ADA for HR LIASIONS
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Department of Civil Rights and Equity Investigations

Created by the President Young in August 2018

Charged with centralization of reporting, investigation, and resolution process for all complaints of our Civil Rights policy, including Title IX

Staff includes 2 Case Managers, 4 Investigators, Deputy Title IX Coordinator, & an AVP Compliance and Title IX
Department of Civil Rights and Equity Investigations

Education

Connect our community with resources and interim support

Investigate CIVIL RIGHTS policy violations (08.01.01) & recommend conclusions

Refer professional misconduct to HR or DOF or Student Conduct for review
Why do we Accommodate Employees with Disabilities?

- It makes financial sense for employers.
  - Accommodations are often inexpensive or cost nothing at all.
  - Accommodations increase productivity, reduce turnover, and improve morale.
  - Inclusion of people with disabilities drives innovation.

- Any one of us could need an accommodation.
  - Roughly one in four Americans will be disabled at some point in their lives.

- It’s the law
Americans with Disabilities Act – signed into law 1990
So what does the ADA(AA) require?

The Americans with Disabilities Act requires employers to:

1) Refrain from discrimination against people with disabilities; and,

2) Provide reasonable accommodations to qualified employees unless the accommodation imposes an undue hardship on the operations of the employer. 42 USC 126 Sec. 12112
What is a disability?

- physical or mental impairment
- substantially limits
- major life activity

*the definition also includes a person with a history of disability and someone who is regarded as having a disability.
Major Life Activities Include:

- **Non-exhaustive List of Major Life Activities**
  - Standing, sitting, seeing, breathing, walking, pulling, thinking, eating, concentrating, lifting, sleeping, hearing, learning . . .

- **Non-exhaustive List of Major Bodily Functions**
  - Functions of the immune system, special sense organs and skin; normal cell growth; digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, & reproductive functions . . .
What is a Reasonable Accommodation?

Modification to the work environment or the way that work is performed that allows the employee to do the essential functions of the job or to access benefits/privileges of others in the job.
Essential Functions vs. Marginal Functions

Job functions are essential if they are:
- the reason the position exists
- limited number of employees who know how to do the task
- limited number of employees overall who can pick up the work
Examples of Reasonable Accommodations for Employees

- making physical changes to the worksite or furniture
- restructuring jobs
- modifying schedules, reducing hours to part-time
- purchasing or modifying equipment such as computers or telephones
- modifying workplace policies, like attendance, AWL, LOA
- reserved parking spaces
- offering reassignment to a vacant position in department or University
Reasonable Accommodations

- Employers have the right to choose among effective accommodation options and are not required to provide the specific accommodation requested by an employee.

- All accommodation requests are evaluated on a case-by-case basis.
Denying an Accommodation

- If an alternate accommodation is not available, or an accommodation is not going to be approved, OCRM must be notified before a final decision is declared.

- OCRM will review the decision with the ADA Coordinator.

- The ADA Coordinator must approve the decision before it’s declared final.
Reasons a request for accommodation can legally be denied:

- Personal use item
- Undue hardship
- Relative’s disability
- Not supported by medical
- Creates a new job
- Lowers Quality of work
- Lowers Quantity of work
- Removes essential functions
- Direct Threat
Undue Hardship

“Undue hardship on the operations of the University " means:

- Significant difficulty or expense
- Unduly disruptive
- Fundamentally alters the operation of the business

- Focus is on the resources available to the University, not the department
- Assessed on a case-by-case basis
- Very difficult to prove
True or false?

A department can choose not to hire a deaf applicant because no one else in the department speaks sign language.

FALSE
True or false?

Custodian Cliff undergoes cosmetic surgery, but surgical complications leave him unable to lift more than 10 pounds for the next six months. A daily task for a person in Cliff’s job is helping to set up equipment for special events, much of which weighs more than 10 pounds.

Cliff requests an accommodation, but his supervisor tells him the University does not need to accommodate his condition because the surgery was voluntary.

FALSE
Leave of Absence

Alli has been out for 14 weeks. She has used up all of her FMLA, sick leave, and vacation time. She brings in a doctor’s note saying that she needs two more weeks of time off and then she will be able to return to work.
Leave of Absence

Do you have to give her two more weeks of unpaid leave as a reasonable accommodation?

Likely Yes

What if the doctor says she needs 8 more weeks?

Likely No
Leave of Absence

What if the doctor isn’t sure whether Alli will be able to return to work in two more weeks?

Indefinite leave is NOT a reasonable accommodation*

* Sick leave pool is an OPTION not a right
Modifying Work Schedules

We are required to consider:

- Flex schedules
- Right to be late without consequence
- Part time work
- No lunch

Relying on Department or University policies will not work.
Modifying Work Schedules

These accommodations are very fact specific.

- Is attendance an essential function of this particular job?
- Does it really matter if the employee works slightly different hours than others?

Relying on Department or University policies will not work.
Change My Supervisor

It is not a reasonable accommodation to require an employer to change the employee’s supervisor or “protect” them from interactions with a supervisor.
Alternate Work Locations

- Case by case determination
- Focus should be on the nature of the work to be performed. Employer’s preference for having people on-site is not part of the analysis.
Alternate Work Locations

- May be denied if work actually requires face to face interaction with others (i.e., person who makes ID’s vs. auditor) or access to documents that cannot be electronically transmitted.
- Partial telecommuting (half days or alternate days) may be a solution.
- Consider role of technology.
Supervisors and Reasonable Accommodations

- Realize you have an ADA request
  - No “magic words” required
  - Anytime an employee brings in a doctor’s note or says that employee cannot do all or part of job because of a health concern

- Make sure the employee gets an ADA packet (HR Liaison/OCRM)
  - Forms: Employee ADA Request & Medical Questionnaire

- Focus on and document your consideration of this particular employee’s job duties, work schedules, and accommodation options
  - All requests are evaluated on a case-by-case basis
Supervisors and Reasonable Accommodations

• Be flexible
  • “The department doesn’t allow flex schedules, AWL etc.”
  • “If we give Maria a new monitor, everyone will want one.”

• Do Not Retaliate Against the Employee
  • Don’t assign the employee work outside of the accommodation and require him/her to remind you of the accommodation.
  • Don’t ding them on performance evaluation for being late if have accommodation to be late!

• Maintain Confidentiality
  • Only the people who need to know about the accommodation should be aware of it.
Red Flag Issues for Supervisors

Confidentiality doesn’t just mean medical records. The fact that someone applied for or was granted an accommodation is confidential as well.

Employees will ask: “Why do I have to work the reception desk again? You never assign DeShawn to do it.”

DO NOT reply: “Because DeShawn has a reasonable accommodation” or “Because DeShawn can’t sit for extended periods of time.”

DO SAY: It is the department’s policy not to discuss one employee with another employee.
HRL/Supervisor Responsibilities

- Employee requests an accommodation
  - Give ADA packet (request form, medical certification)
- Upon return of documents, send a copy to OCRM
- Contact OCRM to discuss request, limitations and accommodations
Factors to consider when reviewing a request for an accommodation:

- Disabled person
- Qualified individual
- Link between the disability and request
- Personal item
- Options available to accommodate
- Essential duties
- Direct Threat
- Will accommodation be effective

Personal use item
HRL/Supervisor Responsibilities

- Notification of acceptance or denial of the accommodation must be sent to the employee
  - Send letter to employee, copy supervisor and OCRM
  - Notice must include what accommodations were granted and when it will be provided; or what accommodations were denied and the reason for the denial.
  - Approved accommodations must be provided in a timely manner
Engage in the Interactive Process in EVERY Case

Employee makes request to Supervisor [Verbal or Written]

Supervisor reports to the HR Liaison, who gives ADA packet to Employee

Employee submits info to HR Liaison – HRL sends copy to OCRM

Department meets with employee to discuss essential functions, understand functional limitations, and brainstorm accommodations

If medical is incomplete or unclear, OCRM will request that more info be obtained from doctor

Accommodation to be granted

HR Liaison notifies OCRM. Supervisor implements accommodation

OCRM consults ADA Coordinator

More Interactive Process

Denied

Granted
Engage in the Interactive Process in EVERY Case

- Common Breakdowns on the Employer side of the Interactive Process

  - Not realizing you have a request for accommodation after employee links health concern to inability to do job

  - Not responding in a timely fashion

  - Not asking for clarification from Health Care Provider

  - Relying on set policies (we don’t do that here) vs. thinking about how to make the request work
Engage in the Interactive Process in EVERY Case

- The interactive process is ONGOING. If the accommodation fails, meet with the employee to discuss and try again.

- Have documentation that shows the Employer:
  - Met with the employee to discuss request
  - Requested information about functional limitations and the type of accommodation sought
  - Considered the employee’s requested accommodation
  - Discussed alternatives if employee’s request is burdensome
Red Flag Issues for Supervisors

- Treat all employees the same when faced with an accommodation request - even those who are good workers. Unequal treatment can appear to be discriminatory even when it’s not.

- Do not temporarily “accommodate” for more than a few days without contacting your HR Liaison or OCRM to ask for assistance.
ADA Applies to Job Applicants:

Some examples:

- Guide to interview location for visually impaired
- Sign language interpreters for hearing impaired
- Scribe or screen reader to assist with completing a job application