

PERSONAL ASSISTANCE SERVICES

Background

The Equal Employment Opportunity Commission (EEOC) determined that updated regulations “were needed to enhance the employment, retention, and promotion of qualified individuals with disabilities...” On January 3, 2017, the EEOC issued updated regulations for Section 501 of the Rehabilitation Act of 1973. Section 501 prohibits federal agencies from discriminating against job applicants and employees based on disability and requires agencies to engage in affirmative action for individuals with disabilities. One of the provisions of the updated Section 501 regulations requires federal agencies to provide Personal Assistant Services (PAS) to certain employees with disabilities beginning January 3, 2018.

Introduction to PAS

For many individuals with disabilities PAS help make employment possible. PAS are services that help individuals perform basic activities of daily living that an individual would typically perform if he or she did not have a disability. PAS are non-medical services such as helping an individual take off and put on a coat, eat, and use the restroom. These services are needed by individuals whose specific disabilities make it difficult for them to perform such activities on their own. They are not the same as services that help individuals perform job-related tasks, such as sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. Those services are already required as reasonable accommodations under the Rehabilitation Act, as long as the provision of such services does not impose an undue hardship.

Workplace-related PAS might include, but are not limited to assistance with the following tasks:

- filing or manipulating paper documents;
- helping an employee with a cognitive disability in decision making;
- reading printed materials to an employee with a visual disability;
- retrieving work materials that are out of reach; or
- providing travel assistance for an employee with a mobility disability.

Under the Section 501 regulations, federal agencies are required to provide PAS during work hours and for job-related travel. Work hours include time that an employee is teleworking, whether the telework is part of an agency telework program available to all employees or is being provided as a reasonable accommodation. Generally, the agency's responsibility for providing PAS begins when the employee reaches his or her duty station or begins teleworking and concludes when the work day ends.

PAS Eligibility

The Consumer Product Safety Commission (CPSC) is required to provide PAS to an individual if: (1) the individual is an employee of the agency; (2) the individual has a targeted¹ disability; (3) the individual requires the services because of his or her targeted disability; (4) the individual 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 (5) providing PAS will not impose undue hardship on the agency.

Requests for PAS

As with a reasonable accommodation, an employee may request PAS (orally or in writing) by informing his or her first-line supervisor that he or she needs assistance with daily life activities because of a medical condition. However, for record-keeping purposes, the requestor must complete the "Confirmation of Request for Personal Assistance Services" (Appendix G) or confirm their request in writing (including by email).

The employee does not need to mention Section 501 or the EEOC's regulations explicitly, or use terms such as "PAS" or "affirmative action" to trigger the agency's obligation to consider the request. The employee's supervisor should consult with the Disability Program Manager (DPM) to determine whether the employee is entitled to PAS, and, if so, the nature of the required services.

An employee's request will also be considered if it is made to another supervisor or manager in his/her immediate chain of command, staff in the Office of Equal Employment and Minority Enterprise (OEEOME) or the DPM. The employee does not have to state the medical condition to his or her supervisor, but may be required to provide medical documentation to the DPM if the disability is not obvious.

¹ Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehabilitation Act. The federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment, which for some people may include lack of access to PAS in the workplace, that are above and beyond the barriers faced by people with the broader range of disabilities. The federal government calls these "targeted disabilities." A list of targeted disabilities can be found at https://www.opm.gov/Forms/pdf_fill/sf256.pdf. Note, however, that not everyone with a targeted disability will be entitled to PAS under the new regulations, because only some individuals with targeted disabilities require assistance with basic activities like eating and using the restroom. Medical conditions that are more likely to result in the need for PAS include, for example, missing limbs or paralysis due to spinal cord injury.

Where it is obvious that an employee has a targeted disability, such as paralysis or missing limbs, the DPM may not require the employee to provide medical documentation in support of the request.

The DPM and supervisor/decision maker should ask the employee what types of PAS he or she needs using the same type of informal, interactive process used for reasonable accommodations.

Very personal information, including explicit details related to personal care such as toileting and bathing, is handled in the most discreet manner and is not shared or discussed with the employee's supervisor. The employee should provide this information to the DPM and the PAS provider so that CPSC can ensure that the personal assistant that is selected is capable and qualified to meet the employee's specific needs.

Once the nature of the required services is determined, the employee will provide the DPM with a description of tasks that have been agreed upon by the employee and supervisor/decision maker; including the frequency, duration and type of tasks to be performed by the PAS provider.

PAS on Travel

CPSC will provide PAS to eligible employees during work-related travel as a reasonable accommodation. PAS during official travel may include assistance with job-related tasks when the employee is attending conferences, meetings, trainings etc. The services may also consist of personal care related tasks such as carrying luggage and work materials and providing personal attendant care (i.e, eating, drinking, toileting, etc.).

An employee on official travel who requires services of a PAS provider is not personally responsible for covering additional costs incurred as a direct result of the travel. In some instances, an employee's own personal assistant, friend or family member who typically assists the employee when at home can be used by an employee as his or her PAS provider for official travel. Should an employee be authorized to use his or her own personal assistant on official travel, CPSC will reimburse the personal assistant directly for per diem and incidental expenses.

The DPM will consult with the employee's supervisor/ decision maker and the employee to determine whether a PAS provider will be provided en-route with the employee, or whether the service will be provided at the destination only. The employee must provide the DPM with his or her travel itinerary including the general description of the needed services, the schedule of services, and all specific information relating to the travel (i.e, departure and return information, hotel, work site location, etc.).

Undue Hardship

CPSC may only deny a request for PAS if the difficulty or cost of providing the service would be an undue hardship. The process of determining whether providing PAS is an undue hardship is the same as the process the agency uses to determine whether a reasonable accommodation poses an undue hardship.

PAS Funding

Funding for PAS is the responsibility of the office where the individual making the request is employed. PAS will be contracted on a scheduled basis.

The following resources offer further information about PAS:

Personal Assistance Services (PAS) in the Workplace — Publication on PAS developed by ODEP's Job Accommodation Network (JAN).

Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act — Guide from the Equal Employment Opportunity Commission to assist federal agencies to provide personal assistance services (PAS) under Section 501 the Rehabilitation Act of 1973.