

CLRC Policy on ADA Compliance and Reasonable Accommodation

I. Statement of Policy

It is the policy of the Joint Coast Labor Relations Committee not to discriminate against disabled individuals in hiring, dispatch and promotion, and to provide reasonable accommodations for applicants and incumbent workers who have covered disabilities within the meaning of state and federal law.

Further, it is the policy of the JCLRC that the Joint Port Labor Relations Committee in each port shall engage in an interactive process with applicants for industry employment and incumbent workers who claim to have covered disabilities to determine whether reasonable accommodations exist which would enable the applicant or incumbent worker to enter or continue working in the longshore industry.

Otherwise qualified applicants and employees found to be able to safely perform longshore and clerk work with or without reasonable accommodations as may be required by law will be so employed. Applicants and employees found to be unable to perform longshore work safely with or without reasonable accommodation shall not be employed and shall not be eligible for dispatch to such work.

The JPLRC will provide notice of this policy prohibiting discrimination and of the procedures for considering and resolving requests for accommodation to potential applicants for industry employment, and members of the incumbent workforce (including identified casual and registered workers) as required by law.

II. Accommodation Procedures

Requests for reasonable accommodation shall be considered and resolved by the local JPLRCs in accordance with Section 17.4 of the PCL&CA as modified herein. The Joint Port LRC shall be responsible for determining the following issues:

1. Whether the worker in question is qualified to perform work under the PCL&CA;
2. whether the worker in question has a bona fide disability that limits his or her ability to perform satisfactorily the essential functions of the job he or she holds or desires; and
3. if so, whether the disability may be reasonably accommodated without imposing an undue hardship on the Union or the Employers or without violating the bona fide seniority provisions of the PCL&CA except to the extent as may be required by law.

All three issues must be found in the affirmative in order for the JPLRC to grant reasonable accommodation. The JPLRC has the discretion to select the accommodation it considers most appropriate, giving due consideration to the suggestions and preferences of the applicant or employee seeking accommodation.

A. Written Request for Accommodation

Requests for accommodation by applicants for industry employment or incumbent workers who believe they are entitled to accommodation under the ADA or other applicable state law must be submitted in writing to the Joint Port LRC. In the written request, the individual seeking accommodation shall provide the Joint Port LRC with following information.

1. The nature and extent of the claimed disability;
2. The precise job-related limitations he/she believes are imposed by the claimed disability;
3. Information and/or suggestions as to any accommodation(s) that would enable the individual to overcome the job-related limitations and perform the work safely and satisfactorily.

The individual should include any medical documentation and other information which he or she believes is relevant and would assist the JPLRC in reaching a decision.

If the employee or applicant seeking accommodation requires assistance in preparing a written request for accommodation, JPLRC personnel will assist in putting the request in writing. Further, in circumstances where it is apparent that an applicant or employee is disabled and may require reasonable accommodation, JPLRC personnel shall advise the applicant or employee of the procedure for requesting an accommodation.

B. Interactive Process re: Accommodation Request

1. Initial Meeting

Within 7 days after receiving a written request for accommodation, the Joint Port LRC shall provide the individual with written acknowledgment that the request has been received along with a written request to appear before the JPLRC to review the accommodation request and to discuss alternatives. At this time, the Committee may request that the individual bring additional documentation or information to this initial meeting which the Committee believes is or may be relevant and/or would assist in reaching a decision, including, in appropriate cases, a medical release. The initial meeting should be scheduled to take place as soon as is practicable, depending on the circumstances giving rise to the accommodation request, but no later than 14 days following receipt of the written accommodation request.

2. Opinion of Medical Specialist

Following the initial meeting, the JPLRC may, in its discretion, obtain an opinion from a designated medical specialist regarding: 1) whether the applicant or employee suffers from a disabling condition which limits one or more major life activity, and 2) the applicant or employee's functional abilities and limitations with respect to the essential functions of the job he or she holds or seeks.

One medical specialist shall be designated in each port to assist the JPLRC in reviewing requests for reasonable accommodation. Each designated specialist shall be made aware and become knowledgeable of the nature and requirements of longshore and clerk work and the established conditions and waterfront operations in the industry. The designated medical specialist shall also

be knowledgeable as to the legal standards and requirements related to the employment of disabled workers with or without reasonable accommodation.

In determining whether a particular applicant or employee has a disabling condition which limits one or more major life activity, the medical specialist will be asked to render an opinion based on any and all of the following s/he deems appropriate: an independent medical examination of the individual by an appropriate health care practitioner, the individual's medical history, medical reports from the individual's personal physician, reexamination of the individual, medical tests, x-rays, etc.

The medical specialist shall provide the JPLRC with a written report setting forth an opinion as to whether the applicant or employee has a disability which limits one or more major life activity along with an opinion as to the individual's functional abilities and limitations in relation to the essential functions of the job which the employee or applicant holds or seeks.

In the absence of unusual circumstances, the JPLRC will schedule an appointment for the applicant or employee with the medical specialist to occur within 14 days following the initial meeting. In the absence of unusual circumstances, the medical specialist, in turn, will provide his or her written report to the JPLRC within 14 days after this appointment takes place.

3. Additional Meeting Before JPLRC

Within 7 days following receipt of the medical specialist's written report, the JPLRC may, in its discretion, invite the applicant or employee to attend a further hearing before the JPLRC and/or request the individual to provide additional documentation or information relevant to the accommodation request. The JPLRC may also, in its discretion, proceed to gather any additional information it deems appropriate in determining whether a reasonable accommodation exists, including consulting with legal counsel and other technical assistance before rendering a decision.

In the absence of unusual circumstances, the JPLRC shall conclude the interactive process and prepare a written referral and recommendation to the Joint Coast LRC regarding the proper disposition of the request no later than 14 days following receipt of the medical specialists' written report. The JPLRC shall make its recommendation to the Joint Coast LRC regarding the accommodation request based on the facts developed during the interactive process.

C. Referral and Recommendation to the JCLRC

In the absence of unusual circumstances, within 14 days following receipt of the JPLRC's written referral and recommendation, the JCLRC shall provide the applicant or employee involved written notification of its decision, including a written explanation of the basis for its decision.

If the Joint Coast LRC agrees on the disposition of the accommodation request, such decision shall be final and no appeal may be taken therefrom. If the Joint Coast LRC does not agree on the disposition of the accommodation request, the accommodation request shall be immediately referred to the Coast Arbitrator for decision. In such cases, the decision of the Coast Arbitrator shall be based solely on the written record of the JPLRC and Joint Coast LRC proceedings.

III. Training

JPLRC members in each covered port, and the members of the Joint Coast LRC will be provided instruction as to the legal requirements related to employment of disabled employees with or

without reasonable accommodations along with training as to the proper handling of requests for reasonable accommodation by disabled employees and applicants.

IV. **Temporary Accommodation While Requests Are Being Processed**

1. Temporary accommodations may be granted to individuals who have filed a request for accommodation under the CLRC ADA policy while the accommodation request is under review. Requests for temporary accommodation shall be acted upon at the initial meeting held by the Joint Port LRC with the individual seeking disability accommodation upon receipt, review and approval by the Joint Port LRC of certification from the individual's own health care provider -- on the attached form -- that (1) the individual has work restrictions that result from a mental or physical impairment, (2) but that he or she can nonetheless perform particular work tasks without creating a risk of injury to him/herself or others.

2. Temporary accommodations granted by the Joint Port LRC shall be limited to an initial ninety (90) day period. The 90 day period may be extended by the Joint Port LRC in time increments not to exceed 30 days in length, until the CLRC accommodation process is concluded provided that delays in completing the interactive process for determining appropriate accommodations under the CLRC policy result do not result from conduct of the applicant intended to keep the temporary accommodation in place for longer than necessary. It is the responsibility of the individual who has been granted a temporary accommodation to contact the Joint Port LRC before the temporary accommodation expires in order to renew it in the event that interactive process is ongoing.

3. Temporary accommodations granted by the Joint Port LRC shall be consistent with all seniority-based rules for dispatch and promotion within the industry and shall not interfere with the seniority-based expectations of other workers. For example, no individual seeking temporary or permanent accommodations shall be promoted from one registration status or job classification to another (such as Class B to Class A registration status, or from the longshore to marine clerk or foremen's registration lists) as a disability accommodation, where such promotions are fundamentally seniority based.

4. Temporary JPLRC accommodations do not need to mirror the accommodation sought under the CLRC Policy being requested by the individuals, if the JPLRC, in communication with the individual, reasonably believes the temporary accommodation will be effective and is reasonable and that, with that accommodation, the individual can safely and efficiently perform the job's essential function.

5. Temporary JPLRC accommodations do not mean the JPLRC agrees to the CLRC Policy request of the individual, nor will an individual be entitled to retain that accommodation if the JCLRC eventually decides to the contrary. The JCLRC retains the authority to decide the appropriate response to the CLRC Policy request and may revoke, amend or replace any temporary accommodation put into place by a JPLRC and may deny a request, notwithstanding that a temporary accommodation was provided by a JPLRC.

6. Nothing in the handling of a request under the CLRC Policy, including any grant of a temporary/interim accommodation, shall be construed as an admission by the PMA and its members and/or the ILWU and its local affiliates, or as evidence that an individual

is disabled, is regarded as disabled, or has a record of disability within the meaning of the Americans With Disabilities Act or any federal, state or local law.

V. Scope of Procedures

The procedures described above shall be utilized in all cases where accommodations have been requested by applicants for industry employment and by incumbent workers with respect to hiring, dispatch and promotion within the industry.

This policy sets forth the procedure to be used by the local committees and the JCLRC for considering and resolving accommodation requests presented by disabled applicants and employees under the Americans With Disabilities Act and applicable state law. Nothing in this policy may be construed to require the ILWU and the PMA to provide applicants or employees with particular accommodations or to provide accommodations where, in the opinion of the Committee, none are warranted. Nor may this policy be construed as acceptance by the ILWU or the PMA of additional, greater or different legal or financial responsibilities than those which are imposed on them by law for providing accommodations to disabled applicants or employees.

The procedures set forth in this policy may be flexibly applied by the JPLRCs and JCLRC in particular cases when, in the judgment of the Committee, the facts and circumstances warrant it. The time lines for accomplishing particular steps of the procedure are intended as guidelines, not strict time limits, which may be extended or waived in appropriate circumstances. Failure of the local committees or the JCLRC to strictly comply with the time lines shall not constitute a violation of the policy.