Kings Community Action Organization  
Administrative Policy  

AP 3130  
Human Resources: Employees  

Americans with Disabilities Act  

Kings Community Action Organization (KCAO) is committed to ensuring equal opportunity and access to all members of its workforce in accordance with the Americans with Disabilities Act (ADA). KCAO prohibits discrimination against any employee or applicant on the basis of physical or mental disability, or perceived disability. KCAO will provide reasonable and appropriate accommodations to enable employees to participate in the work life of KCAO. Individuals with disabilities are responsible for reporting and supplying documentation verifying their disability. Requests for accommodations must be initiated through the Human Resources Department. 

DEFINITIONS: 

A person is considered “Disabled” under the ADA if he/she: 

1) has a physical or mental impairment that limits one or more major life activity;  
2) has a record of such an impairment;  
3) is regarded as having such an impairment;  
4) is regarded or treated as having some condition that has no present disabling effect but may become a physical disability; or  
5) has any health impairment that requires special education or related services. 

Examples of disabilities include, but are not limited to, visual, speech or hearing impairments, Cerebral Palsy, Epilepsy, Muscular Dystrophy, Multiple Sclerosis, Cancer, Heart Disease, Diabetes, Mental Disabilities, Emotional Illness, HIV, Tuberculosis, Alcoholism, or Drug Addiction. 

Having a “record of” being disabled or being “regarded as” disabled includes individuals who have a history of a mental or physical impairment. This includes people such as a person with a history of cancer that is currently in remission or a person with a history of mental illness. 

It is important to note that whether or not a person is actually disabled is irrelevant. If discrimination occurs based on the perception that the person is disabled, it is a violation of the ADA. 

A “Major Life Activity” includes: 

1) Caring for oneself;  
2) Performing manual tasks;  
3) Walking;  
4) Seeing;  
5) Hearing;  
6) Speaking;
7) Breathing;
8) Sleeping;
9) Reproduction;
10) Learning;
11) Thinking;
12) Concentrating;
13) Interacting with others;
14) Working; or
15) Participating in community activities.

“Qualified Individual with a Disability” is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. An individual is not unqualified simply because he or she is unable to perform marginal or incidental job functions.

A “Reasonable Accommodation” is any modification or adjustment in a job, an employment practice, or the work environment that allows an individual with a disability to enjoy an equal employment opportunity. A reasonable accommodation is not one that would require the employer to make any modification or adjustment which would fundamentally alter the essential functions of the job in question.

A function of the job is considered an “Essential Function of the Job” if it is a fundamental job duty of the position, or the reason the job exists is to perform that function. KCAO will maintain a current list of all positions and their essential job functions for employee reference.

OBLIGATIONS UNDER THE ADA:

1) Reasonable Accommodation: When an employee or applicant with a known disability requests reasonable accommodation, KCAO will engage in a timely, good faith interactive process to determine effective reasonable accommodations. At a minimum, KCAO will meet with the employee or applicant to discuss possible reasonable accommodations, be open to the employee or applicant’s suggestions, and be willing to try various accommodations in order to find one that is successful. KCAO will not deny a reasonable accommodation simply because a disabled employee has been the subject of disciplinary action in the past.
   a. KCAO will not need to provide a reasonable accommodation if it can prove the following:
      i. Undue Hardship: If the accommodation is unduly costly, extensive or substantial to KCAO, or it fundamentally alters the operation of KCAO, the accommodation will not be granted. KCAO will attempt to provide an alternative accommodation if available.
      ii. Seniority System Prevails: Ordinarily, if a request to change jobs will accommodate an employee, it will not be granted if it violates a seniority policy. The burden is on the employee to show special circumstances that make an exception to the seniority policy reasonable.
      iii. Direct Threat to the Health or Safety of Others: Direct threat means a significant risk to the health or safety of others that a reasonable accommodation cannot eliminate. If a reasonable accommodation cannot eliminate or mitigate the risk, KCAO may properly deny this person employment.
iv. Direct Threat to the Health or Safety of Self: If an employee/applicant poses a direct threat to the health or safety of themselves, they are not considered "qualified" under the ADA, and KCAO may properly deny this person employment.

2) Documentation:
   a. KCAO: KCAO will keep documentation of all efforts made to reasonably accommodate an employee or applicant, including the current accommodation in effect. The documentation will be given to the employee, the employee’s supervisor, and to the HR department where it will be placed in the employee’s file.
   b. Disabled Employee/Applicant: When the disability or need for accommodation is not obvious, the employee/applicant must provide KCAO with reasonable documentation which describes the nature, severity, and duration of the impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits the employee/applicant’s ability to perform the activity or activities. The documentation must also substantiate why the requested reasonable accommodation is needed.

3) Prohibition of Employment Discrimination: KCAO will not discriminate based on a person’s disability with respect to any term, condition, or privilege of employment, including hiring. Discrimination includes the following:
   a. Classifying disabled applicants or employees in any way that adversely affects their opportunities or status;
   b. Participating in any arrangement with another organization that has the effect of discriminating against disabled applicants or employees. This would include entering into service contracts or collective bargaining agreements when such contracts include arrangements which discriminate against a particular group of applicants or employees;
   c. Using standards or methods that have the effect of discriminating or perpetuating discrimination;
   d. Denying equal jobs or benefits because of a relationship or association with a disabled person. This would include the situation of not hiring a person who has a sick dependent that would tap benefit resources, or refusing to hire someone who is known to do volunteer work with someone who is disabled such as a person who has AIDS, epilepsy, etc.;
   e. Denying employment opportunities to an otherwise qualified individual with a disability to avoid making a reasonable accommodation;
   f. Using standards or tests that tend to screen out disabled individuals unless they are job related and consistent with business necessity;
   g. Failing to select and administer tests in the most effective manner to ensure that the results accurately reflect skills, aptitude, etc. An example of this would be a situation where the standard recruitment procedure for a position includes a written test. If, due to a disability as defined under the ADA, someone could not read the instructions and questions, then the test should be read to them.

4) Health Insurance Benefits: KCAO will not deny health insurance benefits to a person covered under the ADA.

5) Employment Related Physical and Psychological Examinations:
   a. Pre-offer of employment: Physical or psychological exams are prohibited prior to a job offer from KCAO. A job offer can be made on the condition that the applicant pass a physical/psychological examination if all entering employees in the same job category are subjected to such an examination and/or inquiry regardless of disability. The job offer must first be made and it is essential to clearly state that the offer is contingent upon results of the exam. In addition, the
examination must meet the test of job relatedness and be consistent with business necessity. Medical inquiries must be made on separate forms from other application materials. **Medical information must also be kept confidential and separate from other employee files.** Under the ADA it will be critical that results of physical/psychological exams and drug testing be accessible only to individuals on a need-to-know basis. Results of employment related physical and psychological examinations will need to be forwarded to the Human Resources department where they will be maintained separate from the employee's personnel file and secured so that they can be accessed only on a need-to-know basis.

b. Pre-Employment Inquiries/Determination of Essential Job Functions: KCAO may inquire as to an applicant's ability to perform essential job related functions. Further, KCAO may ask an applicant to describe or demonstrate how with or without reasonable accommodation the applicant will be able to perform essential job related functions.

6) Alcohol and Illegal Drug Usage: *Current* use of an illegal substance is not considered a disability under the ADA. However, if someone currently uses illegal drugs and has another covered disability, that person would be covered under the ADA based on the other covered disability. Under the ADA, KCAO still has the right to prohibit the use of alcohol or illegal drugs at the work place and may still prohibit employees from being under the influence of alcohol or illegal drugs at the work place. A drug user or alcoholic may be held to the same qualification standards for employment or job performance and behavior standards as other employees. If someone's substandard work performance is related to alcohol or illegal drug usage, that person may still be disciplined for the work performance and held to the same standards as other employees.

**GRIEVANCE PROCEDURE FOR COMPLAINTS OF ALLEGED DISCRIMINATION BASED UPON DISABILITY:**

1) If an employee of KCAO feels that he or she has been discriminated against on the basis of his or her disability, or a perception of disability, the employee shall submit a complaint in writing to the HR Director. An investigation shall follow, and a written decision by the HR Director shall be rendered within 15 working days of submission of the complaint. The written determination and description of the resolution, if any, will be forwarded to the employee within 30 days of the filing date.

2) If the complaint cannot be resolved to the employee's satisfaction by the HR Director, a request for reconsideration should be made within 10 days. This request for reconsideration will be forwarded to the Executive Director. A written decision will be made by the Executive Director within 30 working days. The decision of the Executive Director shall be final.

3) A record of the complaint and any action taken will be maintained in the employee’s personnel file.


Adopted by the Board of Directors: March 21, 2012