGC (e.g., the individual previously requested an accommodation and the medical information submitted at the time

showed a disability existed and that there would be no change in the medical condition), or if an effective accommodation is obvious.

If an individual's disability and/or need for accommodation are not obvious or already known, the NIGC is entitled to ask for and receive medical information showing that the individual has a covered disability that requires an accommodation. A disability is obvious or already known when it is clearly visible or the individual has previously provided medical information showing that the impairment meets the Rehabilitation Act definition of "disability." It is the individual's responsibility to provide the necessary medical information requested by his or her supervisor, a manager, or the DPM.

In determining whether medical documentation is necessary to support a request for reasonable accommodation and whether an individual has a disability within the meaning of the Rehabilitation Act, NIGC officials will be guided by the principles set forth in the ADAAA. *Specifically, the ADAAA directs that the definition of "disability" should be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis.* Notwithstanding, the NIGC official to whom the request was made may require medical information in order to design an appropriate and effective accommodation, or to determine whether the individual has a disability.

When the NIGC official determines that medical information is needed, he or she may request such information from the individual's health care provider using the memorandum template (Appendix B) and the *Request for Medical Information in Support of Employee's Request for Reasonable Accommodation or Personal Assistance Services (PAS)* form (Appendix C). If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform the NIGC official of this fact. The DPM will then determine whether additional medical information is needed to process the current request.

By using the *Request for Medical Information* form, the NIGC official to whom the request was made will attempt to ensure that the requested medical information does not include any superfluous medical information or documentation that does not pertain to the physical or mental impairment for which the accommodation is being requested. In addition, the Genetic Information and Nondiscrimination Act of 2008 prohibits employers from requesting or requiring genetic information of employees or their family members. The *Request for Medical Information* form contains a specific instruction to health care providers that they must not provide any genetic information when responding to the request for medical information.

If the initial information provided by the health care provider or volunteered by the individual is insufficient to enable the supervisor, manager, or the DPM to determine whether the individual has a disability and/or that an accommodation is

needed, said NIGC official will explain what additional information is needed and the individual should ask his or her health care provider to provide the missing information. The NIGC official may also provide a list of questions for the health care provider to answer. If, after several attempts, sufficient medical information is still not provided by the individual, the individual may be asked to sign a limited release permitting the DPM to directly contact the health care provider for the additional information. The DPM may have the medical information reviewed by a doctor of the NIGC's choosing, at the agency's expense.

e. Requests for medical information pertaining to requests for PAS.

An employee is not likely to request PAS for activities such as eating or using the restroom unless it is truly necessary; and in general, such assistance is only necessary for individuals who have obvious targeted disabilities like paralysis and missing limbs. When it is obvious that an employee has a targeted disability and needs the requested services, the NIGC may not require the individual to provide medical documentation in support of the PAS request. Please note that an employee is not required to complete an SF-256 to self-identify the targeted disability in order to make a request for, and be granted, PAS.

f. Confidentiality requirements.

Under the Rehabilitation Act, NIGC supervisors and managers are reminded that all information obtained in connection with the reasonable accommodation and/or PAS process must be kept confidential, including the request itself, the medical records and/or documentation, the resolution of the request, and any information about functional limitations. This means that all medical information obtained in connection with a request for reasonable accommodation and/or PAS must be kept by the DPM in files separate from the individual's personnel file. It also means that any NIGC employee who obtains or receives such information is strictly bound by these confidentiality requirements.

When a request for reasonable accommodation and/or PAS is made directly to the DPM, he or she may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on the request. Under such circumstances, the DPM will inform the recipients of this information about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request or implement the accommodation or PAS. In certain situations, the DPM may not need to reveal the identity of the individual, the office in which the individual works, or even the specific disability. For example, the DPM may need to consult IT staff in connection with requests for assistive technology for computers. While IT staff may need to know the employee's functional limitations, they may have no need to know the employee's identity or specific disability.

In addition to disclosures of information needed to process a request, other

disclosures of medical information are permitted as follows:

- supervisors and managers are entitled to whatever information is necessary to place restrictions on the employee's work or duties to implement a reasonable accommodation;
- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance during an evacuation; and
- government officials may be given information necessary to investigate the NIGC's compliance with the Rehabilitation Act.

g. Time frame for processing requests and providing reasonable accommodations and/or PAS.

- (1) Generally. The time frame for processing a request (including the provision of an accommodation, if approved) is as soon as possible but no later than 30 *business* days from the date the request is made. This 30-day period includes the 10-day period during which the individual and the NIGC official to whom the request was made must participate in the interactive process.

The 30-day period is the *maximum* amount of time that it should generally take the NIGC to process a request and to provide a reasonable accommodation, but NIGC officials will strive to process such requests and reach a resolution in as short a period of time as reasonably possible. The provision of PAS providers may take longer than 30 days if the NIGC has to hire a new employee or contractor to provide the PAS to the requesting employee, but the NIGC will nevertheless strive to provide the PAS in as timely a manner as practicable.

The time frame begins when an oral or written request for reasonable accommodation and/or PAS is made. Therefore, everyone involved in processing a request should respond as quickly as possible. This includes referring a request to the DPM and providing technical assistance to the DPM regarding issues raised by a request (e.g., information from a supervisor regarding the essential functions of an employee's position, information from IT staff regarding compatibility of certain adaptive equipment with the NIGC's technology, etc.).

If a supervisor, manager, or the DPM must request medical information or documentation from an individual's health care provider, *the time frame will stop* on the day that the NIGC official makes a request to the individual to obtain medical information/documentation, and will resume on the day that the information/documentation is received by the NIGC official.

If the disability is obvious or already known to the supervisor, manager, or the DPM, or if it is clear why a reasonable accommodation and/or PAS is needed, and if an accommodation can be provided quickly, then the NIGC official should not require the full 30 business days to process the request. Unnecessary delays, when a reasonable accommodation and/or PAS can be provided in less than 30 business days, can result in a violation of the Rehabilitation Act.

The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame:

- an employee with insulin-dependent diabetes who sits in an open area asks for three breaks per day to test his or her blood sugar levels in private;
- an employee with clinical depression, who takes medication that makes it hard for him or her to get up in time to get to the office at 9:00 a.m., requests that he or she be allowed to start work at 10:00 a.m. and still work an eight and one half hour day; or
- a supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a serious learning disability asks that the agenda be distributed ahead of time because his or her disability makes it difficult to read quickly and he or she needs more time to prepare.

(2) Expedited processing of a request for reasonable accommodation. Under certain circumstances, a request for reasonable accommodation may require an expedited review and resolution, including:

- to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job; or
- to enable a disabled employee to attend a meeting scheduled to occur within a very short period of time. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five days.

(3) Extenuating circumstances. There may be some circumstances that cannot be reasonably anticipated or avoided or that may be beyond the NIGC's ability to control. Whether extenuating circumstances exist will be determined on a case-by-case basis. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and/or PAS and providing the accommodation/PAS will be extended as

reasonably necessary. Extensions will be limited to circumstances where they are absolutely necessary and only for as long as required to deal with the extenuating circumstances. The NIGC official to whom the request was made will notify the requesting individual regarding any extenuating circumstances that may require an extension of the time to process the reasonable accommodation and/or PAS request. To the extent possible, the NIGC official must also keep the individual informed of the date on which the agency expects to complete the process.

If there is a delay, the supervisor, manager, or the DPM must investigate whether there are temporary measures that could be taken to assist the individual with a disability (e.g., a temporary job restructuring or the use of equipment that might permit the individual to perform some of the functions of his or her job).

h. Resolution of the reasonable accommodation and/or PAS requests.

All decisions regarding a request for reasonable accommodation and/or PAS will be communicated to an applicant or employee orally and by use of the *Resolution of Request for Reasonable Accommodation and/or Personal Assistance Services (PAS)* form (Appendix D). If an employee is making a request for both a reasonable accommodation and PAS, the NIGC official must complete two separate forms that separately address the requests for reasonable accommodation and PAS.

(1) Approvals. If the NIGC grants a request for accommodation and/or PAS, the NIGC official to whom the request was made will issue the *Resolution of Request* form to the individual and discuss implementation of the accommodation and/or PAS. The *Resolution of Request* form(s) must be filled out even if the NIGC is granting the request(s) without determining whether the individual has a disability and regardless of whether the change or modification is considered an appropriate form of reasonable accommodation (e.g., the NIGC grants a three-month removal of an essential function, which is not a form of reasonable accommodation, but nonetheless must be specified on the *Resolution of Request* form).

- A decision to provide an accommodation and/or PAS other than the one specifically requested will be considered a decision to grant the request. The *Resolution of Request* form(s) will explain both the reasons for the denial of the individual's requested accommodation and/or PAS, and why the supervisor, manager, or the DPM believes that the alternative accommodation and/or PAS provider will be effective.
- If the request is approved but the accommodation and/or PAS cannot be provided immediately, the supervisor, manager, or the DPM will inform the individual in writing of the projected time frame for

implementing the accommodation and/or providing the PAS.

- The NIGC may use federal employees, independent contractors, or a combination of employees and contractors as PAS providers. The NIGC can also assign personal assistance service duties to an existing employee who already performs such service as part of his or her job. While the NIGC will give primary consideration to the employee's choice of PAS provider to the extent permitted by law, it may not be possible to honor an employee's preferences in all cases. The NIGC may choose a different provider if, for example, the employee's preferred PAS provider is not qualified or less qualified than another applicant, if the NIGC decides to assign an existing qualified NIGC employee or to utilize a pool of shared PAS providers instead of dedicated providers for reasons of cost or convenience. In short, the NIGC can choose a different PAS provider for reasons of quality, cost, or convenience.

(2) Denials. If the NIGC denies a request for accommodation and/or PAS, the NIGC official to whom the request was made will complete the *Resolution of Request* form by clearly setting forth the specific reason(s) for the denial. The NIGC official will issue the *Resolution of Request* form to the individual and discuss the reason(s) for the denial. In addition, the official cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective," but rather, the form will specifically explain the reason(s) why the accommodation and/or PAS would result in an undue hardship or why it would be ineffective.

- If there is a legitimate reason to deny the specific reasonable accommodation and/or PAS requested (e.g., the accommodation or PAS poses an undue hardship or is not required by the Rehabilitation Act), the supervisor, manager, or the DPM will further explore with the individual whether another accommodation and/or PAS would be effective. The fact that one accommodation and/or PAS provider proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation or PAS provider. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the supervisor, manager, or the DPM will explore whether there is a reasonable accommodation that will meet the employee's needs.
- If the NIGC official offers an accommodation and/or PAS other than the one specifically requested and the alternative accommodation and/or PAS is not accepted, the NIGC official will record the individual's rejection of the alternative accommodation on the *Resolution of Request* form.

The NIGC may deny a request for PAS if:

- the requestor is not an NIGC employee;
 - the requestor does not have a targeted disability;
 - the targeted disability does not create a need for PAS;
 - the requestor is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
 - the requestor would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or
 - providing PAS would impose undue hardship on the agency.
- (3) Changed circumstances. The approval or denial of an accommodation and/or PAS request does not prevent an individual from making another request in the future if circumstances change (e.g., the disability worsens or an employee is assigned new duties that require an additional or a different reasonable accommodation). Additionally, an NIGC official may not refuse to process a request for reasonable accommodation and/or PAS and a request may not be denied based on a belief that the accommodation and/or PAS should have been requested at an earlier point in time (e.g., during the application process).

A supervisor or manager who believes that an employee may no longer need a previously approved reasonable accommodation and/or PAS should contact the DPM. The DPM will decide whether there is a reason to contact the employee to discuss whether he or she has a continuing need for the accommodation and/or PAS.

Section 6. MISCELLANEOUS MATTERS

a. Right to File an EEO Complaint.

An individual dissatisfied with his or her supervisor's, manager's, or the DPM's resolution of a request for reasonable accommodation and/or PAS always has the right to file a complaint using the administrative EEO process or other statutory processes, as appropriate. Such individuals should contact the Office of Diversity, EEO and Inclusion at 202-632-0060 or <harassment_prevention@nigc.gov>.

b. Information tracking and reporting.

In order for the NIGC to ensure compliance with the Rehabilitation Act and this chapter, the DPM will complete the *Reasonable Accommodation/Personal Assistance Services (PAS) Information Tracking and Reporting* form (Appendix E) within five (5) business days of a *Resolution of Request* form being issued to the requesting individual.

These completed forms will form the bases of an end-of-year annual report that will provide a qualitative assessment of the NIGC's reasonable accommodation and PAS programs, including any recommendations for improvement of the NIGC's reasonable accommodation/PAS policy and procedures. This annual report will not contain confidential information about specific requests for reasonable accommodation and/or PAS, such as the names of individuals that requested accommodations and/or PAS. Rather, this report will provide only general information, including but not limited to the following information:

- (1) the number and types of reasonable accommodations and/or PAS that have been requested in the application process and whether those requests have been granted or denied;
- (2) the jobs (occupational series, grade level, and agency component) for which reasonable accommodations and/or PAS has been requested;
- (3) the types of reasonable accommodations and/or PAS that have been requested for each of those jobs;
- (4) the number and types of reasonable accommodations and/or PAS for each job, by agency component, that have been approved, and the number and types that have been denied;
- (5) the number and types of requests for reasonable accommodations and/or PAS that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
- (6) the number and types of reasonable accommodations and/or PAS provided on a recurring basis;
- (7) the reasons for denial of requests for reasonable accommodation and/or PAS;
- (8) the amount of time taken to process each request for reasonable accommodation and/or PAS; and
- (9) the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations and/or PAS.

The DPM will keep all cumulative request records for at least three years to track the agency's performance with regard to reasonable accommodation and/or PAS, enabling the NIGC to assess whether it has adequately processed and provided reasonable accommodations and/or PAS, and to evaluate whether and where the NIGC needs to improve in its handling of requests for reasonable accommodation and/or PAS.

However, the DPM will keep records related to a particular individual (who has requested a reasonable accommodation) for the duration of that individual's employment with the NIGC, including any documentation of the individual's disability or need for reasonable accommodation and/or PAS, as well as information about the resolution of that individual's accommodation and/or PAS

request.

c. Relation of procedures to administrative or statutory claims.

The procedures in this chapter do not limit or supplant administrative or statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation and/or PAS. Requirements governing the initiation of administrative or statutory claims remain unchanged, including the time frames for filing such claims.

The *Resolution of Request* form (Appendix D) provides information to individuals denied accommodation and/or PAS, or denied the accommodation and/or PAS of their choice, about their right to file an EEO complaint and their possible right to pursue a Merit Systems Protection Board (MSPB) appeal.

An individual who chooses to pursue administrative or statutory remedies for denial of reasonable accommodation must:

- (for an EEO complaint) contact an EEO counselor within 45 calendar days from the date of receipt of the *Resolution of Request* form or a verbal response to the request, whichever comes first. The 45-day filing period may not be applicable where there is an unreasonable delay in making a decision regarding an accommodation and/or PAS, and the individual files a challenge before the decision is made. Such individuals should contact the Office of Diversity, EEO and Inclusion at 202-632-0060 or <harassment_prevention@nigc.gov>; and
- (for adverse actions over which the MSPB has jurisdiction) initiate an appeal within 30 calendar days of the action, as defined in 5 C.F.R. § 1201.3.

d. No private right of action created.

The procedures contained in this chapter do not create new enforceable rights under § 501 of the Rehabilitation Act or any other federal law or regulation. Executive Order 13164, which requires all federal agencies to adopt reasonable accommodation procedures, explains that the procedures are “intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, [or] its agencies.”

e. Inquiries and distribution.

Any individual seeking further information concerning these procedures may contact the DPM via e-mail at <disability_program_manager@nigc.gov>.

This chapter shall be distributed to all employees upon adoption, they will be

posted on the NIGC's Intranet and external website, and they will also be distributed to all new employees as part of their orientation. These procedures will be provided in alternative formats when requested from the DPM by, or on behalf of, any NIGC employee.

Adopted on January 10, 2018.

Supersedes the “*Procedures for Providing Reasonable Accommodation for Individuals with Disabilities*” adopted by the Commission on September 25, 2017.

(Appendix A)



REQUEST FOR REASONABLE ACCOMMODATION AND/OR PERSONAL ASSISTANCE SERVICES (PAS)

Applicant or Employee Name

Applicant or Employee Tel No.

Date of Request (*whether verbally or in writing*)

Office or Division

Accommodation and/or PAS requested (*Be as specific as possible, e.g., adaptive equipment, reader, interpreter, etc.*): _____

Reason for request: _____

If request is time sensitive, please explain: _____

Log No.: _____ (*to be filled in by the Disability Program Manager*)

Privacy Act Statement

The Rehabilitation Act of 1973, 29 U.S.C. § 791, and Executive Order 13164 authorize the collection of this information. The primary use of this information is to consider, decide, and implement requests for reasonable accommodation and/or personal assistance services. Additional disclosures of the information may be made to: medical personnel to meet a *bona fide* medical emergency; another federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the Government is a party to the judicial or administrative proceeding; to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of the individual; and to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, EEO investigator, arbitrator, or other duly authorized official engaged in the investigation or settlement of a grievance, complaint, or appeal filed by an employee.

(Appendix B)



(Date)

Memorandum

To: _____

From: _____, [Title]

Re: Request for medical information and/or medical documentation

The purpose of this memorandum is to request medical information and/or documentation from your doctor or other health care provider in support of your request for reasonable accommodation and/or Personal Assistance Services (PAS). In order for me to have a better understanding of your condition, your prognosis, and your need for accommodation and/or PAS, I am requesting that your doctor or health care provider respond to the questions in the attached *Request for Medical Information in Support of Employee's Request for Reasonable Accommodation and/or Personal Assistance Services (PAS)* form.

Your doctor or health care provider should pay particular attention to the questions that address your diagnosis, prognosis, and requested accommodation and/or PAS, and should provide detailed responses to said questions. There is no need for you to undergo any new examinations, treatments, or tests. Your doctor or health care provider can respond to the questions in the attached form based on existing office and hospital records, or narrative summary, or both. A copy of your position description, which contains the essential functions of your position, may also be attached. If so, your position description is to be used by your doctor or health care provider in responding to the questions.

The requested medical information should be submitted to me by _____. Your doctor or health care provider may mail, fax, or courier the completed form and medical documentation, if any, to _____, [Title]. The mailing address and fax number are on the attached form. Your medical information may be reviewed and evaluated by a competent medical authority. All medical information and/or documentation submitted to the NIGC will be handled as confidential.

Please be advised that any delays in providing the requested medical information will delay the NIGC's determination of whether to provide reasonable accommodation and/or PAS to you. If you, your doctor, and/or health care provider have any questions about the medical information and/or documentation requested, please do not hesitate to contact me at _____.



**REQUEST FOR MEDICAL INFORMATION
IN SUPPORT OF EMPLOYEE'S REQUEST FOR REASONABLE ACCOMMODATION
AND/OR PERSONAL ASSISTANCE SERVICES (PAS)**

Employee Name

Date of Request for Medical Information

Employee's physical and/or mental impairment *(To be filled out by employee):*

Accommodation and/or PAS requested by employee *(To be filled out by the NIGC official to whom the request was made):*

TO: HEALTH CARE PROVIDER

The above-named employee has requested an accommodation and/or PAS because of a physical and/or mental impairment to assist the employee in performing the essential functions of his or her position and/or to assist the employee in performing activities of daily living. This federal agency requires further medical information and/or documentation in order to make an informed decision of whether to grant or deny the employee's request for accommodation and/or PAS. Please answer the following three (3) questions with as much detail as possible, but do not include any medical information or documentation that does not pertain to the physical or mental impairment for which the accommodation and/or PAS is requested. Please use additional sheets, if necessary.

***** Important Notice *****

The Genetic Information and Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA from requesting or requiring genetic information of employees or their family members. In order to comply with this law, the agency asks that you not provide any genetic information when responding to this request for additional medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of 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.

Upon completion, please mail the completed form to the attention of _____ at:
National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240, or fax to:
_____. Please mark the documents as "CONFIDENTIAL." In the alternative, please return the
completed form to the employee, who will, in turn, submit it to his or her supervisor, manager, or the
Disability Program Manager. Thank you.

1. What is the nature, severity, and expected duration of the employee's physical or mental impairment? *(Please include your diagnosis and clinical findings from the employee's most recent medical evaluation pertaining to the medical condition for which an accommodation or PAS is requested, including any of the following pertaining to the identified condition or impairment; findings of physical examinations; results of laboratory tests; X-rays; EKGs and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation or psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate).*

2. Identify the major life activity or major bodily function that is limited by the employee's physical or mental impairment, and explain the extent to which the impairment limits the employee's ability to perform a major life activity or the operation of a major bodily function. *(Examples of major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, sitting, standing, lifting, sleeping, cognitive thinking, concentrating, interacting with others, etc.; examples of major bodily functions include functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, lymphatic, musculoskeletal, reproductive functions, etc.).*

3. Explain why this employee requires or does not require reasonable accommodation or the particular reasonable accommodation requested and/or PAS, and/or how (and to what extent) the above-requested reasonable accommodation and/or PAS will assist or will not assist the

employee in performing the essential functions of his or her position, performing activities of daily living, and/or enjoying a benefit of the workplace. *(In so doing, please provide the basis or bases for your conclusion that the requested accommodation(s) and/or PAS are or are not warranted, and the therapeutic benefit or risk avoiding value of such accommodations and/or PAS).*

OPTIONAL:

4. Are there other types of reasonable accommodations and/or PAS which may assist the employee perform the essential functions of his or her position and/or perform activities of daily living? *(If so please provide examples of other types of effective accommodation and/or PAS and the basis or bases for your conclusion, including the therapeutic benefit or risk avoiding value of such accommodation and/or PAS).*

Name of Health Care Provider

Name and Address of Provider's Employer

Title

Address of Provider's Employer

Signature of Health Care Provider

Date



RESOLUTION OF REASONABLE ACCOMMODATION AND/OR PERSONAL ASSISTANCE SERVICES (PAS) REQUEST

Applicant or Employee Name

Applicant or Employee Tel No.

Date of Request

Office or Division

1. Accommodation/PAS requested: _____

2. The accommodation and/or PAS is:

_____ **approved as specifically requested.**

_____ **approved with an alternative accommodation and/or PAS provider.**

_____ **denied.**

3. If the approved accommodation/PAS provider is different from the originally requested accommodation/PAS provider, explain: (i) the reasons for the denial of the accommodation/PAS provider originally requested; (ii) identify the approved alternative accommodation/PAS provider and indicate whether it was accepted or rejected; and (iii) why the alternative accommodation/PAS provider would be effective: _____

4. If applicable, the reasonable accommodation request is denied because (may check more than one):

_____ individual does not have a disability as that term is defined by the Rehabilitation Act.

_____ the accommodation is ineffective.

_____ the accommodation would cause undue hardship.

_____ the medical documentation is inadequate.

_____ the accommodation would require removal of essential function.

_____ the accommodation would require lowering a performance or production standard.

_____ other (explain): _____

5. If applicable, the PAS request is denied because (may check more than one):

_____ the requestor is not an NIGC employee;

_____ the requestor does not have a targeted disability;

_____ the targeted disability does not create a need for PAS;

_____ the requestor is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;

_____ the requestor would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or

_____ providing PAS would impose undue hardship.

6. If applicable, set forth the detailed reason(s) for the denial of the originally requested reasonable accommodation and/or PAS (must be specific, i.e., why accommodation is ineffective or causes undue hardship): _____

7. If, after denial of the request for reasonable accommodation and/or PAS, the individual wishes to file an EEO complaint or pursue a Merit Systems Protection Board (MSPB) appeal, the individual must: (i) contact the NIGC EEO Counselor or the NIGC Diversity, EEO and Inclusion Director within 45 days of receipt of the notice of denial of reasonable accommodation or PAS); or

(ii) initiate an MSPB appeal within 30 days of an appealable adverse action, as defined in 5 C.F.R. § 1201.3.

Signature of NIGC Official

Date

Log. No. _____



**REASONABLE ACCOMMODATION/PERSONAL ASSISTANCE SERVICES (PAS)
INFORMATION TRACKING AND REPORTING**

Applicant or Employee Name

Office or Division

Date of Request (*whether verbally or in writing*)

Date of Resolution of Request

1. Reasonable accommodation/PAS request was:

_____ **approved** (whether as originally requested or as an alternative accommodation).

_____ **denied.**

2. Reasonable accommodation/PAS was needed for:

_____ **application process.**

_____ **performing job functions or accessing work environment.**

_____ **accessing a benefit or privilege of employment (e.g., attending training or social event).**

_____ **daily living activities.**

3. Position held or desired by individual (*employee or applicant, respectively*) **requesting reasonable accommodation and/or PAS** (*title, grade-equivalent level, and office or division*): _____

4. Date that NIGC official received request: _____

5. If applicable, date that reasonable accommodation and/or PAS was provided: _____

6. If time frames prescribed by this chapter for the processing and resolution of requests for reasonable accommodation/PAS were not met, provide the reason(s) (*i.e., explain the extenuating circumstances for not meeting the timelines*): _____

7. Type(s) of reasonable accommodation and/or PAS requested: _____

8. If applicable, reasonable accommodation and/or PAS provided (*if different from what was requested, explain*): _____

9. Is this reasonable accommodation/PAS being provided on a regular or recurring basis? _____

10. If applicable, cost of accommodation/PAS provided: _____

11. Was medical information requested to process this request? _____ If yes, why? _____

12. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations and/or PAS providers (e.g., *Job Accommodation Network, disability organization*): _____

13. Attach all documentation connected with this request.

Selected Reasonable Accommodation Resources

- **U.S. Equal Employment Opportunity Commission**

- 1-800-669-3362 (Voice) 1-800-800-3302 (TT)
- <http://www.eeoc.gov>

The EEOC has published many ADA and Rehabilitation Act-related guidance and documents that may assist both individuals requesting accommodations as well as those involved in the decision-making process. In addition, the EEOC has a poster that employers may use to fulfill the ADA's posting requirement. Most of these documents are available at www.eeoc.gov.

- **Job Accommodation Network (JAN)**

- 1-800-232-9675 (Voice/TT)
- <http://janweb.icdi.wvu.edu>

A service of the Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations and provide referrals to other organizations that may have particular information about accommodations for persons with different disabilities.

- **ADA Disability and Business Technical Assistance Centers (DBTACs)**

- 1-800-949-4232 (Voice/TT)

The DBTACs consist of ten federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can provide information on reasonable accommodation and make referrals to local sources of expertise in reasonable accommodations.

- **Registry of Interpreters for the Deaf**

- 1-301-608-0050 (Voice/TT)
- <http://www.rid.org>

The Registry offers information on locating and using interpreters and transliteration services.

- **RESNA Technical Assistance Project**

- (703) 524-6686 (Voice) (703) 524-6639 (TT)
- <http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- centers where individuals can try out devices and equipment;
- assistance in obtaining funding for and repairing devices; and
- equipment exchange and recycling programs.