

## Department of the Navy's Procedures for Processing Requests for Personal Assistance Services

As required by 29 Code of Federal Regulations (C.F.R.) § 1614.203(d)(5), a regulation implementing Section 501 of the Rehabilitation Act of 1973, as amended, federal agencies are required to provide Personal Assistance Services (PAS), in addition to reasonable accommodation, during work hours and work-related travel to employees with targeted (severe) disabilities unless doing so would impose an undue hardship. The Department of the Navy (DON) affirms its commitment to providing PAS so that employees who cannot be at work without PAS may enjoy the opportunities and benefits of employment.

PAS allow individuals to perform activities of daily living that an individual would typically perform if he or she did not have a disability, such as assistance with removing and putting on clothing, eating, and using the restroom.

The procedures outlined below are to be used when a DON employee makes a request for PAS. Requests for reasonable accommodation (RA) and PAS can be made simultaneously, but must be processed separately using appropriate procedures.

### STEP 1 – THE INITIAL REQUEST

An employee's initial request for PAS can be made verbally or in writing to his or her first-line supervisor or the Reasonable Accommodation (RA) point of contact (POC). If the RA POC receives the request directly from the employee, the RA POC shall immediately inform the employee's first-line supervisor of the request. Additionally, a family member, spouse or partner, friend, or medical health professional may request PAS on behalf of an individual with a targeted disability. It is the responsibility of all DON employees to recognize a request for PAS; if anyone other than the first-line supervisor or the RA POC receives a request for PAS, they should immediately notify the servicing RA POC.

Requests for PAS must be submitted to the servicing RA POC as soon as practicable, but no later than within **two (2) business days** of receipt of the initial request for processing. Requests for PAS, similarly to requests for RA, must be subsequently documented, in writing, signed and dated, for inclusion in the PAS request file. A PAS Request Form is provided as *Attachment 1*.

The RA POC shall retain all documents related to the request for PAS in a file separate from the employee's official personnel record, and may be kept in the employee's RA file if applicable. In addition, the PAS request and processing efforts must be documented electronically in the Navy Electronic Accommodations Tracker (NEAT). Any information or documentation relating to the employee's request for PAS is to be kept confidential and may be shared only with individuals involved in the PAS process who have a need to know.

## STEP 2 – THE INTERACTIVE PROCESS

The interactive process is an informal discussion between the individual requesting PAS, his or her first-line supervisor, and/or the RA POC. This discussion first sets out to determine whether the employee is entitled to PAS. In order to be entitled to PAS, the following must hold true:

- The individual is a DON employee;
- The employee has a targeted disability (see the definition of Targeted Disabilities in the definitions section of these procedures);
- The employee requires PAS because of his or her targeted disability;
- The employee will be able to perform the essential functions of his or her position, without posing a direct threat to safety, once PAS and any required RA have been provided;
- Providing PAS does not impose undue hardship on the DON.

In most cases, the employee's targeted disability and the need for PAS is obvious. Therefore, the determination of whether the individual has a targeted disability should be made quickly. In the event that the targeted disability or the need for PAS is not evident, the employee's first-line supervisor may request medical documentation to support the request. A sample Request for Medical Documentation Letter is provided as *Attachment 2*.

If the employee is entitled to PAS, the interactive discussion then serves to determine the extent and nature of the services required based on the employee's limitations.

A continuing dialogue throughout the PAS request process is required to ensure an effective process. When a delay in processing a request for PAS occurs, the employee's first-line supervisor or the servicing RA POC must notify the employee of the reason for the delay and continue to provide updates as to when the PAS process is expected to be complete.

## STEP 3 – DECISION WHETHER OR NOT TO PROVIDE PAS

### Decision to Approve Request for PAS

If the employee's first-line supervisor determines that providing PAS is the appropriate course of action, a letter denoting the acceptance of the PAS request is issued from the supervisor to the employee within **thirty (30) calendar days of receipt of the written request by the RA POC**. This approval letter may also be used to document that an alternative form of PAS from the PAS originally requested will be provided, and explains why it will be effective. A sample approval letter is provided as *Attachment 3*.

### Decision to Deny Request for PAS

There is no requirement to provide PAS if the employee does not have a targeted disability, or if providing PAS would pose as an undue hardship on the agency. If the employee is not entitled to receive PAS, he or she must be notified of this decision within **thirty (30) calendar days of receipt of the written request by the RA POC**. The denial notification must provide available avenues of redress, to include Alternative Dispute Resolution (ADR), the Equal Employment

Opportunity (EEO) complaints process, and negotiated grievance procedures. A sample denial letter is provided as *Attachment 4*.

**STEP 4 – OBTAINING THE PAS PROVIDER**

A PAS provider is an employee or independent contractor whose primary job functions include the provision of personal assistance services. In general, the training or skill that a PAS provider should have will depend on the specific services needed by the employee.

The DON is entitled to consider all available resources when arranging for PAS, including outside sources that are already providing PAS or are willing to provide PAS at their own expense, such as a state or veteran’s rehabilitation agency, so long as the services are provided in a timely manner.

The DON gives its Major Commands the flexibility of providing PAS via federal employee or independent contractor, depending on the employee’s need and the operational resources required to establish and provide PAS. When making this determination on how to provide the PAS, the below list includes items that may be considered:

	<b>Federal Employee</b>	<b>Contractor</b>
<b>Hiring/Procurement</b>	Authority to appoint non-competitively via 5 C.F.R. 213.3102 (LL) (Schedule A)	May contract service as a commercial item under the procedures in FAR Part 12, with the NAICS code being 624120, "Services for the Elderly and Persons with Disabilities"
<b>Length of Employment</b>	Can be temporary, term or permanent employee	Determined by period of performance
<b>Cost</b>	PAS duties are generally graded around GS-05 level (with 25% administrative duties), and could differ depending on complexity	Cost depends on level/amount of services required and structure of contract (firm fixed price contract vs. indefinite delivery/indefinite quantity)
<b>Security Clearance</b>	Agency is responsible for ensuring PAS provider has appropriate security clearance	Can demand minimum clearance requirement provisions
<b>PAS Duties</b>	Duties are outlined in position description	Duties are outlined in Statement of Work
<b>Performance and Mandatory Training</b>	Agency is responsible for monitoring performance and mandatory training	Contracting agency is responsible for monitoring performance and mandatory training, and is subject to Government inspection
<b>If PAS need changes or is eliminated</b>	May be subject to management-directed reassignment (MDR) or reduction in force (RIF) procedures	Contract can be modified or terminated
<b>Other Considerations</b>	PAS providers may be bargaining unit employees	The Service Contract Labor Standards may apply to a contract for PAS

To assist commands in obtaining PAS, a guide that can assist DON commands in contracting PAS is provided as *Attachment 5*. A template position description is provided as *Attachment 6*, which DON commands may use as a reference in establishing their own position description that is tailored to the services required.

#### Providing PAS to a Single Individual

In determining a PAS provider for a single individual, the DON must give primary consideration to the requestor's preferences to the extent permitted by law. In some cases, the employee who needs PAS will be able to recommend a provider, and may also be able to get a referral from a local center for independent living or a state vocational rehabilitation agency. The option of using a family member or spouse as a PAS provider can also be considered.

#### Providing PAS to More than One Employee in the Organization

If there is more than one employee requiring PAS in the organization, DON commands may use a pool of PAS providers, rather than assign one PAS provider to each employee, so long as the services are provided in a timely manner.

#### PAS for Official Travel

When work-related travel results in the employee's inability to rely on his or her usual source of PAS, DON must provide PAS at all times (both work and off-work hours) during the work-related travel, independent of the new regulations, as a reasonable accommodation (absent undue hardship). Additionally, even if employee's usual PAS provider is available during work-related travel, the DON is required to pay any additional costs related to providing PAS while on travel, such as transportation costs for the PAS provider, as a reasonable accommodation. The DON also has the option of arranging for PAS at the destination site, rather than paying for the employee's own PAS provider to travel with him/her, as long as it is considered effective.

The DON may cover the PAS provider's travel costs in various ways, depending on the type of PAS provider (e.g. family member or spouse or other provider, federal employee, or contractor). Applicable policies or regulations as set forth in the Department of Defense (DoD) Joint Travel Regulations and/or as outlined in the contract shall be followed.

#### PAS during Telework

The DON is required to provide PAS during telework if the individual is entitled to PAS and is entitled to telework under the organization's telework policy or as a reasonable accommodation. Permission to telework should not be revoked solely due to an employee's need for PAS. The determination of whether PAS can be provided to an employee while teleworking should be made on a case-by-case basis.

#### Providing Provisional PAS

The DON recognizes that it may take an extended period of time between when the request for PAS is approved and when PAS is implemented, due to the nature of federal recruitment and contracting. In the event that provisional PAS is required, the employee's first-line supervisor and coworkers may volunteer to assist with minimal non-personally invasive tasks to support the employee, such as, but not limited to, removing and putting on a coat, opening doors, retrieving items in the workplace that are out of reach, and replenishing water. If volunteer assistance by

the employee's first line supervisor or coworkers is being considered, the supervisor should seek advice from legal counsel before agreeing to such an arrangement.

Employees who do not perform PAS as a primary job function shall not assist employees who require PAS with personally invasive tasks that they may not be qualified to perform, such as feeding, toileting, bathing, or lifting or moving employees from vehicles, beds or wheelchairs. Until a contract is secured or a billet is in place, interim arrangements can be made for performing these more personal tasks through exploring the availability of local resources or providing temporary base access to spouses or family members who can assist with PAS.

### **STEP 5 – ONGOING INTERACTIVE PROCESS**

If the request for PAS is approved, the employee shall be informed, in writing, of any changes in providing PAS. Changes can include incurred delays due to the nature of federal recruitment or contracting, the unavailability of the primary PAS provider and any alternative arrangements made, among other situations. In addition, the employee must promptly inform his or her supervisor or the servicing RA POC of any changes needed to the services in place so that they may address these changes. These interactions must be documented and retained in the PAS request folder and electronically in NEAT.

## Definitions

Alternative Dispute Resolution (ADR): Any procedure that is used in lieu of a formal administrative process or litigation to resolve issues in controversy. DON activities and employees are encouraged to consider the use of ADR at any stage of the PAS process to resolve any conflicts. Upon PAS denial, employees may request ADR in writing within 14 calendar days from receipt of the denial letter, or in accordance with the appropriate collective bargaining agreement.

Equal Employment Opportunity (EEO) Complaints: Federal employees are protected from discrimination because of their disability under the Rehabilitation Act of 1973, as amended, and have a right to file an EEO complaint if they believe that they have been discriminated against. An individual, whose request for PAS has been denied, will be advised of their opportunity to pursue the EEO complaint process in accordance with the provisions of 29 C.F.R. Part 1614. The denial letter must state that the individual is required to initiate contact with an EEO Counselor within 45 calendar days of the date the request for PAS was denied. Please note that the amended Section 501 regulations do not take a position on the availability of a private remedy for affirmative action obligations, but the EEOC believes that its procedural regulations governing complaints of discrimination are an appropriate place to address the question.

Interactive Process: A dialogue between the employee requesting PAS, his or her supervisor, and the servicing RA POC, that determines the employee's eligibility to receive PAS and the services required in order to participate in the workplace or in work-related travel. The interactive process begins upon receipt of an employee's request for PAS, occurs throughout the processing of the request, and continues after PAS has been approved to ensure that the employee's need for PAS has been met.

Negotiated Grievance Procedures: A bargaining unit employee, whose request for PAS has been denied, will be advised of their opportunity to file a grievance if this matter is not excluded under the collective bargaining agreement.

Personal Assistance Services (PAS): Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including assistance with removing and putting on clothing, eating, and using the restroom. These services are needed by individuals whose specific disabilities make it difficult for them to perform such activities on their own. PAS does not include services of a medical nature such as administering shots or monitoring blood pressure, and does not include assistance with commuting to and from work.

Personal Assistance Services (PAS) Provider: An employee or independent contractor whose primary job functions includes provision of personal assistance services. The PAS provider can provide the service to more than one individual, and can perform tasks unrelated to PAS, but only to the extent that doing so does not result in failure to provide services in a timely manner. If the DON is hiring a PAS provider to assist a single individual, then the employee's preferences shall be primarily considered to the extent permitted by law.

Reasonable Accommodation (RA): A change to the work environment or the way things are usually done that allows an individual with a disability to apply for a job, perform the essential functions of the position, or enjoy equal access to benefits available to other individuals in the workplace. RA differs from PAS, as the assistance or modification provided as an accommodation is directly related to the performance of job-related tasks. Examples of an accommodation include providing a reader to enable individuals who have visual impairments to read printed text, or a Sign Language interpreter to facilitate deaf-to-hearing communication.

Section 501 of the Rehabilitation Act of 1973, as amended: A federal civil rights law that prohibits federal agencies from discriminating against job applicants and employees based on disability, and requires agencies to engage in affirmative action for individuals with disabilities. The Equal Employment Opportunity Commission (EEOC) issued a final rule on January 3, 2017 to amend the regulations implementing Section 501 of the Rehabilitation Act of 1973. These regulations require federal agencies to provide personal assistance services to certain employees who need them because of a disability.

Targeted Disabilities: A subset of disabilities deemed to be severe. The federal government has recognized that qualified individuals with targeted disabilities face significant barriers to employment, above and beyond the barriers faced by people with the broader range of disabilities. The targeted disabilities are provided on the Office of Personnel Management's Standard Form 256 (SF-256), "Self-Identification of Disability," in which the October 2016 version of the form identifies the following as targeted disabilities:

- Developmental Disability, for example, autism spectrum disorder;
- Traumatic Brain Injury;
- Deaf or serious difficulty hearing, benefitting from, for example, American Sign Language, CART, hearing aids, a cochlear implant and/or other supports;
- Blind or serious difficulty seeing even when wearing glasses;
- Missing extremities (arm, leg, hand and/or foot);
- Significant mobility impairment, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports;
- Partial or complete paralysis (any cause);
- Epilepsy or other seizure disorders;
- Intellectual disability;
- Significant Psychiatric Disorder, for example, bipolar disorder, schizophrenia, PTSD, or major depression;
- Dwarfism; and
- Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders.

Undue Hardship: Significant difficulty or expense, considering the nature, extent, and cost of PAS in relation to an agency's overall resources and the impact of providing PAS on the operation of the agency's business. The DON is not obligated to provide PAS when provision of the services poses an undue hardship on the agency. The determination of undue hardship is made on a case-by-case basis.

## Resources

[Affirmative Action for Individuals with Disabilities in Federal Employment](#)

[EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#)

[EEOC's Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services under Section 501 of the Rehabilitation Act](#)

[EEOC's Questions and Answers: The EEOC's Final Rule on Affirmative Action for People with Disabilities in Federal Employment](#)

[The Job Accommodation Network's \(JAN\) Accommodation and Compliance Series: Personal Assistance Services in the Workplace](#)