



POLICY AND PROCEDURE

SUBJECT: The Americans with Disabilities Act (ADA)
for

Fulton County Employees Policy and

DATE: June 15, 2005

NUMBER: 100-39

Statement of Policy:

It is the policy of Fulton County Government to ensure the civil rights of all employees, as required by the Americans with Disabilities Act (ADA) and the Fulton County Personnel Regulations, irrespective of any mental or physical disability, and to fully comply with the requirements of the ADA. Fulton County does not discriminate against any qualified individual with a disability, because of that disability, in the following areas:

- Recruitment, advertising and position application procedures
- Hiring, upgrading, promotion, awarding of tenure, demotion, transfer, layoff, termination, right of return from layoff, rehiring
- Rate of pay or any other compensation or change in compensation
- Position assignment, position classification, organizational structure, position description, line of progression and seniority listing
- Leaves of absence, sick leave or any other leave
- Fringe benefits available by virtue of employment, whether or not administered by Fulton County
- Selection and/or financial support for training, including apprenticeships, professional meetings, conferences and other related activities and selection for leaves of absence to pursue training
- Activities sponsored by a covered entity, including social and recreational programs
- Any other term, condition, benefit or privilege of employment

Background:

The Americans with Disabilities Act (ADA) is a federal mandate requiring all public and private sector entities to provide equal access to employment opportunities, facilities, buildings, programs, goods, services and activities for individuals who have mental or physical disabilities. Signed into law in 1990, this federal mandate extends anti-discrimination and civil rights protections to persons with disabilities as defined by the Act.

This policy is designed: to assist all Fulton County employees in compliance with the Americans with Disabilities Act (ADA); to provide full and equal access to employment and promotional opportunities; to identify disabled employees whose performance may be impacted by their disability; to provide reasonable accommodation(s) to allow eligible employees to perform the essential functions of their positions; and to provide for Administrative separation without prejudice should efforts to accommodate such an employee fail to identify a position which will accommodate the employee's mental and/or physical, physician imposed, limitations.

Definitions:

1. *Employee* means an individual employed by Fulton County Government in one of the following position categories:

- Classified
- Fee Paid
- Permanent
- Probational
- Temporary
- Temporary Pending Register
- Unclassified
- Work Test
- WAE (When Actually Employed) Hourly

This is not necessarily an exhaustive list and may not include all position classifications that are intended to be included in this definition.

2. *Disability*, with respect to an individual, means:

- A mental or physical impairment that substantially limits one or more of the major life activities of such individual. *However, if an individual is taking measures to mitigate (or correct) a physical or mental impairment, the effects of those measures—both positive and negative—must be taken into account when determining if he/she is “substantially limited” in a major life activity (and thus disabled);*
- A record of such impairment; or
- Being regarded as having such an impairment

Current illegal drug use is expressly excluded from this definition of “disability.”

3. *Physical or mental impairment* means:

- Any physiological disorder, condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory (including speech organ); cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

This is not necessarily an exhaustive list and may not include all physical or mental disabilities that are intended to be included in this definition.

4. *Major Life Activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing and learning. This is not an exhaustive list and may not include all activities that could be considered as major life activities. Additional major life activities could be considered on a case by case basis.

5. *Substantially limits* means:

- Unable to perform a major life activity that the average person in the general population can perform; or
- Significantly restricted to the manner, condition or duration under which an individual can perform a particular major life activity as compared to the manner, condition or duration under which the average person in the general population can perform that same major life activity.
- Mitigating measures may be considered in determining substantial limitation.

6. *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. May include other mitigating measures.

7. *Is regarded as having such an impairment* means:

- Has a mental or physical impairment that does not substantially limit major life activities, but which is treated by a covered entity as constituting such limitation;
- Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment; or
- Has none of the impairments defined herein, but is treated by a covered entity as having a substantially limiting impairment.

8. *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience, education and other position related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodations, can perform the essential functions of such position.

9. *Essential functions* means the fundamental position duties of the employment position the individual with a disability holds or desires. The term “essential function” does not include marginal functions of the position. The Performance Appraisal (PA) and the Fulton County job description may be utilized to determine essential or marginal functions of the job.

10. *Reasonable Accommodation* means:

- Modification or adjustment to a position application process that enables a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- Modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, which enables a qualified individual with a disability to perform the essential functions of that position; or
- Modification or adjustment that enables an employee with a disability to enjoy equal benefits and privileges of employment as enjoyed by other similarly situated employees without disabilities.

- Other possible reasonable accommodations may include:
 1. Making existing facilities accessible
 2. Job restructuring
 3. Part-time or modified work schedules
 4. Acquiring or modifying equipment
 5. Changing test, training materials, or policies
 6. Providing qualified readers or interpreters
 7. Reassignment to a vacant position
11. *Direct Threat* means a significant risk of substantial harm that cannot be eliminated or reduced by reasonable accommodation(s), to the health or safety of the individual or another individual. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the position. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. Factors to be considered include:
- The duration of the risk
 - The nature and severity of the potential harm
 - The likelihood that the potential harm will occur; and
 - The imminence of the potential harm.
12. *Adaptations* means: modification or adjustment to the work environment that enables an individual covered by workers’ compensation to perform the essential functions of that position, as defined and/or modified by Georgia’s Workers’ Compensation law.

Responsibilities:

I. PRE-EMPLOYMENT ACCOMMODATIONS:

- A. The ADA covers all employment activities, including position applications and recruitment. The Fulton County Personnel Department shall endeavor to: make all aspects of the recruitment process accessible; make and/or provide requested reasonable accommodation(s) as required; and assure equal access to employment opportunities for all applicants. The following is a partial list of actions that Fulton County shall implement to ensure equal access to employment opportunities:
1. Notice of position openings shall be provided via a recorded “position hotline” and in print formats at its main office located at 141 Pryor Street, SW, Suite 3030, Atlanta, Georgia 30303 (additional access to Fulton County forms and applications are available at www.myfultoncountyga.com). Enlarged position notices, application forms, testing materials and other printed materials shall be made available in the Personnel Office for persons who may require them;

2. Printed position notices shall be posted at this main office, and an identical set is provided in a notebook that is accessible to persons with disabilities who are unable to reach or read the wall posted notices;
 3. County Personnel staff are available upon request to assist applicants who have disabilities, in reading position notices or completing positions applications;
 4. Sign language interpreters will be provided upon request, to assist persons who require such assistance. Requests for this assistance should be made at least **48 hours** in advance and should be directed to the Personnel Recruitment Manager or the Assistant Personnel Recruitment Manager. Callers may utilize the Georgia Relay Service to reach these individuals. Recruitment personnel will obtain appropriate sign language interpreters by contacting the Office of Disability Affairs;
 5. Other accommodations as requested and deemed reasonable and necessary may be provided to ensure equal access to the recruitment process, the application process, the interview process and/or the physical examination.
- B. It is the responsibility of the applicant to request accommodations at least 48 hours in advance of arriving to participate in the recruitment process, to complete applications, participate in an interview or obtain a required physical examination. Applicants should contact the Personnel Recruitment Manager or the Assistant Personnel Recruitment Manager at least 48 hours in advance to request accommodations.
- C. Fulton County reserves the right to determine what a reasonable accommodation is.

II. CERTIFICATION:

- A. A copy of the County's Americans with Disabilities Act (ADA) policies and procedures shall be explained and provided to the employee by the Office of Disability Affairs (ODA) Reasonable Accommodations Specialist (R.A. Specialist) or designee. The certification requirements and possible outcomes of the process are reviewed with the employee and any questions the employee has are answered at this time. The employee shall be asked to sign an acknowledgment form to verify his/her receipt and understanding of the County's ADA policies and procedures. This gives the Office of Disability Affairs permission to proceed with the reasonable accommodation process.
- B. If minimum requirements are met and the employee desires to proceed, then the *Intake form(s)* and *Release of Medical Information form(s)* must be completed by the employee. **Responsibility for ensuring supporting documentation is provided to the Office of Disability Affairs (ODA) is the sole responsibility of the employee.**
- C. A preliminary determination shall be made based on the intake information provided by the employee. If deemed appropriate, the signed release of medical information form(s) (are) faxed with a cover letter to the specified medical professionals. Verbal confirmation that the fax was received may be made by telephone. The letter informs

the employee's physician that the employee may be on Leave Without Pay during this investigation and that if adequate information is not received within 15 business days, the employee's case may be closed as incomplete. (*See Section XI, Family and Medical Leave and the ADA*).

- D. Documentation for physical or mental impairments must include a diagnostic code(s) from the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-R or later edition) before a determination of any impairment will be considered.
- E. Fulton County Government reserves the right to request, at County expense, a second opinion from a licensed and qualified health professional, in making determinations (for certification purposes only) of mental or physical impairment.
- F. If the ODA does not receive a response within 15 business days from the date of the letter/request to the doctor(s), the employee shall be informed via certified letter, that it is his/her responsibility to have the physician(s) fax the requested information to the ODA. If after another 15 business days there is still no response, the case will be closed as incomplete. The employee shall be notified of the closure via certified letter.
- G. Upon receipt of all medical information in the Office of Disability Affairs, a determination shall be made within ten (10) business days as to ADA Certification or Non-Certification.
- H. If the determination is that the employee is not certified, the employee shall be notified via certified mail and the case shall be closed as "Complete-Not Certified."
- I. If the determination is that the employee is certified, a letter will be directed to the Appointing Authority and the employee (employee's letter will be sent by certified mail), notifying him/her of the employee's ADA certification. An interactive meeting will be scheduled with the employee, the Appointing Authority and other relevant personnel to discuss possible reasonable accommodation(s).
- J. An employee's certification may be modified upon request for or submission of additional documents from a licensed health care provider should the employee's condition(s) change. Additionally, the ADA Coordinator explicitly reserves the right to review and reassess the employee's certification status at any time at his/her sole discretion. An automatic review of initial certification shall occur whenever additional or modified accommodations are requested and/or when an employee certified under the ADA returns from Family Medical Leave.
- K. The ADA Coordinator explicitly reserves the right to review and reassess the employee's reasonable accommodation(s) at any time at his/her sole discretion. Fulton County reserves the right to make final determinations as to what is reasonable in any given situation.

III. REASONABLE ACCOMMODATIONS:

A. The Process:

1. A meeting shall be held with the recently certified employee, the Appointing Authority and/or other relevant and appropriate personnel, to review all essential functions of the employee's position and physician imposed restrictions. The Department representative shall bring the employee's current Performance Appraisal Instrument (PAI) or similar type assessment instrument to be used solely for the purpose of determining essential functions of that position. The purpose of this meeting is to identify one of the following options as applicable:
 - a. An employee can perform the essential functions of his/her current position with a reasonable accommodation(s) such as a shift change or other internal department modifications;
 - b. Employee can perform the essential functions of his/her current position with a reasonable accommodation(s) such as the purchase of equipment, aids or other specified devices;
 - c. Employee cannot perform the essential functions of his/her current position, with or without reasonable accommodation, but the department has a vacancy for which the employee is qualified and in which the employee, with his/her physician imposed restrictions and with or without reasonable accommodation, can perform all of the essential functions ;or
 - d. Employee cannot perform the essential functions of his/her current position and cannot be placed into any vacant position within the department.
2. If the employee cannot perform all essential functions with or without reasonable accommodations in his/her current position or any vacant position within his/her current department, a County-wide job search will be initiated by the ODA to identify any vacant positions for which the employee may be qualified, with or without reasonable accommodations.
3. The R.A. Specialist shall review the current "County-wide Vacancy Register" in an effort to identify any positions for which the employee may be qualified (with or without reasonable accommodations). The R.A. Specialist shall contact the any department(s) in which there appears to be a viable vacancy to discuss the position, identify the specific position requirements and determine accommodation needs. If the vacancy appears viable, a meeting between the ADA Coordinator, R.A. Specialist, the Appointing Authority or designee and/or any other relevant personnel shall be held to finalize recommendations.
4. The employee shall be notified in writing and offered the position as a reasonable accommodation, pending final approval of the Personnel Director and County Manager (see "RE-ASSIGNMENT" below). If the employee accepts, the R.A.

Specialist will schedule a meeting with the department director and or other appropriate parties. This meeting is to discuss all requested accommodations to develop an accommodation plan. Once the plan is agreed upon by all parties, the Reasonable Accommodations Specialist then will draft a Reasonable Accommodation Plan for all parties to sign, and appropriate accommodation(s) will be requested/ordered and provided. The employee's case will be closed. If the employee refuses the proposed reasonable accommodation, then the employee will no longer be considered a "qualified individual" with a disability. Their case with the Office of Disability Affairs (ODA) will be closed and they will be referred back to their department. Administrative Separation without Prejudice (PR#800-8) may be initiated by the current Department.

5. If the County-wide search does not identify a vacant position, or the results are not realistic/feasible, the employee (via certified mail) and his/her Appointing Authority shall be notified. The employee's case will be closed. The Appointing Authority may initiate "Administrative Separation without Prejudice" (PR800-8).
6. Should the employee's condition(s) change, an employee's reasonable accommodation(s) may be modified upon request for or submission of additional documents from a licensed health care provider. The ADA Coordinator explicitly reserves the right to review and reassess the employee's reasonable accommodation(s) at any time at his/her sole discretion. Fulton County reserves the right to make the final determination as to what is reasonable in any given situation.

B. RE-ASSIGNMENT:

1. It may become necessary to attempt placement of an individual into a vacant position for which he/she is qualified and can perform all essential functions, outside his/her current Department. Should this become necessary, the preliminary contacts and arrangements will be made as described in "REASONABLE ACCOMMODATIONS" above.
2. The reasonable accommodation recommendations will be forwarded to the County Personnel Director for review. Upon the Personnel Director's review and agreement, the recommendations for re-assignment will be forwarded to the County Manager for implementation.
3. If the position in which the employee is placed is within a lower pay scale, the employee shall be placed at the salary level nearest his/her current salary, not to exceed his/her current salary.

C. COUNTY MANAGER'S RESPONSIBILITY AND AUTHORITY:

1. The County Manager has the authority to make final determinations regarding re-assignment. Recommendations for re-assignments from the Office of Disability Affairs (ODA), which have been reviewed and approved by the County Personnel

Director, are forwarded to the County Manager for implementation. The County Manager shall initiate the appropriate paperwork and directives to re-assign an employee to an alternate position.

2. Upon receipt of re-assignment recommendations, the County Manager shall have five (5) business days in which to implement the re-assignment recommendations or, at his/her discretion, return the recommendations to the Personnel Director for further review and re-submittal.
3. The County Manager has been granted authority over all County employees, pursuant to County Code Section 2-148.

D. PROCUREMENT OF EQUIPMENT AND DEVICES FOR THE PROVISION OF REASONABLE ACCOMMODATIONS:

1. Should the identified reasonable accommodation(s) consist of equipment, devices or similar items, the ADA Coordinator shall initiate the following procedures:
 - a. Based on physician or other Specialists recommended specifications, identify a minimum of three (3) potential vendors (make note if sole source vendor) to contact for price quotes, including shipping. The Office of Disability Affairs shall follow County procurement policy & procedures.
 - b. Forward a memo to the Director of Finance (or their designee), and a-copy to the County Manager requesting “ADA Funding” for the specified item(s). The ADA Coordinator shall be notified of the availability of funds within four (4) business days after receipt of this memo.
 - c. Upon approval of funds by the Finance Director (or their designee), the ADA Coordinator shall order the specified items, and have the items delivered to the Office of Disability Affairs (ODA), for inventory control and installation at the employee’s work site.
 - d. Upon receipt and confirmation that the correct equipment has been received and functions properly, all invoices will be forwarded to the Director of Finance (or their designee) for payment.
2. The Office of Disability Affairs (ODA) shall inventory these item(s) prior to, or at the time of, delivery/installation at the employee’s work site and shall make the necessary delivery/installation arrangements.
3. All items provided to any County employee as a Reasonable Accommodation under the ADA remain the property of the Office of Disability Affairs (ODA) and Fulton County Government. The ODA shall maintain inventory records showing to which Department and employee these items have been assigned. If for any reason the employee no longer requires these items or any part thereof, these items

shall be returned to the Office of Disability Affairs for recycling and/or re-assignment to other employees determined to be ADA certified by the ODA.

4. Upon separation and/or termination of employment with the County, an employee shall return to the Director of the Office of Disability Affairs, any and all assistive devices which have been provided to him/her by the Office of Disability Affairs. This return shall be completed within three (3) business days of the separation and/or termination.
5. The Office of Disability Affairs shall be responsible for maintaining a current inventory list of any and all equipment which has been purchased by and/or distributed to the County in an effort to reasonably accommodate its employees. This inventory shall be updated once each year.

E. TRAINING:

1. The Office of Disability affairs, in coordination with the Personnel Department's Training Division, provides on-going training to all Fulton County employees in the areas of disability awareness and etiquette, non-discrimination in employment practices (Title I) and ADA requirements for state and local governments (Title II). The ODA also provides specialized training in areas such as: Infectious Diseases in the Workplace; Interviewing and Hiring Persons with Disabilities; Effective Communications; Design and Renovation for Full Accessibility; the Certification and Reasonable Accommodation Process; and other necessary or requested topics related to disabilities and the Americans with Disabilities Act (ADA).
2. Training is provided to all new employees during New Employee Orientation. Introduction to Supervision and other established County training classes include ADA/disability training components. Basic ADA training is provided on a cyclical basis. However, customized/specialized training is provided as needed or requested by specific departments.
3. The Office of Disability Affairs regularly participates in community training workshops/seminars and jointly sponsors 1-2 of these annually on various topics including the ADA and current case law.

F. REPRESENTATION:

For any and all meetings required under this Policy and Procedure, an employee may choose to bring a representative of his/her choice. That representative may be an employee organization/union representative or an attorney. However, should the employee determine that he/she wishes to have a representative present, the employee is responsible for notifying all individuals involved in sufficient time such that those individuals may secure representation should they desire to do so.

G. NOTIFICATION:

1. All correspondence to applicants and new or current employees regarding the process or advancement opportunities shall include a statement informing the individual that reasonable accommodation will be provided upon request as required by the ADA.
2. All correspondence regarding public meetings, training, special events, etc., shall include a statement informing the individual that reasonable accommodation will be provided upon request as required by the ADA.
3. Some examples of such statements might be: "Should you require reasonable accommodations for this interview, please contact _____ at least 48 hours in advance."; or "Please contact the Office of _____ at least 48 hours in advance of the scheduled New Employee Orientation date, should you require reasonable accommodations."

H. CONFIDENTIALITY:

1. The Office of Disability Affairs shall maintain all medical information in a strictly confidential manner at all times. However, the Office of Disability Affairs, as needed or required by law, may disclose certain limited information for the purpose of reasonable accommodations.
2. The employee shall be notified in writing should the Office of Disability Affairs (ODA) be required to release all or any part of their confidential information.

I. RETALIATION:

Retaliation due to any contact with the Office of Disability Affairs or participation or assistance in the Office of Disability Affairs Certification and/or Reasonable Accommodation process is strictly prohibited. Any employee engaging in such retaliation is subject to disciplinary action in accordance with the Personnel Board Rules and Regulations.

IV. WORKERS' COMPENSATION and THE ADA:

To be covered by both Workers' Compensation and the ADA, an injury/illness must arise out of and in the course of employment and must result in a limitation of a major life activity as defined by the ADA and certified by the Office of Disability Affairs.

- A. When an employee has reached maximum medical improvement and the Workers' Compensation physician states that an employee can return to work with permanent restrictions, the employee shall be referred by the Workers' Compensation Division to an authorized treating physician for a Physical Capacity Examination (PCE).
- B. Results of the PCE are sent to the Workers' Compensation physician, along with the employee's current job specifications listing the essential functions of the job.

- C. If the Workers' Compensation physician states that the employee can perform all essential functions of his/her current job, with or without adaptations, ODA will not become involved.
- D. If the employee needs adaptations to perform his/her duties, the Workers' Compensation Division will provide the adaptations as defined by Workers' Compensation Law. The employee shall be returned to his/her current job.
- E. If the employee cannot perform all essential functions of his/her current job, the employee shall be referred to ODA. The employee will continue to receive Workers' Compensation benefits.
- F. The employee must complete the appropriate forms and sign a medical release so that the ODA may contact his/her Workers' Compensation physician. ODA gives the employee the opportunity of seeing his/her personal physician for certification purposes only. If an employee elects to see his/her personal physician for certification purposes, this in no way gives an employee the right to seek treatment for his/her Workers' Compensation injury/illness from his/her personal physician. To remain entitled to Workers' Compensation benefits, an employee must continue treatment from the Workers' Compensation approved treating facility.
- G. Once information is received from the Workers' Compensation physician and the personal physician, if applicable, ODA will review the medical information. If conflicting medical information is received, the Director of the Office of Disability Affairs, in conjunction with the Office of the County Attorney, shall make the final decision.
- H. If the employee is not certified by ODA, the ODA file shall be closed and the Workers' Compensation Division notified.
- I. If the employee cannot perform all essential functions of his/her current job, and the employee is certified by ODA, ODA along with the Personnel Recruiting Manager shall initiate a County-wide search of vacancies that meet the qualifications of the employee. Job specifications of County-wide vacancies will be sent to the Workers' Compensation physician and the personal physician, if applicable. Each physician shall indicate which jobs/job duties are appropriate for the employee, given the physician imposed limitations. Information shall be forwarded to the ODA by the Workers' Compensation Division immediately upon receipt.
- J. If the employee can perform all essential functions of the vacant job position with or without reasonable accommodations or Workers' Compensation adaptations, the employee shall be re-assigned based upon a recommendation by ODA to the Personnel Director, who shall send the recommendation to the County Manager for final approval. If the employee refuses the job placement, all Workers' Compensation benefits shall be terminated.

- K. If the employee cannot perform all essential functions of the vacant job with or without ADA accommodations or Workers' Compensation adaptations, the ADA file is closed. The department and Workers' Compensation Division are notified by ODA that the employee cannot perform the essential functions of any vacant job within Fulton County, with or without accommodations. It will be at the discretion of the department head whether to initiate an "Administrative Separation Without Prejudice" (PR-800-8). Workers' Compensation benefits continue.
- L. If the job in which the employee is re-assigned is in a lower band, the employee shall be placed at the salary level nearest his/her current salary, without exceeding his/her current salary. If the new salary is lower than the salary prior to the Workers' Compensation injury/illness, Workers' Compensation will pay 66 2/3 of the difference in the two salaries, not to exceed the current Workers' Compensation rate.
- M. If the employee is determined to be "totally and permanently disabled" by the Workers' Compensation physicians, the case is retained by Workers' Compensation and not referred to ODA. The employee will continue to receive Workers' Compensation benefits.

V. FAMILY MEDICAL LEAVE and THE ADA:

- A. An employee who is temporarily or intermittently unable to perform one or more of the essential functions of his/her current position may be entitled to the protections afforded by the Family and Medical Leave Act (FMLA). An employee who is in such a situation and believes that he/she may be entitled to the protections afforded by the Family and Medical Leave Act should contact the Personnel Department to explore all available options.
- B. An employee who has been certified as a "qualified individual with a disability" by the ODA at the time he/she requests Family and Medical Leave must send a copy of his/her Family and Medical Leave Certification Form (Form) to the ADA Coordinator in the Office of Disability Affairs within three (3) working days of submitting the Form to his/her Appointing Authority.
- C. Furthermore, an Appointing Authority who is aware of an employee receiving reasonable accommodation pursuant to the ADA is required to submit a copy of any request for Family and Medical Leave submitted by that employee, to the ADA Coordinator in the Office of Disability Affairs within three (3) business days of having received the Form.

VI. PARKING:

- A. **It is not the policy of Fulton County** to provide parking for all employees. Title II of the Americans with Disabilities Act (ADA) requires that a minimum percentage of parking spaces, at facilities where parking exists, be made accessible for the public.

- B. These spaces are strictly for use by the public (citizens with disabilities who display the appropriate permits). No County employee may use parking spaces on County property designated for citizens with disabilities.
- C. Provision to an employee for special parking spaces, of any kind, is not considered a reasonable accommodation. At all times, it shall be the employee's responsibility to obtain the necessary transportation to and from the work site.

SUMMARY: An example of “Jane Doe” who is covered by ADA, FMLA, and Workers’ Compensation

Jane Doe is an Administrative Assistant II in the Public Works Department and has been with the County since February 14, 1984. Jane was originally hired as an Administrative Assistant and was promoted to the position of Administrative Assistant II in 1990. Jane's current salary is \$34,669. Jane is helping her division prepare for a move to new office space and during the packing/moving process, Jane injures her back. Jane reports the injury to Workers' Compensation and chooses a Workers' Compensation physician from the approved panel of physicians, who treats her for 2 ½ years. Jane was out of work for the entire 2 ½ years.

Because Jane had been employed by the County for a minimum of one year, and because she had worked a minimum of 1,250 hours during the immediately preceding twelve months, she was eligible for Family and Medical Leave during the first year of her absence. Note that Jane will not be eligible for Family and Medical Leave protection during the final one and one half years of her absence because she will not have worked the minimum of 1,250 hours during the immediately preceding twelve (12) months.

Jane was able to provide certification/documentation that her back constituted a “serious health condition” as defined by the FMLA, which rendered her unable to perform one or more of the essential functions of her current position during this period of time. Therefore, she was entitled to twelve weeks of leave to care for her serious health condition. Had she returned to work after the first twelve weeks, she then would have been entitled to be returned to the same or an equivalent position. However, Jane did not return after twelve weeks, as she remained out on Workers' Compensation.

After 2 ½ years, the Workers' Compensation physician determined that no further improvement could be expected for Jane's back - Jane had reached maximum medical improvement (MMI). Workers' Compensation then sent Jane for a physical capacity examination (PCE). It was determined, based on a review by the Workers' Compensation physician of the PCE and the job specifications of the employee's current position, that Jane could not perform all of the essential functions of her current position with or without any Workers' Compensation adaptations.

Workers' Compensation then referred Jane to the Office of Disability Affairs for evaluation for certification as a “qualified individual with a disability,” as defined by the ADA. Jane completes the appropriate forms and signs a medical release to allow ODA to contact her Workers' Compensation physician. ODA gives Jane the opportunity of seeing her personal physician for certification purposes. Jane chooses to see her personal physician and signs a medical release. This in no way deters Jane from her continuing treatment with the Workers' Compensation

physician. In order for Jane to remain on Workers' Compensation benefits, she must continue treatment with her Workers' Compensation physician. ODA receives the information from Jane's physician and the Workers' Compensation physician. It is determined that Jane's condition substantially limits one or more of her major life activities such that she will be certified as a "qualified individual with a disability". Once Jane is certified, she is asked to return to ODA and complete a current Fulton County application.

The R.A. Specialist initiates a job search of vacancies within the department and County-wide, which match the qualifications of the employee. Job specifications are sent to the Workers' Compensation physician and the employee's personal physician. Each specification will be noted as departmental or County-wide. The Workers' Compensation physician and personal physician will note the jobs for which the employee can perform the essential functions with or without accommodations and/or Workers' Compensation adaptations. Information will be forwarded to ODA by the Workers' Compensation Division when it is received from the physician.

The R.A. Specialist meets with Jane, her Appointing Authority, and her immediate supervisor to review all essential functions of her position in conjunction with the restrictions imposed by Jane's Workers' Compensation physician and personal physician. It has been determined by Jane's Workers' Compensation physician that Jane cannot perform the essential functions of her job with Workers' Compensation adaptations.

(Note: ADA can make accommodations such as reassigning non-essential job duties, etc., which would meet the restrictions placed on Jane by her Workers' Compensation physician, but Workers' Compensation does not have the authorization to make such adaptations). At this meeting, the group determines that Jane cannot perform all of the essential functions of her current position with or without reasonable ADA accommodations. Furthermore, the group determines that there is no vacant position in the department for which Jane is qualified and for which she also can perform all essential functions, taking into account her physician-imposed restrictions.

First Potential Outcome

The Reasonable Accommodations Specialist identifies positions with the Atlanta/Fulton County Public Library Department and the Marshal's Department for which Jane is qualified. Furthermore, the Reasonable Accommodations Specialist believes that Jane should be able to perform all essential functions of each of these positions, taking into account her physician-imposed restrictions.

The R.A. Specialist then will meet with each of these departments in order to clarify the precise requirements for each of these positions and to determine whether Jane will, in fact, be able to perform all essential functions, with or without reasonable accommodation(s) for either of these positions. It is determined that Jane will best be able to perform the essential functions of the Administrative Assistant position with the Marshal's Department.

The R.A. Specialist will make a recommendation to the Personnel Director that Jane be placed in the vacant Administrative Assistant I position with the Marshal's Department. The Personnel

Director approves the recommendation and forwards the joint recommendation to the County Manager for approval and implementation. The County Manager approves the transfer as an accommodation for Jane and the transfer is effectuated on the first day of the next pay period.

Second Potential Outcome

The Reasonable Accommodations Specialist is unable to identify any County-wide vacancy for which Jane is qualified. Furthermore, the R.A. Specialist does not believe that Jane could perform all essential functions of any of the available positions, taking into account her physician-imposed restrictions.

Jane does not return to work and remains on Workers' Compensation benefits.

Jane's department is notified by ODA that Jane cannot perform the essential functions of any vacant job within Fulton County, with or without reasonable accommodations or Workers' Compensation adaptations. It will be at the discretion of the department head whether to initiate Administrative Separation Without Prejudice (PR-800-8).

Departmental Sponsor: Human Services

Policy Review Date: June 2007

References: Minutes of the Board of Commissioners, December 9, 1998
Minutes of the Board of Commissioners, May 16, 2001
Minutes of the Board of Commissioners, June 15, 2005

Departments Affected: All Fulton County Departments and Offices of Elected and Appointed Officials