

***Supervisory Guide to the Americans with Disabilities Act (ADA)  
and California Fair Employment and Housing Act***

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## I. University Compliance Philosophy

The University's personnel policies are designed to be in compliance with both the substance and intent of the employment provisions of The Americans with Disabilities Act of 1990, as well as with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973 and the provisions of [California Fair Employment and Housing](#).

Accordingly, in the application of its personnel policies, the University's intent is to establish and maintain employment practices which afford equal employment opportunity to otherwise qualified individuals with disabilities and which do not unlawfully discriminate against and/or have unlawful disparate or adverse impact upon disabled individuals on the basis of their disabilities.

A basic tenet of the ADA is the entitlement provided to qualified individuals with disabilities to be afforded reasonable accommodations in employment. While the Act prohibits any form of unlawful discrimination in employment against non-disabled individuals based on their relationship to or association with individuals having known disabilities, it does not require the provision of reasonable accommodations for those individuals on the basis of such relationships or associations.

Accordingly, the University's obligation to provide reasonable accommodation extends only to qualified individuals with disabilities who are applicants for positions or who are already employed. However, certain employment privileges and benefits which are not reasonable accommodations, such as personal and family leave, may appropriately apply to employees who are related to or associated with disabled individuals under existing policies and relevant collective bargaining agreements.

## II. Definitions

**Direct Threat:** A significant risk of substantial harm to the health or safety of the individual or others which cannot be eliminated by reasonable accommodation.

**Disability:** A physical or mental impairment that substantially limits one or more of an individual's major life activities, a record of such an impairment, or being regarded as having such an impairment.

**Essential Functions:** The fundamental (as opposed to marginal) job duties of the employment position the individual holds or desires.

**Functional Limitations:** Measurable physical or mental limitations that prevent the individual with a disability from performing specific job activities.

**Major Life Activity:** Functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

**Physical or Mental Impairment:**

1. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; *or*
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Qualification Standards:** The personal and professional attributes, including the skill, experience, education, physical, medical, safety, and other requirements established by the employer as requirements which an individual must meet in order to be eligible for the position held or desired. Qualification standards may include a requirement that an individual not pose a direct threat to the health or safety of the individual or others.

**Qualified Individual with a Disability:** An individual with a disability who (1) satisfies the requisite skill, experience, and education requirements of the employment position such individual holds or desires, and (2) can perform the essential functions of that position, with or without reasonable accommodation.

**Reasonable Accommodation:**

1. Any modification or adjustment to a job application process that enables a qualified individual with a disability to be considered for the position the qualified individual desires; *or*
2. Any modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables an applicant or employee to perform the essential functions of that position.

Reasonable accommodation may include any of the following:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
2. Job restructuring (modifying a job so that a person with a disability can perform the essential functions of the position; that is, eliminating nonessential elements of the job, redelegating assignments, exchanging assignments with another employee, and redesigning procedures);
3. Initiating part-time or modified work schedules;
4. Acquiring or modifying equipment or devices;
5. Appropriately adjusting or modifying employment examinations, training materials, or local practices;
6. Providing qualified readers or interpreters; Reassigning or referring a disabled individual to an active vacant position if all attempts to implement other reasonable accommodations have been unsuccessful.

**Record of History of Impairment:** Those individuals who have a history of an impairment, have been treated in the past for the impairment, or who have been diagnosed correctly or incorrectly as having an impairment; for example, a former cancer patient.

**Regarded as Impaired:** Individuals who have a physical or mental impairment which, though not substantially limiting a major life activity, is regarded as being such a limitation; for example, severe burn victims who are disfigured, though no substantial limitation of a major life activity exists.

**Substantially Limits:** Inability to perform a major life activity that the average person in the general population can perform; or significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. Under California Fair Employment and Housing regulations, the disability does not have to substantially limit the major life function.

**Substantially Limited in "Working":** An individual will be considered to be substantially limited in "working" if the individual's ability to perform a class of jobs or a broad range of jobs in various classes is restricted when compared with the ability of the average person with comparable qualifications to perform those same jobs.

*Example: An individual who cannot work for a certain supervisor would not ordinarily be considered limited in "working."*

**Undue Hardship:** Any action which would impose significant difficulty or expense to the operation of the campus considered in light of the following facts:

1. The nature and cost of the accommodation;
2. The overall financial resources of the campus;

3. The number of persons employed:
4. The effect on expenses and resources, or the impact otherwise of the accommodation on business operations;
5. The type of operation or operations of the campus, including the composition, structure, and functions of its workforce; the geographic separateness, administrative, or fiscal relationship among the relevant entities; and
6. The impact of the accommodation upon the operation of the campus, including the impact on the ability of other employees to perform their duties and the impact on the campus' ability to conduct business.

**Vacant Position:** An active unfilled position for which it has been determined that open recruitment may proceed because (1) there is no individual with right to recall or preference for reemployment or transfer who is qualified to fill the position, and (2) no other internal transfer action is contemplated for the position.

All terms in bold in the remainder of this document are defined in this section.

### III. The Pre-Employment Process: Recruitment and Selection

#### A. University of California Recruitment and Selection Objectives

It is the intent of University policy to ensure that campus recruitment and selection practices are designed and conducted to meet the following objectives:

1. To provide to disabled individuals equal access to information about position vacancies and equal opportunity to compete for selection to vacant positions.
2. To select for vacant positions individuals who are most fully qualified to perform effectively all essential functions of the job - with or without reasonable accommodation - and to ensure equality of opportunity to them in the selection process.

#### B. Documentation

Hiring actions should be thoroughly documented in writing; accordingly:

1. To provide to disabled individuals equal access to information about position vacancies and equal opportunity to compete for selection to vacant positions.
2. To select for vacant positions individuals who are most fully qualified to perform effectively all essential functions of the job - with or without reasonable accommodation - and to ensure equality of opportunity to them in the selection process. Agreements shall be time-specific with a date set for review and reconsideration.

#### C. Recruitment

1. Job vacancy listing, requisitions, announcements, and advertisements used in recruitment must clearly identify and describe (along with other information):
  - a. The essential functions of the job, and
  - b. The qualifications standards that correspond to the essential functions.
2. The Recruitment Services should ensure that measures are taken to provide to disabled individuals ready access to job vacancy information, announcements, and listings.
3. Open recruitment is not required when a vacant position is to be filled by a current University employee whom has a disability in accordance with the "Special Selection (Transfer) Procedures" given in Section 4 of these Guidelines.

#### D. Selection

1. Disclosing University's Willingness to Consider Reasonable Accommodation

Campuses may include in recruitment and selection materials disclosure that the University will consider - upon request by the applicant - reasonable accommodations that will enable the applicant to participate in the selection process and/or to perform the essential functions of the job.

## 2. Evaluating Job Applicants

### a. Qualification Standards, Tests, and Other Selection Criteria

- i. Must be job related for the position in question and consistent with business necessity'
- ii. Must be job related;
- iii. Cannot be used intentionally to screen out or disadvantage applicants with a disability, and necessitate consideration of reasonable accommodation in instance when they inadvertently screen out disabled applicants;
- iv. Must provide an accurate measure of an applicant's actual ability, with or without reasonable accommodation, to perform the essential functions of the job; Cannot be used to exclude an applicant with a disability if the criterion can be satisfied by the applicant with a reasonable accommodation.

### b. Job Application Forms

Job application forms cannot require applicants to divulge whether they are disabled or list potentially disabling impairments that applicants are to check off if applicable to them. It is permissible to include in application materials separate voluntary self-identification forms listing "disabled" as a category.

### c. Job Interviews

- i. The interviewer cannot make pre-employment inquiries regarding the existence, nature, severity, origin, or prognosis of an applicant's disability, if any, but can ask the applicant about his or her ability to perform all job-related functions (essential and marginal functions).

Example: If driving is an essential function, the interviewer cannot ask whether the applicant is vision impaired, but can ask whether applicant has a valid driver's license.

- ii. The interviewer can describe or demonstrate a job-related function and inquire whether the candidate can perform the function with or without reasonable accommodation

Example: The interviewer may explain that the position requires moving heavy objects from place to place and ask the applicant if and how he or she will be able to perform that function.

- iii. The interviewer cannot inquire about the frequency with which the applicant will require leave for treatment or use leave as a result of incapacitation because of a disability, but can state the attendance requirements of the job and ask whether the applicant can meet them.

## 3. Reasonable Accommodation to Facilitate Performance of Essential Job Functions

The campus is obliged to explore reasonable accommodation options when an individual with a disability requests accommodation or indicates the need for accommodation, accordingly:

- a. An otherwise qualified applicant who is disabled cannot be excluded from consideration because he or she requests or requires a reasonable accommodation.

- b. Once an individual with a disability requests a reasonable accommodation in order to perform essential functions, the department must make a reasonable effort, as part of the selection process, to determine whether an appropriate accommodation can be made.
- c. Following are the general steps to take, with the assistance of the Disability Management Coordinator as appropriate, to explore reasonable accommodation options as part of the selection process:
  - i. Review of established essential functions;
  - ii. Consultation with disabled individual to ascertain precise job limitations imposed by the disability to include review of any medical or other documentation which that individual voluntarily provides;
  - iii. Consultation with disabled individual to determine how job limitations could be overcome with reasonable accommodation, to identify a range of possible accommodations, and to assess effectiveness of potential accommodations;
  - iv. Selection of accommodation that is most appropriate for both the disabled individual and the department, taking into consideration the accommodation preferred by the job applicant; and
  - v. Determination by the Control Unit, in consultation with the Recruitment Services, as to whether the selected accommodation can be implemented or cannot be implemented because it poses undue hardship.
- d. A qualified applicant without a disability cannot be given selection preference or be selected over an equally qualified individual with a disability merely because the disabled individual will require reasonable accommodation - unless it has been determined that the accommodation would pose undue hardship and no alternate acceptable accommodation is available.
- e. If a qualified individual with a disability refuses a reasonable accommodation which is necessary, that individual can be disqualified from consideration for the position.
- f. A qualified individual with a disability cannot be compelled to accept an accommodation when it has neither been requested nor is needed to enable that individual to perform essential functions.

#### 4. Final Selection Decisions

##### a. Prohibited Discrimination

The hiring authority cannot refuse to select or offer employment to a qualified individual with a disability based merely on:

- i. The individual's inability to perform a nonessential marginal job function/task;
- ii. The individual's inability to meet a qualification standard if that criterion can be satisfied with reasonable accommodation;
- iii. The individual's performance on a qualifications test if the test required use of a skill for which that individual is impaired, but the skill is neither an established essential function nor a qualified standard for the position;
- iv. The individual's performance on a qualifications test if the test required use of a skill for which that individual is impaired and the skill is an established essential function or qualification standard - unless no reasonable accommodation is available to enable that individual to perform the function;
- v. The individual's request or need for reasonable accommodation;

- vi. The determination that the individual will require a specific reasonable accommodation, unless the accommodation can be demonstrated to pose undue hardship.
- vii. The individual's refusal to accept an accommodation which is neither requested nor needed.

b. Direct Threat Considerations

The hiring authority can refuse to select or offer employment to an applicant with a disability on the basis that the individual poses a direct threat to the health or safety of himself/herself or others due to the disability only if it can be established and documented that the direct threat cannot be eliminated or acceptably reduced through reasonable accommodation.

The following process should be used to establish and document the existence of a direct threat (in consultation with Labor Relations/Employee Assistance Program as appropriate):

- i. In cases of mental or emotional disability, identify the specific behavior that would pose the direct threat.
- ii. In cases of physical disability, identify the aspect or effects of the disability that could cause substantial harm.
- iii. Assess the duration of the risk, the nature and severity of the potential harm, and the likelihood that the potential harm will occur.
- iv. Based on the above, conclude whether a direct threat exists and, if so, whether it can be eliminated or reduced by a reasonable accommodation.

c. Permissible Reasons for Non Selection of an Individual with a Disability

The hiring authority can refuse to select or offer employment to an individual with a disability who:

- i. With or without reasonable accommodation can be shown to be less qualified than another applicant;
- ii. Cannot be provided with a necessary reasonable accommodation, either because none exists or because it poses undue hardship;
- iii. Refuses a reasonable accommodation which is offered and necessary to enable the individual to perform the essential functions of the job.

5. Pre-Placement Medical Examinations

(These guidelines do not apply to pre-employment drug tests; voluntary medical examinations, such as those taken to obtain medical benefits coverage; or physical agility tests, discussed in 2-d.)

- a. Medical examination may be required after the offer of employment, but before an individual actually starts working, as a condition to the offer of employment - provided that all entering employees in the same job category are subjected to such examination.

*Example: All safety personnel (police and firefighters) are required to take a medical exam as a condition of employment.*

- b. An employment offer to an individual can be withdrawn based on the results of a pre-placement physical exam only if:

- i. The withdrawal is based on the individual's failure to meet an examination criterion that either does not screen out or tend to screen out individuals with a disability and is job related and consistent with business necessity; and
- ii. It can be demonstrated that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job.

*Example: An essential function of a job conditionally offered to an individual is that the incumbent must be available every day for the next three months for work and training. The pre-placement physical exam reveals that the individual has a disabling impairment requiring treatment that will make it impossible for the individual to work for a portion of the first three months. Under these circumstances, the job offer can be withdrawn.*

- c. Medical information about an applicant obtained as a result of a pre-placement examination must be collected and maintained separately and must be treated as confidential in accordance with applicable campus procedures, except that:
  - i. Supervisors and managers may be informed about necessary restrictions on the work or duties of the employee and necessary accommodations;
  - ii. First aid and safety personnel may be informed, when appropriate, if the individual with the disability might require emergency treatment;
  - iii. Relevant information may be provided as appropriate upon request by government officials investigating ADA compliance or pursuant to other official or legal request or order, in compliance with applicable Federal and State laws and regulations and campus policies.

#### **IV. Process of Disability Management**

##### **A. Roles and Responsibilities**

##### **1. Control Unit and Recruitment Services**

The Control Unit, in consultation with the Recruitment Services, is responsible for determining if an accommodation is reasonable.

##### **2. Employee**

It is the responsibility of the employee with a disability to inform the employer of the need for an accommodation. Accordingly, the employee:

- a. Should inform the supervisor of the need for an accommodation, and
- b. Should provide the necessary documentation and/or participate in any necessary evaluations which would provide information allowing the University to evaluate a reasonable accommodation.

##### **3. Supervisor**

It is the responsibility of the supervisor to address the need for a reasonable accommodation within the workplace. Accordingly, the supervisor:

- a. Should be familiar with the essential functions and qualification standards for the position,
- b. Refer employee to Disability Management Coordinator to determine eligibility for accommodation
- c. With assistance from Disability Management Coordinator, evaluates the appropriateness of the accommodation,

- d. Working with Disability Management Coordinator, implements a reasonable accommodation, or
- e. Informs the employee if the accommodation is declined.

#### 4. Disability Management Coordinator

The Disability Management Coordinator assumes the lead role in evaluating the capability of an employee with a disability and in determining if the employee is able to perform the essential job functions. It is the counselor's responsibility to:

- a. Review and evaluate the impact of disabling conditions, functional abilities, and functional limitations of the employee,
- b. Analyze the job duties,
- c. Make recommendations for possible accommodations in consultation with the employee and supervisor, and
- d. Assist employees and supervisors in responding appropriately to an employee's disabling condition.

#### 5. Employee Assistance Program

When appropriate, the Employee Assistance Program will address concerns of mental or psychological disability or substance abuse disability. The Employee Assistance Program provides the following:

- a. Technical assistance to the Disability Management Coordinator for the evaluation and possible accommodation of the employee with a mental, psychological, or substance abuse disability, and
- b. Appropriate mental health support for the employee with a mental, psychological, or substance abuse problem.

### B. Disability Management Process

#### 1. Informal Accommodations

Informal efforts to accommodate the functional limitations of an employee with a disability may be made by the supervisor. Such efforts do not preclude the need for a formal evaluation process, if necessary. The formal process described below in (2) must precede any medical separation action.

- a. With the employee's assistance as appropriate, the supervisor may identify job duties which the employee is unable to perform.
- b. The supervisor may agree to an informal accommodation and should document such discussions, consistent with department practices.
- c. If there is any question concerning the nature of the limitation or of the accommodation requested, the supervisor should consult the Disability Management Coordinator.
- d. In cases involving substance abuse or mental health problems, the supervisor may wish to seek expert advice from the campus Employee Assistance Program or other appropriate resources prior to agreeing to an accommodation.

#### 2. Formal Accommodation Process

The formal accommodation process documents the effort to identify and implement a reasonable accommodation undertaken by the campus and the employee with a disability. The formal accommodation process involves a review by the Disability Management Coordinator.

- a. The employee must present to the supervisor notice of a limitation which requires accommodation.  
*Example: A note from the physician may be submitted restricting the employee from lifting more than 50 pounds.*
- b. If there is a question concerning the employee's ability to perform job related functions, the supervisor may require a medical examination (and/or inquiry) of an employee that is job related and consistent with business necessity.
- c. If the disability precludes the employee from performing essential job functions, the Disability Management Coordinator, in consultation with the employee and the department, shall take the following actions:
  - i. Evaluate the employee's functional abilities and limitations,
  - ii. Analyze the job requirements,
  - iii. Explore options available for an accommodation,
  - iv. Determine the most effective and least costly accommodation, taking into consideration the employee's preferences, and
  - v. Evaluate whether an employee can perform the job safely.
- d. The supervisor should review the essential functions and qualification standards for the position.
- e. The review of possible reasonable accommodations should include consideration of the following:
  - i. Evaluate the employee's functional abilities and limitations,
  - ii. Analyze the job requirements,
  - iii. Explore options available for an accommodation,
  - iv. Determine the most effective and least costly accommodation, taking into consideration the employee's preferences, and
  - v. Evaluate whether an employee can perform the job safely.
- f. In considering the overall reasonableness of possible accommodation, the supervisor should evaluate the effectiveness of each accommodation in enabling the individual with a disability to perform the essential functions of the job. The supervisor should review the following:
  - i. Safety issues of the accommodation,
  - ii. Cost of the accommodation,
  - iii. Impact of the accommodation upon the workplace, and
  - iv. Impact of the accommodation upon co-workers.
  - v. The supervisor discusses the possible accommodation with the Disability Management Coordinator and the employee. If appropriate and reasonable, the accommodation is implemented.
  - vi. Any accommodation that is adopted should be reviewed periodically by the employee, the supervisor, and the Disability Management Coordinator to ensure success.

### 3. Special Selection (Transfer) Procedures for Current Employees

If efforts to provide other types of reasonable accommodation are unsuccessful, transfer or reassignment of the disabled employee to an active vacant position should be considered as an accommodation, as set forth in the following procedures:

- a. The Disability Management Coordinator identifies the employee with a disability to the Recruitment Services.
- b. The Recruitment Services and Disability Management Coordinator identify those specific job titles for which the employee might be qualified, with or without reasonable accommodation.
- c. The Recruitment Services and Disability Management Coordinator establish a reasonable period of time during which to attempt to find a suitable position for which transfer or reassignment might be considered. The time period should be reasonable as determined by the specific circumstances of each individual case.
- d. The Recruitment Services reviews position vacancies in the identified job titles to determine whether the employee might be qualified for consideration.
- e. The Recruitment Services refers the employee to the hiring department for consideration when an appropriate position vacancy is identified.
- f. The department evaluates the employee's qualifications.
- g. If the department determines that the employee can perform the essential functions of the job, with or without reasonable accommodation, the employee is transferred or reassigned to the position without the necessity for recruitment.
- h. If the department determines that the employee cannot perform the essential functions of the job with reasonable accommodation, this determination should be documented in writing and submitted for review by the Recruitment Services and the Disability Management Coordinator.
- i. If not selected for a given vacancy, the employee with a disability will be considered for subsequent appropriate vacancies occurring during the time period that has been established for special selection consideration.

#### 4. Declination of Accommodation by the Department

- a. The supervisor should discuss with the Recruitment Services suggested accommodations that appear unreasonable.
- b. When declining a suggested accommodation, a review should be made of factors considered which constitute undue hardship.
- c. The Control Unit, in consultation with the Recruitment Services, shall decide if a requested accommodation is reasonable or is considered undue hardship.

#### C. Medical Separation

An employee with a disability may be medically separated if efforts to provide a reasonable accommodation are unsuccessful, consistent with University policies and local campus procedures and relevant collective bargaining agreements.

1. The department head will provide a statement describing the essential functions the employee is not performing.
2. The Disability Management Coordinator will formally review and document medical records and efforts to provide a reasonable accommodation.
3. If warranted, the Disability Management Coordinator will forward additional recommendations for possible accommodation.

4. If no additional accommodations are recommended by the Disability Management Coordinator, the department may provide a notice of intent to medically separate the employee as described in local campus procedures and relevant collective bargaining agreements.