

Post-hearing proposed changes (in red) based on comments received:

**§12-46-187 Failure to make reasonable accommodation~~[-.]~~,  
Interactive process.** (a) It is unlawful for an employer or other covered entity not to make reasonable accommodation to the known physical or mental limitations of an applicant or employee with a disability who is otherwise qualified, unless such employer or entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business. An employee does not have to specifically request a "reasonable accommodation", but must only let the employer know that some adjustment or change to the employer's workspace or the employer's policies, such as leave, zero-tolerance, or drug testing policies, including but not limited to tests for medical cannabis, is needed by the employee to do a job because of limitations caused by a disability. Nothing in this subsection shall be construed to require the employer to make an accommodation for the possession or use of drugs prohibited under state law, or require an employer to make an accommodation that would conflict with specific activities permitted under HAR §12-46-192.

Reference:

**HAR §12-46-192 Specific activities permitted.** (a) An employer or other covered entity:

(1) May prohibit the illegal use of drugs and the consumption of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the use of illegal drugs at the workplace;

(3) May hold an employee who engaged in the use of illegal drugs to the same qualification standards for employment or job performance and behavior to which the employer or other covered entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's use of illegal drugs;

(4) May hold an employee who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the employer or other covered entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's alcoholism, as long as reasonable accommodation, if requested, is provided for the performance of essential job functions;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of federal agencies including, but not limited to, the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, regarding alcohol and the use of illegal drugs;

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the United States Departments of Defense and Transportation and of the Nuclear Regulatory Commission that apply to employment in sensitive positions subject to such regulations; and

(7) May require a medical examination or inquiry, or both, as permitted in section 12-46-191, or a test or inquiry to determine the illegal use of drugs. However, this subchapter does not encourage, prohibit, or authorize an employer or other covered entity to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make an employment decision based on such test results.

(b) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of section 12-46-191(f).

(c) Under title I of the Americans with Disabilities Act, 42 U.S.C. §12113(d)(1), the Secretary of Health and Human Services is to prepare a list, to be updated annually, of infectious and communicable diseases which can be transmitted through the handling of food. If a person with a disability is disabled by one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, an employer or other covered entity may refuse to assign or continue to assign such person to a job involving food handling. However, if the person with a disability is a current employee, the employer shall consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling for which he or she is qualified. [Eff 8/18/94] (Auth: HRS §368-3) (Imp: HRS §§378-1, 378-2)