

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-15 (rev. 3), “RELIGIOUS ACCOMMODATION IN THE WORKPLACE”
AUGUST 1, 2015
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Attachment A: PERS 539, Request for a Religious Accommodation (08/15)



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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DATE: August 1, 2015

PAGE: 1 of 10

SUPERSEDES: PD-15 (rev. 2)
August 1, 2011

EXECUTIVE DIRECTIVE

SUBJECT: RELIGIOUS ACCOMMODATION IN THE WORKPLACE

AUTHORITY: Tex. Lab. Code §§ 21.108, 21.115, 21.125; Tex. Gov't Code §§ 493.001, 493.006(b); *Civil Rights Act of 1964* § 7, 42 U.S.C. § 2000e; 29 C.F.R. §§ 1605.1-.3; *Texas Religious Freedom Restoration Act*, Tex. Civ. Prac. & Rem. Code §§ 110.001-.012

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

No qualified applicant for a position within the TDCJ or an employee of the TDCJ shall be discriminated against because of religious affiliation. The TDCJ shall consider requests for a religious accommodation without regard to race, color, religion, sex (gender), national origin, age, disability, genetic information, or uniformed services status. An employee is free to not have religious beliefs; however, non-religious ethical beliefs are not legally protected and are not subject to this directive.

DEFINITIONS:

“Applicant,” for the purpose of this directive, is a person seeking consideration for a position within the TDCJ by way of promotion, lateral transfer, voluntary demotion, interagency transfer, employment, or reemployment.

“Contact Person,” for the purpose of this directive, is: (a) for a posted position, the employee responsible for providing employment application forms, study material, and information regarding worksite visits, as well as the person to whom employment applications should be submitted; or (b) for a correctional officer (CO) or district parole officer (DPO) position, the employee who processes the conditional offer of employment.

“Free Exercise of Religion” is an act or refusal to act that is substantially motivated by the person’s sincere religious belief. In determining whether an act or refusal to act is substantially motivated by a sincere religious belief, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person’s sincere religious belief.

“Religious Accommodation” is a reasonable modification or adjustment to working conditions that: (a) removes conflict between the employee’s working conditions and the employee’s religious observances or practices; (b) does not disadvantage the employee’s employment; and (c) does not cause undue hardship to the TDCJ.

“Religious Accommodation Coordinator” is a specialist within Employee Relations, Human Resources Division, who receives, evaluates, and processes requests for religious accommodations from applicants and employees.

“Selection Reviewer,” for the purpose of this directive, is: (a) for posted positions, the employee who has been designated as the selection reviewer in accordance with PD-71, “Selection System Procedures”; (b) for a CO position, the Employment Section director, Human Resources Division; or (c) for a DPO position, the regional director or designee.

DISCUSSION:

The TDCJ shall seek to provide a reasonable accommodation for religious observances, practices, or beliefs of applicants and employees consistent with state and federal law. The accommodation shall be designed to reasonably remove the substantial burden on the individual’s free exercise of religion. The accommodation need not be the least restrictive alternative and shall be narrowly tailored to remove the particular burden for which the accommodation is sought.

The accommodation offered by the TDCJ is not required to be the accommodation preferred by the applicant or employee requesting the accommodation. The applicant or employee does not have to accept the offered accommodation; however, the TDCJ is under no obligation to provide a different accommodation if the offered accommodation is sufficient to effectively eliminate any conflict with the applicant’s or employee’s religious practices, and does not negatively impact

employment opportunities, such as compensation, terms, conditions, or privileges of employment.

PROCEDURES:

I. Applicants for Employment

A. General Provisions

1. Accommodation for Employment Application Process

It is the responsibility of an applicant to request an accommodation for any step in the employment application process. Upon being informed of the date, time, and place for a worksite visit, pre-employment test, or interview, the applicant shall notify the TDCJ if a religious accommodation for the time or date of the scheduled process shall be required. Such notification shall be received prior to the scheduled date of the action for which an accommodation is required.

2. Accommodation for the Office of the Inspector General Training Academy (OIGTA), Parole Officer Training Academy (POTA), TDCJ Correctional Institutions Division (CID) Pre-Service Training Academy (PSTA), and On-the-Job Training (OJT) Work Schedule

The TDCJ shall not consider a request for a religious accommodation from an applicant (correctional or non-correctional) that would affect:

- a. The OIGTA, POTA, or PSTA schedule; or
- b. An OJT work schedule that differs from a position's regularly scheduled work hours.

After completing the OIGTA, POTA, PSTA, or OJT, an employee is responsible for following the procedures in Section II of this directive to request a religious accommodation that affects the employee's work schedule.

3. Accommodation for a Correctional Officer's Unit Work Schedule

A CO's unit determines the CO's work schedule while assigned to that unit. Therefore, a request for a religious accommodation that would affect a CO applicant's unit work schedule shall not be considered until the applicant has been selected for a CO position and reported for duty to the unit of assignment. Upon reporting to the unit, the CO is responsible for following the procedures in Section II of this directive to request this type of religious accommodation.

4. Other Accommodation for Selected Position

If a selected applicant needs an accommodation relating to the offered position, other than an accommodation described in Section I.A.2 or 3 of this directive, it is the responsibility of the applicant to inform the contact person of the need for the accommodation at the time of the conditional offer of employment. Such an accommodation shall not be considered until the applicant receives a conditional offer of employment.

B. Contact Person's Responsibility

If a contact person or designee receives a verbal or written request for a religious accommodation from an applicant during an employment application or selection process, other than a request described in Section I.A.2 or 3 of this directive, the contact person or designee shall:

1. Provide a PERS 539, Request for a Religious Accommodation (Attachment A), to the applicant in person, via fax or via first class mail; and
2. Immediately send an email to the religious accommodation coordinator, including the following information:
 - a. The applicant's name, month and day of birth, and telephone number;
 - b. The title of the position for which the applicant has applied; and
 - c. The date and method the PERS 539 was provided to the applicant, such as in person or via fax or first class mail.

C. Applicant's Responsibility for Submitting the PERS 539, Request for Religious Accommodation, and Supporting Documentation

Within 10 calendar days of the date that the PERS 539 is provided to the applicant in person or via fax or mail, the applicant shall complete the PERS 539 and return the form and required documents, such as a church bulletin or religious institution's statement of belief or doctrine, to the religious accommodation coordinator.

II. Employees Requesting an Accommodation for Current Position

It is the responsibility of an employee to notify the TDCJ of the need for a religious accommodation for the employee's current position. If an employee needs an

accommodation for a selection process or as the selected applicant for another TDCJ position, the procedures in Section I of this directive shall be followed.

- A. To request a religious accommodation for the employee's current position, other than an accommodation described in Section I.A.2 of this directive, the employee shall:
 - 1. Obtain a PERS 539, Request for a Religious Accommodation, from the employee's human resources representative, the religious accommodation coordinator, or through the TDCJ website at <http://www.tdcj.texas.gov/>;
 - 2. Complete the PERS 539 with the assistance of the human resources representative, if necessary; and
 - 3. Submit the completed PERS 539 and any required documents to the human resources representative.
- B. Upon receipt of a completed PERS 539, the human resources representative shall immediately fax and mail, via first class or truck mail, the completed original form and any supporting documentation to the religious accommodation coordinator, and maintain a copy in the miscellaneous section of the employee's unit or department file.

III. Processing Requests for Religious Accommodation

A. Initial Processing and Determination

The religious accommodation coordinator shall consider requests for religious accommodation in order of the date of receipt. If it is determined additional information is needed, the religious accommodation coordinator shall send a letter requesting the additional information to the applicant or employee listed on the PERS 539, Request for Religious Accommodation. The letter shall be mailed via certified mail, return receipt requested, and indicate that the additional information must be received by the religious accommodation coordinator within 15 calendar days of receipt of the letter.

A request shall not be processed until the completed PERS 539, any required supporting documentation, and any additional requested information have been received and reviewed by the religious accommodation coordinator. It is the applicant's or employee's responsibility to cooperate with the TDCJ's accommodation efforts. A request shall be administratively closed if required information is not received within the 15 calendar days specified in the letter from the religious accommodation coordinator.

1. If the religious accommodation coordinator determines the requested accommodation is not feasible, the religious accommodation coordinator shall forward the request to the Office of the General Counsel (OGC). If the OGC concurs that the accommodation is not feasible, the religious accommodation coordinator shall mail a letter to the applicant or employee via certified mail, return receipt requested, stating the request has been denied. The religious accommodation coordinator shall also fax or hand-carry a copy of the letter to the appropriate contact person or human resources representative.
2. If the religious accommodation coordinator determines the request or an alternative accommodation may be feasible, the religious accommodation coordinator shall prepare and distribute a decision memorandum requesting concurrence from the appropriate approving authorities.
 - a. If the request is related to the employment application or selection process, the appropriate approving authority shall be the selection reviewer.
 - b. If the request is from a selected applicant or employee who is currently in the position for which the accommodation is requested, the appropriate approving authorities are to include the position's warden or department head, chaplaincy director, and, if applicable, the appropriate regional director and division director.

3. Process Period

The religious accommodation coordinator shall determine whether a reasonable workplace accommodation can be made within 90 calendar days from the date an employee's completed PERS 539 is received by the coordinator.

The process period may be extended on a case by case basis if additional information or documentation is required.

B. Accommodation Approved

If all appropriate approving authorities concur with the requested religious accommodation, the religious accommodation coordinator or designee shall fax a notification letter to the appropriate contact person or human resources representative. Within 15 calendar days of the date the religious accommodation coordinator faxed the notification letter, the contact person or human resources representative shall obtain the applicant's or employee's signature on the letter indicating acceptance or rejection of the offered accommodation. The contact person or human resources representative shall immediately fax a copy of the

signed and dated notification letter to the religious accommodation coordinator. If the applicant or employee does not sign the notification letter within 15 calendar days, the request shall be administratively closed.

The contact person or human resources representative shall maintain the letter with the original signatures in accordance with Section IV of this directive.

1. Accommodation Accepted by Applicant or Employee

- a. Upon receiving the applicant's or employee's acceptance of an accommodation, the religious accommodation coordinator shall:
 - (1) Provide instructions to the appropriate contact person or human resources representative for implementing the accommodation; and
 - (2) Fax a copy of the signed letter to the appropriate warden, department head, parole regional director, deputy director for Private Facility Contract Monitoring/Oversight Division, or CID regional director.
- b. Upon receiving instructions from the religious accommodation coordinator for an accommodation relating to an employment or selection process, the contact person shall immediately notify the selection reviewer that the accommodation has been granted.
- c. Upon receiving instructions from the religious accommodation coordinator for an accommodation requested by a selected applicant, the contact person shall notify the immediate supervisor, warden or department head, and human resources representative, if different from the contact person, that the accommodation has been granted, how the accommodation shall be implemented, and when the accommodation shall be implemented.
- d. Upon receiving instructions from the religious accommodation coordinator for an accommodation requested by a current employee, the human resources representative shall notify the immediate supervisor and warden or department head that the accommodation has been granted, how the accommodation shall be implemented, and when the accommodation shall be implemented.

2. Accommodation Rejected by Applicant or Employee

If the applicant or employee rejects the offered accommodation, the applicant or employee may contact the religious accommodation

coordinator to discuss an alternative accommodation. The request for an alternative accommodation shall be processed in the same manner as the request for the original accommodation.

C. Accommodation Denied

If the applicant's or employee's request for a religious accommodation is denied, the religious accommodation coordinator or designee shall:

1. Mail a notification letter to the applicant or employee explaining the reason for the denial via certified mail, return receipt requested; and
2. Fax a copy of the notification letter to the appropriate contact person or human resources representative.

IV. Documentation Maintenance

- A. If the requested religious accommodation was related to the employment application process or selection process, or was requested by a selected applicant who declined the position, the contact person shall file the notification letter from the religious accommodation coordinator with the selection packet.
- B. If the religious accommodation was requested by a selected applicant who accepted the position, the contact person shall provide the notification letter from the religious accommodation coordinator to the position's human resources representative, if different from the contact person. The human resources representative shall file the copy of the letter in the employment section of the selected applicant's unit or department human resources file.
- C. If the religious accommodation was requested for an employee's current position, the human resources representative shall file the notification letter from the religious accommodation coordinator in the miscellaneous section of the employee's unit or department human resources file along with a copy of the PERS 539, Request for a Religious Accommodation previously received.

V. Changes to Employee's Assignment

An employee's approved religious accommodation shall be valid only while the employee remains in the position held at the time that the request was approved, including the same location of assignment. If the religious accommodation affects the employee's work schedule, the accommodation shall be valid only while the employee remains assigned to the same work schedule, position, and location. If the previously approved request is no longer valid because of changes to the employee's assignment, the employee shall be required to submit a new PERS 539, Request for a Religious Accommodation for approval.

VI. Emergency Situations

If an employee's approved religious accommodation affects the employee's work schedule, the accommodation shall be valid only during routine day to day operations. In the event of an emergency situation requiring additional staff, such as an escape or staffing shortage, the TDCJ reserves the right to temporarily adjust the employee's work schedule as needed until additional staff are no longer required.

Brad Livingston
Executive Director

**Texas Department of Criminal Justice
Request for a Religious Accommodation**

Print Name: _____ Month/Day of Birth: _____
Last First MI (MM/DD)

Applicant to Provide the Following Information:

Position Applied For: _____ Unit or Department: _____

Current Employee to Provide the Following Information:

Job Title: _____ Unit or Department: _____

Current Shift: _____ Current Shift Work Hours: _____

1. Describe the religious accommodation you are requesting.

2. If you observe or participate in religious practices at an institution, such as a church, synagogue, or mosque, provide the name of the institution, address, phone number, and name of the person in charge at the institution.

3. Attach any available documentation of days and times that you observe or participate in religious practices or services, such as a church bulletin or the religion's statement of belief or doctrine.

Signature: _____ Date: _____
(MM/DD/YYYY)

Personal Phone Number: _____ Work Phone Number: _____
(Area Code) (Area Code)

Email Address: _____

Mailing Address: _____
Street

City State Zip Code

Note to Applicant/Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Tex. Gov't Code §§ 552.021 and 552.023 to receive and review the collected information. Under Tex. Gov't Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, incorrect information the TDCJ has collected about you be corrected.

Instructions for Applicants: If you are an applicant requesting a religious accommodation for the employment application process or for a position for which you have received a conditional offer of employment, you shall complete this form and return it within 10 calendar days of the date the form was provided to you in person or via fax or the date the form was mailed to you. The form shall be returned to the TDCJ religious accommodation coordinator at the following address: Texas Department of Criminal Justice, Human Resources Division, Employee Relations, 2 Financial Plaza, Suite #600, Huntsville, Texas 77340.

Distribution:
Original – Religious Accommodation Coordinator, Employee Relations, Human Resources Division
Copy – Applicant or Employee; Employee's Unit or Department Human Resources File, Miscellaneous Section