



NUCLEAR WASTE TECHNICAL REVIEW BOARD

PERSONAL ASSISTANCE SERVICES POLICY AND PROCEDURES

June 8, 2023

Series: Administrative, 100 **Number: 100-3.3** **Point of Contact:** Director of Administration
Review Schedule: In effect until rescinded or updated.

Purpose: To establish the Nuclear Waste Technical Review Board (NWTRB) policy and procedures for handling requests for Personal Assistance Services (PAS) in accordance with 29 C.F.R. § 1614.203(d)(5) and the Rehabilitation Act of 1973.

Authority:

- Section 501 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 791
- Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791, et seq.
- 29 C.F.R. § 1614.203(d)(5), Personal assistance services allowing employees to participate in the workplace

Scope and Applicability: The provisions of this policy apply to all Board members and staff and will remain in effect until superseded or rescinded.

1. Definitions:

- A. *Targeted Disability:* 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.”
- B. *Undue Hardship:* A specific accommodation that causes undue hardship for NWTRB. NWTRB does not have to provide that specific accommodation. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation and the impact of the reasonable accommodation on NWTRB’s operations.
- C. *Personal Assistance Services:* Assistance with performing activities of daily living that an individual would typically perform if they did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom. PAS differs from services that help an individual to 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 reasonable accommodations, if the individual needs them because of a disability and providing them does not impose undue hardship on NWTRB.

2. POLICY:

It is the policy of the Board, in accordance with the Rehabilitation Act of 1973 and 29 C.F.R. § 1614.203d(5)(i), to provide PAS together with any reasonable accommodations required under the standards set forth in 29 C.F.R. Part 1630 to employees with targeted disabilities upon their request to enable them to perform essential functions, unless to do so would cause undue hardship.

NWTRB provides PAS when:

- the individual is an employee of the Board
- the individual has a targeted disability
- the individual requires the services because of his or her targeted disability
- 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
- providing PAS will not impose undue hardship on the agency.

The intent in providing PAS is not to help individuals with disabilities perform their specific knowledge-based job functions, such as reviewing documents or responding to requests for information. Instead, PAS allows the individual to perform activities of daily living that an individual would typically perform if they did not have a disability.

For detailed procedures on requesting a reasonable accommodation, refer to the NWTRB Procedures for Providing Reasonable Accommodations and the NWTRB website at www.nwtrb.gov. The process for requesting personal assistance services, 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 for reasonable accommodations.

3. RESPONSIBILITIES:

A. Executive Director:

1. Ensures Board members and Board supervisors are informed about how to address requests in the manner set forth in these procedures.
2. Considers all resources that are available inside and outside of NWTRB to provide PAS to eligible employees.
3. Designates a person within the agency who shall serve as a Reviewing Official for purposes of participating in the informal dispute resolution process when requests for PAS are denied and appealed.
4. Inform the Board Chair of PAS denials and appeals.

B. Disability Program Manager (DPM)/Director of Administration:

1. Provides direction and guidance on the implementation of these procedures.
2. Develops appropriate training programs to ensure NWTRB employees, supervisors, and officials are aware of and have the skills and information necessary to comply with these procedures; and to assure that employees who need and qualify for PAS are successfully accommodated.
3. Participates in and facilitates, as appropriate, meetings with relevant NWTRB personnel regarding PAS requests.
4. Reviews all proposed decisions pertaining to PAS requests, including decisions of denial or to provide alternative accommodation.
5. Reviews all determinations to ensure that all accommodations have been exhausted prior to reassignment, and to ensure compliance with these procedures.
6. Maintains summary statistics on PAS accommodations as required by the EEOC.
7. In the absence of a written request, acknowledges and begins to act on oral requests for PAS within three (3) business days.

C. PAS Coordinator:

1. Consults with and advises supervisors and other appropriate officials throughout the PAS request process to help determine whether requests for PAS should be granted or denied.
2. Facilitates the interactive process by bringing together supervisor, employee, implementing office(s) and other appropriate parties.
3. Coordinates with the Director of Administration when PAS requests are complicated by performance, conduct, or leave issues, or a worker's compensation claim; or when an accommodation involves reallocation of tasks, revision of standards, or other adjustment ordinarily accomplished with the assistance of human resource staff.
4. Provides statistical information on the number, nature, and disposition of PAS requests as requested.

5. Maintains records submitted by employees in connection with PAS requests, in a manner that complies with the confidentiality requirements of the Rehabilitation Act and the Privacy Act of 1974, 5 U.S.C. § 552a, as amended.
6. Serves as expert resource to the agency when PAS requests are complicated by performance, conduct, or leave issues or a worker's compensation claim, or when an accommodation involves reallocation of tasks, revision of standards, or other adjustment ordinarily accomplished with the assistance of human resources staff.

D. Immediate Supervisor of an Employee Requesting PAS:

1. Participates in the interactive process when the employee requests a PAS.
2. Reports all requests for PAS to the NWTRB Director of Administration within two business days of receipt.
3. Consults with NWTRB's EEO Counselor and other appropriate officials in determining:
 - i. Whether the requestor is a qualified individual with a targeted disability,
 - ii. Whether to grant, deny, or provide an alternative to the requested accommodation, and
 - iii. Whether, in the case of a denial, the requested accommodation poses an undue hardship.
4. Renders final decisions on accommodation requests.
5. Documents requests for accommodation and the action taken.

E. Designated Reviewing Official:

1. Ensures they are familiar with PAS.
2. Participates in the informal dispute resolution process when requests for PAS are denied and appealed.
3. Provides a recommendation to the Executive Director and DPM on resolution of a denial of PAS.

F. Employee or Applicant with Disabilities:

1. Requests PAS, as needed (see procedures section below).
2. Participates in good faith with NWTRB officials in an interactive process to determine whether PAS is appropriate.

4. PROCEDURES:

A. Requesting Personal Assistance Services:

Requesting PAS is similar to requesting a reasonable accommodation. An individual may request PAS by informing their supervisor, the Director of Administration, or the EEO Counselor that the individual needs assistance with daily life activities because of a disability.

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. In accordance with 29 C.F.R. § 203(d)(5)(iii), the agency shall take no adverse action against job applicants or employees based on their need for, or perceived need for, personal assistance services.

B. Processing the Request:

NWTRB's Director of Administration oversees the PAS program. The Director of Administration will process requests for PAS in a prompt and efficient manner in accordance with the time frames set forth in these procedures. If a request is given to a manager or the immediate supervisor rather than directly to the Director of Administration, that individual should forward the request immediately and must do so within two business days. The immediate supervisor will include an initial recommendation for PAS.

The Director of Administration or the EEO Counselor will contact the employee within 10 business days after the PAS request is made (even if the request is initially made to someone else) to begin discussing the request. The Director of Administration will ask the employee what type of PAS is needed using the same type of informal, interactive process used for reasonable accommodation. Pursuant to 29 C.F.R. § 1614.203(d)(5)(ii), the personal assistance services required must be performed by a personal assistance provider.

The requestor and the immediate supervisor, with the assistance of the Director of Administration and the EEO Counselor, should work together to identify effective PAS. Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear.

C. Approval of Personal Assistance Services:

If NWTRB grants a request for PAS, the DPM will provide a written explanation of the PAS provided and discuss implementation of the PAS.

If the request is approved but the PAS cannot be provided immediately, the DPM will inform the individual in writing of the projected time frame for providing the service(s).

D. Denial of Personal Assistance Services:

If NWTRB denies a request for PAS, the Director of Administration will provide a written explanation with the reason(s) for the denial to include why the PAS would result in an undue hardship or why it would be ineffective. The Reviewing Official should participate in the informal dispute resolution process when requests for PAS are denied and appealed.

E. Selecting a PAS Provider:

NWTRB may use federal employees, independent contractors, or a combination of employees and contractors to perform personal assistance services. Pursuant to 29 C.F.R. § 203(d)(5)(iv), if NWTRB is hiring a PAS provider who will be assigned to a single individual, and if that individual prefers a particular provider, then NWTRB will give primary consideration to the employee's choice to the extent permitted by law. However, it may not be possible to honor the individual's preference in all cases. An individual may request permission to bring his or her own PAS provider to work as a reasonable accommodation if the individual does not request that the agency assume the cost of providing services. However, if the individual wants the agency to assume the cost of providing the services, the agency may choose a different provider.

5. POINT OF CONTACT: The Point of Contact for these procedures is the Director of Administration, diradmin@nwtrb.gov.

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