

## UNIVERSITY OF CALIFORNIA, MERCED

### CAMPUS PROCEDURES FOR AMERICANS WITH DISABILITIES AND DISABILITY MANAGEMENT

#### I. POLICY REFERENCE:

UC PPMS 81 Reasonable Accommodations, July 1, 2006

#### II. BACKGROUND:

This procedure is to provide local guidelines for the University of California Reasonable Accommodations policy cited above.

#### III. DEFINITIONS:

- A. Direct Threat**-A significant risk of substantial harm to the health and safety of the individual or others (DOJ, 2008).
- B. Disability**-A physical or mental impairment that substantially limits one or more of the individual's major life activities, or bodily functions, having a record of such an impairment, or being regarded as having such an impairment (ADAA, 2008) (DOJ, 2008).
- C. Disability Manager**-The individual responsible for consulting with the employee and supervisor pertaining to ADA review and accommodation requests.
- D. Essential Functions**- An **Essential Job Function** must meet at least one of the following criteria:
  - 1. The reason the position exists is to perform this duty at least 51% of the time. Removing this function would fundamentally change this position.
  - 2. A limited number of employees are available to do the function as determined via the interactive process.
  - 3. The functions performed are highly specialized.
  - 4. The function requires a proportionate amount of time to perform (51% in a 40 hour work week).
- E. Interactive Process**-The interactive process is an ongoing dialogue between the employee and appropriate representatives of the University about possible options for reasonably accommodating the employee or qualified applicant's disability.
- F. Medical Documentation** -The employee is responsible for providing medical documentation to assist with the interactive process and the determination of functional limitations. The University may require that the employee be evaluated by a licensed, University selected, medical provider and will pay the expenses of any medical examinations that are required or requested (UCOP, Reasonable Accommodation, 81, 2006).

- G. Medical Separation**-An employee with a disability who is unable to perform the essential functions of his or her position with or without a reasonable accommodation may be medically separated after the University has engaged the interactive process with the employee (UCOP, Medical Separation, 66, 2006). An employee separated under this procedure is eligible for special reemployment procedures, as outlined in PPSM 66.E -Special Reappointment Procedures.
- H. Request for Reasonable Accommodation** - A statement that an employee needs a work-related adjustment or change for a reason related to a mental or physical disability.
- I. Section 504 ADA Title 1 Coordinator**-The individual at UC Merced responsible for coordinating organizational compliance with the Americans with Disabilities Act specific to employment.
- J. Special Selection** -An employee who becomes disabled may be selected for an open position that has not been publicized for which they qualify. The Disability Manager will assist the employee with a disability in applying for the open position and he/she may be considered over non-disabled applicants. (Staff Policy 20.B .3, Exceptions to Recruitment)
- K. Treating Physician/Treating Health Care Professional** -A physician or other health care professional who examines the disabled employee at least once for the purpose of rendering or prescribing treatment and who has monitored the effect of the treatment afterwards.
- L. Undue Hardship**-Any action that imposes significant expense to the operation of the University based upon the nature and costs of the accommodation, the overall resources of the campus, the number of employees and other related factors (DOL, 2008)

#### **IV. INTERACTIVE PROCESS ROLES**

##### **A. INTERACTIVE PROCESS AND REASONABLE ACCOMMODATIONS**

The interactive process is an ongoing dialogue among the employee, the employee's supervisor, and the Disability Manager to determine reasonable and appropriate employment accommodations for qualified UC Merced employees.

An accommodation is reasonable if it does not impose an undue hardship on the department. Reasonable accommodation can include, but is not limited to, the following:

- Modifying the job duties
- Changing the work shift
- Modifying work schedules

- Leaves of Absence
- Providing assistive equipment and ergonomic services
- Reassignment

## **B. EMPLOYEE ROLE INTERACTIVE PROCESS**

An employee may start the interactive process by requesting a reasonable employment accommodation from the supervisor or the Disability Manager due to a qualifying mental or physical disability (see Definitions Section III B). The employee may make the request orally or in writing or by someone on his or her behalf.

The employee must respond to reasonable requests for information in a timely manner and must participate in the interactive process with the supervisor and Disability Manager. The employee is responsible for providing medical documentation

## **C. SUPERVISOR ROLE INTERACTIVE PROCESS**

The supervisor is also responsible to start the interactive process if he or she becomes aware of an employee's disability and the possible need for an accommodation.

Examples of when an employer must start the process are as follows:

- An employee informs a supervisor that he or she is having trouble working full days because of medical appointments.
- A supervisor learns that an employee cannot do a certain task or use a particular device on the job because of pain or other symptoms.
- An employee or employer's insurer informs the employer of work restrictions reported by the employee's primary treating physician.

Once the supervisor or Disability Manager are informed or become aware of the need for an accommodation, the Disability Manager will coordinate the interactive process within a reasonable time.

## **V. INTERACTIVE PROCESS STEPS**

The steps to the interactive process are outlined below. The process involves consultation among the employee, the employee's supervisor, the Disability Manager, and the employee's health care provider. All steps need to be timely, made in good faith and documented.

- 1) Identify specific job-related functional limitations and whether limitations are temporary or permanent by consulting with the employee and reviewing documented functional limitations.
- 2) To assist in understanding the nature of the employee's functional

limitations, the supervisor asks the employee for documentation of functional limitations from the medical provider, unless limitations are obvious.

**Note:** The supervisor does not communicate directly with the employee's medical provider due to confidentiality. Requests for documentation and related clarification are to be handled by the Disability Manager or the employee.

The documentation may be subject to confirmation by a University-appointed licensed healthcare provider.

- 3) Analyze the job requirements and identify the essential and non-essential functions of the job using the job description.
- 4) Determine if the limitations interfere with the employee performing the essential functions of the job.
- 5) Identify possible reasonable job accommodations through the interactive process with the employee.
- 6) Make recommendations about the reasonable accommodation based on the employee's medical status and submit a Reasonable Accommodations Recommendation letter to the Section 504 Title 1 Coordinator for approval.
- 7) Implement the reasonable accommodation that is most appropriate for both the employee and the employer, does not impose undue hardship on the University, and is not a direct threat to the health and safety of the employee or others.
- 8) Monitor the effectiveness and satisfaction of the reasonable accommodation.
- 9) If the accommodation is unsuccessful, continue the interactive process to evaluate possible alternatives or other accommodations.

If the reasonable accommodation request is not approved, the employee has the right to appeal the decision to the VC for Administration.

If a reasonable accommodation cannot be identified, the Section 504 ADA Title 1 Coordinator will determine the employee's eligibility for alternative vacancies within UC Merced (based on UCOP staff policy 20 B) or proceed with a medical separation (based on UCOP staff policy 66).

## **VI. UNDUE HARSHIPS AND DIRECT THREAT**

- A. **Undue Hardship:** The University is not required to provide reasonable

accommodation if the accommodation results in undue hardship. "Undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the essential nature of the business or service (ADA, 1990). Limitations to the department's funds and resources are only one factor in determining undue hardship. The department must take into account the size, resources, nature and structure of the campus, as well as the impact on the specific facility providing the accommodation. Undue hardship has to be approved by the Section 504 ADA Title 1 Coordinator.

- B. **Direct Threat:** The University is not required to employ an individual with a disability who poses a "direct threat" to the health and safety of him/herself or others and who cannot perform the job at a safe level even with reasonable accommodation. The University bears the burden of proof for this exception.

## **VII. CONFIDENTIALITY**

Medical records are subject to the confidentiality requirements of federal and state laws and UC policy (UCOP, RMP-8, 1992). The Health Insurance Portability and Accountability Act of 1996 requires the employee's written authorization for any use or disclosure of protected health information and compliance with the principle of the minimum necessary for the intended purpose. The University of California is a HIPAA covered entity and requires compliance with the confidentiality, availability and integrity of health care information (UCOP, HIPAA, 2002)

## **VIII. COMPLAINT PROCESS**

Staff, faculty, student employees or applicants for employment who believe they have been discriminated against are encouraged to contact the campus EEO/AA Officer in Human Resources.

Retaliation or harassment against a person who files a complaint of discrimination, participates in an investigation of such a complaint, or opposes an unlawful employment practice is prohibited. An employee who believes she or he has been retaliated against for filing a complaint of discrimination is encouraged to report the retaliatory actions to the campus EEO/ AA Officer.

The Section 504, ADA Title 1 Compliance statement will be incorporated into the campus publications and recruitment materials on an ongoing basis and made available to applicants, students, employees, and other interested parties.

## **IX. SPECIAL SELECTION**

An employee who becomes disabled may be selected for a position which has not been

publicized consistent with applicable collective bargaining agreements and personnel policies (UCOP, Recruitment 20 B.3). Departments are required to consider employee applicants referred by AVC for Human Resources prior to reviewing the applications of any external candidates and/or any employee who is not eligible for recall or lay-off preference. Human Resources will be responsible for coordinating the applicant referral process and ensuring that the appropriate preferential sequence is followed.

## **X. MEDICAL SEPARATION**

A Medical Separation occurs when a regular status employee becomes unable to perform essential functions of his or her position with or without reasonable accommodation, due to a disability. A regular status employee may be separated in the event that he or she is unable to perform essential functions of the position with or without reasonable accommodation, due to a disability (UCOP, Medical Separation, 66, 2006). Prior to any medical separation, the University will engage in the interactive process in accordance with the provisions of Staff Policy 81 -Reasonable Accommodation. An employee separated under this policy is eligible for special reemployment procedures, as outlined in PPSM 66.E -Special Reappointment Procedures.