



Massachusetts Bay Transportation Authority

POLICY/PROCEDURE

<p align="center"><u>SUBJECT:</u></p> <p align="center">Policy on Reasonable Accommodations on Basis of Creed or Religion</p>	<p align="center"><u>DATE OF ISSUE:</u></p> <p align="center">July 10, 2017</p>	<p align="center"><u>POLICY/PROCEDURE #</u></p> <p align="center">7.21</p>
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I. PURPOSE

This policy establishes organizational guidelines and protocol to ensure that all individuals have equal access to and full enjoyment of employment opportunities at the Massachusetts Bay Transportation Authority (the “Authority”). This policy expresses our commitment to non-discrimination and equal opportunity in sustaining a diverse, inclusive and equitable workplace. This policy is not intended, nor should be interpreted, to substitute, contradict, or modify any applicable state or federal law, regulations and/or collective bargaining agreement (CBA) provisions.

II. SCOPE

This policy applies to all applicants for employment and employees of the Authority.

III. POLICY

The Authority will provide reasonable accommodations on the basis of sincerely held creed or religious beliefs, practices and/or observances to ensure that an individual may apply for a job, perform the job, and/or enjoy the benefits or terms, conditions or privileges of employment of similarly situated individuals. Upon timely notification and sufficient information, the Authority will consider an individual’s request (and other alternative accommodations) on a case-by-case basis in conformance with this policy and applicable law. The Authority is under no obligation to provide the individual’s preferred accommodation or one that would impose an undue hardship.

IV. DEFINITIONS

Creed or Religious Beliefs, Practices and/or Observances Creed or religious beliefs, practices, and/or observances include those that are theistic in nature and non-theistic moral or ethical beliefs as to what is right and wrong which are *sincerely held* with the strength of traditional religious views.¹ Mere personal preferences or social, political or economic philosophies do not constitute *creed or religious beliefs* under this policy.

¹ Factors that—either alone or in combination—might undermine an employee’s assertion that he/she sincerely holds the religious belief at issue may include: whether the employee has behaved in a manner markedly inconsistent with the professed belief; whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons; whether the timing of the request renders it suspect (*e.g.*, it follows an earlier request by the employee for the same benefit for secular reasons); and/or whether the Authority otherwise has reason to believe the accommodation is not sought for sincerely held religious reasons.

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Reasonable Accommodation

In consideration of applicable law and/or CBAs, an adjustment or alteration based on *creed or religious beliefs, practices and/or observances* which may enable an individual to apply for jobs, perform his/her job, and/or enjoy the benefits or terms, conditions or privileges of employment, without imposing *undue hardship*. Depending upon the circumstances, these may include, without limitation:

- Modifying work schedules, including *voluntary* substitutions and swaps with qualified employees;
- Excepting specific policies and work rules (e.g., dress code); and/or
- Allowing time off from work (e.g., paid or unpaid) or other leaves of absence.²

Undue Hardship

More than *de minimus* or trivial cost or burden to the Authority, e.g., a request that has adverse impact on labor costs, efficiency, safety, emergency and/or obligations under applicable law or CBAs. It is demonstrably concrete and fact-specific regarding financial loss (e.g., regularly paying overtime wages) or disruption to business (e.g., dropped trips or actual number of employees requiring the accommodation). Undue hardship includes the inability of the Authority to provide services which are required by and in compliance with state and/or federal law; where the health or safety of the public would be unduly compromised; when the employee’s presence is indispensable to the orderly transaction of the business and his/her work cannot be performed by another employee of substantially similar qualifications; and when the employee’s presence is needed to alleviate an emergency situation.

V. REASONABLE ACCOMMODATIONS

Upon timely notification of a need for a religious accommodation, the Authority, through its Office of Diversity and Civil Rights (ODCR), will endeavor to make *reasonable accommodation* for *sincerely held creed or religious beliefs, practices and/or observances* to enable an applicant or employee to apply for jobs; perform his/her job, and/or enjoy the benefits or terms, conditions, or privileges of employment, unless doing so would impose *undue hardship*.

A. Requests for Accommodations

Under this policy, an applicant or employee may request an accommodation *at any time verbally or in writing* to ODCR, at EEO@mbta.com, which will then notify and collaborate with the Human Resources Department (HR) and the appropriate supervisors and/or managers to make an individualized, case-by-case assessment.

² Notice of a request for leave of absence under this policy must be submitted to ODCR **at least ten (10) days in advance** of any foreseeable need. In consideration of applicable CBAs and/or other Authority policies, unpaid leave may be authorized under this policy only in cases where the employee has already exhausted all of his/her accrued but unused paid leaves (e.g., personal days or vacation). Last-minute requests for leave as an accommodation, *without reasonable justification*, may not serve as valid excuse for tardiness and/or absence from work under applicable policies.

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Under certain circumstances, e.g., where there may be *bona fide* doubt or questions about a request and/or the sincerity of an individual’s belief, the Authority may, at its sole discretion, ask the requesting individual to provide supporting information or documentation to verify the basis of the request and/or need for the accommodation. It is the responsibility of the individual to provide such supporting information and/or documentation in a timely manner.

B. Discussion of Requests

The discussion or interactive process between the individual and the Authority will focus on assessing the reasons for the request and any reasonable accommodations sought and/or suggested. The goal in this confidential process is to identify reasonable accommodations that meet the needs of the individual, e.g., by eliminating the tension between his/her practice or observance and established work rules or policies, in a manner that best serves the legitimate business interests of the Authority, without creating undue hardship. An individual’s failure to participate or cooperate in this process or otherwise may be grounds for denial of his/her request.

C. Notification of Decision

At the conclusion of the discussion(s), ODCR will issue a written notification to the requesting individual either approving or denying (wholly or partially) the specific request or other alternatives. This written notice will explain the reason(s) for the determination. In cases of approval, management personnel will be given as much information as may be needed to perform their duties and help implement the approved accommodation.

The Authority’s denial of a particular accommodation does not prevent the individual from making the same or another related or unrelated request for accommodation at a later time, if and when circumstances may change and/or he/she believes an accommodation is needed due to new circumstances. Similarly, an accommodation previously granted to an employee may be considered for discontinuation by the Authority due to changing circumstances and/or undue hardship.

VI. COMPLAINTS, APPEALS AND OTHER RELIEF

Discrimination, harassment, and/or retaliation against an individual because of his/her creed or religious beliefs, practices and/or observances are strictly prohibited and will not be tolerated by the Authority. The Authority also prohibits any discrimination, harassment and/or retaliation by anyone in the workplace against any individual because he/she has requested an accommodation or appealed a determination; has filed a complaint; and/or has cooperated in a related investigation under this policy.

In case an applicant or employee is dissatisfied or feels aggrieved by a practice or decision under this policy, he/she may file: (i) a verbal or written complaint by contacting the ODCR Investigations Unit at (855) 227-8066 or electronically at ODCRComplaints@mbta.com or (ii) an appeal with the Assistant Secretary of ODCR in accordance with ODCR’s established policies and procedures. The applicant or employee may also seek other remedies available to him/her at the Massachusetts Commission Against Discrimination (MCAD), Equal Employment Opportunities Commission (EEOC), and/or any other forum with competent jurisdiction.

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