

U.S. Merit Systems Protection Board



PERSONAL ASSISTANCE SERVICES POLICY AND PROCEDURES

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SECTION 1. BACKGROUND.

1. On January 3, 2017, the Equal Employment Opportunity Commission (EEOC) amended the regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), the law that prohibits the Federal Government from discriminating in employment on the basis of disability and requires it to engage in affirmative action for people with disabilities.
2. As part of agencies' obligations to engage in affirmative action, Federal agencies are required by the new regulations to provide Personal Assistance Services (PAS), in addition to reasonable accommodations, to employees who need them because of certain disabilities. See 29 C.F.R. §1614.203(d)(5). PAS are services that help individuals who, because of certain targeted disabilities, require assistance to perform basic activities of daily living, like eating and using the restroom, to fully participate in the workplace.
3. Beginning on January 3, 2018, Federal agencies were required to provide PAS to both existing and new employees with targeted disabilities regardless of when the employee was hired. Even if an existing employee who is entitled to PAS under the regulations has arranged for his or her own PAS in the past, the agency will be responsible for providing PAS beginning on January 3, 2018, provided the employee meets the criteria for PAS (see Section 3. Eligibility).
4. The process for requesting PAS, the process for determining whether such services are required, and the agency's right to deny such requests when provision of the services would pose an undue hardship, are the same as those for reasonable accommodations. The process is found in the Merit System's Protection Board's (MSPB) Reasonable Accommodation Policy and Procedures.
5. Each agency is also required to prepare and submit annually to EEOC an affirmative action plan for individuals with disabilities that includes a copy of these procedures and information on its efforts to implement them.
6. An agency's obligation to provide PAS is subject to several limitations (see Section 3 and 7, below). For example, agencies are not required to grant a request for PAS if doing so would impose "an undue hardship" on the agency. The EEOC's regulations and the EEOC's [Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services \(PAS\) under Section 501 of the Rehabilitation Act](#) states that granting an individual's request for PAS will impose an undue hardship if it would result in "significant difficulty or expense." The determination of whether a difficulty or expense is "significant" must consider the agency as a whole. Although small agencies are not exempt from PAS obligations, the potential financial and logistical challenges presented by a request for PAS will be a critical factor in MSPB's assessment of a request for PAS.

SECTION 2. DEFINITIONS.

1. Personal Assistance Services allow employees with targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing. For many individuals with targeted disabilities, such as paralysis or cerebral palsy, full participation in the workplace is impossible without such services.

PAS do not help individuals with disabilities perform their specific job functions. The provision of PAS for activities of daily living is not considered a reasonable accommodation, but rather a part of the agency's affirmative action obligations under Section 501. Under this same provision, Federal agencies are prohibited from taking adverse actions against job applicants and employees based on their need for, or perceived need for, PAS.

2. Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehabilitation Act and for which qualified individuals with certain disabilities (i.e., such as blindness, deafness, paralysis, convulsive disorders, and mental illnesses, among others) have faced significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. (See the Office of Personal Management, "Self-Identification of Disability Form" (SF 256, Oct 2016), for a complete list of targeted disabilities.)
3. Agency refers to the U.S. Merit Systems Protection Board (MSPB), including headquarters, regional and field offices.

SECTION 3. ELIGIBILITY.

1. An employee may be entitled to PAS, during work hours and when on work-related travel, if the following conditions apply:
 - a. the individual is a new or existing employee of the agency and has a targeted disability (see Section 2. Definitions);
 - b. the employee requires such services because of his/her targeted disability (certain disabilities such as missing extremities and paralysis, require assistance with basic activities of daily living like eating and using the restroom);
 - c. the provision of such services would, together with any reasonable accommodation required under the Rehabilitation Act, enable the employee to perform the essential functions of his/her position, without posing a direct threat to safety; and
 - d. providing PAS will not impose an undue hardship on the agency.

2. Not all employees with a targeted disability are entitled to PAS. Generally, such assistance is only necessary when it is obvious that an employee has a targeted disability (i.e., paralysis or missing limbs) and requires assistance with basic activities, like eating and using the restroom. In these situations, MSPB may not require the individual to provide medical documentation in support of their request. However, to determine whether a requesting individual is entitled to PAS, and, if so, the nature of the required services, MSPB's Disability Program Manager (DPM) should ask the employee what types of PAS he or she needs using the same type of informal, interactive process used for reasonable accommodation.
3. Telework. MSPB is required to provide PAS for an employee who teleworks, if the employee meets the eligibility requirements in Section 3.1 and are entitled to telework under the agency's telework policy or as a reasonable accommodation. An employee's permission to telework must not be revoked because he or she is entitled to PAS under the new regulations.
4. Federal agencies must, as a matter of affirmative action, provide PAS for employees to participate in employer-sponsored events, to the same extent as they must provide reasonable accommodations.
5. MSPB is not required to provide PAS to help employees commute to and from work.

SECTION 4. PROCEDURES FOR REQUESTING PAS.

1. As with reasonable accommodation, an individual may request PAS by informing a supervisor, the Human Resources Director, the Office of Equal Employment Opportunity Director, or the DPM that she or he needs assistance with daily life activities because of a medical condition. The request may be made orally or in writing. The individual 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.
2. A request for PAS may be made by a family member, health professional, or other representative on the individual's behalf with the individual's consent. Whenever possible MSPB's DPM will confirm the request with the person with the disability.
3. As with reasonable accommodations, to enable MSPB to maintain accurate records of requests for PAS, the requestor is asked to confirm the request by completing the Personal Assistance Service Request Form (see Attachment 1) and submit it to the DPM. Requests for PAS must be addressed promptly even if the requestor does not complete the form.

SECTION 5. PAS DURING WORK-RELATED TRAVEL.

MSPB is only required to provide PAS when the employee is working, unless he or she is on work-related travel. When an assignment of work-related travel results in an employee's inability to rely on his or her usual source of PAS during both work and off-work hours, the agency is required to provide PAS at all times during that work-related travel, independent of the new regulations, as a reasonable accommodation (absent undue hardship). Additionally, even if an employee's usual PAS provider is available during work-related travel, the agency is required to pay any additional costs related to providing PAS while on travel, such as transportation costs for the PAS provider, as a reasonable accommodation.

SECTION 6. GRANTING REQUESTS FOR PAS.

As with reasonable accommodations, the DPM has the responsibility for processing requests for PAS. As soon as a decision has been made to provide PAS to an employee, the DPM will assist the supervisor or Office Director in arranging the service. As a part of the interactive process, and in consultation with Human Resources and/or Contracting, the DPM will assist the supervisor and/or Office Director in determining the most appropriate source for PAS based on the employee's needs and available resources. The DPM will provide the decision in writing to the requestor. The DPM must maintain a copy of the decision in the same way records are maintained for requests for reasonable accommodations.

SECTION 7. DENIAL OF REQUESTS FOR PAS.

1. Procedures for denying a request for PAS are the same as for reasonable accommodations (see MSPB's Reasonable Accommodation Policy and Procedures).
2. The agency is only required to provide PAS if the requesting employee is entitled to them under the regulations. (See Section 3. Eligibility.) Therefore, a request for PAS may be denied if:
 - a. the requestor is not an employee of MSPB;
 - b. the requestor does not have a targeted disability;
 - c. the targeted disability does not create a need for PAS;
 - d. the requester is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
 - e. the requester would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or

- f. providing PAS would impose undue hardship on the agency.
3. **Undue Hardship.** The term “undue hardship” has the same meaning that it has in the reasonable accommodation context. Granting a request for PAS will impose undue hardship on an agency if it would result in “significant difficulty or expense.” The regulations emphasize that, as with reasonable accommodation, the determination of whether granting an individual’s request for PAS would impose “significant” difficulty or expense must take into account all resources available to the agency as a whole.
4. The number of individuals with the types of disabilities that require assistance in activities of daily living and who will apply for Federal employment is very low. However, in the unlikely event that the resources available to the agency as a whole are insufficient to grant a particular individual’s request for PAS, MSPB may deny the request on the grounds that it would impose an undue hardship.

SECTION 8. PAS PROVIDERS.

1. PAS must be performed by a personal assistance service provider. MSPB has the discretion to decide if it wants to use Federal employees, independent contractors, or a combination of employees and contractors. PAS may also be provided by an employee’s family member who is hired as a professional PAS provider, either as a contractor or Federal employee.
2. When identifying a provider, MSPB will follow the guidance found in the Equal Employment Opportunity Guidance Document (questions 18-27): [Questions and Answers: Federal Agencies’ Obligation to Provide Personal Assistance Services \(PAS\) under Section 501 of the Rehabilitation Act.](#)

SECTION 9. CONFIDENTIALITY.

1. As with reasonable accommodations, the Rehabilitation Act prohibits the disclosure of medical information except in certain limited situations. Generally, information that is otherwise confidential under the Rehabilitation Act may be shared only with individuals involved in the PAS process who need to know the information to consider PAS for a specific individual.
2. The DPM should encourage employees to complete the Office of Personnel Management’s (OPM) voluntary “Self-Identification of Disability” form (SF-256, Oct 2016) to identify their disability status when submitting a request for PAS. However, an employee is not required to complete this form nor can MSPB make completion of the form a condition of receiving PAS. The agency may still be able to count an individual who is receiving PAS in its annual disability workforce analysis, even if the individual does not self-identify as having a disability.

SECTION 10. EFFECTIVE DATE AND IMPLEMENTATION

This revised policy is effective immediately upon signature.



Tristan L. Leavitt¹

9/27/19

Date

¹ Because the positions of Chairman, Vice Chairman and Board Member are currently vacant, the functions of the chief executive and administrative officer of the U.S. Merit Systems Protection Board are vested in the General Counsel pursuant to 5 U.S.C. § 1203(b) and the agency's Continuity of Operations Plan.



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Equal Employment Opportunity
1615 M Street, NW, 5th Floor
Washington, DC 20419

Attachment 1

PERSONAL ASSISTANCE SERVICES REQUEST FORM²

Date: _____

Full Name:

Last

First

Middle Initial

Mailing Address:

Street

City

State

Zip Code

Email Address: _____ **Fax:** _____

Phone: _____

Day

Evening

Cell

MSPB Office: _____ **Supervisor:** _____

² Personal assistance services help employees who, because of targeted disabilities, require assistance to perform basic activities of daily living, during work hours and job-related travel to participate in the workplace. For example, because of a targeted disability, an employee may need someone to push their wheelchair, assist them with eating or using the restroom, or help them into or out of a vehicle at the worksite. Such services are not otherwise required as a reasonable accommodation and do not include medical services like administering shots or medical monitoring. This form may be used to apply for personal assistance services.

What is your targeted disability?³

What personal assistance services do you require, during work hours and/or job-related travel, because of a targeted disability? (Describe specific services that you are requesting.):

*NOTE: If your need for personal assistance services is not obvious, you must provide documentation from an appropriate medical professional, such as a doctor, rehabilitation counselor, or vocational counselor, concerning your disability and functional limitations as they pertain to the requirements of your current position. We will provide you with a medical consent form for you to sign if we need to contact your doctor for additional information.

Your failure to provide this information may result in the inability of MSPB to grant your request. Fax the completed form and any supporting documentation to the Disability Program Manager at fax number (202) 653-7831. A fax cover sheet is attached for your convenience. For questions you may phone the Disability Program Manager at: (202) 653-6772 ext. 4496 or (202) 254-4405. You may also email your request to: DisabilityProgramManager@mspb.gov. Requests may also be mailed (or hand-delivered) to the attention of the Disability Program Manager at the U.S. Merit Systems Protection Board, 1615 M Street, NW, 5th Floor, Washington, DC 20036.

The process for requesting personal assistance services, determining whether such services are required, and the agency's right to deny such requests when provision of the services would pose an undue hardship, are the same as for reasonable accommodations. *See* U.S. Merit Systems Board Reasonable Accommodation and Personal Assistance Services Policy and Procedures, posted on [MSPB's website](#) and the MSPB portal page (intranet).

³ A list of targeted disabilities may be found here: https://www.opm.gov/forms/pdf_fill/sf256.pdf. Not everyone with targeted disabilities will be entitled to personal assistance services because only some individuals with targeted disabilities require assistance with basic activities like eating and using the restroom.

U.S. MERIT SYSTEMS PROTECTION BOARD
OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY
1615 M Street, NW, 5th Floor
Washington, DC 20419



Fax

To: MSPB Disability Program Manager

Fax: (202) 653-7831 (secure fax number)

From: _____

Phone: _____

Date: _____

No. of pages (including cover sheet): _____

Subject: _____

Attached you will find my request for personal assistance services. *I have placed a check mark next to each item that I am including in support of my request.*

- 1. PERSONAL ASSISTANCE SERVICES REQUEST FORM _____
- 2. SUPPORTING DOCUMENTATION _____

Signed _____

Comments:

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