

# **PCWBFA Policy on ADA Compliance and Reasonable Accommodation**

## **I. Statement of Policy**

It is the policy of the Joint Foremen's Labor Relations Committee in each port area covered by this agreement, not to discriminate against disabled workers in hiring and dispatch and where applicable, 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 ILWU and the PMA that the Joint Foremen's Labor Relations Committee (JFLRC) 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 as a foreman or walking boss under the terms of the PCWB&FA in the longshore industry.

Otherwise qualified applicants and incumbent employees found to be able to safely perform the duties of a Foreman or Walking Boss both with or without reasonable accommodations as may be required by law will be so employed. Applicants for promotion to a Foremen's/Walking Boss registration list, and registered foremen and walking bosses who are found to be unable to perform walking boss/foreman work safely with or without reasonable accommodation shall not be employed and shall not be eligible for dispatch to such work.

The JFLRC will provide notice of this policy prohibiting discrimination and of the procedures for considering and resolving requests for accommodation to potential applicants for walking boss/foreman employment, and members of the incumbent workforce as required by law.

## **II. Accommodation Procedures**

Requests for reasonable accommodation shall be considered and resolved by the local Joint Port FLRCs in accordance with Section 13.3 of the PCWB&FA as modified herein. The Joint Port FLRC shall be responsible for determining the following issues:

1. whether the worker in question is qualified to perform work under the PCWB&FA;
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 PCWB&FA except to the extent as may be required by law.

All three issues must be found in the affirmative in order for the Joint Port FLRC to grant reasonable accommodation. The Joint Port FLRC 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 promotion to the Foremen/Walking Boss registration list, 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 FLRC. In the written request, the individual seeking accommodation shall provide the Joint Port FLRC 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 Joint Port FLRC in reaching a decision.

If the employee or applicant seeking accommodation requires assistance in preparing a written request for accommodation, Joint Port FLRC 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, Joint Port FLRC personnel shall advise the applicant or employee of the procedure for requesting an accommodation.

## **B. Interactive Process re: Accommodation Request**

### **1. Initial Meeting**

Within 15 days after receiving a written request for accommodation, the Joint Port FLRC shall provide the individual with written acknowledgment that the request has been received along with a written request to appear before the Joint Port FLRC to review the accommodation request and to discuss alternatives. At this time, the Joint Port FLRC may request that the individual bring additional documentation or information to this initial meeting which the Joint Port FLRC 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 15 days following receipt of the written accommodation request.

### **2. Opinion of Medical Specialist**

Following the initial meeting, the Joint Port FLRC 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 Joint Port FLRC in reviewing requests for reasonable accommodation. Each designated specialist shall be made aware and become knowledgeable of the nature and requirements of longshore, clerk, and walking boss/foreman's 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 Joint Port FLRC 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 Joint Port FLRC 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 Joint Port FLRC within 14 days after this appointment takes place.

### **3. Additional Meeting Before Joint Port FLRC**

Within 7 days following receipt of the medical specialist's written report, the Joint Port FLRC may, in its discretion, invite the applicant or employee to attend a further hearing before the Joint Port FLRC and/or request the individual to provide additional documentation or information relevant to the accommodation request. The Joint Port FLRC 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 Joint Port FLRC shall conclude the interactive process and prepare a written decision regarding the proper disposition of the request no later than 14 days following receipt of the medical specialists' written report. The Joint Port FLRC shall provide the applicant or employee involved written notification of its decision, including a written explanation of the basis for its decision. The Joint Port FLRC shall make its decision regarding the accommodation request based on the facts developed during the interactive process.

#### **C. Referral and Recommendation to the Joint Port FLRC**

In the absence of unusual circumstances, within 14 days following receipt of the Joint Port FLRC's written referral and recommendations, the Joint Port FLRC 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 Port FLRC agrees on the disposition of the accommodation request, such decision shall be final and no appeal may be taken therefrom. If the Joint Port FLRC 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 Joint Port FLRC proceedings.

### **III. Training**

Joint Port FLRC members in each covered port will be provided instruction as to the contractual 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 PCWB&FA 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 FLRC with an applicant for disability accommodation upon receipt, review and approval by the Joint Port FLRC of certification from the applicant's own health care provider -- on the attached form -- that (1) the applicant 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 with specified accommodations.
2. Temporary accommodations granted by the Joint Port FLRC shall be limited to an initial ninety-day (90) period. The 90-day period may be extended by the Joint Port FLRC in time increments not to exceed 30 days in length, until the ADA Policy accommodation process is concluded provided that delays in completing the interactive process for determining appropriate accommodations under the ADA Policy result do not result from conduct of the applicant intended keep the temporary accommodation in place for longer than necessary. It is the responsibility of the employee who has been granted a temporary accommodation to contact the Joint Port FLRC 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 FLRC 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 applicant seeking temporary or permanent accommodations shall be promoted from one registration status or job classification to another (such as from the longshore or marine clerk or foremen's registration lists) as a disability accommodation, where such promotions are fundamentally seniority based.
4. Temporary Joint Port FLRC accommodations do not need to mirror the accommodation sought under the ADA Policy being requested by the individuals, if the Joint Port FLRC, 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 Joint Port FLRC accommodations do not mean the Joint Port FLRC agrees to the ADA Policy request of the individual, nor will an individual be entitled to retain that accommodation if the Joint Port FLRC eventually decides to the contrary. The Joint Port FLRC retains the authority to decide the appropriate response to the ADA Policy request and may revoke, amend or replace any temporary accommodation put into place by the Joint Port FLRC and may deny a request, notwithstanding that a temporary accommodation was provided by the Joint Port FLRC.
6. Nothing in the handling of a request under the ADA 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. The procedures shall be applied flexibly in accordance with the local port practices with respect to the hiring, dispatch and, where applicable, promotion of workers to the foremen's registration list as they may vary from port to port. This policy sets forth the procedure to be used by the Joint Port FLRCs 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 Joint Port FLRCs in particular cases when, in the judgment of the Joint Port FLRC, 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 Joint Port FLRC to strictly comply with the time lines shall not constitute a violation of the policy.